

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Florence County

S.C. SUPREME COURT

Honorable D. Craig Brown, Circuit Court Judge

ERIC S. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000223

APPENDIX

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STATE OF SOUTH CAROLINA) }
COUNTY OF FLORENCE) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
11-GS-21-1212

v.)
ERIC S. WILLIAMS,)

DEFENDANT.)

July 30, 2012
Florence, South Carolina

BEFORE :

THE HONORABLE THOMAS A. RUSSO, JUDGE;
AND JURY

APPEARANCES:

JOHN C. JEPERTINGER, ESQ.
Assistant Solicitor

MICHAEL S. BELL, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
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(There were no exhibits submitted.)

1 THE COURT: Ladies and gentlemen, we're
2 ready to begin and draw a jury for our first trial
3 and would recognize Mr. Jepertinger for the State.

4 MR. JEPERTINGER: Yes, sir, if it please
5 the Court, Your Honor, the State would call
6 2011-GS-21-1212 the State against Eric Shanta
7 Williams charging him with the crime of armed
8 robbery.

9 THE COURT: All right. Ladies and
10 gentlemen, the State — the first case that the
11 State has called to trial is State of South Carolina
12 versus Eric Shanta Williams. Mr. Williams is
13 charged under indictment 2011-GS-21-1212 with the
14 offense of armed robbery. To this charge, ladies
15 and gentlemen, Mr. Williams has pled not guilty and
16 that plea of not guilty does two things. It places
17 upon him the presumption of innocence and it places
18 upon the State the burden of proof to prove the
19 allegations contained in this indictment. The fact
20 that Mr. Williams has been charged and indicted in
21 this case is not evidence in this case at all. He
22 has pled not guilty to this charge and is presumed
23 innocent as he sits here today. I am going to read
24 to you the allegations contained in the indictment
25 so that you'll be familiar with what the State

1 alleges and then can answer any questions that I
2 will be asking regarding this. Under this
3 indictment Mr. Williams — and I'll just read the
4 allegations as they're contained here. It is
5 charged that Eric Shonta Williams did in Florence
6 County on or about October 21st of 2010 while armed
7 with a deadly weapon, to wit, a handgun, take and
8 carry away personal property of Joe Backus, Jr.,
9 from or in the immediate presence of Joe Backus,
10 Jr., with the intent to deprive Joe Backus, Jr., of
11 possession of his wallet including cash and
12 documents by use of force, threats, or intimidation
13 all in violation of Section 16-11-330(a) of the
14 South Carolina Code of Laws 1976 as amended.

15 Now, is there any member of the jury panel
16 based on the little bit of information I've given
17 you, who knows anything about this case, if so,
18 please stand.

19 (There was no response.)

20 THE COURT: Thank you, there are none.
21 Ladies and gentlemen, you saw earlier me introduce,
22 or recognize Mr. Jepertinger on behalf of the State.

23 Mr. Jepertinger, if you would stand and
24 introduce yourself.

25 MR. JEPERTINGER: Yes, sir. My name is

1 John Jepertinger. I'm deputy solicitor here in the
2 Twelfth Judicial Circuit. The twelfth circuit
3 includes both Florence and Marion counties. I work
4 with your solicitor Ed Clements. Other members of
5 the staff include Robert Wells, Patricia Parr,
6 Steven Hill, Katherine Wyse, Emily Crayton, Mat
7 Ozment, and Todd Tucker.

8 THE COURT: Thank you, sir. Ladies and
9 gentlemen, is there any member of the jury panel who
10 is related by blood, connected by marriage, or who
11 has any close, personal, or business relationship
12 with Mr. Jepertinger or any member of the
13 Solicitor's office or that staff, if so, please
14 stand.

15 Ma'am, I get your name please.

16 POTENTIAL JUROR: Margaret Costas.

17 THE COURT: All right, Ms. Costas. This
18 is juror number 33. And who in that office, ma'am,
19 or —

20 THE POTENTIAL JUROR: We hosted a campaign
21 party for Mr. Clements so I don't know if that would
22 be —

23 THE COURT: Well, let me ask you this.

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: The fact that you had that

1 event on behalf of Mr. Clements' election, would
2 that in any way effect your ability to be fair and
3 impartial to give both the State and the Defense a
4 fair trial?

5 THE POTENTIAL JUROR: No, sir.

6 THE COURT: All right. Thank you very
7 much, Ms. Costas. You may have a seat.

8 Ladies and gentlemen, you heard me mention
9 earlier Mr. Michael Bell who is the attorney for
10 Mr. Williams. I'm gonna have Mr. Bell introduce
11 himself, as well as his client.

12 MR. BELL: I'm Michael Bell. I'm a lawyer
13 with the Public Defender's Office, and this is
14 Mr. Eric Williams.

15 If you would, just stand, Eric.

16 Assisting us at the table is Mr. Thomas
17 McKenzie who is an investigator in our office.
18 Other members of our staff that are in the courtroom
19 are Mr. Scott Floyd who is the Twelfth Circuit
20 Public Defender, Karen Parrot, and Will Grove.

21 THE COURT: Thank you very much, sir.
22 Ladies and gentlemen, is there any member of the
23 jury panel who is related by blood, connected by
24 marriage, who has any close business or personal
25 relationship with Mr. Michael Bell or who has been

1 represented by Mr. Bell in the past, if so, please
2 stand.

3 (There was no response.)

4 THE COURT: Thank you very much. Is there
5 anyone — you heard him discuss the members of his
6 office. Is there any member of the jury panel
7 related by blood, connected by marriage, or have any
8 close business or personal with relationship with
9 any of the folks that he named related to his
10 office, if so, please stand.

11 (There was no response.)

12 THE COURT: Thank you. There are none.
13 You've met Mr. Williams, ladies and gentlemen. Is
14 there any member of the jury panel who is related by
15 blood, connected by marriage, or who has any close
16 business or personal relationship with the defendant
17 in this case Mr. Eric Williams, if so, please stand.

18 (There was no response.)

19 THE COURT: Thank you. There are none.
20 Ladies and gentlemen, I'm gonna call out a list of
21 names. These names are folks who are potential
22 witnesses in this case. These folks may appear as
23 witnesses during the course of this trial. I'm not
24 sure if all of them will, but they certainly are
25 listed as potential witnesses. That question that I

1 just asked you as it related to Mr. Williams, if
2 you're related by blood, connected by marriage or
3 have any close business or personal relationship,
4 that's the question that I'm gonna be asking you as
5 it relates to these witnesses. Now there are
6 several names on here that I'm gonna be calling out.
7 If you hear a name and that question applies to you,
8 then I'm gonna ask you to go ahead and stand if you
9 hear a name where that question applies to you. If
10 you do stand, continue to listen now because it may
11 with that you know one or more of the folks that are
12 listed on these sheets, okay?

13 So the following are potential or possible
14 witnesses who may testify during this trial. And if
15 any of these witnesses are present please stand.
16 Thomas McFadden, and is it Xederick Hall, Joe
17 Backus, Hope Anderson, Alonzo Mumford, Margaret
18 Gurley, Tamika Stover, Michael Atkins, Doris Hayden.
19 And let me just real quick, was it Ms. Stover and
20 Ms. Hayden; is that correct? I'm sorry, Ms. Atkins
21 and Ms. Hayden, if y'all would please stand again.
22 Let me let — I don't think the jury realized that
23 y'all stood just so they can see you. Sometime
24 people know people by face but not by name. So
25 thank you very much, ladies, you may have a seat.

1 Shondra Anthony, Shonta McDaniel.

2 MR. JEPERTINGER: Not in the courtroom.

3 THE COURT: Sherman Peterson, Eric Coffin.

4 Any members of the jury related by blood connected
5 by marriage or have any close business or personal
6 relationship with any of those folks whose names I
7 called?

8 (There was no response.)

9 THE COURT: Thank you. There are none.

10 Ladies and gentlemen, is there any member of the
11 jury panel who is a contributor either by financial
12 means or by volunteering of your time, any member of
13 the panel who is a contributor to organizations such
14 as MADD, Mothers Against Drunk Driving, SADD,
15 Students Against Drunk Driving, CAVE, Citizens
16 Against Violence, the Fraternal Order of Police, the
17 South Carolina Highway Trooper's Association, South
18 Carolina Sheriff's Association, any of these types
19 of organizations, any member of the jury panel a
20 contributor either through money or your time of
21 volunteering, if so, please stand.

22 And ma'am, your name please.

23 THE POTENTIAL JUROR: Patricia Lewis.

24 THE COURT: All right, Ms. Lewis. This is
25 juror 86. Ms. Lewis, the fact that you are a

1 contributor to any number of those organizations
2 would that in any way affect your ability to be fair
3 and impartial, ma'am.

4 THE POTENTIAL JUROR: Well, I'm not a
5 contributor at present. That was before I had two
6 children in college, but I used to.

7 THE COURT: I absolutely understand that.
8 Would that, the fact that you were a former
9 contributor, would that in any way affect your
10 ability to be fair and impartial, ma'am?

11 THE POTENTIAL JUROR: No, it wouldn't.

12 THE COURT: Thank you very much,
13 Ms. Lewis, you may have a seat.

14 Is there any member of the jury panel or a
15 member of your immediate family or close circle of
16 friends who has been the victim of a crime, if so,
17 please stand.

18 Your name, ma'am, please.

19 POTENTIAL JUROR: Jean Williams.

20 THE COURT: Ms. Williams, this is juror
21 number 154. Yourself or member of your family,
22 Ms. Williams, or a friend?

23 THE POTENTIAL JUROR: Me. Housebreak,
24 someone breaking into my home.

25 THE COURT: Sure, that would be a crime.

1 You would be a victim. The fact that you have had
2 that experience, Ms. Williams, would that in any way
3 affect your ability to be fair and impartial giving
4 both the State and the Defense in this case a fair
5 trial?

6 THE POTENTIAL JUROR: It happened.
7 two-and-a-half weeks ago. I'm still pretty angry.

8 THE COURT: All right. So you say it
9 would affect your ability?

10 THE POTENTIAL JUROR: I think it would.

11 THE COURT: Okay. And I certainly
12 understand that. Ms. Williams, for purposes of
13 this — as a matter of fact, let me get you to step
14 up here real quick.

15 THE POTENTIAL JUROR: Sure.

16 (WHEREUPON, potential juror approached
17 the Bench for an on-the-record
18 discussion.)

19 THE COURT: It may be because you've had
20 this situation, I was thinking it may be better more
21 or it may be more comfortable I transfer you to a
22 term of civil court since you're so fresh.

23 THE POTENTIAL JUROR: That will be fine.
24 Would that be today as well?

25 THE COURT: No, ma'am. And I notice that

1 you are a teacher.

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: So y'all start back school in
4 a couple of weeks.

5 POTENTIAL JUROR: Actually that Monday,
6 the 13th, yes.

7 THE COURT: We may have to do it sometime
8 out —

9 THE POTENTIAL JUROR: Okay. In your
10 opinion I'm, you know, somebody came in my home and
11 took my stuff. I'm kind of angry about it.

12 THE COURT: I don't blame you. I would be
13 too. I've had it happen. But I mean, you know, it
14 could be that it's just a little too fresh for you.

15 POTENTIAL JUROR: I think so too.

16 THE COURT: What we may do, we may have
17 you come back for a criminal term but we'll do it
18 later on in the year.

19 THE POTENTIAL JUROR: That will be fine.

20 THE COURT: Let's do that. Thank you very
21 much, Ms. Williams. I'm going to excuse you then
22 for the balance of the week.

23 THE POTENTIAL JUROR: The whole week?

24 THE COURT: Yes, ma'am.

25 And we got Ms. Costas; is that correct?

1 THE POTENTIAL JUROR: My husband was shot
2 in a pawn shop robbery about six years ago.

3 THE COURT: Ms. Costas, the fact that you
4 have had that experience, would that in any way
5 affect your ability to be fair and impartial?

6 THE POTENTIAL JUROR: No, sir.

7 THE COURT: Thank you, ma'am.

8 Sir, your name please.

9 THE POTENTIAL JUROR: David Tilley.

10 THE COURT: Mr. Tilley, this is juror
11 number —

12 THE POTENTIAL JUROR: 143.

13 THE COURT: 143. Mr. Tilley, yourself or
14 a member of your family or a friend?

15 THE POTENTIAL JUROR: Myself. My house
16 was broken into maybe seven years ago. Fortunately
17 I was not there at the time.

18 THE COURT: Would that experience in any
19 way affect your ability to be fair and impartial,
20 sir?

21 THE POTENTIAL JUROR: No, sir.

22 THE COURT: Thank you. Mr. Tilley, you
23 may have a seat, sir. Thank you.

24 Ma'am, your name.

25 THE POTENTIAL JUROR: Linda Anderson.

1 THE COURT: All right. This is juror
2 number 4. Ms. Anderson, yourself or someone you
3 know or?

4 THE POTENTIAL JUROR: Myself. I was
5 robbed in a parking lot.

6 THE COURT: Ms. Anderson, would that in
7 any way affect your ability to be fair and impartial
8 if you were to be selected in this case?

9 THE POTENTIAL JUROR: No, sir, I don't
10 think so, no.

11 THE COURT: Thank you very much, ma'am.
12 You may have a seat.

13 Anyone else?

14 (There was no response.)

15 THE COURT: All right. Ladies and
16 gentlemen, is there any member of the jury panel who
17 in the past or, a member of the jury panel or member
18 of your immediate family who in the past, or
19 currently has been, is being or has been prosecuted
20 for a criminal offense by the Twelfth Circuit
21 Solicitor's Office, if so, please stand.

22 Your name, sir?

23 THE POTENTIAL JUROR: Frank Miles.

24 THE COURT: All right, Mr. Miles. Juror

25 103.

1 THE POTENTIAL JUROR: May I approach you
2 please.

3 THE COURT: Yes, sir.

4 (Potential juror approached the Bench for an
5 on-the-record discussion.)

6 THE COURT: Yes, sir.

7 THE POTENTIAL JUROR: My mother was
8 convicted for murder back in April.

9 THE COURT: Of this year?

10 POTENTIAL JUROR: Yes, sir, it was in
11 here. I mean, I don't have a problem. I was
12 charged with it but the charges have been dismissed.
13 I mean, I don't have a problem with serving.

14 THE COURT: It wouldn't affect your
15 ability to be fair and impartial?

16 THE POTENTIAL JUROR: No, sir.

17 THE COURT: Well, I'm gonna let you serve
18 then.

19 MR. BELL: Do you recall who the
20 prosecutor would have been?

21 THE COURT: Do you recall who the
22 prosecutor —

23 MR. JEPERTINGER: That would have been Mat
24 Ozmert. This was — I believe your mother was
25 Brenda Bratschi, on the Bratschi case?

1 POTENTIAL JUROR: Yes.

2 THE COURT: All right. If you don't think
3 that'll affect your ability —

4 THE POTENTIAL JUROR: No, sir, it won't
5 affect me.

6 THE COURT: Then you're good.

7 POTENTIAL JUROR: All right.

8 THE COURT: Thank you, sir. Juror number
9 103, Mr. Miles, will remain with us.

10 Is there any member of the jury panel or
11 member of your immediate family who is employed not
12 necessarily locally, could be locally, but is
13 employed as a law enforcement officer or in law
14 enforcement work, if so, please stand.

15 And sir, your name please.

16 THE POTENTIAL JUROR: Quentin Spears.

17 THE COURT: Juror 137. Mr. Spears, member
18 of your family?

19 THE POTENTIAL JUROR: Yes, sir.

20 THE COURT: Is it anyone — is it local
21 here?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: What department?

24 THE POTENTIAL JUROR: State trooper in
25 narcotics.

1 THE COURT: All right. The fact that you
2 have those relatives who work in that capacity,
3 would that in any way affect your ability to be fair
4 and impartial, sir?

5 THE POTENTIAL JUROR: No, sir.

6 THE COURT: Thank you very much,
7 Mr. Spears. You may have a seat.

8 Sir, your name please.

9 THE POTENTIAL JUROR: Number 37.

10 THE COURT: All right, sir. And you have
11 members of your family who serve in that capacity,
12 sir?

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: All right. The fact that you
15 have relatives that are members of law enforcement,
16 would that in any way affect your ability to be fair
17 and impartial?

18 THE POTENTIAL JUROR: No, sir.

19 THE COURT: Thank you, sir. You may have
20 a seat.

21 Yes, ma'am, your name please.

22 THE POTENTIAL JUROR: Brittany Campbell.

23 THE COURT: Ms. Campbell.

24 THE POTENTIAL JUROR: Number 25.

25 THE COURT: This is juror number 25.

1 THE POTENTIAL JUROR: Florence County
2 Sheriff's Office.

3 THE COURT: And Ms. Campbell, the fact
4 that you have that relationship in your family, ly
5 would that any way affect your ability to be fair
6 and impartial?

7 THE POTENTIAL JUROR: No, sir.

8 THE COURT: Thank you very much, ma'am.
9 You may have a seat.

10 Ma'am, again.

11 THE POTENTIAL JUROR: Number 86, Patricia
12 Lewis.

13 THE COURT: Ms. Lewis. Ms. Lewis, the
14 fact that you have members of your family that are
15 involved in law enforcement, would that in any way
16 affect your ability to be fair and impartial, ma'am?

17 THE POTENTIAL JUROR: No, sir, it
18 wouldn't.

19 THE COURT: Thank you, Ms. Lewis, you may
20 have a seat.

21 Yes, ma'am.

22 POTENTIAL JUROR: Debbie Bryant, 21.

23 THE COURT: Juror number 21, Ms. Bryant,
24 would that in any way affect your ability to be fair
25 and impartial?

1 THE POTENTIAL JUROR: No, sir.

2 THE COURT: Thank you, Ms. Bryant, you may
3 have a seat.

4 And sir, your name please.

5 POTENTIAL JUROR: Robert Wise.

6 THE COURT: Mr. Wise, this is juror number
7 158.

8 THE POTENTIAL JUROR: I have a cousin who
9 is a member of the Florence County Sheriff's
10 Department.

11 THE COURT: All right. And sir, the fact
12 that you have that relationship, would that in any
13 way affect your ability to be fair and impartial?

14 THE POTENTIAL JUROR: No.

15 THE COURT: Thank you very much, Mr. Wise.
16 You may have a seat.

17 Anyone else?

18 (There was no response.)

19 THE COURT: All right. You can probably
20 gather from my questions and what I'm asking of you,
21 the whole purpose in this process — and it's the
22 same if it's a criminal trial or civil trial, and
23 it's the same in all trials. What we're trying to
24 do, the purpose, and we're trying to achieve, we're
25 trying to select a jury that can sit, hear this

1 case, and regardless of any outside influences put
2 those influences aside and judge this case, listen
3 to this case, and be fair both to the State and to
4 the Defense giving both sides a fair and impartial
5 trial where your decision is based solely on the
6 facts and evidence that's presented in this trial.
7 That's the purpose of asking these types of
8 questions. Now I could ask questions all afternoon
9 trying to determine is there anyone that has some
10 type of a bias or some type of a problem that would
11 cause them to not be able to do that. So let me
12 simply ask it this way, is there any member of the
13 jury panel who knows of any reason keeping in mind
14 that our goal is to impanel a jury that can be fair
15 and impartial giving both the State and the Defense
16 a fair trial, is there any member of the jury panel
17 who knows of any reason why if you were selected to
18 sit on this case that you would not be able to be
19 fair and impartial, if so, please stand.

20 (There was no response.)

21 THE COURT: Thank you, ladies and
22 gentlemen. There are none.

23 Any additional questions or voir dire from
24 the State?

25 MR. JEPERTINGER: No, sir.

1 THE COURT: Anything further from the
2 Defense?

3 MR. BELL: No, sir.

4 THE COURT: All right. We got five and
5 ten?

6 MR. JEPERTINGER: Yes, sir.

7 (Pause.)

8 THE COURT: All right. Is the State ready
9 to proceed?

10 MR. JEPERTINGER: The State is ready.

11 THE COURT: Defense ready?

12 MR. BELL: Ready, Your Honor.

13 THE COURT: Madam Clerk, you ready?

14 THE CLERK OF COURT: Did you say five and
15 ten?

16 THE COURT: Five and ten, uh-huh.

17 THE CLERK OF COURT: 36, Ashley Dargan
18 (black female). What say the State?

19 MR. JEPERTINGER: Please present the
20 juror.

21 THE CLERK OF COURT: What say the
22 Defendant?

23 MR. BELL: Seat the juror please.

24 THE CLERK OF COURT: Please have a seat in
25 the jury box, ma'am.

1 37, Allen Davis (black male). What say
2 the State?

3 MR. JEPERTINGER: Please present the
4 juror.

5 THE CLERK OF COURT: What say the
6 Defendant?

7 MR. BELL: Please excuse the juror for
8 purposes of this trial.

9 THE CLERK OF COURT: You've been excused
10 from this trial only, sir. You may return to your
11 seat.

12 47, John Floyd (white male). What say the
13 State?

