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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Brooks P. Goldsmith, Circuit Court Judge

KADEEM JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000028

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JESSICA KINARD
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

Kadeem Johnson,

PLAINTIFF,

v.

State of South Carolina,

DEFENDANT.

TRANSCRIPT OF JURY/PRE-MOTIONS
C/A No. 2011-GS-43-0469

Sumter County Courthouse
April 16, 2012

BEFORE:

HONORABLE R. JEFFREY YOUNG, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor John Meadors
Attorney for State of South Carolina

Charles Brooks, Esquire
Attorney for Kadeem Johnson

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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1 The Court: All right, Mr. Solicitor.

2 Mr. Meadors: If it pleases, Your Honor.

3 The Court: Yes, sir.

4 Mr. Meadors: At this time the State would call the
5 State of South Carolina vs. Kadeem S. Johnson. Mr.
6 Johnson is in court with his attorney Mr. Charles Brooks.
7 Your Honor, we are here on three Sumter County true
8 billed indictments. 2011-GS-43-469, indictment for Armed
9 Robbery and Possession of a weapon during a violent
10 crime. 2011-GS-43-481, Attempted Murder, Attempted Armed
11 Robbery, Possession of a weapon during the commission of
12 a violent crime. 2011-GS-43-939, Armed Robbery.

13 The Court: All right, Ladies and Gentlemen, we are
14 about to begin the case of State vs. Kadeem S. Johnson.
15 Mr. Johnson is charged under three indictments. The
16 first indictment will be indictment 2011-GS-43-469 which
17 reads that Kadeem S. Johnson, did in Sumter County on or
18 about June 9, 2010 violate session 16-11-330 of the South
19 Carolina Code of Laws, as amended. While armed with a
20 deadly weapon and with a firearm, did felonious take from
21 Alicia Moses and Abraham Alebe by means of force or
22 intimidation goods or monies said such goods or money being
23 Three Hundred (\$300) Dollars in U.S. currency. Count two
24 reads that Kadeem S. Johnson did in Sumter County on or
25 about June 9, 2010 violate section 16-23-490, South

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1 Carolina Code of Laws and that while armed with a deadly
2 weapon to wit a firearm, did felonious take from the
3 presence of Alicia Moses and Abraham Alebe by force or
4 intimidation goods or monies, said such goods or money
5 being described as Three Hundred (\$300.00) Dollars in
6 U.S. currency. The next indictment under indictment
7 number 2011-GS-43-481. The indictment reads on the
8 charge of attempted murder Kadeem S. Johnson did in
9 Sumter on or about June 10, 2010 violate section 16-3-29
10 of the South Carolina Code of Laws as amended in that
11 Kadeem S. Johnson did shoot Bashem Mohammed at the scene
12 multiple times in an attempt to kill the victim with
13 malice aforethought either expressed or implied. Count
14 two reads that Kadeem S. Johnson in Sumter County on or
15 about June 10, 2010, while armed with a deadly weapon, a
16 handgun, attempted to take and carry away the personal
17 property from Bashem Mohammed with the intent to deprive
18 him by use of force, threats or intimidation in violation
19 of section 16-11-330(b) of the South Carolina Code of
20 Laws 1976, as amended. Count three reads possession of a
21 weapon during the commission of a violent crime that
22 Kadeem S. Johnson did assault on or about June 10, 2010
23 violate section 16-3-29 of the South Carolina Code of
24 Laws, as amended and that Kadeem S. Johnson did attempt to
25 kill Bashem Mohammed, with malice aforethought either

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1 expressed or implied by shooting the victim multiple
2 times with a firearm by carrying a handgun without the
3 authority to do the same in violation of section 16-23-
4 490 of the South Carolina Code. And then, finally, under
5 indictment 2011-GS-43-939, the indictment reads that on
6 or about June 11, 2010 in Sumter County, South Carolina
7 the defendant Kadeem S. Johnson at 2264 Peach Orchard
8 Road by use of force, threats or intimidation and while
9 armed with a deadly weapon and while alleging either by
10 words or action that he was armed by using the
11 representation of a deadly weapon or a object which a
12 person present during the commission of a robbery
13 reasonably believed to be a deadly weapon did take and
14 carry away goods and/or monies from the person present of
15 Ollethia Dinkins to deprive the victim of possession
16 thereof in violation of section 16-11-330(a) of the South
17 Carolina Code.

18 Now, Ladies and Gentlemen, let me remind you that
19 the fact that the defendant was arrested, charged and
20 indicted is in no way indicative that he committed these
21 crimes. The defendant has plead not guilty and therefore
22 the State has the burden of proving each and every
23 element of these crimes beyond a reasonable doubt.

24 Now, Ladies and Gentlemen, the indictment again,
25 these are only the documents to get the case into court

1 and in no way are indicative that he's guilty of the
2 charges contained therein.

3 Now, Ladies and Gentlemen, before we select the
4 jury, there are several questions that I am going to need
5 to ask you and I remind you that you are still under
6 oath. Now, Ladies and Gentlemen, the reason that you're
7 under oath is because this is such a crucial stage of the
8 trial. Just like a building must have a firm foundation
9 and be strong and protective of those who live in it, so
10 must a jury be strong as the basis for a fair and
11 impartial trial for those who participate. The Solicitor
12 for the State and the Defendant who is on trial.

13 Your answers to these questions are the foundation
14 by which the attorneys will build a jury and they are
15 relying on your truthful answers to help them strike an
16 unbiased jury who will diligently listen to the evidence
17 and will deliver a just verdict. Again, thank you ladies
18 and gentlemen for your complete truthfulness concerning
19 these questions.

20 The first question is, has anyone ever been related
21 by blood or marriage or have a close personal
22 relationship to the Defendant, Kadeem S. Johnson, if so
23 please stand.

24 Thank you, no one is standing.

25 Is any member of the jury panel had a close personal

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1 relationship or business relationship with any of the
2 alleged victims? That would be Aleshia Moses and Abraham
3 Alebe and Bashem Mohammed or Ollethia Dinkins? . If so,
4 please stand.

5 Mr. Meadors: Your Honor, if it please the Court.
6 That Aleisha may also be Felicia Moses.

7 The Court: She may also be Aleisha or Felicia.

8 Mr. Meadors: And Mr. Bashem, is also known as Sam,
9 Your Honor.

10 The Court: Bashem Mohammed?

11 Mr. Meadors: He's known as Sam, Your Honor.

12 The Court: Anybody know the possible victims or
13 related by blood or marriage or have any relationship
14 with any of these people. If so, please stand.

15 Thank you. No one is standing.

16 All right. Ladies and Gentlemen, this I a list of
17 possible witnesses in this case and I'm going to go
18 through it. It's a long list. I'm going to go through
19 it and then I am going to ask you if you are related by
20 blood or marriage or have a business or personal
21 relationship with any of these witnesses.

22 Felicia Moses, Basel Mohammed, also known as Sam.
23 Randy Lowery. Ophelia Dinkins, Brady Higgins, Deputy M.
24 Jordan, Sgt. R. Reynolds of the Sumter County Sheriff's
25 Office. Investigator Wesley Gardner of the Sumter County

1 Sheriff's Office. Investigator Tripp Mayes of the Sumter
2 County Sheriff's Office. Investigator Michael Bean of
3 the Sumter County Sheriff's Office. Corporal C. Hice of
4 the Sumter County Sheriff's Office. Investigator T.
5 Herbert of the Sumter County Sheriff's Office. Michael
6 Grier, Antonia Nolan. Corporal J. Thomas of the Sumter
7 County Sheriff's Office. Kareemee Upchurch. Deputy S.
8 Deberry of the Sumter County Sheriff's Office. Michael
9 Gorton. Investigator James Atkinson of the Sumter County
10 Sheriff's Office. Doris Yarborough of the State Law
11 Enforcement Division. Donna Welch, registered nurse.
12 Tommy Barron. Mary Ann Baum of the State Law Enforcement
13 Division. Stephanie Stanley, Cindy Person, Michael
14 Anderson Young, of Young's and Abraham Alebe.