14 MR. JEPERTINGER: Please present the
15 juror.

16 THE CLERK OF COURT: What say the
17 Defendant?

18 MR. BELL: Seat the juror please.

19 THE CLERK OF COURT: Please have a seat in
20 the jury box, sir.

21 Number 5, James Archie (black male). What
22 say the State?

23 MR. JEPERTINGER: We excuse this juror for
24 purposes of this trial only.

25 THE CLERK OF COURT: You've been excused

1 for this trial only, sir. You may return to your
2 seat.

3 56, Waymond Haselden (white male). What
4 say the State?

5 MR. JEPERTINGER: Please present the
6 juror.

7 THE CLERK OF COURT: What say the
8 Defendant?

9 MR. BELL: Seat the juror please.

10 THE CLERK OF COURT: Please have a seat in
11 the jury box.

12 126, Roy Roush (white male). What say the
13 State?

14 MR. JEPERTINGER: Please present the
15 juror.

16 THE CLERK OF COURT: What say the
17 Defendant?

18 MR. BELL: Please excuse the juror for
19 purposes of this trial.

20 THE CLERK OF COURT: You've been excused
21 from this trial only, sir. You may return to your
22 seat.

23 158, Robert Wise (white male). What say
24 the State?

25 MR. JEPERTINGER: Please present the

1 juror.

2 THE CLERK OF COURT: What say the
3 Defendant?

4 MR. BELL: Please excuse the juror for
5 purposes of this trial.

6 THE CLERK OF COURT: You've been excused
7 from this trial only, sir. You may return to your
8 seat.

9 114, Loria Nesmith (black female). What
10 say the State?

11 MR. JEPERTINGER: Please present the
12 juror.

13 THE CLERK OF COURT: What say the
14 Defendant?

15 MR. BELL: Seat the juror please.

16 THE CLERK OF COURT: Please have a seat in
17 the jury box, ma'am.

18 159, Thelma Woodberry (black female).
19 What say the State?

20 MR. JEPERTINGER: Please present the
21 juror.

22 THE CLERK OF COURT: What say the
23 Defendant?

24 MR. BELL: Seat the juror please.

25 THE CLERK OF COURT: Please have a seat in

1 the jury box, ma'am.

2 Number 19, Carrie Bochette (white female).
3 What say the State?

4 MR. JEPERTINGER: Please present the
5 juror.

6 THE CLERK OF COURT: What say the
7 Defendant?

8 MR. BELL: Seat the juror.

9 THE CLERK OF COURT: Please have a seat in
10 the jury box.

11 99, Barbara McKenzie (black female). What
12 say the State?

13 MR. JEPERTINGER: 99. Your Honor, may we
14 approach one second.

15 THE COURT: Yes, sir.

16 (WHEREUPON, counsel approached the Bench
17 for an off-the-record discussion.)

18 THE COURT: Ms. McKenzie, let me get you.
19 (Potential juror approached the Bench for an
20 on-the-record discussion.)

21 THE COURT: We don't anticipate this case
22 going into Thursday, but it could possibly so I'm
23 gonna set you aside because this — we have a lot of
24 cases that usually take one or two days to try. And
25 this may end up being that, but we just don't know

1 at this point. And rather than take that risk, I'm
2 gonna set you aside for the purposes of this case,
3 okay?

4 THE POTENTIAL JUROR: Fine.

5 THE COURT: Thank you, ma'am. You can
6 have a seat.

7 (End of on-the-record Bench conference.)

8 THE COURT: Ms. McKenzie is excused by the
9 Court.

10 THE CLERK OF COURT: 21, Debbie Bryant
11 (white female). What say the State?

12 MR. JEPERTINGER: Please present the
13 juror.

14 THE CLERK OF COURT: What say the
15 Defendant?

16 MR. BELL: Please excuse her for purposes
17 of this trial.

18 THE CLERK OF COURT: You've been excused
19 from this trial only, ma'am. You may return to your
20 seat.

21 140, Shannon Suggs (white female). What
22 say the State?

23 MR. JEPERTINGER: Please present the
24 juror.

25 THE CLERK OF COURT: What say the

1 Defendant?

2 MR. BELL: Seat the juror please.

3 THE CLERK OF COURT: Please have a seat in
4 the jury box, ma'am.

5 104, Allison Milz (white female). What
6 say the State?

7 MR. JEPERTINGER: Please present the
8 juror.

9 THE CLERK OF COURT: What say the
10 Defendant?

11 MR. BELL: Seat the juror please.

12 THE CLERK OF COURT: Please have a seat in
13 the jury box, ma'am.

14 41, Melody Douglas (black female). What
15 say the State?

16 MR. JEPERTINGER: Please present the
17 juror.

18 THE CLERK OF COURT: What say the
19 defendant?

20 MR. BELL: Seat the juror please.

21 THE CLERK OF COURT: Please have a seat in
22 the jury box, ma'am.

23 33, Margaret Costas (white female). What
24 say the State?

25 MR. JEPERTINGER: Please present the

1 juror.

2 THE CLERK OF COURT: What say the
3 Defendant?

4 MR. BELL: Please excuse the juror for
5 purposes of this trial.

6 THE CLERK OF COURT: You've been excused
7 from this trial only, ma'am. You may return to your
8 seat.

9 Number 12, Shatodd Banks (black male).
10 What say the State?

11 MR. JEPERTINGER: We'd excuse this juror
12 for purposes of this trial only.

13 THE CLERK OF COURT: You've been excused
14 from this trial only, sir. You may return to your
15 seat.

16 25, Brittany Campbell (white female).
17 What say the State?

18 MR. JEPERTINGER: Please present the
19 juror.

20 THE CLERK OF COURT: What say the
21 Defendant?

22 MR. BELL: Please excuse the juror for
23 purposes of this trial.

24 THE CLERK OF COURT: You've been excused
25 for this trial only, ma'am. You may return to your

1 seat.

2 Number 15, Lauren Stanton (white female).

3 What say the State?

4 MR. JEPERTINGER: Please present the
5 juror.

6 THE CLERK OF COURT: What say the
7 Defendant?

8 MR. BELL: Seat the juror please.

9 THE CLERK OF COURT: Please have a seat in
10 the jury box, ma'am.

11 45, Albert Eaton (white male). What say
12 the State?

13 MR. JEPERTINGER: We'd excuse this juror
14 for purposes of this trial only.

15 THE CLERK OF COURT: You've been excused
16 for this trial only, sir. You may return to your
17 seat.

18 26, Campanella Chatman (black male). What
19 say the State?

20 MR. JEPERTINGER: Please present the
21 juror.

22 THE CLERK OF COURT: What say the
23 Defendant?

24 MR. BELL: Seat the juror please.

25 THE CLERK OF COURT: Please have a seat in

1 the jury box, sir.

2 Number 50, Brian Gibbs (white male). What
3 say the State?

4 MR. JEPERTINGER: Please present the
5 juror.

6 THE CLERK OF COURT: What say the
7 Defendant?

8 MR. BELL: Please seat the juror please.

9 THE CLERK OF COURT: Please have a seat in
10 the jury box, sir.

11 Judge, that's 12.

12 THE COURT: One or two?

13 MR. JEPERTINGER: Two.

14 THE COURT: Two, one and two on each.

15 THE CLERK OF COURT: 143, David Tilley
16 (white male). What say the State?

17 MR. JEPERTINGER: Beg the Court's
18 indulgence one second. We'd excuse the juror for
19 purposes of this trial only.

20 THE CLERK OF COURT: You've been excused
21 for this trial only, sir. You may return to your
22 seat.

23 Number 60, Katrina Hill (black female).
24 Does the State wish to challenge this juror for
25 cause?

1 MR. JEPERTINGER: No, she'll do fine.

2 Thank you.

3 THE COURT: What say the Defendant?

4 MR. BELL: Seat the alternate please.

5 THE CLERK OF COURT: Please have a seat in
6 the jury box, ma'am.

7 75, Harry Jordan (white male). What say
8 the State?

9 MR. JEPERTINGER: Please present the
10 juror.

11 THE CLERK OF COURT: What say the
12 Defendant?

13 MR. BELL: Can we approach, Judge.

14 THE COURT: Yes, sir.

15 (WHEREUPON, counsel approached the Bench
16 for an off-the-record discussion.)

17 MR. BELL: We'd excuse the juror.

18 THE CLERK OF COURT: You've been excused
19 for this trial. You may return to your seat.

20 71, Soren Johnson (white male). What say
21 the State?

22 MR. JEPERTINGER: We'd excuse this juror
23 for the purposes of this trial only.

24 THE CLERK OF COURT: You've been excused
25 for this trial only, sir. You may return to your

1 seat.

2 64, Ashton Hunter (white female). What
3 say the State? Does the State wish to challenge
4 this juror for cause?

5 MR. JEPERTINGER: No, I think she'll do
6 fine.

7 THE CLERK OF COURT: What say the
8 Defendant?

9 MR. BELL: Seat the juror.

10 THE CLERK OF COURT: Please have a seat in
11 the jury box, ma'am.

12 MR. JEPERTINGER: May we approach one
13 second, Your Honor.

14 THE COURT: Yes, sir.

15 (WHEREUPON, counsel approached the Bench
16 for an off-the-record discussion.)

17 THE COURT: All right. Are there any
18 motions regarding jury selection from the State?

19 MR. JEPERTINGER: No, sir.

20 THE COURT: Anything regarding jury
21 selection from the Defense?

22 MR. BELL: No, sir.

23 THE COURT: All right. In just a moment
24 I'm gonna give all these folks a chance to clear and
25 then I'm gonna excuse you for lunch. And I'm gonna

1 ask you, if you would please, it's about ten after
2 twelve right now. You're gonna get kind of an
3 extended lunch because I have some matters that I
4 need to take up on other cases that don't relate to
5 this one. And so if you would, I'm gonna ask you to
6 be back here at 2:30, and we'll get started once you
7 get back here. But let me tell y'all this, once you
8 leave here and from this point till the end of the
9 trial, you're not to have any discussions or any
10 conversations with anybody about this case and that
11 includes even amongst yourselves.

12 Now sometimes jurors look at me kind of
13 funny and they do, I thought that's what we were
14 supposed to do, and it is what you're supposed to do
15 when the time is appropriate. You're not supposed
16 to have any deliberations or any communications
17 about this case until all of the evidence is in you
18 had an opportunity to hear from the attorneys, and
19 I've given you the charge on the law. So until all
20 of this occur, you're not to have any conversation
21 about the case so that when you leave here, if
22 anyone tries to speak to you or talks to you about
23 the case, of course you can talk to people but if
24 they try to talk to you about this case you need to
25 let them know that you're not allowed to talk about

1 it and that should end it. If it doesn't, if they
2 insist on talking to you, then if you'll let me know
3 who it is I'll make sure that it stops and that they
4 don't have any more interaction with you. When you
5 return after the lunch break you're gonna reconvene.
6 You'll come up to the 11th floor. There will be a
7 bailiff outside who will direct you into the jury
8 room, okay, and then you'll have a seat there in the
9 jury room. When you reassemble you can introduce
10 yourselves to each other, get to know each other,
11 talk about anything you want, but you're not allowed
12 to talk about the case at all.

13 While you're in the jury room if you need
14 anything if you'll let Ms. Joe know. We've got,
15 we've got some soft drinks, we've got snacks, we got
16 things like that for you if you would like to have
17 something. But just make yourselves comfortable,
18 and then once we get everybody reassembled we'll
19 then start the case, okay. When you come back from
20 lunch if you would have that sticker on. That lets
21 the folks downstairs at the door know that you are a
22 juror sitting on a case, and it also lets other
23 folks around here know that you are a juror on a
24 case so they won't, you know, talk with you or at
25 least they know that you're a juror and they can't

1 talk about cases. So if y'all would come on out.
2 Everyone else remain seated. See you back at 2:30.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 12:10 p.m., and the following
5 proceedings commenced in open court.)

6 THE COURT: Why don't we come back at 2
7 and we'll begin — let's recess for this trial now
8 for lunch. We'll come back at 2 and let y'all
9 gather that maybe you can talk about these records
10 and see if you can agree on that stuff and then you
11 can get him the information that he needs, okay.

12 MR. JEPERTINGER: That'll be good.

13 MR. BELL: Some of these witnesses are
14 here and Thomas can try to get some of them.

15 THE COURT: Okay, for purposes of this
16 trial then we'll remain at ease.

17 (WHEREUPON, a lunch break was taken and
18 court resumed at 2:15 p.m.)

19 THE COURT: Yes, sir, Mr. Bell.

20 MR. BELL: Thank you, Your Honor. Before
21 we begin the substance of the trial I would make a
22 couple of motions, Your Honor. Just to renew our
23 Rule 5 and Brady motion, we have not received
24 anything from the Solicitor's Office that would
25 indicate any evidence of an exculpatory nature. We

1 would inquire if they have discovered anything of an
2 exculpatory nature.

3 THE COURT: Mr. Jepertinger, is there
4 anything that you're aware of, sir?

5 MR. JEPERTINGER: No, sir. I did inform
6 Mr. Bell that there was a photo of a bicycle that
7 was referenced in one of the statements. We cannot
8 find that photo of the bicycle, Your Honor. I've
9 tried asking the investigator for it. We checked
10 the crime scene; they have nothing. I think the
11 investigator may have taken it on his digital phone
12 and we don't have it, Judge, and I don't think it
13 was exculpatory or inculpatory. It was just a
14 picture of a bicycle. The bicycle will have some
15 significance in this case, however —

16 THE COURT: A photo of it?

17 MR. JEPERTINGER: Yeah, there was nothing
18 in terms of the defendant being on the bicycle in
19 the photo or not being — it's just a picture of a
20 bike is our understanding.

21 THE COURT: Okay. All right, Mr. Bell,
22 anything else?

23 MR. BELL: I would inquire under Rule 5 we
24 have received copies of statements from two
25 individuals, two statements from Mr. Mumford and one

1 statement from Shonta McDaniel. Those copies of
2 statements from the victims or any physical
3 evidence, anything of that nature, we'd inquire if
4 there are any further statements or physical
5 evidence in the case.

6 THE COURT: Anything beyond what you've
7 already turned over?

8 MR. JEPERTINGER: No, sir.

9 THE COURT: All right, sir.

10 MR. BELL: I will just say that we know
11 that Eric did give a statement to the police; and
12 should the State desire to present that statement,
13 we of course would need to have a Jackson v. Denno
14 hearing, and should it be ruled admissible there
15 would have to be some redaction of that statement as
16 it refers to being in prison before and things like
17 that. Now it's my understanding that at our Bench
18 conference earlier that Mr. Jepertinger indicated
19 that he did not plan to use that statement. Of
20 course we won't need that hearing if he does not use
21 the statement.

22 MR. JEPERTINGER: Currently I don't have
23 any interest in putting that statement in.

24 THE COURT: All right. And what we'll do
25 is we'll just go on that assumption that he's not

1 going to use it, but if it does come into play we'll
2 certainly recess and then have the appropriate
3 hearing.

4 MR. BELL: Thank you, Your Honor. And as
5 was suggested by Mr. Jepertinger before the lunch
6 break, there are some NCICs on State's witnesses and
7 certainly this might be the appropriate time to
8 review those for what can be used for impeachment as
9 opposed to stopping for each witness and then doing
10 that or else just not doing it and run afoul of
11 objections going on during the cross-examination.

12 THE COURT: Yeah, this will be a good
13 time.

14 MR. JEPERTINGER: May I propose —

15 THE COURT: Let me mention to — is Mr.
16 Propps out front?

17 THE BAILIFF: Yes, sir.

18 THE COURT: If he gets like three or four
19 jurors piled up there, tell him to let us know and
20 we'll stop to let them through.

21 MR. JEPERTINGER: Let the record reflect
22 that I just handed the Court a copy of the records
23 of the proposed State witnesses, Your Honor.

24 THE COURT: I've got —

25 MR. JEPERTINGER: That would not be the

1 police in this case, Your Honor. It would be the

2 —

3 MR. BELL: I would assume the police
4 officers do not have any record.

5 MR. JEPERTINGER: Probably not.

6 THE COURT: I don't know that I'd make
7 that assumption but — no, I do have an NCIC report
8 regards to Mr. Joe Backus and there is nothing.

9 MR. JEPERTINGER: There's nothing there.
10 And of course, I've not included the defendant's
11 record in that stack of things, Your Honor.

12 THE COURT: Yes, sir.

13 MR. JEPERTINGER: In terms of Sherman
14 Peterson, you want to go through that one first?

15 THE COURT: Yes, sir, that's fine.

16 MR. JEPERTINGER: It would be my thought,
17 Your Honor, to allow out of abundance of caution the
18 1996 and it's on page — it says one of five. These
19 records are from 10/28/96. It s says custody status
20 received.

21 THE COURT: Yes.

22 MR. JEPERTINGER: Burglary second
23 nonviolent convicted, 12 years. Even though that
24 technically was probably not within the ten year
25 time range, if he got 12 years he would have fallen

1 into that time range.

2 THE COURT: It would have brought it into
3 that range, I agree. That's a burglary second
4 conviction?

5 MR. JEPERTINGER: Yes, nonviolent, uh-huh.

6 THE COURT: Okay, that would be certainly
7 open to impeachment.

8 MR. JEPERTINGER: Okay. And then next,
9 Your Honor, I think that he has in 2004 which I
10 would suggest, Your Honor, he has a possession of
11 crack cocaine first offense, and that would be on
12 the bottom of page two of five there.

13 THE COURT: Yeah, I see that.

14 MR. JEPERTINGER: And my reluctance into
15 agreeing to resisting arrest it did not carry more
16 than a year, Your Honor, on the top of that page.

17 THE COURT: I see that, yes, sir.

18 MR. JEPERTINGER: And turning over to
19 what's, I guess what's page four of five.

20 THE COURT: Yes, sir.

21 MR. JEPERTINGER: You have bottom in 2009
22 it looks like distribution, sell, etc., crack
23 cocaine PWID near a school. Looks like counts two
24 and three on that I think they can use.

25 THE COURT: Yep.

1 MR. JEPERTINGER: And —

2 THE COURT: Mr. Bell, you have copies of
3 this; is that correct?

4 MR. BELL: I do, Your Honor.

5 MR. JEPERTINGER: And on the last page
6 that's when he was received in the Department of
7 Corrections so I think.

8 THE COURT: That's on the previous '09 —

9 MR. JEPERTINGER: Yes.

10 THE COURT: —distribution case, yeah.

11 MR. JEPERTINGER: So I think those are all
12 fair game, Judge.

13 THE COURT: And just to recap, Mr. Bell,
14 I'll hear from you, I've got a burglary second,
15 possession of crack, distribution of crack.

16 MR. BELL: Burglary second, distribution
17 of crack, what was the third one, Judge?

18 THE COURT: Possession of crack. We've
19 got a — the burg was in 1998, but it took it into
20 the time frame because of the 12 year sentence. The
21 possession of crack was in '04 and the distribution
22 was in '09.

23 MR. JEPERTINGER: It would be two
24 distributions in proximity, looks like counts two
25 and three, Your Honor.

1 MR. BELL: And it would appear, Judge, he
2 had a parole revocation in 2003, and I'm not sure
3 what that's for; but certainly it says ten years
4 after completion of the sentence. Whatever that —

5 THE COURT: If it was in '03 I would
6 imagine it's on that burglary.

7 MR. BELL: If it was on the burglary we've
8 already counted. If it's for something else —

9 THE COURT: Correct.

10 MR. BELL: —it wouldn't be admissible
11 because the sentence wasn't completed even though —
12 do you know, John?

13 MR. JEPERTINGER: I think it would be for
14 the burglary.

15 THE COURT: I'm just looking at things
16 prior to that and I don't see any —

17 MR. JEPERTINGER: It would make sense—

18 THE COURT: I don't see anything prior to
19 that that was more than like a 30 day sentence.

20 MR. JEPERTINGER: Right.

21 THE COURT: The first time I see anything
22 that goes beyond a 30 day sentence appears to be the
23 burglary in '96. All right.

24 MR. JEPERTINGER: I think that would cover
25 —

1 THE COURT: I think that is the — it
2 appears at least from this record, unless it was
3 something from out of state, it would have been the
4 burglary.

5 MR. BELL: Probably. Judge, there's one
6 earlier conviction which I know was over ten
7 years — I think it's a balancing test for anything
8 older than that — but it concerns me because of
9 what it was, and that was giving false information
10 back in 1994 because it certainly has to do with
11 telling the truth and telling and so I would ask the
12 Court Do consider allowing us to impeach him with
13 that conviction.

14 MR. JEPERTINGER: I would say that
15 conviction is two stale, Judge, and it looks like it
16 also was 48 hours community service so I think that
17 would have been handled in municipal court under
18 both theories, Judge.