15 Does any member of the jury panel know any of these
16 victims or have any relationship with them? If so, please
17 stand.

18 Yes, sir. Please state your name and juror number.

19 Juror: My name is Rodney, I don't know what my
20 number is.

21 Bailiff: 213, Your Honor.

22 The Court: Yes, sir.

23 Juror: I know Michael Jordan.

24 The Court: Would the fact that you know Michael
25 Jordan make it so that you can't be fair and impartial to

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1 the State or the Defendant?

2 Juror: No, sir.

3 The Court: Okay. Thank you, sir. Anyone else?.

4 (Juror stands)

5 The Court: Yes, ma'am.

6 Juror: I know ...

7 The Court: What's your ...

8 Juror: Amanda Arden, Juror #7.

9 The Court: Yes, ma'am.

10 Juror: I know multiple of the officers and the
11 investigators but nothing personal just came in contact
12 with them.

13 The Court: But you can listen to the evidence and be
14 fair and un-bias to both the State and the Defendant?

15 Juror: Yes.

16 The Court: All right. Thank you, ma'am.

17 Juror: Thank you.

18 The Court: Yes, ma'am.

19 Juror: I do know some of the officers.

20 The Court: Name and number.

21 Juror: #21, Tara Groom. I also know some of the
22 officers but I could certainly be impartial.

23 The Court: All right. Thank you. Now, Ladies and
24 Gentlemen, the attorneys who will be trying this case are
25 Mr. John Meadors for the Solicitors office and Mr.

1 The Court: All right. Thank you. Is there any
2 member of the jury panel that is aware of any bias or
3 prejudice towards either the State or the Defendant in
4 this case. If so, please stand. Thank you, no one is
5 standing.

6 Is there any member of the jury panel that was also
7 a member of the grand jury which issued the indictment in
8 this case. If so, please stand. Thank you, no one
9 standing.

10 Is there any member of the jury panel who is a
11 member of or a contributor to, any group which has as
12 it's primary concern promotion of law enforcement or
13 victims rights. These groups would include but certainly
14 not be limited to Mothers Against Drunk Drivers.
15 Students Against Drunk Drivers or Citizens Against
16 Violent Crime. If so, please stand. Thank you, no one
17 standing.

18 Does any member of the jury panel know of any reason
19 whatsoever why he or she should not serve in this case
20 with particular interest being placed on your ability to
21 be fair and impartial to both the State and the
22 Defendant. If so, please stand. Thank you, no one is
23 standing.

24 Does the State have any additional questions that
25 you'd like for me to ask?

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1 Charles Brooks for the Defendant. Has any member of the
2 jury panel ever been represented by either of these
3 attorneys and Mr. Meadors works for the Solicitor's
4 office and Mr. Brooks has a private practice. So, if
5 you've ever been represented by them, please stand at
6 this time. Alright. Thank you. No one is standing.

7 Has any member of the jury panel formed or expressed
8 an opinion about any issue involved in this case. If so,
9 please stand.

10 Has any member of the jury panel had a family member
11 who has been the victim or the perpetrator of a violent
12 crime. If so, please stand. Yes, ma'am. State your
13 name and number.

14 Juror: Number 4, Ms. Anderson.

15 The Court: All right. Ms. Anderson.

16 Juror: Two years ago my niece was murdered.

17 The Court: The fact that you have a niece who was
18 murdered several years ago make it so that you could not
19 be fair and impartial to the State or the Defendant in
20 this case?

21 Juror: I can be.

22 The Court: You can be?

23 Juror: Yes.

24 The Court: You can be?

25 Juror: Yes.

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1 Mr. Meadors: May we approach?

2 The Court: You may.

3 (Mr. Meadors and Mr. Brooks approach the bench)

4 The Court: All right. Ladies and Gentlemen, I
5 pronounced Randy Higgins. It's Grady Higgins. So if
6 anybody knows a Grady Higgins, please stand at this time.
7 Okay. Any additional questions Mr. Meadors?

8 Mr. Meadors: No, sir.

9 The Court: Mr. Brooks?

10 Mr. Brooks: No, sir.

11 The Court: All right. Now, Ladies and Gentlemen,
12 what is going to happen now is the computer is going to
13 generate a list of possible jurors. When your name is
14 called, if your name is called, please come forward and
15 bring your personal items with you and turn around and
16 face General Thomas Sumter. Ladies and Gentlemen, the
17 attorneys will then have an opportunity to then strike
18 you or accept you to the jury. Please do not take it
19 personally if they strike you from the jury. Attorneys
20 have an idea who they want for the jury and they can
21 strike for any reason or no reason except for your race
22 or your gender. Again, please don't take it personally
23 if you are stricken. You'll have another opportunity to
24 go before Judge Cothran if you are not selected in this
25 case.

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1 Bailiff: Please the Court, Your Honor.

2 The Court: Yes, sir.

3 Bailiff: Ladies and Gentlemen, when your name is
4 called, please come through the double gate or your left
5 or the single gate on your right, which is most
6 convenient come up to the front of the Courtroom and face
7 the back, please.

8 Juror Number 160. Maryland Timmons. (Juror
9 approaches). What sayeth the State?

10 Mr. Meadors: Please present the juror.

11 Bailiff: What sayeth the Defendant?

12 Mr. Brooks: Please strike this juror.

13 Bailiff: Please have a seat back with the panel,
14 you've been excused from this trial, please ma'am.
15 (Juror returns to seat). Juror Number 25, Angel Brown.
16 (Juror approaches). What sayeth the State?

17 Mr. Meadors: Please present the juror.

18 Bailiff: What sayeth the Defendant?

19 Mr. Brooks: Please seat the Juror.

20 Bailiff: Please have a seat in the jury box, please
21 ma'am. This way ma'am. Juror Number 170, Camelia
22 Washington. (Juror approaches). What sayeth the
23 State?

24 Mr. Meadors: Please present the juror.

25 Bailiff: What sayeth the Defendant?

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1 Mr. Brooks: Please seat this juror.

2 Bailiff: Have a seat in the jury box, please, ma'am.

3 Juror Number 181, Robert Ross. (Juror approaches). What
4 sayeth the State?

5 Mr. Meadors: Please present the juror.

6 Bailiff: What sayeth the Defendant?

7 Mr. Brooks: Please seat this juror.

8 Bailiff: Have a seat in the jury box, please, sir.

9 Juror Number 105, Ruthie McClary. (Juror approaches).
10 What sayeth the State?

11 Mr. Meadors: Please present the juror.

12 Bailiff: What sayeth the Defendant?

13 Mr. Brooks: Please seat this juror.

14 Bailiff: Have a seat in the juror box, please,
15 ma'am. Juror Number 69, Brenda Green. (Juror
16 approaches). What sayeth the State?

17 Mr. Meadors: Please excuse the jury.

18 Bailiff: Have a seat back with the panel, you've
19 been excused from this trial, please, ma'am. Juror Number
20 111, Tina Merritt. (Juror approaches). What sayeth the
21 State?