19 THE COURT: Yeah.

20 MR. JEPERTINGER: But I would say it's two
21 stale.

22 THE COURT: That was a '94 conviction
23 which puts it about 18 years outside of the — well,
24 8 years outside of the time frame. I'm gonna note
25 your exception, but I'm gonna deny the request to

1 allow that conviction to be used.

2 MR. BELL: And you understand why I raise
3 that because of what it absolutely what it is.

4 THE COURT: With truthfulness and
5 veracity, yeah. But again, I, it's just the
6 staleness of it that causes me concern.

7 MR. JEPERTINGER: That's all we have of
8 Sherman Peterson.

9 THE COURT: All right.

10 MR. JEPERTINGER: The next individual,
11 Margaret Gurley, I don't see any conviction on her
12 record.

13 THE COURT: I don't see any convictions, I
14 agree.

15 MR. BELL: It has a CDV. That's all I
16 see.

17 THE COURT: Yeah, it's just no conviction.

18 MR. JEPERTINGER: In that regard we go to
19 the next woman, Hope Anderson. I see a public drunk
20 from 2004 and a breach of peace and another public
21 disorderly conduct from May of this year. I don't
22 think any of those can be used against her.

23 THE COURT: Do you agree with that,
24 Mr. Bell?

25 MR. BELL: Yes, sir.

1 MR. JEPERTINGER: All right. Now the next
2 individual is Shonta McDaniel.

3 THE COURT: Okay.

4 MR. JEPERTINGER: I think there's a
5 conviction in 2004 for forgery, Your Honor, and this
6 would be — I'm looking to see what page this would
7 be.

8 THE COURT: Page four of five.

9 MR. JEPERTINGER: Somewhere in there.

10 THE COURT: Yeah, I see it.

11 MR. JEPERTINGER: Forgery more than a
12 thousand, less than five thousand dollars. I think
13 he can use that. At first I thought that we were
14 going to be able to use the fraudulent checks; however,
15 I saw there were 14 counts of 20 days each, Your
16 Honor. I think those were all handled in magistrate
17 court, and I would ask that they not be allowed to
18 inquire in terms of that. There is a burglary third
19 at the bottom of that page that I think they can get
20 into.

21 THE COURT: Let me — let's see.

22 Mr. Bell, since we're looking at the same paperwork
23 would you agree that it appears that the record that
24 would be subject to use begins with that 2004
25 conviction for forgery?

1 MR. BELL: Let me take a quick look back,
2 Judge.

3 THE COURT: I do see there's one back in
4 '93 or somewhere like that for an armed robbery.

5 MR. BELL: Yes, sir, certainly —

6 THE COURT: He got a YOA sentence. I
7 guess back then you could get a YOA on that.

8 MR. JEPERTINGER: You could, and sentence
9 back then would be three years, Judge.

10 MR. BELL: Only — I think perhaps it
11 could be used and I'll explain why, Judge. It's
12 like it, despite its age and what is — obviously he
13 was a suspect in this case as well. He was
14 interviewed and I think he was named in one
15 statement as having been involved.

16 THE COURT: That might be the very reason
17 you can't use it.

18 MR. BELL: And because if he had a second
19 armed robbery he was subject to life without parole
20 so he has a very powerful incentive to have lied
21 about this involvement in the case because not
22 because of the similar crime if it had been a
23 burglary first or something like that, but it would
24 have been the same way, but because his life was on
25 the line much like Mr — like Eric's is. I would

1 ask to be able to use that.

2 THE COURT: I think you might can skin
3 that cat in a different way though so to speak
4 because you certainly can question him as to any
5 details we may have cut with the State, and you
6 could certainly bring it out in that fashion. But
7 the concern I've got —

8 MR. BELL: I'm not trying to do anything
9 improper.

10 THE COURT: I know you're not, I know. But
11 because of the, it being the same crime and I think
12 the risk of prejudice is tremendous where a jury
13 could go, okay, well, you know, if he did it before
14 he probably did it again, and that's what we're
15 trying to avoid obviously.

16 MR. BELL: So I could avoid the name of
17 the crime and say it is not true you faced life
18 without parole had you been convicted of this, Your
19 Honor.

20 MR. JEPERTINGER: That's not necessarily
21 true. That only becomes true if the State moves and
22 it becomes completely discretionary with me for a
23 second offense under 17-25-45. That's not
24 necessarily true. And, in fact, in this case as
25 opposed to Mr. Mumford who we'll get to in a second,

1 Mr. Mumford is a charged co-defendant in this crime,
2 Your Honor, on a separate indictment. Mr. McDaniels
3 was never charged with this crime in one shape or
4 the other.

5 THE COURT: Well, that changes things if
6 he was never even charged.

7 MR. BELL: He was named in Mr. Mumford's
8 initial statement as being the second person
9 involved in the crime and then they questioned him.

10 THE COURT: I'm assuming — I'm assuming,
11 based on the investigation they felt that there was
12 no evidence to support that and they didn't charge
13 him.

14 MR. BELL: Of course, he gave a statement
15 which did not inculcate himself and certainly had
16 much incentive to do that because of this situation.
17 They chose to believe that statement whereas they
18 chose not to believe Mr. Eric's statement.

19 THE COURT: You know, I hadn't heard the
20 case obviously. I don't know a thing about the
21 evidence, but I don't know that law enforcement just
22 tosses a coin and decides which one to believe. I'm
23 assuming there's some evidence that led them to one
24 direction or another. Maybe there's not, I don't
25 know.

1 MR. BELL: No physical evidence in this
2 case, Judge.

3 THE COURT: I didn't say it was physical;
4 I don't know. I'm just saying that the fact that he
5 was never charged here I think would relieve that
6 concern that he was never subject to LWOP even with
7 this conviction here. So I would obviously, I would
8 note your exception but I would not allow you to go
9 into that '93 conviction. Then Mr. Bell, subject to
10 that, to your exception, would you then based on
11 what you see here the next would be the 2004
12 forgery?

13 MR. BELL: I believe so, Your Honor.

14 THE COURT: And then Mr. Jepertinger's
15 position on the fraudulent checks, that they were
16 all handled down in city court or magistrate court
17 or whatever.

18 MR. BELL: Apparently he got consecutive
19 time and would have gone to the penitentiary for
20 that.

21 THE COURT: I don't — but it's 20 days on
22 each. I don't think you can add up consecutive to
23 get over a year.

24 MR. BELL: It could have been 30 days on
25 each but...

1 THE COURT: The next though, and clearly I
2 agree, the burglary, I think you agree the burglary
3 third is certainly subject to questioning?

4 MR. JEPERTINGER: Yep, agree.

5 THE COURT: And then I was trying to
6 see if there was — I don't see anything else.

7 MR. JEPERTINGER: Second to last page,
8 Judge, do you have that?

9 THE COURT: Yeah, I do. I do see it.

10 MR. JEPERTINGER: It says this looks like
11 a federal offense, conspiracy to commit offense or
12 defraud United States. He received on 10/7/05 36
13 months probation. In my dealings with federal court
14 no one gets less than a year. I would say that is
15 an impeachable offense. That he got probation was
16 a — I think they can go into it.

17 THE COURT: I think you'll have to — if
18 you do decide to question him on that I think you're
19 gonna have to phrase it in that generic term that
20 you've been convicted of a crime that carries more
21 than — well, let's see, is it a felony?

22 MR. JEPERTINGER: It just says 36 months
23 probation.

24 THE COURT: It doesn't tell us.

25 MR. JEPERTINGER: Then you see restitution

1 amount.

2 MR. BELL: It's got nine counterfeit
3 checks I see.

4 MR. JEPERTINGER: Yeah, but there's no
5 disposition on those 'cause it says — then you drop
6 down to cycle three it says charges dismissed by
7 disposition. That was on the probation violation.

8 MR. BELL: Apparently he did some time on
9 probation violation for the conspiracy charge.

10 THE COURT: If you want to go into that
11 which was back in '05 it looks like, I think you can
12 ask him, isn't it true that you were convicted of a
13 crime that carried more than a year back in 2005. I
14 don't know if there's any other way to ask that.

15 MR. BELL: There is one other thing with
16 him, Judge, and that is this, apparently in the last
17 week or so he's been arrested on some new charges.
18 And certainly being that those charges are
19 prosecuted by the Solicitor's Office here, he may
20 certainly, I'm sure, that he certainly wants to
21 whether there's been a deal cut or not I'm sure he
22 probably has some expectation of him in return for
23 his testimony.

24 THE COURT: Well, you can ask him about
25 any deals.

1 MR. BELL: I can ask him, is it not true
2 that you have pending charges at present in here and
3 an expectation of receiving some favorable treatment
4 in return for your testimony? Or should I ask what
5 the specifics, I think there's a burglary and a drug
6 case if I'm correct.

7 THE COURT: I don't think you can go into
8 specifics of what it is.

9 MR. BELL: He certainly has pending
10 charges.

11 MR. JEPERTINGER: He does have pending
12 charges. He's in the holding cell, Judge. I don't
13 know that he's allowed to get into pending arrests
14 because, you know, he's presumed innocent just like
15 every —

16 THE COURT: But I think you can certainly
17 ask him to the extent of his dealings with the
18 State.

19 MR. JEPERTINGER: Sure. Are there any
20 deals for you to testify.

21 THE COURT: What, if any, deals have you
22 have you struck with the State?

23 MR. BELL: On the pending charges.

24 THE COURT: No, for your testimony here
25 today. Mr. Jepertinger, have —

1 MR. JEPERTINGER: I don't have a problem
2 with that. I think that's fair.

3 THE COURT: Have any deals been made with
4 him?

5 MR. JEPERTINGER: No, to tell the truth,
6 if that's the deal.

7 MR. BELL: I'm sure he would have an
8 examination of.

9 MR. JEPERTINGER: I'm sure, I'm sure.
10 Because truth be known, I think I prosecuted him on
11 his last charge so Mr. Jepertinger will probably
12 prosecute him again.

13 THE COURT: Here is what Mr. Bell is
14 wanting to say.

15 MR. JEPERTINGER: Yes.

16 THE COURT: Is basically something along
17 the lines o,f, you have pending charges, is it your
18 belief that the State is gonna assist or help you
19 with these pending charges.

20 MR. JEPERTINGER: I think that's fair game
21 under the case law, Judge.

22 THE COURT: Right. But I don't think you
23 can go into what those pending charges are.

24 MR. JEPERTINGER: Right, that's correct.

25 THE COURT: So I have, in kind of

1 recapping with Mr. McDaniel, I've got a forgery,
2 burglary third which you can ask him about. I've
3 got an innocuous federal conspiracy charge which I
4 think you can do it in a generic sort of fashion
5 about a crime that carries more than a year from
6 '05. And then, of course, you can go into deals he
7 may have struck with the State. All right. And
8 then we got Mr. Mumford.

9 MR. JEPERTINGER: Mr. Mumford, I would
10 suggest he had August 13th, 2001, aggravated battery
11 of a high and aggravated nature — excuse me,
12 assault, I said aggravated. It's assault and
13 battery of a high and aggravated nature from 2001.
14 I think he can go into that. I have a question mark
15 on the next page for receiving stolen goods,
16 convicted, time served. I don't know if that was
17 petit receiving stolen goods or — I just have a
18 question mark by that. It just said time served.

19 MR. BELL: You can tell if it's a general
20 sessions conviction for —

21 MR. JEPERTINGER: All I can say it's
22 16-13-181 there in the column to the left, and I
23 cannot tell you because I didn't bring my little red
24 book with me.

25 THE COURT: 16-13-180. That is receiving

1 stolen goods, unlawful...

2 MR. JEPERTINGER: Now of course, the
3 dollar amounts have changed in 2010, Judge.

4 THE COURT: I've got the most recent book.
5 I've got the 2012 book.

6 MR. JEPERTINGER: Yea, I know but in 2006
7 it was under —

8 THE COURT: Oh.

9 MR. JEPERTINGER: You —

10 THE COURT: I doubt it's gotten worse but
11 here's the problem. That says 16-13-180 parentheses
12 1, which really is no help because it has (a) which
13 is the section that talks about it's unlawful to do
14 these things. Then it says (b) a person who
15 violates provision of this section is guilty of a —
16 then it's subsection one under (b) is a misdemeanor
17 triable in magistrate court, up to 30 days. So that
18 doesn't tell us anything.

19 MR. JEPERTINGER: I'll leave it to the
20 Court's discretion how we handle that one because I
21 have no idea, Judge. We can go on the ones and
22 maybe we can come back to that one.

23 THE COURT: We'll do that and what we may
24 need to go is somebody may need to go do a little
25 investigation.

1 MR. JEPERTINGER: With the warrant number.

2 THE COURT: With the warrant number and
3 find out exactly what that was. But certainly the
4 ABHAN from '06 I think is certainly open to
5 question. The burglary second degree in 2007 I
6 believe is obviously also open to question.

7 MR. JEPERTINGER: And he had one in 2006.
8 We talked about that one aggravated assault. I
9 think that was difference between 2001. He had a
10 forgery as well as at the same time, Judge, I think
11 that can go into.

12 THE COURT: Back on the 2001?

13 MR. JEPERTINGER: 2006.

14 THE COURT: I was looking at that but I
15 didn't see a conviction.

16 MR. JEPERTINGER: Right on the next page,
17 Judge.

18 MR. BELL: The conviction is on the next
19 page.

20 THE COURT: Got you.

21 MR. BELL: I was missing that too.

22 THE COURT: Okay. So yeah, you're right,
23 Mr. Jepertinger. ABHAN and the forgery which are
24 both subject to impeachment, and then the burglary
25 second.

1 MR. JEPERTINGER: From 2008.

2 THE COURT: From 2007 or 8, yeah, for 8,
3 is also subject to that as well.

4 MR. JEPERTINGER: Right.

5 THE COURT: And I'm assuming — is this
6 armed robbery you said he's a co-defendant, that
7 would be his pending case?

8 MR. JEPERTINGER: Yes, sir. The other
9 things are magistrate court marijuana and I don't
10 think they come in, Judge.

11 THE COURT: Right.

12 MR. JEPERTINGER: Judge, according to
13 Ms. Knight, she looked at the warrant number on the
14 receiving stolen goods, the one we had a question
15 about, and according to her records that warrant
16 number I304384 was not transmitted to general
17 sessions. So I —

18 THE COURT: So it would have been a
19 magistrate level offense.

20 MR. JEPERTINGER: Looks like it.

21 THE COURT: All right. Then recapping
22 Mr. Mumford I've got a assault and battery of a high
23 and aggravated nature charge which he's subject to
24 questioning, forgery, and burglary second.

25 MR. JEPERTINGER: You got an ABHAN from

1 2001, an ABHAN from 2006, a forgery, and those two
2 burglaries.

3 THE COURT: All right. Does that take
4 care of your potential witnesses then,
5 Mr. Jepertinger?

6 MR. JEPERTINGER: Yes, sir.

7 THE COURT: All right. Mr. Bell, anything
8 further regarding those witnesses?

9 MR. BELL: I was just looking, Judge, he
10 had a strong armed robbery in '99 for which he got
11 three years suspended. I was just looking to see if
12 there was any probation violation on that one which
13 might have brought it further and see really not
14 easy to read. But I do see he did have a — had a Y
15 parole revocation in '99.

16 MR. JEPERTINGER: I noticed that too,
17 Judge, but then I noticed that the ABHAN happened in
18 2001 which means he was out.

19 MR. BELL: I looked but I don't see a
20 violation.

21 THE COURT: I didn't see anything in this
22 when I looked through that record either.

23 MR. BELL: Certainly one I would have
24 liked to use.

25 THE COURT: Yeah, well, it is what it is.

1 Now did you receive — is there any information —

2 MR. JEPERTINGER: They gave me three
3 names; I've given it. They don't have anything I
4 can go forward on, Judge, and they're gonna give me
5 another name tomorrow.

6 THE COURT: All right, okay. Is there
7 anything else before we get started from either the
8 State or the Defense?

9 MR. JEPERTINGER: From the State, yes.

10 THE COURT: Yes, sir, okay.

11 MR. JEPERTINGER: One further matter, and
12 I don't want to ambush, Mr. Bell. In terms of out
13 of court identification the co-defendant was out of
14 court identified by lineup, but he's going to be a
15 State's witness; that will be Mr. Mumford. There
16 was no out of court police show-up or lay-down or
17 lineup involving Eric Williams and the victim in
18 this case Mr. Backus; is that correct?

19 THE INVESTIGATOR: That's correct.

20 MR. JEPERTINGER: There was none.
21 However, I don't think that precludes Mr. Backus if
22 he recognizes this gentleman as being the armed
23 robbery case from identifying him in court. I don't
24 think Neil versus Biggers applies, Your Honor, if no
25 pretrial out of court identification took place.

1 There is a case out there, State versus Lewis, that
2 says remedy for any alleged suggestiveness of an ID
3 that occurs for the first time in court is
4 cross-examination and argument.

5 THE COURT: Mr. Bell, anything?

6 MR. BELL: I'm asking Mr. Jepertinger if
7 that's the case that we're talking about in terms of
8 probabilities is just your understanding that he is
9 going to identify him?

10 MR. JEPERTINGER: It's my understanding
11 that he is going to identify him as being the person
12 that put the gun in his face and took his money.

13 MR. BELL: What I've always been told is
14 that there was no identification. I would ask a few
15 minutes to talk to our client about that change in
16 circumstances.

17 THE COURT: All right. My understanding
18 is that there was no identification prior to this
19 case as far as either through a lineup or through a
20 photo lay-down or any other means.

21 MR. JEPERTINGER: Right.

22 THE COURT: Can I assume — and I don't
23 know — did he give any description of the
24 assailants at the time?

25 MR. JEPERTINGER: Yes. Racial makeup, you

1 know, sex, make, sex.

2 THE COURT: Kind of generic.

3 MR. JEPERTINGER: And general clothing
4 description.

5 THE COURT: Got you, okay. Mr. Bell, I'll
6 certainly give you time, any time you need to talk
7 with Mr. Williams regarding that.

8 MR. BELL: I would just ask for a few
9 minutes, Judge. I am very aware of the case law in
10 that regard since I litigated that myself in the
11 last trial I had.

12 THE COURT: Sure, we'll give you that
13 opportunity.

14 MR. BELL: But in that regard I would ask
15 one other thing, and that is, was he ever shown a
16 photo lay-down or a picture, Eric, at any time by
17 any law enforcement?

18 THE INVESTIGATOR: No.

19 MR. JEPERTINGER: Do you agree? Did you
20 ever show Mr. Backus a photograph of Mr. Williams?

21 THE OFFICER: NO.

22 MR. JEPERTINGER: And the State did not, I
23 can tell you that.

24 MR. BELL: And the other question I have
25 is when is the first time that he has stated that

1 Mr. Williams is the...

2 MR. JEPERTINGER: Well, I would say when
3 he came into the courtroom about 11:00.

4 THE COURT: Whenever we —

5 MR. JEPERTINGER: When we started the
6 case.

7 THE COURT: Okay.

8 MR. BELL: Thank you, Your Honor. If I
9 might have just a few minutes.

10 THE COURT: We'll give you that in just a
11 minute. Let me see if there's anything further from
12 the State that we need to take up.

13 MR. JEPERTINGER: Not in terms of anything
14 else that I can think of at this point, Judge.

15 THE COURT: All right. And Mr. Bell,
16 before you — before we adjourn for you to talk with
17 Mr. Williams, is there anything from the Defense
18 other than that issue have you need to talk with
19 Mr. Williams about?

20 MR. BELL: I don't think so, Your Honor.

21 THE COURT: All right. Well, let's take a
22 few minutes and wherever you can get a place you're
23 welcome, if you would like, to use my chambers you
24 could do that, or I got a conference room you're
25 welcome...

1 MR. BELL: We can use that. That would be
2 good.

3 THE COURT: I'm just going to remain here.
4 We'll just take a recess while you do that.

5 (WHEREUPON, a recess was taken from the
6 proceedings.)

7 MR. JEPERTINGER: If it please the court
8 Your Honor.

9 THE COURT: Yes, sir.

10 MR. JEPERTINGER: Standing in front of you
11 on a change of plea is Eric Shanta Williams,
12 2011-GS-21-1212. He's pleading under the case of
13 North Carolina versus Alford if that is okay with
14 the Court to armed robbery, Your Honor. The State
15 is not making any recommendation in terms of
16 sentence, Your Honor. He is — the defendant, we
17 feel, has required us to get to this point in order
18 to exercise his constitutional rights, and we
19 understand that, we protect that right, Your Honor;
20 but still, he made us go through the trouble of
21 getting this trial ready to go before he decided to
22 plead guilty.