22 Mr. Meadors: Please present the juror.

23 Bailiff: What sayeth the Defendant?

24 Mr. Brooks: Please seat this juror.

25 Bailiff: Have a seat in the jury box, please, ma'am.

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1 Juror Number 141, Sherod Shaw. (Juror approaches). What
2 sayeth the State?

3 Mr. Meadors: Please present the jury.

4 Bailiff: What sayeth the Defendant?

5 Mr. Brooks: Please seat this juror.

6 Bailiff: Have a seat in the jury box, please, sir.

7 Juror Number 154, Timothy Sumpter, Jr. (Juror
8 approaches). What sayeth the State?

9 Mr. Meadors: Please present the jury.

10 Bailiff: What sayeth the Defendant?

11 Mr. Brooks: Please seat this juror.

12 Bailiff: Have a seat in the jury box, please, sir.

13 Juror Number 121 Albert Perry. (Juror approaches). What
14 sayeth the State?

15 Mr. Meadors: Please present the jury.

16 Bailiff: What sayeth the Defendant?

17 Mr. Brooks: Please present this juror.

18 Bailiff: Have a seat in the jury box, please, sir.

19 Juror Number 80, Andrew House. (Juror approaches). What
20 sayeth the State?

21 Mr. Meadors: Please present the juror.

22 Bailiff: What sayeth the Defendant?

23 Mr. Brooks: Please excuse this juror.

24 Bailiff: Have a seat back with the panel, you've
25 been excused from this trial, please, sir. (Juror

1 returns to panel). Juror Number 50, Scott Hay. (Juror
2 approaches). What sayeth the State?

3 Mr. Meadors: Please present the juror.

4 Bailiff: What sayeth the Defendant?

5 Mr. Brooks: Please seat this juror.

6 Bailiff: Have a seat in the jury box, please, sir.

7 Juror Number 17, Natasha Blackmon. (Juror approaches).

8 What sayeth the State?

9 Mr. Meadors: Please excuse the juror.

10 Bailiff: Have a seat back with the jury panel,
11 you've been excused from this trial, please, ma'am.

12 Juror Number 139, James Skaf, Jr. (Juror approaches).

13 What sayeth the State?

14 Mr. Meadors: Please present the jury.

15 Bailiff: What sayeth the Defendant.

16 Mr. Brooks: Please excuse this juror.

17 Bailiff: Have a seat back with the panel, you've
18 been excused from this trial, please sir. Juror Number
19 97, Alexander Lane. (Juror approaches). What sayeth the
20 State?

21 Mr. Meadors: Please excuse the juror.

22 Bailiff: Have a seat back with the panel, you've
23 been excused from this trial, please, sir. Juror Number
24 63, Danielle Glover. (Juror approaches). What sayeth
25 the State?

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1 Mr. Meadors: Please present the juror.

2 Bailiff: What sayeth the Defendant?

3 Mr. Brooks: Please seat this juror.

4 Bailiff: Have a seat in the jury box, please, ma'am.

5 Juror Number 48, Stacy Durant. (Juror approaches). What
6 sayeth the State?

7 Mr. Meadors: Please excuse the juror.

8 Bailiff: Have a seat back with the panel, you've
9 been excused from this trial, please, ma'am. (Juror
10 returns to panel). Juror Number 21, Terra Bradham.
11 (Juror approaches). What sayeth the State?

12 Mr. Meadors: Please present the juror.

13 Bailiff: What sayeth the Defendant?

14 Mr. Brooks: Please excuse this juror.

15 Bailiff: Haven a seat back with the panel, you've
16 been excused from this trial, please, ma'am. Juror
17 Number 29, Nathalie Butler. (Juror approaches). What
18 sayeth the State?

19 Mr. Meadors: Please present the juror.

20 Bailiff: What sayeth the Defendant?

21 Mr. Brooks: Please seat this juror.

22 Bailiff: Have a seat in the jury box, please, ma'am.
23 Juror Number 7, Amanda Arnold. (Juror approaches). What
24 sayeth the State?

25 Mr. Meadors: Please present the juror.

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1 Bailiff: What sayeth the Defendant?

2 Mr. Brooks: Excuse the juror.

3 Bailiff: Have a seat back with the jury panel,
4 you've been excused from this trial, please, ma'am.

5 Juror Number 79, Benjamin Holladay, Sr. (Juror
6 approaches). What sayeth the State?

7 Mr. Meadors: Please present the juror.

8 Bailiff: What sayeth the Defendant?

9 Mr. Brooks: Please seat the juror.

10 Bailiff: Have a seat in the jury box, please, sir.
11 For our alternate juror. Juror Number 173, Bessie
12 Williams. (Juror approaches). What sayeth the State?

13 Mr. Meadors: Please present the juror.

14 Bailiff: What sayeth the Defendant?

15 Mr. Brooks: Please seat this juror.

16 Bailiff: Have a seat in the jury box, please, ma'am.

17 The Court: Please call the juror names.

18 Bailiff: Ladies and Gentlemen. When I call your
19 name, please raise your hand. Angel Brown, Camile
20 Washington, Robert Ross, Ruthie McClary, Tina Merritt,
21 Sherod Shaw, Timother Sumpter, Albert Parrott, Scott Eck,
22 Danielle Glover, Nathaniel Buckman, Benjamin Holladay,
23 Sr., Bessie Williams.

24 The Court: Thank you. Ladies and Gentlemen, you all
25 have been selected as the jurors for this case. I'm

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1 going to send you back to the jury room for a few minutes
2 while we take up a few matters of law up here in Court
3 outside of your presents. While you are back there, of
4 the primary jurors you all decide who you want to be your
5 foreperson. It can be any of the twelve of you. But you
6 all talk amongst yourselves during this brief period of
7 time. When you come out the foreperson needs to sit in
8 this chair. Thank you.

9 (Jury break 11:55)

10 The Court: Are there any objections to the jury that
11 has been selected and the manner in which it has been
12 selected from the State?

13 Mr. Meadors: No, sir.

14 The Court: From the Defendant?

15 Mr. Brooks: No, sir.

16 The Court: All right. (Panel excused from this
17 trial to the other courtroom for jury selection).

18 (Jury panel excused)

19 The Court: All right. Gentlemen, how do you all
20 want to handle this. We've got pretrial motions. Do you
21 all want to let the jury go and have them come back
22 tomorrow morning?

23 Mr. Meadors: Yes, sir.

24 Mr. Brooks: We would request that. That's fine.

25 The Court: Okay.

1 Mr. Meadors: Judge, what time will you bring them
2 back?

3 The Court: 9:30.

4 Mr. Meadors: Okay. That's fine.

5 The Court: Let's bring our jury back.

6 (Jury enters courtroom 11:58)

7 The Court: All right, you're my forelady, right.

8 All right. Very good. Ladies and Gentlemen, because of
9 the pretrial stuff we need to take up before we actually
10 start the trial, we are going to need that time this
11 afternoon to do that. So, what I'm going to do is I'm
12 going to release you for the afternoon with instructions
13 that you return here tomorrow morning. Now, Ladies and
14 Gentlemen, please do not discuss with anyone about this
15 case. Please do not go looking on the internet to see
16 what you can find out. The idea is that all the
17 information you are going to need to make your decision
18 of the Defendant's guilt or not guilt will come from this
19 witness stand and from what is presented in court.