23 I will tell the Court back in March, March
24 8th, 2012, we noticed both this defendant and his
25 attorney Mr. Bell, who are both present in court

1 obviously today, of the State's notice of intention
2 to seek a life without parole based on his prior
3 criminal history. Your Honor, in terms of plea
4 bargain negotiations we will retract that notice to
5 seek life without parole should the Court accept
6 this plea.

7 THE COURT: Okay. So that puts
8 Mr. Williams back in a position of just the armed
9 robbery statute?

10 MR. JEPERTINGER: Yes, sir, 10 to 30. And
11 I will say for the record that I spoke with Mr. Joe
12 Backus, Senior, who is the victim in this case and
13 his daughter Phyllis Jackson, and they have
14 concurred with it. They asked me to — well, no
15 one's happy that they're here obviously, but at the
16 same time they understand it and they're okay with
17 it and they gave me permission to offer this and we
18 are doing so.

19 THE COURT: All right. And of course,
20 Mr. Williams, you are Eric Williams?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right, Mr. Williams.
23 Mr. Williams, and I just, I'm gonna go through these
24 for the record. I know you're aware of the
25 indictment and the charge you're here on; but for

1 purposes of the record, you're before the Court on
2 indictment 2011-GS-21-1212 and that's a indictment
3 for armed robbery. That offense of armed robbery
4 carries a penalty of not less than 10 years, nor
5 more than 30 years. It is classified as a violent
6 offense and a most serious offense under our code of
7 laws. You understand that, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Williams, it is my
10 understanding that you've indicated you understand
11 the nature of the charge against you and the
12 possible punishment. And it's my understanding that
13 you wish to enter a guilty plea on that charge but
14 to do so under the case of North Carolina versus
15 Alford; is that correct, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Thank you, sir.
18 Mr. Bell, you represent Mr. Williams?

19 MR. BELL: I do, Your Honor.

20 THE COURT: And I know you've talked with
21 him about his constitutional rights. We've gone
22 through many of those rights as we led up to this
23 point. But have you also reviewed with him and
24 talked to him about the ramifications of entering a
25 plea under North Carolina versus Alford and how that

1 that is viewed as far as whatever sentence he would
2 receive and whatever his record would reflect after
3 that?

4 MR. BELL: He's very aware of what a armed
5 robbery sentence carries, Judge, and I've explained
6 to him that North Carolina versus Alford is
7 certainly if you, if you don't admit your guilt, you
8 feel like you, very strongly case be convicted that
9 you can take that option. For this most recent
10 revelation about new evidence against him he's
11 chosen to do that and I wanted — I appreciate the
12 Court's indulgence in giving me few moments to speak
13 with him about that because we, that was certainly
14 something that was new and a new factor to be
15 considered in whatever your chances might be at
16 trial, and I think it's an intelligent decision to
17 do that, Your Honor.

18 THE COURT: All right. Mr. Williams, am I
19 correct that you're 31, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You got arrested on this
22 charge were you working anywhere or what type of
23 work have you done, sir?

24 THE DEFENDANT: I wasn't working.

25 THE COURT: All right. At that time, but

1 have you, I mean, at some point you've worked in
2 your life; is that correct?

3 THE DEFENDANT: Yes, sir.

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

5 THE DEFENDANT: I am working at Denny's.
6 I worked at Perdue. I worked on roofing.

7 THE COURT: Okay.

8 THE DEFENDANT: Morning News.

9 THE COURT: Okay. Are you married or
10 single, sir?

11 THE DEFENDANT: Single.

12 THE COURT: Do you have any children?

13 THE DEFENDANT: No, sir.

14 THE COURT: Did you serve — of course
15 you're currently in jail on this charge. How long
16 have you been in jail on this charge, sir?

17 THE DEFENDANT: Like 17-and-a-half months.

18 THE COURT: All right, sir. Mr. Williams,
19 I'm gonna go over some things with you. I know
20 you've already talked with Mr. Bell at length; but
21 as I go through this stuff with you, if at any time
22 during our conversation you have any question about
23 anything that I bring up or anything that I ask, if
24 you have any questions about that and you need to
25 speak with Mr. Bell, let me know that, I'll stop,

1 and I'll give you that opportunity, okay.

2 THE DEFENDANT: All right.

3 THE COURT: Now before we go any further,
4 Ms. Joe, I'm gonna get you to do me a favor, if you
5 would. I'm gonna get you, just poke your head in
6 the jury room and just tell them that I'm taking up
7 some pretrial matters and that we'll be with them
8 shortly.

9 THE BAILIFF: Yes, sir.

10 (Pause.)

11 THE COURT: Mr. Williams, the first thing
12 I'm going to go over with you and probably the best
13 way to go over this with you is to tell you what my
14 understanding is about an Alford plea and see if it
15 matches your understanding, okay? When someone
16 pleads guilty under the case of North Carolina
17 versus Alford, essentially what they're doing and
18 what they're saying is this: Judge, I am entering a
19 plea of guilt; however, I am not admitting to any
20 wrongdoing, what I am doing is I am pleading to the
21 charge in an effort to accept the offer that the
22 State is making me. In other words, I understand
23 the evidence that the State has and that they would
24 present to a jury; and it is my belief that if I
25 were to go forward in a trial there's a great

1 likelihood that I would be convicted. And so in an
2 effort to avoid that situation, the State has made
3 me an offer and I would like to accept that offer.
4 In this case, the offer would be to accept the
5 State's removal of the request for life without
6 parole and allow you to plead under the statutory
7 time that is associated with this case. In other
8 words, they're gonna remove their request or their
9 motion for life without parole. And so when you
10 plead guilty under Alford you're basically telling
11 the Court, Judge, I want to accept that offer and
12 so, to do so, I am willing to plead guilty even
13 though I am not making any admission of wrongdoing.
14 That's essentially an Alford plea.

15 Is that your understanding of an Alford
16 plea?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Now do you also
19 understand that when someone, anyone, pleads guilty
20 under North Carolina versus Alford that for purposes
21 of their plea they give up or waive any defenses
22 that they may have had, that you give up a jury
23 trial, and that whatever sentence the Court imposes
24 that you would serve that sentence the same as you
25 would if you pled guilty straight up. In other

1 words, an Alford plea doesn't change your sentence
2 or alter that in any way. You understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And as far as your criminal
5 history goes, it doesn't affect or change that. In
6 other words, if you go forward with this plea under
7 Alford it will still be reflected on your record as
8 a conviction for armed robbery. You understand
9 that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, sir. Now Mr.
12 Williams, any time anybody pleads guilty they give
13 up certain constitutional rights as they relate to
14 the charge they're before the court on. And what
15 that basically means is this: We all have the right
16 to remain silent and we all have the right to a jury
17 trial. But when you enter a plea, whether it be
18 under Alford or straight up, for purposes of that
19 plea you give up or you waive those important
20 constitutional rights. You understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now when you waive your right
23 to a jury trial you also waive or you give up the
24 rights that are associated with it. For example, we
25 were ready to go forward and pull a jury and let you

1 begin your trial. And if you would have done that,
2 if you would have maintained your not guilty plea
3 and gone forward with your trial, then you would, as
4 I told the jury this morning, be presumed innocent
5 of this charge and that presumption of innocence
6 places upon the State the burden of proof. As you
7 know, through a jury trial the State, the way they
8 would try to prove someone guilty is they would call
9 witnesses. Those witnesses would take the witness
10 stand and they would testify. More than likely they
11 would be testifying against your best interest. The
12 constitution of the United States says that any
13 person that's charged with a criminal offense has
14 the right to confront or to face their accusers.
15 And what that means, sir, is simply that during the
16 course of that jury trial if you were to have gone
17 forward, then through your attorney Mr. Bell you
18 would have the right to cross-examine or question
19 the State's witnesses. That's your right of
20 confrontation. But when you plead guilty under
21 Alford or straight up, either way, you give up that
22 presumption of innocence and you relieve the State
23 of their burden of proof; and since they're no
24 longer to required to prove your guilt they don't
25 have to bring their witnesses into court and you

1 lose the opportunity or you give up or waive the
2 opportunity to cross-examine or to confront those
3 witnesses. You understand, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now Mr. Williams, had you gone
6 forward with your trial the State is not the only
7 one that can call witnesses. You could call
8 witnesses if you chose to do so in your defense, and
9 I had a list of several people that were listed as
10 possible defense witnesses. You could call any
11 number of those people or you yourself could take
12 the witness stand and you could testify in your
13 defense. You could do either one of those things or
14 you could do both of those things. You could do
15 whatever you would like to do, but you also have the
16 right to exercise that constitutional right and
17 remain silent. In other words, you have the right
18 to not take the witness stand. And if you had a
19 jury trial and if you decided to do that, I would
20 tell the members of the jury that they could not
21 hold that against you in any way. I would explain
22 to the jury when I give them the charge on the law
23 that the State has the burden of proof and that you
24 don't have to prove anything. I would tell the
25 members of the jury that the fact that you chose to

1 remain silent could not even be discussed in the
2 jury room at all. I would instruct them that the
3 fact that you chose to exercise that constitutional
4 right could not be considered by them in their
5 deliberations in any way.

6 You understand that, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, as I indicated, the State
9 has the burden of proof in a trial, and they must
10 carry that burden to a unanimous decision. In other
11 words, they must convince all twelve members of the
12 jury that you are guilty or they could not convict
13 you. It must be a unanimous decision. You
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, if you did
17 have a jury trial, if you did go forward with a jury
18 trial, Mr. Williams, then, and if the jury did
19 convict you, you could appeal that conviction to a
20 higher court if you felt that was appropriate. You
21 understand that, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you also have an appellate
24 right with this proceeding here today. In other
25 words, if at the conclusion of this hearing you wish

1 to appeal my decision you may do so, sir, but you
2 must file a notice of intent to appeal within ten
3 date of today's date. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now Mr. Williams, these are
6 rights that we all have. Everybody has these
7 rights. But when you enter a plea, whether it be
8 under North Carolina versus Alford or whether it be
9 straight up, for purposes of your plea you give up
10 or you waive these rights. You will not have a jury
11 trial, and your case will be resolved pursuant to
12 your plea here today. You understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Understanding those things do
15 you still wish to go forward with your plea under
16 North Carolina versus Alford?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now the State has in exchange
19 for your plea under North Carolina versus Alford,
20 they have removed or withdrawn their motion to seek
21 a penalty of life without parole. The removal of
22 that motion then leaves the sentence that the Court
23 can consider to be anywhere between 10 and 30 years.
24 You understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Other than removing that
2 motion for life without parole, has anybody promised
3 you anything, held out any hope of reward or
4 threatened you in any way to get you to enter this
5 plea?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you satisfied with the
8 representation and the advice that Mr. Bell and the
9 members of his office have provided?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any complaints
12 against him or anybody, any member of his staff?

13 THE DEFENDANT: No, sir.

14 THE COURT: Have you told him everything
15 that you know about the facts and circumstances
16 surrounding this case so that they could investigate
17 and look into these matters for you, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I know you've given them the
20 name of some witnesses. Have you told them everyone
21 you know that might would be helpful to you in this
22 case?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now as you stand before the
25 Court here today, Mr. Williams, are you under the

1 influence of any substance that would affect your
2 ability to understand what you're doing?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you entering this plea
5 under North Carolina versus Alford of your own free
6 will, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. I'm gonna get Mr.
9 Jepertinger to give me the facts surrounding this
10 case, or at least the facts as the State would
11 present them and I would ask that you please listen
12 carefully and I'll get back with you in just a
13 minute.

14 MR. JEPERTINGER: Your Honor, on
15 October 21st, 2010, at the time Joe Backus, father
16 of nine children, was 76 years old. And Joe was
17 working still doing, I believe, some home remodeling
18 at Street. That's in the western part of
19 the city of Florence, Judge. And Joe worked there
20 pretty much the whole day, and it was about 12:30.
21 He was going to knock off, eat some lunch, and he
22 got into his pickup truck, gonna eat some lunch.
23 He'd gotten paid. And he cashed the check he had,
24 and I think the check was 320-dollars he told me.
25 And then he had some extra cash that he had taken

1 with him, Your Honor. And when we're trying to
2 figure out, he thought it was almost five hundred
3 dollars that he had around there.

4 Well, as he's sitting there at his truck,
5 12:30, beautiful October, October day, this
6 defendant came up to him. He said it was a heavy
7 set black male wearing a blue gray plaid shirt, came
8 up to the vehicle and asked whose truck is this.
9 Mr. Joe stated, well, this is Mr. EG's truck. At
10 that point Mr. Joe stated that this individual
11 pointed a black handgun at him and said give me your
12 wallet and everything that you have if you want to
13 live. Mr. Backus, truthfully Judge, told me he was
14 scared to death. He tried to open up the car door,
15 and the guy kind of pushed it shut and said you
16 ain't going nowhere, or something of that nature,
17 telling him to give it up. Well, Mr. Backus did
18 want to live. He gave the subject his wallet and
19 all the money out of his wallet. And of course, in
20 the wallet contained driver's license and all the
21 important cards that you have to get through life —
22 they're gone. And he had to go and do all that
23 stuff, go get a new driver's license and everything
24 that you got to get.

25 He said that Williams ran to a black male

1 wearing a dark blue shirt on a bike and got on the
2 handle bars and rode off. Now that person that was
3 on the bicycle that was peddling the bicycle was
4 Alonzo Baldy Mumford who would have testified for
5 the State. And Mr. Mumford would have testified,
6 Your Honor, that he had loaned this gentleman what
7 he called an air gun, beebie type gun, but the thing
8 looks like a 9-millimeter. You can't tell what the
9 thing is if it's just pulled on you. In fact, and I
10 forgot to tell you this. Mr. Backus told me that
11 the guy that came up kind of threw like a blue wash
12 cloth or blue towel over the thing so, I mean, all
13 you saw was kind of the opening end of the barrel.
14 Baldy told me that they split the money. He got
15 about 75-dollars if I'm not mistaken. Is that
16 right, Mr. Mumford?

17 MR. MUMFORD: Yes, sir.

18 MR. JEPERTINGER: He got about 75-dollars
19 and Williams got the rest. And the other witnesses,
20 Your Honor, would have testified 'cause I know this
21 gentleman was saying based on the statement I was
22 not going to put into evidence. He was in
23 Lancaster, South Carolina when this whole event
24 happened. Well, I had Margaret Gurley that saw him
25 here in Florence with baldy Mumford going away on

1 the bicycle that was her bike. I had Sherman
2 Peterson that was also there at a poker game that
3 saw the two together. Ashanta McDaniels who saw
4 them together that day, heard them talking about
5 doing something like this. I had these witnesses to
6 come in and testify that this man was with Baldy
7 Mumford and they robbed Mr. Backus.

8 And this gentleman, Your Honor, came up —
9 and this is what just, I mean, it just sits in my
10 craw — that a 76 year old man who is now 78, not in
11 great health, had experienced this in the autumn of
12 his life. He's — all he's known is hard work his
13 whole life raising his family to be good and
14 respectful people. Doesn't have a record. All he's
15 known is work, Judge. I went to his house over in
16 Lamar to talk to him. His house is immaculate. He
17 and his wife are both suffering right now, and
18 they're good people, and to have this happen just
19 burns the State up, Your Honor.

20 And this isn't his first rodeo of course.
21 The State knows that, and I mean, the Defense knows
22 that, the Court knows that. And it seems like every
23 decade he has had something of this nature. On
24 indictment 1996-GS-21-904 in this county he had a
25 prior conviction for the crimes of armed robbery,

1 attempted armed robbery, and assault and battery of
2 a high and aggravated nature, Your Honor. And back
3 in those days you could get a youthful offender
4 sentence and that's exactly what he got. He got a
5 YOA to run concurrent, Judge, and it was Judge
6 Kinard that sentenced him to that. Then in 2002 on
7 indictment number 2002-GS-21-180, he had another
8 armed robbery for which Judge Brogdon sentenced him
9 to ten years. Your Honor, this business has got to
10 stop.

11 Now I have left this sentence open that
12 you're gonna give him, open Judge, it's not
13 negotiated. But Your Honor, he has to get a
14 sentence that is in accord with the crime he
15 committed against a nice old man. Now Mr. Backus
16 wasn't hurt; he wasn't pistol whipped. He wasn't
17 any of that. But he was robbed of hard earned money
18 and it's just wrong. And I think that's all.

19 And Thomas, anything you have to add?

20 THE INVESTIGATOR: And basically, like he
21 said with the witnesses, we could have filled the
22 courtroom up. When they asked me why I came up with
23 those two suspects, when I got the information about
24 the individuals he had a co-defendant at first, he
25 put hisself out of it. And I had already had names

1 from people that was out there that saw the
2 individuals on the bike so that's why I had those
3 two names more than that, that many names. And when
4 I went to the other guy who he named said he was on
5 the bicycle, McDaniel, he was like, tell him he need
6 to tell the truth of what they did. And that was
7 Williams and Baldy. He said tell them not to put my
8 name in it. He was trying to tell me it wasn't a
9 real gun. You know, it doesn't matter to me if the
10 gun was real not.

11 THE COURT:. Right.

12 THE INVESTIGATOR: It's the fact that he
13 was sitting out on lunch break, a 70 something old
14 man, 'cause y'all kept referring to him as old man,
15 and you pull a gun on this guy and he terrified.
16 His wife, what was sad to me, she kept saying he too
17 nice. I don't care how nice he is. That don't give
18 you a reason to rob him. She think he too friendly.
19 That don't make a difference. He was sitting out
20 enjoying his lunch and he had a weapon pulled on him
21 and he took the gun. Yeah, the witness would have
22 testified saying they were there, both of them, left
23 on a bike. They couldn't say what they did when
24 they got around there which didn't make a
25 difference. Both of y'all left, y'all went running,

1 and y'all robbed him. I don't care if y'all can say
2 I didn't want to know who the two that left on the
3 bicycle that was at the intersection and fled after
4 they robbed him. And that what the witness would
5 have stated. Yea, the courtroom been filled up with
6 — Jepertinger told me he done need that many, it'd
7 be repetition to bring all these people here saying
8 the same thing over and over again so that's why we
9 chose the few that were here to come in to say this.

10 THE COURT: All right, sir. I don't know
11 Mr. Backus, but oh Mr. Backus, I guarantee you if he
12 didn't have a gun you wouldn't have given him
13 nothing, would you?

14 MS. JACKSON: He said if he hadn't had a
15 gun you wouldn't have given him nothing, would you?

16 THE VICTIM: No, sir, Your Honor, I sure
17 wouldn't have.

18 THE COURT: You probably would have
19 whipped his tail.

20 THE VICTIM: Yeah, I'd probably been in a
21 little fight.

22 THE COURT: I have no doubt about it.
23 Well, Mr. Backus, I'm thankful that you were not
24 injured.

25 THE VICTIM: Yea.

1 THE COURT: And I appreciate your
2 cooperation —

3 THE VICTIM: Yes, sir.

4 THE COURT: —with law enforcement.

5 MR. JEPERTINGER: Judge, would you like to
6 here from either Mr. Backus or Ms. Jackson?

7 THE COURT: I'm going to in just a little
8 bit but let me finish with the qualification here.
9 Mr. Williams, now you've heard the — you've heard
10 the testimony that the State would have presented if
11 this case would have gone to trial. You heard what
12 they testified or what they've shared with the Court
13 they would have put in front of the jury. Is it
14 your understanding that that's the evidence that the
15 State would have put in front of a jury that caused
16 you concern that you would likely be convicted if
17 that evidence was conveyed to the jury?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. And I understand that
20 you don't necessarily agree with that evidence but
21 you do understand that that is the evidence that the
22 State would have put up had this case gone forward?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right, sir. I find that
25 the State has provided a substantial factual basis

1 to support the charge that Mr. Williams has pled to.
2 I find that the decision — and that he has pled
3 under North Carolina versus Alford. I find that the
4 decision to enter that plea has been done freely,
5 voluntarily, and intelligently. He's had the advice
6 and counsel of an outstanding attorney in Mr. Bell
7 who's had wonderful support in Investigator McKenzie
8 and other folks in his office, and Mr. Williams has
9 indicated he is satisfied with the representation
10 and the advice that he's received.

11 I've spoke with Mr. Williams about his
12 understanding of a plea under North Carolina versus
13 Alford, and I think he understands the ramifications
14 of entering a plea under Alford, and I'm going to
15 accept his plea.

16 Mr. Bell, I'll be happy to hear from you,
17 sir.

18 MR. BELL: Thank you very much. Your
19 Honor, we always understood that this would be a
20 very strong case that the case — that the State
21 would present. And certainly we knew that — I had
22 encouraged him in the past to consider an Alford
23 plea, but certainly the two main individuals that
24 were gonna testify against him also had a checkered
25 past. The statements they finally ended up with

1 weren't the ones they initially made so there was
2 some room for trial in there. Also we know that the
3 victim of this robbery is just a kindly old man who
4 would not lie. He could be mistaken but he wouldn't
5 lie. And certainly we always knew that he had
6 identified Baldy from a photo lay-down, and we know
7 that from the very getgo there were witnesses that
8 implicated Baldy as having been in the area and so
9 there was room in a trial for some chance.