20 I am going to dismiss you. Be back tomorrow morning
21 at 9:30 and have a nice afternoon.

22 Bailiff: Ladies and Gentlemen, come to the juror
23 room, do not come back in the courtroom. Thank you.

24 The Court: You will be sworn at that time. Thank
25 you.

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1 (Jury exits courtroom 12:00).

2 The Court: What is your pleasure. Do you all want
3 to do the motions now or do you want to break and come
4 back and do them at 2:00. It makes no difference to me.

5 Mr. Brooks: We'll do them now, Judge.

6 The Court: All right. Let's go ahead and do them
7 now.

8 Mr. Brooks: Are you ready, Judge?

9 The Court: Yes, sir.

10 Mr. Brooks: My first motion basically is the
11 inventory motion of discovery to make sure that we have
12 gotten everything. I feel confident that the State has
13 complied with Rule 5, but I want to make sure we have
14 those issues out and we understand we've got everything
15 in our case.

16 What I've got basically is the incident reports from
17 the various officers involved in the case and I've got a
18 statement from, it's a report from I believe officer
19 Tripp Mays, was the detective in this case. I've also
20 got, as of late Friday afternoon, I've got statement from
21 Mike, and obviously that is going to be another motion
22 I'm going to raise and I did get a video and some
23 pictures, I do need to take a break so that I can look at
24 that video because I wasn't able to look at it. I've
25 talked with Mr. Meadors about that. I've got the

1 pictures and I believe that's all of the discovery in
2 this case.

3 Mr. Meadors: Judge, during our break for this
4 afternoon I will go over everything with him. There's
5 basically, obviously three separate incidences. On the
6 investigative report it looks like two-thirds of it are
7 basically the same thing with a different caption on the
8 top describing that incident and then it goes through the
9 investigation for the rest of it. I want to look, I want
10 him to look over that, over all three of them during the
11 lunch hour. As far as the two statements last Friday
12 they came into my possession then and I turned them over
13 as quickly as I could.

14 The Court: Did the police hold them back?

15 Mr. Meadors: It was nothing intentional, Judge.

16 Mr. Brooks: That's going to be my next motion,
17 Judge, whenever we finish with the discovery issue, I'm
18 going to get into, directly get into that if we can.

19 Mr. Meadors: But, Judge, as far as discovery there
20 were some still photos from, Judge, basically the June 9
21 incident which is a El Cheapo's, at 949 North Main
22 Street, the video just wasn't --- you couldn't download
23 it so the officers just came and had to take individual
24 pictures from the monitor. He's got those.

25 Judge, the June 10, incident is from the El Cheapo's

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1 at 4756 Broad Street, that's the one Mr. Sam is the
2 victim in back here, go ahead and stand up.

3 (Victim stands)

4 Mr. Meadors: I appreciate it. (Victim sits down).
5 The video just wasn't working. Just wasn't working.
6 It's one of those things. So, no video on that one.

7 June 11, 2010, was the incident at the Young's Store
8 at 2264 Peach Orchard Road where we do have a video that
9 I will make sure he --- we gave it to him last week and
10 we'll make sure we look at that and it does show two
11 individuals stepping inside, the victims, Ms. Dinkins,
12 they had coats and masks on but there is a video of that
13 incident.

14 Judge, in addition to that --- Your Honor, we'll
15 review the file before this afternoon. There was some
16 other stuff submitted by SLED, which I've gave him. No
17 testing was done, which I told him that and there may be
18 some change sheets which I don't think will be an issue
19 since we have nothing to offer but I'll make sure that he
20 sees all of that.

21 Mr. Brooks: As long as those witnesses answers
22 appropriate, Judge. Judge, the second motion I have is
23 in regards to the statements allegedly from my client to
24 these witnesses. We got that basically after ---
25 basically 4:30-5:00 Friday. There addresses are blacked

1 out so there is no way that I can actually investigate
2 those guys to try to determine the liability or
3 credibility to be prepared to ...

4 The Court: Y'all can provide him with that
5 information?

6 Mr. Meadors: Yes, sir. Yes, sir. I just came from
7 a seminar where they had said to black that out. If,
8 Your Honor, orders me to, I will do it.

9 Mr. Brooks: Judge, on the statements themselves were
10 taken October 5, 2011. And, of course, they are just now
11 giving them to us. I just want to answer the question.
12 Obviously, my first position is that that issue be
13 suppressed in its entirety and the witnesses not be
14 allowed to testify. But, in addition to that, obviously
15 we just haven't had a chance, my client doesn't know
16 about it, the State doesn't know about it, I told what I
17 saw, I mean I told them that this morning and obviously
18 we couldn't check out these guys ...

19 The Court: Well, you'll have this afternoon. Motion
20 denied.

21 Mr. Brooks: Judge, I'll also as the Court for
22 sequestration motion. Obviously, you know, a lot of
23 these things are fact witnesses and I want to make sure
24 everybody keeps their story straight.

25 The Court: Okay. I will sequestrate the witnesses

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1 with the exception of the chief investigator on each one
2 of these charges will be allowed to stay.

3 Mr. Brooks: Judge, I did raise a motion to elect
4 which incident they were going on because we've got three
5 robberies on three different days. At this point in time
6 there is nothing that actually officially connects the
7 first robbery to the second robbery to the third robbery
8 to assume that who did it was one in the same. We talked
9 about it in chambers. I wanted to put that motion on the
10 record.

11 The Court: Mr. Meadors.

12 Mr. Meadors: If it pleases, Your Honor. Judge, some
13 of the elements made, Your Honor, did consider this case
14 whether or not the indictments arise out of a single
15 change of circumstances, approved by the same evidence or
16 the same general nature and no right of the defendant has
17 been prejudiced, real right. Judge, this is a type of
18 case where in the earlier morning hours of the 9th, 10th
19 and 11th three convenient stores in Sumter were robbed.
20 Same motives. We believe the same two individuals coming
21 into the store. We anticipate and believe that the co-
22 Defendant Mr. Kareeme Upchurch, who was involved with the
23 defendant will testify that he and this defendant did
24 basically these robberies. So, I guess the practical
25 consideration of judicial economy with the exception of

1 the three victims, Mr. Sam, Ms. Moses and Ms. Dinkins,
2 the chief investigating officer is the same, the co-
3 defendant, we believe, will be the same. And besides a
4 few chain witnesses, even Mr. Lowery, one of the
5 witnesses who came forward initially gave a statement
6 against Mr. Upchurch, he'd be the same in each case.
7 These two other witnesses, which again, we just got these
8 two statements last week they are exculpatory, those two
9 witnesses will be the same in all three. They were
10 basically just that he told me they did some bops and
11 there's nothing earth shattering in those just that he
12 told them they had done some robberies and he was trying
13 to save enough money to buy a Corvette from his uncle in
14 Florida and then was going to come back up here. So that
15 witness would actually be brought in all three incidents,
16 so. With all those factors as, Your Honor, as already
17 ruled, that we can join these charges and try them
18 together. I just want to put that on the record.

19 The Court: Of course, if the co-defendant does not
20 testify that's a different matter. Motion denied.

21 Mr. Brooks: We ask for the State to disclose any
22 deals. At this point, I was unaware that there was a co-
23 defendant testifying until I got here this morning.
24 Obviously, I relayed that to my client and we feel that
25 we should be privy to that for purposes of getting ready

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1 to go to trial. Mr. Meadors can speak on that.

2 The Court: Mr. Meadors.

3 Mr. Meadors: Your Honor, in participating a plea to
4 all the charges were negotiated to fifteen (15) years,
5 Mr. Upchurch and Mr. Sam is in agreement to that. He was
6 personal, up close and personal, he got shot a few times.
7 Glad he is still here today.

8 Judge, Mr. Murphy worked on this last week. He
9 approached me with this. After consultation with him
10 made that agreement and hopefully we will finalize that
11 this afternoon.

12 The Court: All right. A plea arrangement will be
13 done this afternoon.

14 Mr. Brooks: Is he going to plea this afternoon?

15 Mr. Meadors: Your Honor, we discussed that with you
16 in chambers but that is anticipating that. His lawyer is
17 here and we are anticipating that.

18 The Court: Anything else?

19 Mr. Brooks: Judge, I think that's all --- I do have
20 one other motion. There was some mention in the report
21 about anonymous tip and obviously we are going to delve
22 into that because even though it is an anonymous tip we do
23 have an opportunity to see whether or not that anonymous
24 tip is actually genuine and obviously demonstrates
25 knowledge of a concealed criminal activity and pretrial

1 motion that the officer can testify outside the jurors
2 presence to determine if it is a safe anonymous tip,
3 assuming, I use that word carefully, Judge, I'm assuming
4 that Officer Mayes is going to say that, that is how he
5 got to Mr. Lowery who eventually got to Mr. Upchurch
6 because that's in his report.

7 The Court: I guess it all depends on what happens
8 this afternoon.

9 Mr. Meadors: I've never used an anonymous tip, I
10 don't plan on using one.

11 Mr. Brooks: It's in his report.

12 Mr. Meadors: I want to listen to ...

13 Mr. Brooks: That's fine, if you're not going to say
14 that then ...

15 Mr. Meadors: Judge, this afternoon, we were going to
16 try to get the video up and getting it running in here
17 and if there are any other issues up this afternoon we
18 will come back before, Your Honor.

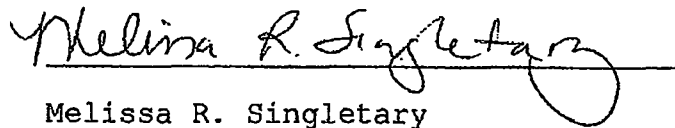
19 The Court: All right. Very well.
20
21
22
23
24
25

CERTIFICATE

This is to certify that the motion transcript in the matter of James Earnest Butler vs. State of South Carolina, consisting of Twenty-Eight (28) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 2nd day of November, 2014.



Melissa R. Singletary
Certified Court Reporter

STATE OF SOUTH CAROLINA	)	
COUNTY OF SUMTER	)	COURT OF GENERAL SESSIONS
Kadeem Johnson,	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
v.	)	C/A #: 2011-GS-43-00469
State of South Carolina	)	2011-GS-43-00481
DEFENDANT.	)	2011-GS-43-00939

April 17, 2012
Sumter County Courthouse
Sumter, South Carolina

BEFORE:

HONORABLE R. JEFFREY YOUNG, PRESIDING

APPEARANCES:

Assistant Solicitor John Meadors
Attorney for State of South Carolina

Charles Brooks, Esquire
Attorney for Kadeem Johnson

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no Exhibits marked during this Hearing)

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1 Mr. Meadors: May it please the Court?

2 The Court: Yes sir.

3 Mr. Meadors: Your Honor, before you is Mr. Kadeem
4 Johnson with his attorney Mr. Charles Brooks and I
5 believe family members and/or friends. As Your Honor
6 knows we've picked a jury and we are prepared to open.
7 Mr. Brooks approached me this morning and asked me about
8 pleading guilty. He is here before Your Honor on
9 2011-GS-43-469, armed robbery and possession of a firearm
10 during a violent crime. 2011-GS-43-481 attempted murder,
11 attempted armed robbery, and possession of a weapon
12 during a violent crime. And indictment 2011-GS-43-939,
13 armed robbery.

14 Bailiff: Place your left hand on the Bible, raise
15 your right hand.

16 (Witness complies)

17 Bailiff: State your name, please.

18 A: Kadeem Johnson.

19 Bailiff: Do you solemnly swear or affirm your
20 testimony to the Court will be the truth, the whole truth
21 and nothing but the truth so help you, God?

22 A: I do.

23 The Court: All right Mr. Brooks you represent Kadeem
24 S. Johnson on all these charges?

25 Mr. Brooks: I do, Judge.

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1 The Court: Have you had an opportunity to explain to
2 him the charges contained in the indictments, the
3 possible punishment that he faces and his constitutional
4 rights?

5 Mr. Brooks: I have, Judge.

6 The Court: And he understands that we have a jury
7 sitting in a room over there. He participated in the
8 selection and that we are ready to try this case.

9 Mr. Brooks: He understands that, Judge.

10 The Court: Do you think he understands everything
11 you've told him?

12 Mr. Brooks: He does.

13 The Court: Does he now wish to plead guilty or not
14 guilty?

15 Mr. Brooks: Guilty.

16 The Court: Do you agree with his decision to plead
17 guilty?

18 Mr. Brooks: In light of the facts of the case
19 changing, yes sir.

20 The Court: And based upon your understanding of
21 everything going on, do you think if he were to go to trial
22 that there would be a substantial likelihood that he would
23 be found guilty beyond a reasonable doubt?

24 Mr. Brooks: In light of the fact that the facts have
25 changed in this case, we've talked about it, yes, sir.

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1 The Court: Now, Mr. Johnson, I need to ask you a
2 series of questions to make sure that you're entering this
3 plea freely, voluntarily, knowingly and intelligently to
4 the charges contained in the indictment and the possible
5 punishment that you face.

6 **Mr. Johnson - Questions by The Court:**

7 Q: The first question that I have is are you under the
8 influence of alcohol or drugs.

9 A: No, sir.

10 Q: Are you taking any medication that would cloud your
11 judgment in any way?

12 A: No sir.

13 Q: Are you aware of any physical, emotional or nervous
14 condition that would keep you from understanding what
15 we are doing today?

16 A: No sir.

17 Q: It's my understanding that you now want to plead
18 guilty under three indictments and I will go over each
19 one of them. I will read what is in the indictment to
20 you. Under indictment 2011-GS-43-469, there are two
21 counts. First count reads that Kadeem S. Johnson did
22 in Sumter County on or about June 9, 2010 violate
23 section 16-11-330 of the code of laws of South
24 Carolina, 1976, as amended, while armed with a deadly
25 weapon, a firearm, did feloniously take from the

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1 presence of Felicia Moses and Ibrahim Awid by means of
2 force or intimidation such goods being described as
3 Three Hundred Dollars in U.S. Currency. Is what is
4 stated in count one of Indictment 469, the truth?

5 A: Sir?

6 Q: Is it the truth?

7 A: Yes sir.

8 Q: Under count two reads that Kadeem S. Johnson did in
9 Sumter County or about June 9, 2010 violate section
10 16-23-490 of the code of laws of South Carolina, 1976,
11 as amended while armed with a deadly weapon, a
12 firearm, did feloniously take from Felicia Moses and
13 Ibrahim Awid by means of force or intimidation goods
14 or monies of such goods or monies being described as
15 Three Hundred Dollars in U.S. Currency. Is what's
16 stated in count two of Indictment 2011-GS-43-469 the
17 truth?