10 I always felt considering the penalty he
11 was facing and certainly I wouldn't have wanted to
12 take that risk, Your Honor, but he chose do so and
13 that's his right. And we know that when you present
14 alibi witnesses sometimes you know, there's all
15 those friends, girlfriends, friends, sometimes
16 they're, sometimes they're not believed so we know
17 that that is always a worrisome thing. I mean, if
18 you were preaching in the church and you had a choir
19 come testify for you then you've got great alibi
20 witnesses. So I always felt it was a very tough
21 situation where and then certainly this revelation
22 this afternoon certainly changes the locus of
23 examination of the case and I wanted to explain that
24 to you.

25 THE COURT: Sure.

1 MR. BELL: I think he's made an
2 intelligent decision. Thankfully, as you've heard
3 some of the things that perceive danger was that the
4 real danger wasn't as great as the perceived danger,
5 but even in the statements given before it was
6 talked about that that Baldy had this air pistol or
7 beebee gun that looked like a 9-millimeter. So not
8 just justifying that and certainly under the statute
9 that's still an armed robbery; but certainly the
10 danger is although perceived as great is not as
11 great. And there wasn't any actual physical harm
12 done although it's traumatic to undergo this. I'm
13 not playing down what happened, I'm just, we do see
14 some cases that are far worse than what happened.

15 THE COURT: Sure.

16 MR. BELL: Then I think it —

17 THE COURT: Any number of things could
18 have gone bad.

19 MR. BELL: —could have been
20 embarrassing. And so I don't say that as
21 mitigation, but just as, that's just as what the
22 facts are but it's not quite as bad. And he does
23 have a bad record. I mean, it's — some of these
24 others have bad records too. And the last time he
25 was in this kind of trouble was 10, 12 years ago.

1 And there were some good things going on in his life
2 at the time that these events happened. He has his
3 girlfriend here with him, and they've been — at the
4 time he was arrested up there in Lancaster. He was
5 living up there. And perhaps if he had been able —
6 he couldn't really go up there until he got off the
7 bracelet on his parole and then he started staying
8 up there and that would have been a turnaround point
9 for him for his life, I think, getting away from the
10 people here and getting away from some of the things
11 that had gone on. He had met, he and Baldy met in
12 prison. There's not a lot of good you can say about
13 it but it's not quite as bad as it might first
14 sound.

15 He — the discussions were, you know, we
16 always had a plea bargain for ten years. Had we had
17 this information here certainly that probably would
18 have developed sooner. I understand Mr. Jepertinger
19 when he says he got ready for trial. For he and I
20 both it would be easier to try this case than plead
21 it out 'cause now we have to turn our attentions
22 elsewhere.

23 THE COURT: Sure, I understand.

24 MR. BELL: And certainly it made the
25 weekend spent a little different than it would have

1 been without the trial starting on Monday morning so
2 it's equal in that regard. But it wouldn't be
3 better for him if we did this I don't think, Judge,
4 because he's got his life on the line and that, you
5 can't get any more serious than that.

6 But I would ask in light of the fact that
7 this has just come to light — and I'm not faulting
8 Mr. Jepertinger 'cause he didn't know anything until
9 11:00 today. It's not like they were hiding
10 something from us. I respect Mr. Jepertinger's
11 integrity, great, I've known him for years. I would
12 not impugn his integrity at all. But having just
13 found this out and all and I think he probably would
14 have taken the deal earlier with this, I would ask
15 you very strongly to consider the ten year sentence
16 that would have been his offer. It was also the
17 initial offer to his co-defendant although he may
18 end up better for his cooperation. You know,
19 sometimes these cases are pled strong armed which is
20 what we asked for in this case and couldn't get and
21 I understand John's position on that. But I would
22 ask you very strongly, Judge, if you would give him
23 the benefit of the ten year deal he could have had,
24 and I understand John's position, but I very much
25 ask you to consider that.

1 He has spent, as you've heard, about
2 17-and-a-half months in prison. He does have people
3 that love him. And when he gets out he has a place
4 to go that's not here in Florence, and I think he
5 needs that change of scenery. I wish it had
6 happened before. I would ask you to be as lenient
7 as possible to him, to accept that. That's a long
8 time. It's not like getting a candy bar if he gets
9 ten. It's another — it's eight-and-a-half even if
10 credit for a year-and-a-half, that's another 7. And
11 then you're on community supervision for the other
12 hanging over, and he's reaching the age now that I
13 think in maturity and having done the things he's
14 done, spent as much time in the penitentiary as he
15 has that I think he's probably a pretty good bit not
16 to be coming back.

17 If you get in these, reading some of those
18 statements about what went on after it and so forth,
19 that all of it they talk about buying some weed and
20 stuff so this location everybody was hanging around
21 where the card game was and all, there was other
22 activities going on around there too that not
23 strictly legal and that's out of that environment
24 this comes. And there weren't any choir boys
25 hanging around there. And he's been off that stuff

1 a long time now. I think this an awakening for him,
2 the time that he spent in jail. I would ask you to
3 be as lenient to him as you possibly can. If any of
4 these ladies or he would like to speak.

5 THE COURT: I'm — no one is required to
6 speak, but I'm certainly happy to hear from anyone
7 if you would like to address the Court.

8 MR. BELL: They stand with their support.
9 Do you want to say something?

10 THE DEFENDANT: Yeah. Your Honor —

11 THE COURT: Mr. Williams, I'll be happy to
12 hear from you, sir.

13 THE DEFENDANT: Yeah. I want to say, Your
14 Honor, I want to apologize, you know what I'm saying
15 to the Court for going through this little time.
16 But just like Mr. Bell said, by the circumstances
17 that had came to our attention it wouldn't have been
18 like this, I would have said go forward with trial.

19 THE COURT: Let me say this. I don't want
20 you to be concerned that we went through the process
21 of drawing a jury and doing all that and then you
22 changed your plea because that — you certainly have
23 that right. So that doesn't — I'm not offended by
24 that at all. I mean, that's, that is your right,
25 that's your prerogative. So that's not a problem.

1 (Mr. Bell and defendant confer.)

2 THE DEFENDANT: One thing I don't want you
3 to, don't want the court to look at, you know what
4 I'm saying, my past record and think that's a
5 reflection on me today. Like Mr. Bell said, I
6 learned from this experience. I had already learned
7 from the last time I was incarcerated 'cause I was
8 young then, you know, and now I got a different
9 perception on life because I got my fiance with me
10 and she done came a long way with me, you know what
11 I'm saying. I'm sorry for what happened to Mr.
12 Backus, you know, but I just hope that you consider
13 the first offer that was on the table, you know what
14 I'm saying. Like he said, I ain't getting no
15 younger. I do got a new perception of life now and
16 it ain't, got nothing to do with it, incredible.

17 THE COURT: All right. Mr. Jepertinger,
18 I'll be happy if Mr. Backus would like to address
19 the Court I'll be happy to hear from him or anyone
20 on his behalf.

21 MR. JEPERTINGER: Phyllis.

22 THE COURT: And I just need your name for
23 the record please.

24 MS. JACKSON: Hi, my name is Phyllis
25 Jackson and this is my father Joe Backus.

1 THE COURT: All right, Ms. Jackson.

2 MS. JACKSON: I would just like for the
3 Court to know that my father is a forgiving man; he
4 is. My father does not want this young man to get
5 life. Life itself happens and mistakes happen. My
6 father is a hardworking man; he is. He never hurt
7 anyone. My father has so much forgiveness for you;
8 he does. This is my dad. He doesn't want you to
9 get life. He wants you to go on with your life.
10 And for any mistakes that you made that is something
11 you're gonna have to take up from another angle that
12 is beyond this court. My father really forgives
13 you; he does. He is a hardworking man, raised nine
14 kids. My father is on great granddaddy status now.
15 He does not want you to get life.

16 Sir, my father does not want this young
17 man to get life.

18 THE COURT: I understand.

19 MS. JACKSON: He does not. He doesn't
20 want him to get 30 years. Life itself happens and I
21 even appreciate the fact that you took the time now
22 to admit it. We wish you well, son, we really do.
23 Thank you.

24 THE COURT: Well, I want to thank both of
25 you for being here and thank you for showing the

1 grace and the forgiveness that you've shown,
2 Mr. Backus. That's incredibly admirable and an
3 attitude that I hope I would have in the same
4 position because I think it's a very Godly and
5 Christ-like attitude and I appreciate it from you.

6 I don't ever, you know, I know people say
7 this all the time but it's true in what I'm telling
8 you. I don't ever punish anybody for exercising
9 their right to a jury trial. We are all entitled to
10 that; that is not a problem. But I will tell you
11 that I don't believe I'd have accepted this plea
12 with that original plea offer. I've got a young man
13 who's got an armed robbery conviction and he
14 received a YOA sentence, and probably not long after
15 he completed that YOA sentence he picks up another
16 armed robbery and he gets a ten year sentence. And
17 not long after he serves that time he's back in
18 front of the court on another armed robbery. And in
19 all candor, I don't think I would have accepted the
20 initial plea offer.

21 So this is not reflective of punishing
22 anybody for their exercising their right to a trial
23 because, as I said before, I have absolutely no
24 problem with what Mr. Williams has done here this
25 morning in exercising his rights. I realize that

1 some information came to light that changed that
2 position and it came to light this morning; but the
3 sentence that I am going to impose, I think, simply
4 reflects what I think is appropriate under the facts
5 and circumstance and I'm gonna take into
6 consideration the grace and the mercy that Mr.
7 Backus has shown as the victim in this case.

8 But ma'am, and I know Mr. Backus has a
9 little bit of a hearing problem so if he can't hear
10 me I hope you'll convey to him —

11 MS. JACKSON: Thank you.

12 THE COURT: —that what I'm doing here I
13 think is just, it's just justice for this situation.
14 And I've got a young man who at least up to this
15 point has shown a reluctance to stop this behavior.

16 THE VICTIM: Yes, sir.

17 THE COURT: And so I have a duty to
18 protect the citizens of this community from this
19 type of activity.

20 THE VICTIM: Yes, sir. That's right, Your
21 Honor.

22 THE COURT: I'm going to take into
23 consideration the fact that Mr. Williams has entered
24 this plea, and so I'm not going to give him the
25 maximum. I'm not gonna give him 30 years.

1 MS. JACKSON: Thank you.

2 THE COURT: But I do feel that the
3 sentence needs to reflect the seriousness. It's a
4 serious crime in any aspect, but it becomes more
5 problematic and more concern for the Court when this
6 has happened time and time again, and that's
7 basically the impetus behind the sentence that I'm
8 going to impose.

9 On indictment 2011-GS-21-1212, the
10 sentence of the Court is that you be committed to
11 the State Department of Corrections for a period of
12 20 years. You're to be given credit for any time
13 that you have served up to this point. Good luck to
14 you, sir.

15
16 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 11th day of July, 2014.

Frances B Ray

FRANCES BAKIS-RAY, RPR

FORM 5

20 13 CP 21 2108

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Florence)Eric S. Williams #234526)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2013 AUG 12 PM 2:20
CONNIE REEL-SHEARER
CCJP & GS
FLORENCE COUNTY, SC

INSTRUCTIONS B READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Florence County City Complex / 180 N. Irby Street Florence, S.C. 29501
3. Name(s) of co-defendant(s) (if any) Alonzo M. [unclear]
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-21-1212 Armed Robbery

CONFIRMED: A TRUE COPY
CLERK OF COURT
FLORENCE COUNTY, S.C.

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 30th, 2012 - 20 years incarceration
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- ✓(a) after a plea of guilty Plea of North Carolina versus Alford
- (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?
- I asked my attorney to appeal the sentence
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) Attorney never filed appeal

- (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective counsel
 (b) Prosecutor misconduct
 (c) Due-Process violation

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) False leadings from Attorney to accept plea/overwhelming case load
 (b) Violation of disclosure evidence, (Beady v. Maryland) withheld evidence
 (c) _____

Cont.
Back
of page

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

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

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____

- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR is my first processing step
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes (after pre-trial)
 (b) your trial, if any? (pre-trial) yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Micheal Bell
City County Complex 180 North Irby St. Florence S.C. 29501

ii. _____

 iii. _____

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

i. Pre-Trial hearing

 ii. _____

 iii. _____

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

New trial, where as indictments and warrant remains the same
variation of alleged charge of robbery

And of equal amount time sentence as co-defendant/hands of one

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

the hands of
an.

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, Eric Williams, 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.

Eric L. Williams

SWORN to and subscribed before me this 23rd
 day of July, 2013.

Quedraan Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

FILED
 2013 AUG 12 PM 2:20
 CONNIE REEL-SHEARIN
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
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 thereof.

Eric S. Williams #234526
Applicant

SWORN or affirmed to and subscribed before me this
8th day of August, 2013.

Quibecum Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED
 2013 AUG 12 PM 2:20
 CONNIE REEL-SHEARIN
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shearlin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
Eric S. Williams, #234526,	)	Case No. 2013-CP-21-2108
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed August 12, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In July 2011, the Florence County Grand Jury indicted Applicant for armed robbery (2011-GS-21-1212). Michael S. Bell, Esquire, represented Applicant. On March 8, 2012, the State served Applicant and counsel with a notice of intent to seek a sentence of life without parole based on Applicant's prior convictions for armed robbery, attempted armed robbery, and assault and battery of a high and aggravated nature. On July 30, 2012, Applicant pled guilty as indicted. The Honorable Thomas A. Russo sentenced Applicant to confinement for a period of twenty (20) years. Applicant did not appeal his guilty plea or sentence.

II.

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

1. "ineffective counsel"
 - a. "False leadings from attorney to accept plea/overwhelming caseload"
2. "Prosecutor misconduct"
 - a. "violation of disclosure evidence, (Brady v. Maryland) withheld evidence"
3. "Due-Process violation"

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v.

Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

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

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Post-conviction relief "is not a substitute for nor does it affect any remedy

incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.”).

Applicant’s allegations regarding the evidence against him is an inappropriate challenge to the sufficiency of the evidence. See Ashley v. State, 260 S.C. 436, 438, 196 S.E.2d 501, 502 (1973). Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). Regardless, it is applicant’s burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989). Respondent submits he cannot meet this burden and this allegation should be dismissed.

V.

Applicant further alleges due process violations. However, Applicant fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must “... specifically set forth the grounds upon which the application is based.” S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (“It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief.” (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))).

This allegation is so vague it is impossible for Respondent to respond. Since Applicant has failed to make even a *prima facie* showing, Respondent submits this allegation should be dismissed, pursuant to Rule 12(b)(6) for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

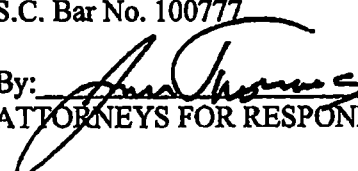
Respectfully submitted,

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By: 
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April 29, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2013-CP-21-2108
	)	
ERIC S. WILLAIMS, #234526	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
120 Gantt St.
Lexington, SC 29072

DATED this 29TH day of April, 2014.


 Norma Bigbee, Legal Assistant

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2013-CP-21-02108

Eric Shanta Williams,

Plaintiff,

-vs-

Transcript of Record

State of South Carolina,

Defendant.

November 7, 2016
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Tristan Shaffer, Esquire
Attorney for the Plaintiff

Jessica Kinard, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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1	<u>E X H I B I T S</u>			
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1 NOVEMBER 7, 2016

2 (WHEREUPON, the proceedings began at 9:56 a.m.)

3 THE COURT: All right. Ms. McAllister, call your first
4 case, please. How are you, Ms. Crayton?

5 MS. CRAYTON: Good. How are you doing today?

6 THE COURT: I'm doing well. Mr. Bell, how are you doing,
7 sir?

8 MR. BELL: Doing well.

9 MS. MCALLISTER: Thank you, Your Honor. The first case
10 will be Eric Williams, and Ms. Kinard is going to --

11 THE COURT: What about Mr. Dollard?

12 MS. KINARD: We will be doing his. We were just
13 wondering if we could switch those two around.

14 THE COURT: Okay. That's fine.

15 MS. KINARD: Thank you, Your Honor. We would call the
16 case of Eric S. Williams.

17 THE COURT: All right. Mr. Williams, if you'd come
18 around and have a seat with your lawyer. All right.

19 MS. KINARD: Thank you, Your Honor.

20 THE COURT: Can y'all -- hold on a second. Mr. Neal, can
21 you move this? Do y'all need this need this podium up here,
22 Mr. Shaffer?

23 MR. SHAFFER: Thank you.

24 THE COURT: Do y'all need it?

25 MR. SHAFFER: We do now, Your Honor.

1 THE COURT: I mean you can roll it. Mr. Neal, if you
2 want to, you can just roll it right here in front of me.

3 THE DEPUTY: If I can get it to work. Well, somebody
4 might be on the stand.

5 THE COURT: That's why I want it right here in front of
6 me.

7 THE DEPUTY: I'm going to put it where you tell me. How
8 about right there?

9 THE COURT: That's good right there. Thank you. Yes,
10 ma'am?

11 MS. KINARD: Thank you, Your Honor. May it please the
12 Court. This is the matter of Eric S. Williams versus the
13 State of South Carolina. It's Case Number 2013-CP-21-2108.
14 We're before the Court on an application for post-conviction
15 relief that was filed by Mr. Williams August 12th, 2013.

16 Mr. Williams is presently confined in the South Carolina
17 Department of Corrections pursuant to orders of commitment of
18 the Florence County Clerk of Court. In July 2011, the
19 Florence County Grand Jury indicted him for armed robbery. He
20 was represented by Michael Bell.

21 On March 8th, 2012, the State served Mr. Williams and his
22 counsel with a notice of intent to seek life without parole
23 based on his prior convictions for armed robbery, attempted
24 armed robbery, and assault and battery of a high and
25 aggravated nature.

1 On July 30th, 2012, Mr. Williams pled guilty as indicted
2 pursuant to *North Carolina v. Alford*. The plea was taken by
3 the Honorable Thomas A. Russo, who sentenced the applicant to
4 a confinement for a period of 20 years. He did not appeal his
5 guilty plea or his sentence.

6 In his application for post-conviction relief, Mr.
7 Williams alleged that he's being held in custody unlawfully
8 due to ineffective assistance of counsel, prosecutorial
9 misconduct, and due process violation. The State is present
10 and ready to proceed. Mr. Williams is present and represented
11 by Tristan Shaffer.

12 THE COURT: All right. Mr. Shaffer?

13 MR. SHAFFER: Thank you, Your Honor.

14 THE COURT: Good morning.

15 MR. SHAFFER: Good morning. Before we begin, my client
16 -- I've spoken with my client and I was going to ask for
17 either a continuance or to leave the record open on this
18 particular case.

19 The reason that I'm asking for this is that -- and to
20 give the Court a little bit of history, back in August we --
21 we were before Judge Seals. We spoke to Judge Seals or I
22 spoke to my client beforehand and I believe the week
23 beforehand he had indicated that there were some alibi
24 witnesses to this armed robbery that hadn't been spoken to. I
25 made contact with his girlfriend, who was one of those

1 individuals, right before the last hearing and she told me
2 that essentially she could get the names of these other
3 individuals, who were her neighbors at the time.

4 THE COURT: And that was in August?

5 MR. SHAFFER: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. SHAFFER: Judge, Judge Seals decided to continue the
8 case so that he could -- so that I could go -- go after those
9 witnesses and get statements from them. My -- my client has
10 indicated that he has tried to contact me with some of that
11 information and that his girlfriend has as well. I don't
12 recall receiving phone calls from his girlfriend and, as for
13 letters, I'm not sure if that's in there, but I have spoken to
14 the girlfriend. The girlfriend is saying that, you know, he
15 does, in fact, have an alibi.

16 Now, in fairness to the Court, Mr. Bell states that he
17 actually spoke with or had his investigator, Mr. McKenzie,
18 speak to these individuals before trial and was planning on
19 calling them as a witness, at least some of them as witnesses.
20 Your Honor, I think that having these statements from these
21 witnesses -- my client has indicated that he was not aware of
22 that and that had played a role in him pleading guilty.

23 Having statements from these in the -- in the record
24 would be helpful in this case, even though obviously some of
25 the information we can bring out through Mr. Bell and through

1 his investigation to show what he had done in his
2 investigation of the case, but I would like to at least
3 supplement that with actual statements from those -- the
4 witnesses, Your Honor.

5 THE COURT: What says the State?

6 MS. KINARD: Your Honor, these witnesses I believe would
7 require a credibility determination by the Court and I believe
8 that would really only be possible through further testimony.
9 The State opposes a continuance at this time due to the nature
10 -- excuse me -- the age of the case.