18 A: Yes, sir.

19 Q: Under Indictment 2011-GS-43-481, a three count
20 indictment reads under count one, Kadeem S. Johnson
21 and Kareem Upchurch did in Sumter on or about June 10,
22 2010 violate section 16-3-29 of the code of laws of
23 South Carolina 1976 as amended in that Kadeem S.
24 Johnson did shoot Basem Mohammed multiple times with
25 the intent to kill the victim with malice aforethought

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7

1 rather expressed or implied. Is what is stated in
2 count one of this indictment the truth?

3 A: Yes, sir.

4 Q: Under count two it reads that Kadeem S. Johnson and
5 Kareem Upchurch did in Sumter County on or about June
6 10, 2010, while armed with a deadly weapon, a handgun,
7 attempted to take and carry away personal property
8 from Basem Mohammad with the intent to deprive him of
9 possession by use of force, threats, intimidation in
10 violation of section 16-11-330(b), South Carolina Code
11 of Laws 1976, as amended. Is what's stated in count
12 two of indictment 2011-GS-43-481 the truth?

13 A: Yes sir.

14 Q: Under the same indictment, count three, the indictment
15 reads Kadeem S. Johnson and Kareem Upchurch did in
16 Sumter on or about June 10, 2010 did violate section
17 16-29 of the code of laws of South Carolina 1976, as
18 amended. In that said Kadeem S. Johnson and Kareem
19 Upchurch did with intent to kill Basem Mohammad with
20 malice aforethought, either expressed or implied by
21 shooting the victim multiple times with a firearm
22 while carrying a firearm without the authority to do
23 same in violation of section 16-23-490 of the code of
24 laws of South Carolina 1976 as amended. Is what's
25 stated in count three of indictment 2011-GS-43-481 the

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8

1 truth?

2 A: Yes, sir.

3 Q: Indictment 2011-GS-43-939, it reads that on or about
4 June 11, 2010 in Sumter County South Carolina, Kareem
5 Upchurch along with Kadeem S. Johnson at 2264 Peach
6 Orchard Road, by use of force, threat or intimidation
7 did while armed with a deadly weapon either by action
8 or words, armed while using a representation of a
9 deadly weapon or other object which a person present
10 during the commission of violence reasonably believed
11 to a deathly weapon did take and carry away personal
12 goods or immediate presence of Ollethia Dinkins in
13 possession thereof in violation of section 16-11-338
14 of the South Carolina Code of Laws, 1976, as amended.
15 Is what's stated in count one of indictment
16 2011-GS-43-939 the truth?

17 A: Yes sir.

18 Mr. Meadors: May it please the Court. This happened

19 ...

20 The Court: I'm aware of what the facts are.

21 Mr. Meadors: I'll make a brief factual basis for this
22 plea if that's okay. This happened on June 9th, it started
23 happening June 9, 2010. This defendant Kadeem Johnson and
24 his co-defendant Kareem Upchurch are first cousins they
25 were basically at their grandmother's house off of 261,

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9

1 decided they were going to rob a convenience store, Judge.
2 The first one they picked was El Cheapo's at 949 North Main
3 Street here in Sumter. Judge, I think they cased the joint
4 out. They would go by and see when there weren't people in
5 there. If there were people in there they weren't going
6 in. They waited until it was pretty much just the workers
7 or the managers. On indictment for 469 both of them went
8 in, Judge. This young lady right here is my first witness.
9 Ms. Felicia Moses. She was there. Judge, they stole
10 approximately \$300 dollars. Get on the floor. You get to
11 hear a little bit of my opening. Get on the floor or we'll
12 shoot. That's the first thing she heard, Judge. She saw
13 guns, they stole the money and they left. Law Enforcement
14 was called, Judge. They get there and for what every
15 reason, this happens sometime, they couldn't download the
16 video but they got some still pictures of the video and it
17 showed two individuals, two black males. You can kind of
18 see them inside but you see them running away also, Judge,
19 and it's got a unique jacket with kind of a emblem on the
20 back. So law enforcement had that to start with. No i.d.
21 They were wearing masks, hoodies and a coat with a hood on
22 it, Judge. After they robbed that, I've learned they go
23 back to grandmama's and split the money up. They were in
24 grandmama's van. The next one June 10th, Judge, and this
25 was in the early morning hours, 1:30 a.m. on June 9th,

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1 obviously waiting until there are less folks in there. On
2 June 10th, indictment 481, it was roughly a little after
3 twelve. Mr. Johnson and co-Defendant Kareem Upchurch and
4 this is at 4756 Broad Street Extension, Your Honor, in
5 Sumter. Again, they were kind of casing it out if you will.
6 They waited until no one was there. I believe they were
7 parked on the side of the road, Judge. They then went
8 inside, they being this Defendant, Mr. Johnson and Mr.
9 Upchurch. When they went inside, this is where my second
10 victim comes in. This is who we know as Sam, Judge.
11 Basem Muhammed, also known as Sam. Everybody knows him as
12 Sam, he owns this place, Judge. His brother owns a lot of
13 them. He's been working there in the community. He cares
14 about this community, Judge. They came in. Sam grabbed a
15 rack or something but he wasn't going to let them rob him,
16 he just wasn't going to let them rob him. Shots were
17 fired, Judge. Both of them shot, fired shots. Their
18 intent was to go and rob, no question about it. They fired
19 the shots. I believe we could have shown malice and
20 intent. He's lucky to be standing here and I'm not just
21 saying that. I'm not just saying that. He's lucky to be
22 standing here. I've got to know Sam and Felicia. They are
23 both wonderful people. He was shot here, here, here, show
24 him, here and here.

25 Mr. Sam: I got shot here and here, have one here.

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1 Mr. Meadors: And this one is still in him, Judge.

2 Mr. Sam: One is still in me here.

3 Mr. Meadors: Thank God he is still here. They didn't
4 take anything. That's the attempted armed robbery. The
5 attempted murder, Judge. Mr. Upchurch said he fired and
6 kind of ran out and then I think also we could show this
7 defendant fired also. Who hit that would have been up to
8 a jury but they both fired, hand of one, hand of all. I
9 don't think we would have had a issue on that, Judge.
10 There was also a possession of a firearm during the
11 commission of a violent crime on that. Go to June 11,
12 Judge the next night, early morning hours still in the same
13 van, I believe that it belonged to their grandmother. They
14 decide that they're going to rob Young's 2264 Peach Orchard
15 Road. And that's when they parked near the Pizza Hut
16 across the street, Judge. Judge, they go in and this is
17 the video we had prepared to show your honor and the jury.
18 It's a good video. It shows them coming in. And my third
19 victim, Ms. Dinkins, who works for Blue Cross and Blue
20 Shield just couldn't be here today. I had her scheduled
21 to come in the morning, she had taken off. She was
22 prepared. When she came in her first words were when they
23 came in, Your Honor, and you can see them both coming in.
24 Mr. Upchurch came in first and then Mr. Johnson came in
25 after that. Mr. Johnson had a 9 millimeter, you can see