11 Furthermore, this was a guilty plea. The applicant is
12 not alleging an involuntary guilty plea, although his
13 description of his ineffective assistance of counsel
14 allegation does kind of include that.

15 However, as the Court is aware, guilty pleas necessarily
16 require a waiver of the weight of any evidence considerations.
17 So the State does not believe that any further investigation,
18 especially at this point in time, is really warranted in this
19 matter.

20 THE COURT: All right. I'm going to respectfully deny
21 your request for a continuance.

22 MR. SHAFFER: Thank you.

23 THE COURT: We're going to move forward at this time.
24 I'll make a decision as to whether or not I'm going to leave
25 the record open based upon what I hear in here this morning.

MICHAEL BELL - DIRECT BY MR. SHAFFER

1 MR. SHAFFER: Thank you, Your Honor. Your Honor, the
2 applicant would call Michael Bell.

3 THE CLERK: Do you swear or affirm that the testimony you
4 give in this case will be the truth, the whole truth, and
5 nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE COURT: Sir, if you'll state your full name for
8 record and spell your last, please?

9 THE WITNESS: My name is Michael S. Bell, last name is B-
10 e-l-l.

11 THE COURT: Mr. Shaffer.

12 MR. SHAFFER: Thank you, Your Honor.

13 MICHAEL BELL, being first
14 duly sworn. Testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHAFFER:

17 Q: Mr. Bell, you've represented Mr. Williams; correct?

18 A: I did.

19 Q: Okay. Tell us a little bit about the allegations against
20 him. What was the State claiming he did?

21 A: Well, there was a gentleman that was eating his lunch in
22 a truck. He was doing some construction I think on a house.
23 He was approached by a gentleman with a gun. He was relieved
24 of his wallet, and the gentleman jumped on the handlebars of a
25 bicycle and was ridden away from the scene. Do you want me to

MICHAEL BELL - DIRECT BY MR. SHAFFER

1 go more about what happened with their investigation?

2 Q: Yes.

3 A: Well, what happened was the officers had ended up
4 discussing the case with his codefendant, Baldy, who gave a
5 statement alleging that Eric and a third person had done the
6 robbery and, when they went and talked to this third person,
7 that person said that Eric and Baldy had done the offense, and
8 then Baldy eventually came around and he gave a statement to
9 that effect as well. And the victim was shown a photo lay
10 down with the codefendant in a photo lay down and identified
11 him as being one of the people there.

12 Now, they also talked with other people that would have
13 been witnesses that Eric was here because there had been a
14 card game going on and people said that Eric was there. There
15 had been Sherman Peterson and his girlfriend who said Eric had
16 come around and tapped on their window and things of that
17 nature.

18 So they had witnesses that Eric was in town. They had
19 the codefendant's testimony that Eric was involved. I think
20 just from all the stuff that we had, there was supposed to be
21 somebody who said they had heard them discussing some such
22 thing as well.

23 But the main two witnesses against him would've been the
24 codefendant and the third person who had said the two of them
25 -- I mean had identified the other two as doing it and

MICHAEL BELL - DIRECT BY MR. SHAFFER

1 supposedly saw part of it or whatever, but not the actual
2 robbery.

3 We had from Eric that he was in Lancaster. I talked with
4 his girlfriend. His girlfriend and another lady actually came
5 down to see us one time and I told them that before we could
6 get much into specifics, we needed to get the Rule 5 discovery
7 stuff to know exactly when we were talking about and all
8 because at first when I talked with her about what day it was,
9 you know, they decided, well, I think we remember that day
10 because there was a JV football game that night.

11 We were going to get more details once we got the Rule 5
12 stuff, and eventually we did. Our investigator, Mr. McKenzie,
13 talked with her and got names and talked with people that were
14 up in that area too, and he also talked to people here.

15 Our investigator, Ron Smith, talked to a couple of people
16 here as well. I think we actually discovered maybe a couple
17 people that the State didn't have on their list that actually
18 said he was here as well, but -- so our -- our initial start
19 in this case was delayed a little bit I'll say because
20 initially he said I think that they had hired Richard Strobel
21 and so we waited to see if that resolved.

22 Maybe I'm using that one. Let me be sure I'm on my right
23 case. But the -- yes, that's right because Jack had put a
24 note in here to make sure Strobel represents this guy. If he
25 does, close it. So there was conversations about how Richard

MICHAEL BELL - DIRECT BY MR. SHAFFER

1 had been paid some money and there was a payment plan and
2 things like that. So we didn't initially take off doing a lot
3 of stuff to determine what was going to happen there.

4 And then another thing that happened was he got his
5 parole or probation revoked and so he was gone to the
6 penitentiary for a while. Mr. Jepertinger's initial generous
7 offer, of course, was 25 years or life without parole because
8 he had a prior armed robbery. And as time went on, eventually
9 we had an offer for 10, which he declined.

10 And then when it came -- came time for the trial, we
11 actually picked -- picked a jury. We actually -- I had
12 requested that because so many of the State's people had
13 criminal records that we go ahead and go ahead over their
14 records to see what could be used for impeachment or not used
15 for impeachment, and we did that.

16 They also had the names of some of our defense witnesses,
17 and John had given me rap sheets on them. I don't think they
18 had anything on theirs; so we didn't go over any of them.

19 Initially, I was thinking we didn't give the judge our
20 witnesses' names, but I saw about two or three of them were on
21 the list. I think we had given him the ones that -- we had
22 two there in the courtroom that day. We had another one that
23 called that was coming and we were trying to get the rest of
24 them. Thomas was working behind the scenes.

25 There had been a delay up there in Lancaster where

MICHAEL BELL - DIRECT BY MR. SHAFFER

1 somebody hadn't served subpoenas to start with and then they
2 started serving them, but, of course, we would never force
3 defense witnesses to come. They don't tend to be very well if
4 you make them come, but by doing subpoenas you have people get
5 off jobs and things like that.

6 So we actually had a couple of defense witnesses here.
7 Now, after -- after we had picked the jury, after we had done
8 these motions, then John informed us that the victim was going
9 to identify him at trial. So we asked for some time to
10 discuss the matter -- that matter with him. The State had
11 never done a photo lay down with him in it. They had never
12 done a physical lineup. They had never shown him a picture of
13 him and, of course, he sees him in the courtroom that morning
14 and he identified him to John.

15 I'd had this happen in one of my other cases not too long
16 before and tried to keep it out under *Neil v. Biggers* and
17 lost, and we went through all that litigation there about
18 that. And so I realized that wasn't -- we would've had the
19 same result in this case as well.

20 So we discussed with him the plea, but we previously had
21 discussions with him about a plea and about *Alford* and things,
22 particularly when we had the 10-year offer, which was -- which
23 was, you know, from the State's side a pretty generous offer.
24 When -- when we talked this time, he decided that he would
25 enter a plea under *Alford*. John would not give us the 10

MICHAEL BELL - DIRECT BY MR. SHAFFER

1 years. He just left it open.

2 So when we got into the plea, I begged the Court to give
3 him the 10-year sentence, which had been offered originally,
4 and my argument was if -- had we known that he was going to be
5 identified earlier that we probably would have accepted that
6 at that point, given the options facing him with a life
7 without parole and the risks involved.

8 The judge chose not to do that and, in fact, said he
9 wouldn't have accepted a plea for 10 years given his record
10 and so forth. We did catch a break in this because the
11 victim's daughter was there with the victim and spoke for him
12 at the sentencing and said that being a good Christian man
13 that they did not want to see him get a life sentence and they
14 did not want to see him get a 30-year sentence, and I think
15 that helped because he did get a 20-year sentence.

16 Unfortunately, you know, if we had had that information
17 about identification before, we probably could've got the 10-
18 year sentence. But given that he was facing a life without
19 parole, it -- certainly, the crux of the case changed having
20 that identification because many of the people that were
21 implicating him had given more than one statement and had
22 criminal records, which made them pretty impeachable. Some of
23 them weren't, some of the ones that said that he was in town,
24 but certainly you don't know how their credibility would've
25 played out.

MICHAEL BELL - DIRECT BY MR. SHAFFER

1 In a trial, we would have seen how the State's witnesses
2 did and, depending on how well they did, we would have
3 considered putting up the alibi witnesses. They knew his
4 alibi because he had given them his alibi in his statement.
5 John had already announced he was not going to use his
6 statement because I guess John was thinking I want to -- I
7 want to make him take the stand to give that and, if he takes
8 the stand, I can bring up these two prior armed robberies that
9 he's got and then, you know, he's sunk with his impeachment.

10 So John wasn't going to put up his alibi for us. So the
11 only way we could then have put it up was if he testified or
12 using alibi witnesses and, like I said, we would not have put
13 up witnesses on the first day of the trial, but we had two
14 there. We had another one that would've come. Hopefully, we
15 would've had everybody there before it was over, but we knew
16 we had two in hand.

17 We didn't have impeachable alibi witnesses based on
18 criminal record, but we did have to face the problem that a
19 lot of people believe your friends and relatives and neighbors
20 will lie for you. And we also knew that there were other
21 people here in town that had said that he was here, other than
22 what was on the State's list, and so also we would've faced
23 the fact that there could have been some -- the State could
24 have come back and tried to use some more in reply.

25 So it was -- it was -- you know, I can understand his

MICHAEL BELL - DIRECT BY MR. SHAFFER

1 choice to go to trial before the -- before the guy identified
2 him. I do think it was a very high-risk choice because of
3 what was at stake at that point, 10 years versus life without
4 parole, and I certainly would've been comfortable either way
5 he went then, but I believe it was definitely in his best
6 interest once we knew that this nice guy who would never have
7 lied -- he could be mistaken, but he never would've lied about
8 who robbed him, who was not going to be impeachable -- I mean
9 the best argument we could've made then would be why didn't
10 the police -- which I already had in my notes anyways. Why
11 didn't the police bother to do lay downs on him or show up on
12 him or something.

13 You know, part of it was some of the warrants weren't
14 signed for a month or so or a couple of months because we went
15 through this stuff where we had the other suspect and
16 different things.

17 Q: Okay.

18 A: So that -- you know, it wasn't like all this was
19 happening in one day that he would focus as a suspect, but
20 still they could've done that. Does that help give you the
21 framework?

22 Q: Uh-huh. And just for clarification, the other suspect --
23 was that the -- originally there was an identification of
24 another individual. Did that end up being the co-defendant or
25 was that another bystander?

MICHAEL BELL - DIRECT BY MR. SHAFFER

1 A: Well, the original statement I think was by the co-
2 defendant, also known as Baldy, had implicated -- had said I
3 didn't have anything to do with it, but these other two did.
4 And then when they went to him, he said, no, Baldy and him did
5 it.

6 And that's when -- and then the victim identified Baldy
7 and so they went -- who had said he wasn't involved, and so at
8 that point -- and, of course, the problem -- the problematical
9 thing of all this was these identifications of the co-
10 defendant and all were putting him as riding the bicycle and
11 Eric as being the one on the handlebars. The one on the
12 handlebars is the one who had the gun and went and did the
13 actual robbery, and, you know, I think there was something in
14 some of the statements about whether the gun might've belonged
15 to Baldy, being an air pistol, and there was some dispute
16 whether it was an air pistol or whether was a real gun, but
17 under the armed robbery statute, that's really irrelevant if
18 it's a representation of a gun.

19 Q: Now, the bicycle that was used -- the State had lost
20 pictures of this bicycle; correct?

21 A: The State I think had taken a picture of another bicycle.

22 Q: Okay.

23 A: Which -- see, the reason -- one of the reasons that they
24 suspected this other person -- and I've got all their names in
25 here. I'm sure you've got them too -- was that when they were

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1 first around talking to people around there, they saw that guy
2 ride off on a bicycle and I think some officer took a picture
3 of that bicycle with his cell phone or something. And so when
4 we asked about a picture of the bicycle, they said, well, it
5 was on a cell phone and it wasn't the bicycle --

6 Q: Okay.

7 A: -- anyway. So --

8 Q: Okay. But they weren't able to produce this other
9 bicycle that was in the area?

10 A: No.

11 Q: The one they allege to be the bicycle?

12 A: They didn't. To my knowledge, I don't believe they ever
13 had any physical evidence. I don't believe they have the gun.
14 They didn't have the bicycle, but, you know, I think the armed
15 robbery comes on the credibility of the victim, which I think
16 is, you know, great credibility there.

17 Q: Okay. And this -- this other individual who was riding
18 the bicycle that was not used in the robbery -- or that the
19 State alleges was not used to the robbery, did anyone identify
20 that individual as being the person who committed the robbery?

21 A: Only his co-defendant in his initial statement.

22 Q: Okay. Now, you mentioned that you had alibi witnesses
23 ready to testify. Would those witnesses have said that he was
24 in Lancaster at the time?

25 A: Well, what we -- what -- our first focus came -- he said

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1 he was in Lancaster. We had to figure out -- well, with his
2 girlfriend. What day are we talking about? We finally
3 figured out it was the day of this junior varsity football
4 game and that was where it stood for a long time.

5 That was not particularly helpful because even in the --
6 the State's witnesses' statements that they said that he left
7 town immediately. The robbery is about two -- one or two
8 o'clock or something like that and he could have been at the
9 ballgame in Lancaster at five leaving Florence right after
10 that.

11 So being at the ballgame was not -- you know, it's good,
12 but it doesn't cover the time because you can get from
13 Florence to Lancaster in that amount of time. And only later
14 on did we start to get this other information very late in the
15 game about, you know, in the day, and we did have people that
16 would say that they saw him in Lancaster that day I believe
17 was my understanding.

18 I'd have to look back at my notes -- at Thomas's notes,
19 but so we were going to have people that were going to do a
20 better job finally of putting him there. This information
21 initially came, you know, through his girlfriend and through
22 the other lady, and two of the people were there when we
23 picked the jury. And you know, we were kind of antsy about
24 who was going to show up and who isn't because the more, the
25 merrier. We had a third one contact us after the plea that

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1 would've been there. Hopefully, they would've all been there.

2 Q: Okay. But you had several witnesses placing him in
3 Lancaster; correct?

4 A: Yes.

5 Q: Okay.

6 A: I did.

7 Q: And those witnesses did place him there at the time of
8 the robbery; correct?

9 A: Let me take a -- I'm not sure they all placed him there
10 at the time of the robbery, but they would place him there
11 where he wouldn't have had time to come to Florence --

12 Q: Okay.

13 A: -- and be back in Lancaster.

14 Q: Sure.

15 A: You know, like I saw him at one o'clock or something like
16 that I think was some of the stuff.

17 Q: So they would --

18 A: I can be a little bit more specific --

19 Q: Okay.

20 A: -- if I look at these notes.

21 Q: Certainly.

22 A: I had it all sorted out and then when I picked it up --
23 let me see. I will tell you Shaunte McDaniel was that third
24 person that was initially charged.

25 THE WITNESS: Pardon me, Judge, for just a minute.

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1 THE COURT: Go right ahead.

2 BY MR. SHAFFER:

3 A: This file was extraordinarily organized at the time of
4 the trial. It has not maintained that integrity. I don't
5 think I left it over here. I know I have those things with me
6 because I was showing part of it to you earlier. Right in
7 front of me is the wrong place to find it. Okay.

8 Okay. We had Chandra Anthony, a black female who lived
9 in Lancaster. Stated she had a doctor's appointment at 11:30
10 a.m. She states Eric was at the home with her son part of the
11 day. Anthony -- Ms. Anthony stated she returned a little
12 after 1 p.m. that day and when she got home Eric was there.
13 Okay. And then she went to her -- and later that night at the
14 ballgame.

15 Q: And are you --

16 A: That was one of them. Let's see. Yeah. Mica Stover
17 lived in Heath Springs, South Carolina. Said that Eric was
18 living in Lancaster with his cousin, Chandler Anthony. The
19 day of the robbery, she called her cousin, Chandler, at
20 approximately 12 and stated Eric answered the phone. Eric
21 told her Chandler had gone to the store. She states later on
22 the day she saw Eric at the ballgame.

23 Doris Hayden said that on the day of January 21 she spoke
24 with Eric at 10 a.m. that morning and she states that he was
25 under the breezeway at the apartment complex. She saw him

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1 later that day going to the ballgame.

2 All -- all of them indicating they saw him at the
3 ballgame and some of them indicating that they had seen a
4 glimpse of him or --

5 Q: Okay.

6 A: -- talked with him briefly. There was one person that he
7 was supposed to be with that day that told us that she didn't
8 see him that day. I remember that too. But those -- that was
9 the gist of what we were trying to -- would have brought up on
10 his behalf.

11 Q: Okay.

12 A: We also had talked with people here. Some of them had
13 said that he was here. Some people that supposedly wouldn't
14 say that I think had. And we were -- we were hoping maybe one
15 of the State's witnesses might bend a little bit, Sherman
16 Peterson, but, you know, Thomas's opinion was that that was
17 just too undependable to rely on.

18 Q: Okay. And Mr. Peterson -- what -- what role did he play?

19 A: Sherman Peterson -- I think the thing was Sherman
20 Peterson and his girlfriend had said that Eric was here that
21 day and had come around and tapped on the window that morning.
22 So basically, they weren't saying we saw the armed robbery,
23 but that they were verifying that he was here. They were
24 destroying the alibi.

25 Q: Okay.

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1 A: There were other people.

2 Q: Did you ever speak to the eyewitness or did you ever have
3 Mr. McKenzie speak to the eyewitness?

4 A: I don't believe that we did because as long as he wasn't
5 hurting us, we didn't want to do anything that would've nudged
6 him.

7 Q: Okay.

8 A: You know, because our understanding was he hadn't
9 identified anybody except the co-defendant. We didn't want to
10 do anything that was going to alter that in any way.

11 Q: Okay.

12 MR. SHAFFER: Court's indulgence. No further questions,
13 Your Honor.

14 THE COURT: Cross-examination.

15 MS. KINARD: Thank you, Your Honor. Thank you for being
16 here, Mr. Bell.

17 THE WITNESS: Thank you very much.

18 MS. KINARD: I want to ask you a few background questions
19 before we get back into this.

20 THE WITNESS: Yes, ma'am.

21 CROSS-EXAMINATION

22 BY MS. KINARD:

23 Q: When were you licensed to practice law?

24 A: 1977.

25 Q: And you've just recently retired; is that correct?

MICHAEL BELL - CROSS BY MS. KINARD

- 1 A: A couple of years ago, yes.
- 2 Q: And how much of your time and practice was spent related
3 to criminal law?
- 4 A: About 25 years of it.
- 5 Q: And was that mostly criminal defense?
- 6 A: It was all criminal defense.
- 7 Q: With the Public Defender's Office?
- 8 A: Yes.
- 9 Q: Okay.
- 10 A: I also spent time at the Department of Social Services
11 working for the State.
- 12 Q: Okay. In your criminal defense practice, was it your
13 practice to file a Rule 5 or Brady motion?
- 14 A: It was, yes.
- 15 Q: Was that done in this case by you or by your office?
- 16 A: Yes.
- 17 Q: Did you receive documents in relation to that motion?
- 18 A: Yes. We received Rule 5 materials.
- 19 Q: Did you feel that they were complete records based on
20 your knowledge of the case?
- 21 A: Pretty much so. I think so.
- 22 A: Okay. Did you share all that information with your
23 client?
- 24 A: Yes, we did. Now, of course we couldn't share things
25 with him while he was gone, but -- and then in this case, we

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1 also got -- in addition to the written statements, we got
2 disks of the -- some of the statements were videotaped and we
3 took -- I always take a laptop to the jail and took disks with
4 me and played them for the inmates down at the jail.

5 Q: Do you feel that he understood all of the evidence that
6 the State had against him?

7 A: I do so -- I do believe so.

8 Q: Did you talk to him about how you felt that would play at
9 trial?

10 A: I did. In particular, you know, when they were offering
11 him 25 years, I think that maybe the trial was not nearly so
12 much a risk, but when they offered him 10, then, you know, I
13 really told him I thought that an *Alford* plea would be in his
14 best interest then because 10 versus life without patrol --
15 life without parole is a lot different than facing --

16 Q: So your discussions --

17 A: -- 25.

18 Q: -- changed necessarily when that offer changed?

19 A: Yes.

20 Q: And at that point in time, did you go over what it meant
21 to take a guilty plea?

22 A: I went over all the -- you know, I always went over at
23 length with people all the elements of their charge and their
24 rights and so forth.

25 Q: So he knew what the State would have had to prove at

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1 trial?

2 A: Yes.

3 Q: And he knew the constitutional rights that he was giving
4 up?

5 A: Yes, he did.

6 Q: Such as the right to confront witnesses, right to remain
7 silent, and so on and so forth?

8 A: Right. And in fact, you know, he went through part of
9 the process. So he actually was very familiar with it.

10 Q: And before it came to the point during the trial and the
11 transcript that we have where he decided to plead, before that
12 time had you discussed the possibility of *North Carolina v.*
13 *Alford* pleas in terms of the 10- or 25-year offers?