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1 him kind of going after Ms. Dinkins. One of the shots
2 shows the gun to the head. Mr. Upchurch then goes to the
3 front of the counter gets the drawer that Ms. Dinkins has
4 taken out, he takes that out. Mr. Johnson goes around the
5 back and tries to get the victim, Ms. Dinkins to open the
6 safe for some lottery money, where the lottery money is she
7 says I don't have the key. They had just made the big
8 deposit so there were just ones in there, Judge. Mr.
9 Upchurch takes the tray, you see that on the video. He
10 leaves. He tells me later that they burned that tray out
11 in the woods. What Ms. Dinkins said as she was being
12 followed around and would have been offered was I'm
13 pregnant, I'm pregnant. Don't shoot. And she was five and
14 a half months pregnant. She's fine now, she's working, but
15 that would have been her testimony. And again she couldn't
16 be here today. She was going to be here tomorrow, Judge.
17 Judge law-enforcement is armed with this information. They
18 get a look at the first still photos and then they look at
19 this last video they realize they are wearing the same
20 thing. They have something to go on. They know there is
21 a description of a green van or a van that left. It's
22 actually burgundy. They started investigating.
23 Investigator Mays talks to an individual named Randy Lowery
24 who knows Mr. Upchurch. He initially doesn't provide
25 information. Some heat is put on him, basically we know

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1 you know him, we know you have a van. He goes and talks to
2 Mr. Upchurch and basically says look, I'm getting heat on
3 me, I didn't have anything to do with this you all need to
4 turn yourself in. He ultimately says that Mr. Upchurch
5 told him he had done these with his cousin. Mr. Lowery, he
6 didn't want to get involved. They got him involved. I
7 talked to him but reluctantly I believe he would have come
8 forward and testified to that and I want to thank him for
9 that.

10 Judge warrants were taken out, and I believe we're in
11 July of 2010 now. I believe Investigator Mays along with
12 some Marshals were looking for Mr. Kadeem Johnson. He was
13 near his grandmother's house on 261. He was with a fellow
14 named Brady Higgins and Michael Gordon and you can't make
15 this up, Judge. They were looking for Mr. Johnson to serve
16 the warrants on him. Once they stop them there is some
17 marijuana there, everybody is arrested initially they go
18 down to headquarters. Mr. Higgins had said this defendant
19 Mr. Johnson had told him he had done some bops recently
20 which I believe the street term is robberies and that he
21 was going to save enough money to go to Florida according
22 to this witness to buy a vehicle from his uncle. Hang out
23 until the heat died down and come back. That's the
24 evidence we had prepared as we were getting ready for
25 trial. Obviously, Mr. Upchurch entered a plea. I

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1 debriefed Mr. Upchurch along with this attorney Mr. Murphy
2 and Investigative Mims yesterday. We went over complete
3 detail of his statement. He was prepared to testify today
4 and I think he would have testified truthfully roughly to
5 the facts I just gave, Your Honor. Judge, his prior record
6 is a juvenile burglary nonviolent, burglary second non-
7 violent, non-violent, excuse me on January 15, 2009.
8 That's his only record. Judge, I hope I've adequately
9 presented the facts I'm sorry if it took too long.

10 With me again are two victims. At the appropriate
11 time they may want to address the court. Thank you.

12 The Court: Mr. Johnson do you agree with the facts as
13 stated by Mr. Meadors?

14 A: Yes sir.

15 The Court: On June 9th of 2010 in your words tell what
16 you did that violated the law.

17 A: I did the crime.

18 The Court: I want to know what crime you did.

19 A: I did a crime, sir.

20 The Court: I want you to tell me what crime you
21 committed on June 9th, 2010.

22 A: Armed Robbery.

23 The Court: You committed Armed Robbery?

24 A: Yes, sir.

25 The Court: And that would be at the El Cheapos on

1 North Main is that correct?

2 A: Yes, sir.

3 The Court: On June 10, 2010 tell me in more detail
4 than you just told me on the last one what you did that
5 violated the law?

6 A: I guess you could say I shot the man.

7 The Court: After you committed armed robbery, you shot
8 the man?

9 A: Yes, sir.

10 The Court: How many times did you shoot the man?

11 A: Two.

12 The Court: On June 11, 2010, tell me on the record,
13 specifically what you did that violated the law.

14 A: Armed robbery.

15 The Court: Where?

16 A: At Young's.

17 The Court: Which Young's? Don't be evasive with me or
18 I'll stop this right now, do you understand that?

19 A: There's only one Young's involved, Your Honor.

20 Mr. Brooks: There is only one Young's in this
21 particular situation. One was El Cheapos and the other was
22 Young's. That's what he means.

23 The Court: It was the Young's on Peach Orchard Road.
24 Is that correct?

25 A: Yes, sir.

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1 The Court: Now, are you in fact guilty of these
2 charges?

3 A: Yes, sir.

4 The Court: Do you understand that all these charges on
5 the armed robbery, I can sentence you to, this would be the
6 armed robbery under indictment 2011-GS-43-469, I can
7 sentence you to thirty (30) years in jail.

8 A: Yes, sir.

9 The Court: On the weapons possession charge under
10 indictment 2011-GS-43-469, I can sentence you to five (5)
11 years in jail.

12 A: Yes, sir.

13 The Court: Under indictment 2011-GS-43-481 charging
14 you with attempted murder, I can sentence you to twenty
15 (20) years in jail. Do you understand?

16 A: Yes, sir.

17 The Court: Under indictment 2011-GS-43-481, armed
18 robbery or attempted armed robbery, I can sentence you to
19 thirty (30) years in jail. Do you understand?

20 A: Yes, sir.

21 The Court: Under indictment 2011-GS-43-P481 charging
22 you with possession of a weapon during a violent crime, I
23 can sentence you to five (5) years in jail. Do you
24 understand?

25 A: Yes, sir.

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1 The Court: Under indictment 2011-GS-43-939, I can
2 sentence you to thirty (30) years in prison.

3 A: Yes sir.

4 The Court: Do you understand that if I choose to do so
5 I can sentence you to these consecutively and sentence you
6 to One Hundred and Twenty (120) years in jail. Do you
7 understand?

8 A: Yes, sir.

9 The Court: Do you understand, as well, that whatever
10 I sentence you to, you will have to, because these are most
11 serious violent crimes, that you will have to serve at
12 least eighty-five percent of whatever I sentence you to.
13 Do you understand that?

14 A: Yes sir.

15 The Court: Do you understand that because with these
16 convictions you will have two or more violent most serious
17 crimes and therefore if you ever commit another violent
18 crime that you will be facing life without the possibility
19 of parole. Do you understand?

20 A: Yes, sir.

21 The Court: So you fully understand the charges
22 contained in the indictments and the possible punishment
23 which you face?

24 A: Yes sir.

25 The Court: Do you understand that your co-defendant

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 18

1 has already plead guilty and there is a negotiated sentence
2 of fifteen (15) years for him. Do you understand that I am
3 not bound by that to you in any way. That you at this
4 moment are looking at a full One Hundred and Twenty (120)
5 years. Do you understand?

6 A: Yes sir.

7 The Court: Now, do you have any questions about what
8 sentence you could possibly receive?

9 A: No sir.

10 The Court: Do you also understand that when you plead
11 guilty you waive certain constitutional rights. The first
12 right you waive is your right against self incrimination.
13 Not in this court or any other court in this land would you
14 ever be required to testify against yourself. However,
15 when you plead guilty, you're doing exactly that. Do you
16 understand?

17 A: Yes sir.

18 The Court: So you wish to waive your right and self
19 incrimination at this time?

20 A: Yes sir.

21 The Court: And you understand as well that we have a
22 jury back here, twelve of them, you participated in the
23 selection of them and they are ready to try the case.
24 During the trial, Mr. Brooks would have the opportunity to
25 cross examine the witnesses presented. I would instruct

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 19

1 the jury that the State had to prove your guilt beyond a
2 reasonable doubt. If you chose not to testify I would
3 instruct the jury that they could not hold that against
4 you. Mr. Brooks could bring up any defenses that he felt
5 were available to you. And, again, only after the State
6 has proven your guilt beyond a reasonable doubt could you
7 be found guilty.

8 Therefore, if you plead guilty, the State does not
9 have to prove anything. You don't get to ask any questions
10 about the evidence against you. Do you understand?

11 A: Yes sir.

12 The Court: So do you wish to waive your right to have
13 a jury trial and confront the witnesses against you?

14 A: Yes sir.

15 The Court: Are you satisfied with the services of Mr.
16 Brooks?

17 A: Yes sir.

18 The Court: Has he done everything that you have asked
19 him to do?

20 A: Yes sir.

21 The Court: Do you need any more time to speak with Mr.
22 Brooks?

23 A: No sir.

24 The Court: Has Mr. Brooks done anything that you don't
25 think he should have done?

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 20

1 A: No sir.

2 The Court: Has anyone threatened you in anyway to get
3 you to plead guilty?

4 A: No sir.

5 The Court: Has anybody promised you anything to get
6 you to plead guilty?

7 A: No sir.

8 The Court: The only reason that you are pleading
9 guilty is why?

10 A: I can't go to trial. I can't win.

11 The Court: Is it because you are guilty?

12 A: I am guilty.

13 The Court: Have you understood all of my questions?

14 A: Yes sir.

15 The Court: Do you have any questions for the court?

16 A: No sir.

17 The Court: Do you understand that your lawyer has ten
18 (10) days in which to file an appeal as to your plea or the
19 sentence that I give you?

20 A: Yes sir.

21 The Court: Under indictment 2011-GS-43469 charging you
22 with armed robbery, how do you plead guilty or not guilty?

23 A: Guilty

24 The Court: And under indictment 2011-GS-43-469
25 charging you with possession of a weapon during a violent

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA

21

1 crime, how do you plead guilty or not guilty?

2 A: Guilty.

3 The Court: Under indictment 2011-GS-43-481 charging
4 you with attempted murder, how do you plead guilty or not
5 guilty?

6 A: Guilty.

7 The Court: Under indictment number 2011-GS-43-481
8 charging you with attempted armed robbery, how do you plead
9 guilty or not guilty?

10 A: Guilty.

11 The Court: Under indictment 2011-GS-43-481 charging
12 you with possession of a weapon during a violent crime how
13 do you plead guilty or not guilty?

14 A: Guilty.

15 The Court: Under indictment 2011-GS-43-939, charging
16 you with armed robbery, how do you plead guilty or not
17 guilty?

18 A: Guilty.

19 The Court: All right I find that the Defendant has
20 entered into his plea freely and voluntarily. He has had
21 the advice of counsel whom he says he is well pleased. The
22 Defendant in his own words has admitted to each one of
23 these crimes as to what he has done and I will accept his
24 plea. What's his criminal history?

25 Mr. Meadors: Your Honor, a burglary second non-violent

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA

22

1 in January 15, 2009 as a juvenile.

2 The Court: Is that correct?

3 A: Yes, sir.

4 The Court: I would like to hear from the victim.

5 Mr. Meadors: Yes sir. If it please the Court, Your
6 Honor, this is Alicia Moses. Her presence speaks for
7 itself, she just wants to thank Your Honor. Your Honor,
8 this is Sam.

9 Mr. Sam: Your honor, I want you to know and I want his
10 family to know I was working and I just got off work my
11 relief just walked and ask me to go check the cooler which
12 I said go ahead all of a sudden I heard something I just
13 turned around like this I get three bullets in my stomach,
14 two in my stomach, one right here is still in here. I have
15 a cigar rack behind me I just pushed it. I didn't know
16 what to do, I just push both him and the other guy. Those
17 guys start shooting. They shot me in my finger, shot me in
18 my hand, shot me in my arm, shot me in here. That is
19 without even asking me for money, without nothing. I was
20 standing and those guys walked in to rob the store. They
21 didn't ask for money they just start shooting, that's fine.
22 I called 911 because my co-worker he was crying because he
23 was scared. I was, my blood and everything at the store.
24 Mr. Metts came and drive me to the hospital. When we went
25 to the bond hearing, I believe this or somebody hire a

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 23

1 lawyer for him. She should have paid my hospital bills
2 which I am paying til this minute instead of hiring a
3 lawyer for somebody killing somebody. And that is my
4 belief. I mean I didn't do nothing wrong. I was doing my
5 job those guys walking in to kill me for nothing. If they
6 rob me that night they only get a hundred dollars, Your
7 Honor, just a hundred dollars because we change shift. I
8 was standing there, we change shift, nothing. All they had
9 to do and I swear to you if they ask me for the money, I
10 would carry the whole cash register to their car.
11 Everybody knows if you have a robbery, you just give them
12 the money, everybody knows this, even the bank knows this.
13 I didn't do nothing wrong. I didn't deserve all this. My
14 wife called the store because I didn't call and one of my
15 employees say, your husband shot. That woman, she lives in
16 Jerusalem. She went straight to the airport, she came
17 here. She didn't have nothing on, nothing. She came to
18 the hospital. Mr. Meets saw her. My daughter's crying, my
19 wife crying, all family crying for what. Why do I have to
20 go through this? Do, I deserve it, sir? I do nothing. I
21 was working. I work sixteen hours a day, sixteen,
22 seventeen hours a day, seven days a week just for my wife
23 and my kids to do a better life for them.

24 Mr. Meadors: Your Honor, Sam had actually, the shift
25 had just ended and the new person was coming on and he said

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 24

1 can you give me a minute. He covered it a little bit
2 longer so the person could go to the back of the store.
3 So, we've talked about it. He may have saved that fellow's
4 life actually by staying on.

5 The Court: Is there restitution ordered?

6 Mr. Meadors: Your Honor, we quite frankly haven't
7 discussed this.

8 Mr. Sam: You know, Your Honor, the lady I was doing
9 that shift for, she had a stroke. I was covering a shift
10 for another employee and the other employee came in and I
11 was, I stand so he can do the cooler. All this happened.
12 I not suppose to be even there. No, I'm still paying every
13 month. I'm still paying my hospital bills and my doctor,
14 my surgeon bills. I never asked for any of this.

15 Mr. Meadors: Your Honor, I don't know what to say. It
16 is what it is. I try not to lead victims on that they may
17 receive money and I have not discussed that with him
18 because I did not think that was a possibility.

19 Mr. Sam: I never asked for any help, Your Honor.

20 The Court: The odds of you getting any are going to be
21 very, very slim because it's going to be a while.

22 Mr. Sam: Like I said, I never asked for any help. I
23 never got no employment. I never got nothing, nothing. I
24 always provide. I didn't get nothing.

25 Mr. Meadors: Thank you. Judge, I want to thank law

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 25

1 enforcement, especially over the last few days Investigator
2 Mims and I think, Tripp, unless you have anything else I
3 believe that's all we have.

4 The Court: Okay. Mr. Brooks.

5 Mr. Brooks: If it please the Court, Judge. As you've
6 had the opportunity to listen to everything, see my client,
7 see him shedding tears. Obviously he's very remorseful
8 about this situation. He's nineteen now. His grandmother,
9 his family stands beside him. Obviously, all upset about
10 the situation. I remind, Your Honor, that obviously in
11 terms of culpability, I don't think he was any more or any
12 less culpable than Kareem was. At least, what I'm saying
13 I don't think there is a situation where one person did
14 most of the crime versus the other person. I think if you
15 look at the video, I think if you hear the statement by