14 A: In terms of the 10-year offer, I had certainly.

15 Q: And you felt he understood that even though he wasn't
16 admitting necessarily guilt that it functioned as a guilty
17 plea?

18 A: Yes.

19 Q: So when this identification was made, you felt that it
20 was still in his best interest to plead at that time?

21 A: Well, when he -- when they made -- the fact of having an
22 unimpeachable source pointing him out as the actual gunmen and
23 robbing him, I thought really, really, really strengthened the
24 State's case.

25 Q: And just to be perfectly clear, would you describe why he

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1 was unimpeachable?

2 A: Because he was a 70-something year -- and I mean he was
3 unimpeachable for the record and so forth. Like I said, he
4 would not -- he would not be lying about the robbery. He
5 could be mistaken, but that -- that is a much harder sell than
6 you -- than somebody like some of these other people that had
7 some fairly bad record would be. You could show perhaps they
8 had some incentive to lie and some of them had, in fact,
9 already lied by giving conflicting statements.

10 But here you've got a very, very, very sympathetic
11 victim, and they're not going to be sympathetic to Eric.
12 They're going to be sympathetic to the victim. And so, you
13 know, you've got a guy that you can't really attack and who is
14 -- who is going to be telling the truth as he knows it.

15 Q: Do you believe that you and your office investigated this
16 case as fully as possible?

17 A: I do believe so. Like I said, Mr. McKenzie -- Thomas
18 McKenzie had talked to people here and there, and Ron Smith
19 had talked to Sherman Peterson and some other people here
20 because he -- Ron had worked with the city police for 25
21 years; so he knew lots of people in the city and he talked to
22 some of the State's witnesses.

23 Q: And you were prepared to continue with trial on the day
24 that he pled?

25 A: Yes. We were going -- we were at -- we were going

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1 forward full steam until we got the surprise.

2 Q: Is there anything else that you'd like the Court to know
3 about your representation of Mr. Williams in this matter?

4 A: I can't think of anything right now. You know, he -- I
5 think he made an intelligent decision for his future by
6 accepting this plea.

7 I wish he could have had the 10-year option and I know
8 that he -- and I'll say I know he's frustrated because his
9 codefendant ended up getting a much better deal, but his
10 codefendant was going to testify against him and his
11 codefendant was not identified as the man, you know, that had
12 the gun. I'm a little frustrated by that myself that he came
13 out as well as he did, but, of course, we didn't know how that
14 would come out at that time. But you know he's cut a deal if
15 he's testifying.

16 Q: So you already knew that it wasn't a last-minute --

17 A: Well, we knew he was --

18 Q: -- plea when the codefendant pled?

19 A: We knew he was going to testify given his statement.

20 Q: And just briefly about the 10-year sentence, you
21 testified on direct that you essentially begged Judge Russo to
22 give him the 10-year sentence that had been on the table?

23 A: Right.

24 Q: And while he didn't do that, you also spoke to him about
25 how you recognized that it was a late plea due to some late

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1 information. Do you recall Judge Russo's opinion on that or
2 anything he might have said about that matter?

3 A: I don't remember. I mean I know John, you know, did the
4 normal thing about we've had to prepare for trial and, of
5 course, I think I told the judge that actually the easiest
6 thing for all of us to do at that point would have been to go
7 to trial. We'd spent all the weekend getting ready for trial.
8 We had to have witnesses there and so forth.

9 So the easiest thing to do would have been if we went
10 forward with the trial, but it wasn't going to be the best
11 thing for Eric to go forward with the trial. So, you know --
12 and had we known this earlier that the victim was going to
13 make that statement, then certainly it would have figured
14 differently into our plans. I mean it was ultimately Eric's
15 decision, but certainly I would have lobbied a lot harder for
16 an *Alford* plea knowing that that gentleman was going to
17 testify.

18 MS. KINARD: And, Your Honor, for the Court's
19 information, the statement he just made about it would be
20 easier to try the case is on page 87.

21 BY MS. KINARD:

22 Q: And there's some further information from the Court on
23 page 93 about how his sentence is not reflective of punishing
24 anybody for exercising their right to plead, which is kind of
25 what I was going for. Does that -- does that comply with your

MICHAEL BELL - CROSS BY MS. KINARD

1 recollection of the case?

2 A: It does.

3 Q: Okay.

4 MS. KINARD: I have no further questions at this time.

5 Thank you.

6 THE COURT: Mr. Shaffer, anything further?

7 MR. SHAFFER: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. SHAFFER:

10 Q: Had you gone forward with the trial, would it -- would
11 you have brought up the fact that the codefendant had a deal?

12 A: Well, we would have cross-examined him on his record,
13 which we'd already exposed what we could use and what we
14 couldn't use. And of course, you know, obviously, we would
15 have cross-examined him as to what deal he might've made or
16 promises he might've made to the State or the State might've
17 made to him. I don't know what his deal was at the time, but
18 I mean we would have. Of course, obviously, he had some sort
19 of understanding or deal or he would've been welshing on
20 testifying.

21 Q: Okay. And you mentioned that you had previously had a
22 case where you argued a *Biggers* identification, in-court
23 identification, with no outside influence?

24 A: The State's argument in *Neil v. Biggers* doesn't apply --

25 Q: Okay.

MICHAEL BELL - CROSS BY MS. KINARD

- 1 A: -- and the case law seems to back them up, unfortunately.
- 2 Q: Okay. Did you ever consider making that argument anyway?
- 3 A: I could have made it. It would have -- if we had
- 4 considered and continued into trial, I certainly would have
- 5 made it. It would've had the same result because the case law
- 6 hadn't changed. I disagree with the case law --
- 7 Q: Okay.
- 8 A: -- but certainly it wouldn't have changed the case law.
- 9 Q: Okay. Now, you mentioned that the victim was
- 10 unimpeachable and I think during direct you might've mentioned
- 11 that you might've argued that he made a mistake?
- 12 A: Right. I mean you couldn't say he's lying.
- 13 Q: Okay.
- 14 A: You could -- you could say he's made a mistake, but you
- 15 can't say he's lying.
- 16 Q: Okay.
- 17 A: I mean that's where you --
- 18 Q: I guess that's where your alibi comes in?
- 19 A: That's where -- that's where you get in to argue an alibi
- 20 and you talk about, you know, where you're more focused on the
- 21 gun or you're more focused on the face or that sort of thing.
- 22 Q: Okay.
- 23 A: You know, that's just standard.
- 24 Q: In the identification of Baldy by the victim, he said
- 25 Baldy was the guy on the bicycle; correct?

MICHAEL BELL - CROSS BY MS. KINARD

1 A: That's my understanding, yes, but again, it just -- it
2 doesn't say that on the photo lay down, but that's --

3 Q: Okay. And the -- but you said that he thought that Mr.
4 Williams was basically going to shoot him; correct?

5 A: Yes.

6 Q: My understanding of it -- and correct me if I'm wrong,
7 but he actually -- the bicycle was sort of around the corner
8 and the gunman jumped on the bicycle; correct?

9 A: The bicycle was within sight. I mean it wasn't out of
10 sight or anything. He saw it.

11 Q: Okay.

12 MR. SHAFFER: Court's indulgence.

13 BY MR. SHAFFER:

14 A: I also think there would've been other people that said
15 when they left the card game area that the codefendant was
16 riding -- was the one riding the bicycle.

17 Q: Okay. Did you ever consider -- if you would have gone
18 forward with the trial, did you ever consider, you know,
19 putting forth a diagram to show where the viewing angle might
20 not have been perfect to identify Baldy?

21 A: Well, we would have. We probably would not have had a
22 diagram, but we probably would've argued about distances and
23 sights and roles and the passage of time since the argument,
24 but still it would be the hand of one is the hand of all
25 problem coming up.

ERIC WILLIAMS - DIRECT BY MR. SHAFFER

1 MR. SHAFFER: No further questions.

2 THE COURT: Any recross?

3 MS. KINARD: No, Your Honor.

4 THE COURT: Sir, you may step down.

5 THE WITNESS: Thank you.

6 MR. SHAFFER: The applicant calls Eric Williams.

7 THE COURT: All right.

8 THE COURT: Hold on a minute, Mr. Williams, and let Mr.
9 Bell get down.

10 THE WITNESS: Excuse me.

11 THE COURT: All right. You can come around, Mr.
12 Williams.

13 THE CLERK: Raise your right hand as much as you can. Do
14 you swear to tell the truth, the whole truth, and nothing but
15 the truth, so help you God?

16 THE APPLICANT: Yes, ma'am.

17 THE CLERK: Have a seat and state your name for the
18 record.

19 THE APPLICANT: Eric Williams.

20 ERIC WILLIAMS, being first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SHAFFER:

24 Q: Good morning, Mr. Williams.

25 A: Good morning.

ERIC WILLIAMS - DIRECT BY MR. SHAFFER

1 Q: You're currently serving a 20-year sentence; correct?

2 A: Yes, sir.

3 Q: Okay. And those charges stem from the ones that Mr. Bell
4 just talked about; correct?

5 A: Yes, sir.

6 Q: Okay. Tell us a little bit about -- well, first, you had
7 -- were you aware -- obviously, you made a statement you were
8 in Lancaster when this robbery happened; correct?

9 A: Yes, sir.

10 Q: Okay. And were you -- did you see anybody there? Did
11 you see people there in Lancaster?

12 A: Yes, sir.

13 Q: Who all did you see? You saw some of the witnesses Mr.
14 Bell talked about; correct?

15 A: Yes, sir.

16 Q: Okay. Obviously, you ended up pleading guilty after the
17 trial had begun; correct?

18 A: Yes, sir.

19 Q: Or after they had selected the jury. Now, to your
20 knowledge at the time you pled guilty, was Mr. Bell going to
21 present those alibi witnesses?

22 A: He just asked for the names. He asked for the names of
23 them, of who can verify that they seen me that day or
24 whatever, whatever. Yeah, he did. He asked me that.

25 Q: Okay. Did you think that they were going to get called

ERIC WILLIAMS - DIRECT BY MR. SHAFFER

1 to trial? Did you think that they were going to be present
2 for you that day?

3 A: I was hoping so, but they never got called.

4 Q: Okay. Did you have any discussions with Mr. Bell about
5 any of the alibi witnesses on the day of trial?

6 A: Just a couple of them who was in there because there was
7 a couple who was there who I had to get in touch with
8 personally.

9 Q: Okay. So what was your understanding about the ones that
10 were not there?

11 A: From my understanding, he was -- he was just, like, well,
12 okay, they ain't show up and there's nothing. We still got to
13 go through trial.

14 Q: Why -- why did you end up deciding to plead guilty?

15 A: Because after -- after the victim -- after the victim
16 said that -- well, after the solicitor said that the victim
17 was going to get on the stand and say that he was going to
18 identify me as the robber, it just -- that was just something
19 else that accumulated throughout the long process of while I
20 was being locked up of things that wasn't happening and I knew
21 it wasn't happening.

22 Like, for instance, like when I found out they had an
23 eyewitness to the robbery, I asked Mr. Bell would he please
24 get the name of this eyewitness so we can know what was going
25 on and you can holler at them maybe to hurry up and they'll be

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1 able to tell you, well, no, it wasn't him. I could go ahead
2 and get up out of jail because I was just in a rush to get out
3 of jail, but he wouldn't never do it.

4 Q: All right. Let's talk about that just for -- for a
5 moment. You said that you wanted him to get the name of the
6 eyewitness and get in touch with the eyewitness. What did you
7 specifically want him to do once he was in touch with the
8 eyewitness?

9 A: To have an opportunity to look at me.

10 Q: To ask the eyewitness if you were there?

11 A: Yeah.

12 Q: Okay. And to your knowledge, did he ever do that?

13 A: Never.

14 Q: Okay.

15 A: Because to this day I still don't know the name of the
16 eyewitness.

17 Q: Now, you said you pled guilty because of an accumulation
18 of things including the ID of the victim, not getting in touch
19 with the eyewitness. What else?

20 A: Mostly it was it seems like he just wouldn't -- he just
21 -- it's like he didn't show no effort whatsoever. He really
22 wasn't even entertaining the thought that I was telling him I
23 was actually innocent. He wasn't entertaining that. The only
24 thing he kept coming at me with -- you done been to jail
25 before, they offered you 10 years, my advice to you is to take

ERIC WILLIAMS - DIRECT BY MR. SHAFFER

1 this 10 years.

2 Q: Okay. So in addition to the ID, not getting in touch
3 with the eyewitness, and his insistence basically or his
4 belief that you needed to take a deal, were there any other
5 reasons that you pled guilty?

6 A: What else? It was just -- just mostly -- like I said, it
7 just seemed like I had no -- I was in a nowhere situation
8 because it was like I was in the water by myself. I mean he
9 wasn't showing me no help, none. The couple of times I did
10 talk to him, I know our conversation ain't last no longer than
11 five minutes.

12 Q: Did the -- did you believe that there were alibi
13 witnesses present that -- you said that he never got in touch
14 with them. Is that your understanding of it that he didn't
15 get in touch with the alibi witnesses?

16 A: Yes, sir.

17 Q: Okay. Did that play a role in whether or not you decided
18 to plead guilty?

19 A: Yes. Because one of them who -- one of the -- one of my
20 alibi witnesses who was supposed to have been there was never
21 informed that it was time to go to trial. He was down in
22 Florida. He ain't know nothing about when we was supposed to
23 go to trial.

24 Q: The day of trial, did Mr. Bell ask you to contact
25 witnesses for him?

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1 A: No, sir.

2 Q: Okay. Did he tell you that he was trying to get a hold
3 of these witnesses?

4 A: No, sir.

5 Q: Did you think that they were going to be present had you
6 gone to trial?

7 A: Would they have been present?

8 Q: Yeah.

9 A: Yes, sir, they would have been present.

10 Q: Okay. Do you think that Mr. Bell would have -- would
11 have gone to secure their testimony that week to make sure
12 that they showed up to court that week?

13 A: If he would have talked to them, their testimony would've
14 been secured.

15 Q: Okay. But you're saying that, to your knowledge, he
16 never talked to them; correct?

17 A: He never talked to them.

18 Q: Okay. And they were not present in the courtroom;
19 correct?

20 A: Some of them was.

21 Q: Okay. Do you think the ones that were not present in the
22 courtroom would've been essential to your defense?

23 A: Yes. Because like I said, one of them was with me.

24 Q: Okay. Which witness was with you specifically?

25 A: Eric Caulder.

ERIC WILLIAMS - DIRECT BY MR. SHAFFER

1 Q: Okay. He was with you the entire day?

2 A: (No verbal response.)

3 Q: And how is he --

4 THE COURT: Hold on a second. Did you answer the
5 question? You asked him if he was with him the entire day.

6 THE APPLICANT: Oh. I was shaking my head.

7 THE COURT: I didn't hear a verbal response.

8 THE APPLICANT: Yes, sir.

9 THE COURT: Hold on a minute. I didn't hear. Did you
10 verbally respond?

11 THE APPLICANT: No, sir.

12 THE COURT: You may have, but I --

13 THE APPLICANT: Yes, sir.

14 THE COURT: I want a verbal response, yes or no.

15 THE APPLICANT: Yes, sir.

16 THE COURT: Thank you. You may continue.

17 MR. SHAFFER: Thank you, Your Honor.

18 BY MR. SHAFFER:

19 Q: So Eric Caulder was with you the entire day; correct?

20 A: Yes, sir.

21 Q: Okay. What is his relationship to you? How -- how do
22 you know him?

23 A: I had met him when I had moved out to Lancaster because
24 he stayed in the apartment right beside me, right across from
25 me.

ERIC WILLIAMS - DIRECT BY MR. SHAFFER

1 Q: Okay. Was he the only person who was with you the entire
2 day -- that entire day?

3 A: No. A couple more -- a couple more cats who was -- a
4 couple more guys who live in the apartment complex, they was
5 out there to.

6 Q: Did you tell Mr. Bell that you wanted Eric Caulder
7 present for trial prior to the day of trial?

8 A: No. I had to tell Thomas McKenzie.

9 Q: Okay. But you told -- and Mr. McKenzie obviously was
10 working for Mr. Bell; correct?

11 A: Uh-huh.

12 Q: Was Mr. -- Mr. Caulder present for the trial?

13 A: No, sir.

14 Q: Do you think he would've been essential for the trial?

15 A: Yes, sir.

16 Q: You had alleged that there was an issue involving the
17 State not providing you all the discovery, specifically a
18 picture of a bicycle. Tell us how that would've been relevant
19 in your own words?

20 A: It really wasn't the bicycle issue. It was more of the
21 eyewitness issue because how are we going -- how am I be able
22 to defend myself if this there's an eyewitness to the case,
23 but I don't know who the person is?

24 Q: Okay. So did Mr. Bell ever speak to you about who --
25 obviously, he wanted him to get in touch with them, but did he

ERIC WILLIAMS - DIRECT BY MR. SHAFFER

1 ever show you all of the discovery in the case?

2 A: You talking about my Rule 5?

3 Q: Yes.

4 A: At the beginning, the first -- the first thing that was
5 in my Rule 5 was a summary report of what the victim had said.
6 Right? When I first talked to him about it, I asked him about
7 the Rule 5. He said he has it. So I said, okay, can I see
8 it? He says that the victim identified you and your co --
9 your codefendant identified you. I said I don't have a co-
10 defendant because I ain't had nothing to do with the robbery.
11 He was like, well, the victim identified you and your alleged
12 codefendant is IDing you.

13 So I said, okay, well, let me see my Rule 5. His exact
14 words was you don't need it because I'm telling you that the
15 victim identified you. So then Mr. McKenzie walked in and I
16 told him -- I said, Mr. McKenzie, he got my Rule 5, but he
17 won't give it to me. He say he got it. So he asked him.
18 He's like you have -- Michael, do you have his Rule 5, and he
19 said yes. So he gave him the folder.

20 He come back with one sheet of paper. It was the summary
21 report and he -- I was like, well, now, Mr. McKenzie, can you
22 tell me where the victim identified me as being the robber.
23 He said it don't say that. It just described who the robber
24 was. I said, well, Mr. Bell just told me that the man
25 identified me and I want to see that in the paperwork where he

ERIC WILLIAMS - DIRECT BY MR. SHAFFER

1 identified me.

2 So a few months later that's when I get the statements,
3 my statement, two statements from Baldy, and one statement
4 from Shaunte, and he was like this is all -- in my Rule 5,
5 this is all that they have, period, to present to me in a
6 discovery.

7 Q: You said that Mr. Bell indicated that the victim
8 identified you months before trial?

9 A: Yes, sir.

10 Q: Okay. But he didn't have a statement for that; right?

11 A: No, sir.

12 Q: Okay. But he told you that at the end; correct?

13 A: Yes, sir.

14 Q: Okay.

15 MR. SHAFFER: No further questions.

16 THE COURT: Cross-examination.

17 MS. KINARD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. KINARD:

20 Q: Good morning, Mr. Do -- I mean Mr. Williams. Excuse me.

21 A: Good morning.

22 Q: Regarding your witnesses, so you testified that you gave
23 Mr. Bell a list of people that could testify on your behalf?

24 A: Yes, ma'am.

25 Q: And you are uncertain if he contacted all of them?

ERIC WILLIAMS - CROSS BY MS. KINARD

1 A: No. I'm certain that he never contacted them. I ended
2 up having to -- telling my girlfriend at the time to handle
3 this and she got them to write statements out to send to them
4 and that was all that happened on that.

5 Q: Okay. Then how did they know to come to court, the ones
6 that did show up?

7 A: Because of my girlfriend.

8 Q: Okay. So you don't know if they were subpoenaed by Mr.
9 Bell?

10 A: They were never subpoenaed.

11 Q: Okay. The ones that you said were not there -- is it
12 possible they could've been coming another day?

13 A: No, ma'am.

14 Q: Okay. Did you hear Mr. Bell testify about his thoughts
15 on forcing defendant witnesses to testify?

16 A: I heard him. Yes, ma'am.

17 Q: Had he spoken to you about that?

18 MR. SHAFFER: Objection.

19 A: No, ma'am.

20 MR. SHAFFER: Withdrawn, Your Honor.

21 THE COURT: Go ahead, Mr. -- you have something else to
22 say?

23 THE APPLICANT: Yeah. I want to.

24 BY MS. KINARD:

25 A: On the question you just asked me, he never mentioned

ERIC WILLIAMS - CROSS BY MS. KINARD

1 anything about that, but I had asked him could he have --
2 could he have talked to the victim and found out what was
3 going on and give the victim an opportunity telling -- I'm
4 saying, like, put me in a photo lineup or a physical lineup,
5 and he had -- he had told me that he couldn't -- he couldn't
6 talk to the victim because that's the State's witness.

7 Q: Okay. Did you understand what he was saying about how
8 forcing a witness to testify on your behalf is probably not a
9 great idea because it can change their minds?

10 A: No, ma'am.

11 Q: Did you understand his thoughts similar to that about
12 getting in touch with the eyewitness, that you don't want to
13 poke the eyewitness is I think the word that he used?

14 A: I understand what he was saying, but I don't understand
15 it, no.

16 Q: Okay. So, in other words, he didn't talk to you about
17 the idea that since the eyewitness had not identified you,
18 maybe it wasn't a good idea to get in touch with him on your
19 behalf?

20 A: No, ma'am. Because I was actually trying to get him to
21 get the eyewitness and the victim and probably this would
22 never have happened. An in-court identification after 21
23 months probably would have never happened.

24 Q: I understand that's your testimony. I'm asking if you
25 ever talked to Mr. Bell about anything like that?

ERIC WILLIAMS - CROSS BY MS. KINARD

1 A: No. I just --

2 Q: If he ever came back and said that?

3 A: No, ma'am.

4 Q: Okay. Did you ask him directly if he or Mr. McKenzie had

5 talked to any of those defense witnesses?

6 A: The defense witnesses? My witnesses?

7 Q: Yes.

8 A: The only one McKenzie had talked to off and on was my

9 girlfriend.

10 Q: Okay.

11 A: Because she's the one keeping in touch and, like I said,

12 handling everything for me.

13 Q: All right. Let's talk about discovery for a minute. Mr.

14 Bell testified that he took a laptop to jail and y'all watched

15 video statements together; is that true?

16 A: No, ma'am.

17 Q: So you only read the statements?

18 A: Yes, ma'am.

19 Q: Okay. Did you feel that there should have been more

20 information that was presented in the Rule 5?

21 A: Yes, ma'am.

22 Q: Like what?

23 A: You got other people other than the two people who wrote

24 statements that's in my Rule 5 who was testifying for the

25 State, but there's no statements from them.

ERIC WILLIAMS - CROSS BY MS. KINARD

1 Q: Okay?

2 A: There's no statements from the eyewitness I mean.

3 Q: Okay. Do you understand that those aren't necessary to
4 present a witness at trial?

5 A: Say that again, ma'am?

6 Q: That those don't need to be produced in order to present
7 a witness at trial?

8 A: No, I ain't never knew that.

9 Q: Okay. Let's talk about your -- the plea offers that were
10 on the table. Why did you decide not to take the 10-year plea
11 offer?

12 A: Because I didn't do the robbery.

13 Q: Okay. When that was on the table, did you talk to Mr.
14 Bell about plea offers and how they function, such as the
15 rights that you're going to give up by not going to trial,
16 what they mean as far as potential incarceration, and things
17 like that?

18 A: I just don't recall. I just remember telling him I'm not
19 taking no plea because I didn't do it; so why would I plead.

20 Q: Even though you were facing life without parole?

21 A: Yes, ma'am.

22 Q: Okay. When did you first talk to him about the idea of a
23 North Carolina v. Alford plea?

24 A: Right after -- right after the solicitor said that the
25 victim was going to get on the stand and ID me. The judge

ERIC WILLIAMS - CROSS BY MS. KINARD

1 gave us the opportunity to go in his chambers to talk about
2 it. The solicitor came right in and he said I'm giving you
3 five minutes to sign this plea agreement of a plea of 10 to 30
4 up under the *Alford* plea and that was it. They gave me -- he
5 gave me five minutes to make my decision.

6 Q: And you decided to plea pursuant to *Alford* to a non-
7 negotiated, non-recommended sentence or an open sentence; is
8 that correct?

9 A: Yes, ma'am.

10 Q: Because the -- the crime carried 10 to 30; is that
11 correct?

12 A: Yes, ma'am.

13 Q: Okay. So why did you plea?

14 A: Because as I said, it felt -- it felt hopeless. I ain't
15 had no -- like, I ain't had no winnings because I felt like he
16 wasn't doing what he had -- Mr. Bell wasn't doing what he was
17 supposed to do and I ain't had nowhere else to turn.

18 Q: Was your plea the choice of a lesser of two evils, so to
19 speak?

20 A: Say that again now?

21 Q: Was it the better of two options to plea or go to trial
22 and face life without parole?

23 A: I ain't felt like it was the better of two options. I
24 felt like it was the only option.

25 Q: But you understood what you were doing by pleading

ERIC WILLIAMS - CROSS BY MS. KINARD

1 guilty?

2 A: No, ma'am.

3 Q: What did you --

4 A: I understand I was taking an Alford plea. I ain't
5 understand it was a guilty plea. I ain't understand it was a
6 guilty plea until I got to the law library at Lieber
7 Correctional Institution.

8 Q: Okay. We'll come back to that part in just a second, but
9 you understood that you were agreeing with the Court that
10 certain things happened; is that correct?

11 A: Certain things happened? What you mean by that?

12 Q: That -- I'm sorry. Let me rephrase that.

13 MS. KINARD: I beg the Court's indulgence.

14 BY MS. KINARD:

15 Q: All right. Do you remember your plea when you talked to
16 the judge that day?

17 A: Do I remember the plea? No, ma'am. I just barely been
18 going through the motions.

19 Q: Okay. So, for example, if I showed you this transcript
20 about what you talked to the judge about, would it be familiar
21 to you, do you think?

22 A: No, I done been through it. I know -- I know what it
23 says.

24 Q: Okay. But you don't remember that happening?

25 A: I'm just saying at the time I wasn't -- my mind wasn't

ERIC WILLIAMS - CROSS BY MS. KINARD

1 there. I was there, but it -- but my mind wasn't.

2 Q: Okay. Did you tell the Court that you were competent to
3 take that plea that day?

4 A: Yes, ma'am.

5 Q: That you understood what was going on?

6 A: Yes, ma'am.

7 Q: Okay. All right. So you understood what was going on.
8 You answered all the judge's questions; is that correct?

9 A: Yes, ma'am.

10 Q: Okay. And you ended up saying you didn't have any
11 problems with your attorney. Do you recall that?

12 A: I think so.

13 MS. KINARD: That's on page 75, Your Honor.

14 BY MS. KINARD:

15 Q: I'd show it to you if you'd like, Mr. Williams.

16 Regardless, you answered all the Court's questions to the
17 point where he took your plea; is that correct?

18 A: Yes, ma'am.

19 Q: Okay. And that's the option that you went with and you
20 knew what was happening that day; is that correct?

21 A: That's correct. Yes, ma'am.

22 Q: All right.

23 MS. KINARD: No further questions at this time.

24 MR. SHAFFER: Just brief redirect.

25 THE COURT: Yeah. Go ahead, sir.

ERIC WILLIAMS - REDIRECT BY MR. SHAFFERREDIRECT EXAMINATION

1
2 BY MR. SHAFFER:

3 Q: You testified on cross-examination that you pled because
4 you felt hopeless. During direct, you testified that there
5 was an accumulation of several different things?

6 A: Uh-huh.

7 Q: Were those -- was that accumulation of several different
8 things the reason you felt hopeless?

9 A: Yes, sir.

10 Q: Okay.

11 MR. SHAFFER: No further questions.

12 MS. KINARD: Nothing, Your Honor.

13 THE COURT: Sir, you may step down. Thank you.

14 MR. SHAFFER: The applicant rests, Your Honor.

15 THE COURT: All right.

16 MR. SHAFFER: For clarification, Your Honor, I rest
17 pending my previous request for leaving the record open.

18 THE COURT: All right. Bear with me just a second here.

19 (WHEREUPON, there was a pause in the proceedings, after
20 which the proceedings resumed as follows.)

21 THE COURT: All right. Anything by way of argument at
22 this time, Mr. Shaffer?

23 MR. SHAFFER: I apologize, Your Honor. I didn't hear
24 your question.

25 THE COURT: Anything by way of argument at this time,

1 sir?

2 MR. SHAFFER: Your Honor, just very brief. Your Honor, I
3 think that, obviously, Mr. -- Mr. Williams testified that he
4 had not -- he was unaware of the fact that the witnesses would
5 be present or any defense by Mr. Bell to actually have them
6 present. Clearly, that is something that obviously could've
7 made a difference in the case.

8 Therefore, I would ask that, you know, if he was unaware
9 of that, if that was truthful testimony, which there's no
10 testimony that would rebut that, I would argue that he -- that
11 alibi would have been -- those alibi witnesses would've been
12 crucial to him and those alibi witnesses -- but for that, you
13 know, if they would have been present, he might have actually
14 considered going forward. There is a strong likelihood that
15 the trial would've gone differently, Your Honor, or the case
16 would have gone differently.

17 THE COURT: All right.

18 MS. KINARD: Thank you, Your Honor. The State would
19 certainly disagree with the proposition that the trial would
20 have -- excuse me -- resulted in a different outcome if the
21 alibi witnesses were there. There was an unimpeachable
22 witness in the form of the victim who strongly identified Mr.
23 Williams before the case proceeded to the merits.

24 There's also, if you review the transcript very thorough,
25 a well-entered plea that was done with the advice of very

1 competent counsel with the consideration of all factors
2 involved. I believe that Mr. Bell has testified that all
3 relevant witnesses were contacted or at least attempted to be
4 contacted, with all the effort of the Public Defender's
5 Office, and several were there and ready to testify and
6 several might've come, you know, the next day when that
7 portion of the case was actually presented.

8 As often happens in PCRs, the applicant seems to have
9 felt uncomfortable and has let that go into his consideration
10 of whether he pled or not. However, I believe the evidence
11 and the testimony backs up his decision and the fact that his
12 decision was a good one in light of all circumstances and with
13 the advice of his counsel. There's simply no evidence that
14 there was any ineffective assistance of counsel in this matter
15 by either prong of the *Strickland* test and, for that reason,
16 the State respectfully requests that you deny any relief that
17 the applicant is seeking.

18 THE COURT: All right.

19 MS. KINARD: And to amend that, we would also request
20 that the record not be held open for the addition of any
21 further affidavits or testimony.

22 RULING

23 THE COURT: All right. In a post-conviction relief
24 action, the applicant bears the burden of proof. Pursuant to
25 *Strickland v. Washington*, the defendant must show counsel's

1 performance was deficient. In other words, that the attorney
2 for the defendant at the time of trial or plea failed to
3 render reasonably effective assistance under prevailing
4 professional norms. In the context of a guilty plea,
5 deficiency -- the deficiency prong is viewed from the
6 standpoint of whether or not the defendant entered his plea
7 voluntarily, knowingly, and intelligently.

8 Furthermore, in addition to proving deficient performance
9 on the part of trial counsel or plea counsel, the defendant
10 must show -- or the applicant must show prejudice. In other
11 words, but for errors of counsel, there's a reasonable
12 probability that the result would have been different.

13 Based upon what I've heard here today, the testimony
14 elicited from the stand of Mr. Bell, as well as Mr. Williams,
15 I do not find that counsel's performance was deficient. The
16 Court believes that his performance as trial counsel or plea
17 counsel in this case -- that he did render reasonably
18 effective assistance and that, based upon such assistance of
19 trial or plea counsel in this case, the defendant entered his
20 plea voluntarily, knowingly, and intelligently.

21 As it relates to -- maybe I should've addressed this
22 initially, but with regards to leaving the record open, the
23 Court is going to deny Mr. Shaffer's request that the record
24 remain open. This is certainly not a situation of newly
25 discovered evidence, so to speak. This is evidence for which

1 the applicant claims was in existence at the time of his trial
2 or initial start of his trial and subsequent plea. The
3 applicant has had more than sufficient time to have witnesses
4 here to address this matter pertaining to PCR.

5 It's my understanding, as Mr. Shaffer initially brought
6 to the Court's attention, the matter came before Judge Seals
7 in August of this year. That at that time, the applicant was
8 advised to provide such information to counsel.

9 I believe that the applicant has had more than adequate
10 and sufficient time to provide such information, contact
11 information, et cetera, to applicant's counsel to have them
12 here today, and he has failed to do so based upon what I have
13 heard and the Court is respectfully denying counsel's request
14 to leave the record open.

15 And further, if the State would get me an order to that
16 effect. Thank you.

17 MS. KINARD: Thank you, Your Honor.

18 (WHEREUPON, the proceedings ended at 11:14 a.m.)

19

20 --- END REQUESTED TRANSCRIPT ---

21

22

23

24

25

1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 54 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 7th day of November, 2016.

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

17 s/Krystal J. Smith

18	Court Reporter
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20	Florence, South Carolina
----	--------------------------

21 April 5, 2017

CERTIFIED: A TRUE COPY

Connie Reel Shearin

CLERK OF COURT C.P. & G.S.

FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCEIN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Eric S. Williams, #355055,

2108
2013-CP-21-3549

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

2016 DEC 30 PM 3:04
FILED
CONNIE REEL-SHEARIN
CLERK OF COURT
C.C.P. & G.S.
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 12, 2013. Respondent made its Return on April 29, 2014. An evidentiary hearing into the matter was convened on November 7, 2016 at the Florence County Courthouse. Tristan Shaffer, Esquire, represented Applicant. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Michael S. Bell, Esquire, also testified. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In July 2011, the Florence County Grand Jury indicted Applicant for armed robbery (2011-GS-21-1212). Michael S. Bell, Esquire, represented Applicant. On March 8, 2012, the State served Applicant and counsel with a notice of

intent to seek a sentence of life without parole based on Applicant's prior convictions for armed robbery, attempted armed robbery, and assault and battery of a high and aggravated nature. On July 30, 2012, Applicant pled guilty as indicted. The Honorable Thomas A. Russo sentenced Applicant to confinement for a period of twenty years. Applicant did not appeal his guilty plea or sentence.

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

1. "ineffective counsel"
 - a. "False leadings from attorney to accept plea/overwhelming caseload"
2. "Prosecutor misconduct"
 - a. "violation of disclosure evidence, (Brady v. Maryland) withheld evidence"
3. "Due-Process violation"

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668

(1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State,

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304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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 post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Applicant additionally alleges prosecutorial misconduct in the form of a Brady violation. Brady v. Maryland, 373 U.S. 83 (1963). Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

A. Ineffective Assistance of Counsel

At the evidentiary hearing, Applicant called Counsel to the stand, and Counsel began by testifying to the underlying facts that led to these charges. Counsel testified that the victim of the

crime had identified the co-defendant, but the victim was never presented a lineup that included Applicant. Counsel also stated that Applicant's only defense was that he had an alibi and was in Lancaster at the time of the crime. Counsel stated that the State had numerous witnesses who put Applicant in Florence on the day of the crime, as well as a witness who said he heard Applicant and co-defendant discussing the crime. Further, Counsel stated the witnesses who could put Applicant in Lancaster could only do so for part of the day, leaving open the possibility that Applicant was in Florence when the crime was committed. Counsel testified that Applicant had two witnesses present in court that day and several more that he hoped would come, but it was against his policy to force defense witnesses to come to court, as they tended not to cooperate when they didn't want to be there.

Counsel stated that he engaged in negotiations with the Solicitor's office prior to trial, and an initial plea offer was presented of twenty-five years. This was rejected by Applicant, who also later rejected an offer of ten years, despite Counsel's advice to accept that offer. Counsel also testified that he discussed a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), with Applicant. Counsel stated that he supported Applicant's decision to go to trial when the offer was twenty-five years because the State did not have any physical evidence, only the testimony of co-defendants and other witnesses that he felt were impeachable.¹ However, Counsel testified that the victim's identification changed the case because he felt the victim was unimpeachable and highly credible; the victim had no criminal history, had never made any prior conflicting statement regarding

¹ Although Counsel testified that he supported Applicant's decision to go to trial before the identification was made, he stated that he would not have supported a decision to continue with the trial after the identification was made.

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Applicant, and was very sympathetic. Counsel testified that he attempted to get the solicitor to revive the ten-year offer, stating that they would never have gone that far into trial if the identification had been made earlier. The solicitor agreed not to seek life without parole in order for Applicant to plead "straight up" to armed robbery.² Ultimately, Counsel expressed his belief that the Applicant made a fully informed and reasonable decision to plead and understands his frustration with the sentence.

Applicant testified that several people saw him in Lancaster on the date of the incident, including some that Counsel mentioned during his testimony. He stated that Counsel did ask early on for names of potential witnesses, and he was hoping that those people would be present on the day that trial started. Applicant admitted that some defense witnesses were present on the first day of the trial, but he stated that some essential ones were not. Applicant stated that he felt alone, and he felt that all of his conversations with Counsel were short. He testified that he felt that Counsel showed no effort and did not believe that he was innocent, particularly because Counsel advised him to take the ten year plea offer made by the State prior to trial.

Regarding the ten-year plea offer, Applicant stated that he did not accept it because he did not commit the crime. He did recall speaking about an Alford plea in chambers on the day of the plea, and he stated that he eventually pleaded guilty because he felt it was his only option. Applicant stated that he did not understand that an Alford plea functioned as a guilty plea. Lastly, Applicant

² Counsel testified the judge stated he would not have accepted the ten-year plea offer even if the State had presented it.

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agreed that he testified at his plea that he understood what was happening and that he was satisfied with his attorney, but he stated that was "just going through the motions" of the plea.

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))).

The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charge to Applicant, including the maximum penalty, and informed Applicant he could be sentenced to up to thirty years. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and agreed with the facts presented by the State at the plea. Applicant told the plea court that he was satisfied with his attorney and that Counsel had done everything that Applicant had asked of him. This Court finds that Applicant understood the terms of the plea and the possible sentence.

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This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the elements of the charges, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses. Furthermore, this Court finds credible Counsel's testimony that his strategy in this case changed suddenly upon learning of the victim's identification of Applicant for the first time on the day that the trial was set to begin. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant stated that he refused a ten-year plea offer prior to trial against Counsel's advice because he was innocent of the charges. Furthermore, the record reflects that the plea judge stated to Counsel and Applicant that he would not have accepted a ten-year sentence even if the State had presented it. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

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For these reasons this Court finds Applicant has failed to satisfy his burden of proving ineffective assistance. Accordingly, this allegation is denied and dismissed.

B. Prosecutorial Misconduct

Applicant testified that he asked Counsel for the name of the eyewitness during trial preparation because he wanted a definitive answer as to whether the eyewitness saw him there, but Counsel did not provide the name. On cross-examination, Applicant testified that Counsel told him he could not talk to the State's witnesses, which is why the eyewitness was not contacted. He further stated that he remembered Counsel advising him that it was not a good idea to force potential defense witnesses to testify. Applicant testified that he reviewed discovery with Counsel and was of the impression that the victim identified him months before the trial. He further testified that he only read the statements provided to law enforcement and did not view the videos of the statements as Counsel stated.

Counsel testified that the first time he was made aware of any eyewitness identification of Applicant was when the solicitor informed the court at the close of pre-trial motions that the victim had identified Applicant as the perpetrator after seeing him in the courtroom that morning. Counsel stated that he would have made a motion to keep the identification out under Neil v. Biggers, 409 U.S. 188 (1972), if the trial had continued, but Applicant decided to plead once they learned of the identification. Counsel also testified that he received full production of documents pursuant to his Rule 5 request, and he shared all of this information with the Applicant, including viewing videotaped statements with him at the jail.

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This Court finds that Applicant has failed to prove any prosecutorial misconduct or a Brady violation. Applicant testified that it was his own attorney who did not give him the name of the eyewitness who identified him, not the Solicitor or anyone else acting on behalf of the State. Additionally, Counsel credibly testified that he received a full disclosure of documents from the State pursuant to his Rule 5 request and that he reviewed the file thoroughly with Applicant.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Additionally, Applicant presented no evidence that the State withheld any information which would support finding a Brady violation had occurred. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds, as to all other allegations, that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991),

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 Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.


 THE HONORABLE D. CRAIG BROWN
 Presiding Circuit Court Judge
 Twelfth Judicial Circuit

12-21-, 2016
Florence, South Carolina

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 CONNIE REE-SHEARIN
 CCP & GS
 FLORENCE COUNTY, SC

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WITNESSES

Thomas Mcfadden

Florence County Sheriff

JOHN C JEPERTINGER

ARREST WARRANT NUMBER

M273055

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

7-21-11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-21-1212

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JULY

TERM

2011

THE STATE

vs.

ERIC SHANTA WILLIAMS

Indictment for

ARMED ROBBERY

FILED

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CONNIE REEL SHEARIN
CLERK
FLORENCE COUNTY, SC

RECEIVED: A TRUE COPY
JUL 21 2011
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR

ARMED ROBBERY

At a Court of General Sessions, convened on JULY 21, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

That ERIC SHANTA WILLAIMS did in Florence County on or about October 21, 2010, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Joe Backus, Jr. from or in the immediate presence of Joe Backus, Jr. with intent to deprive Joe Backus, Jr. of possession of his wallet, including cash and documents, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR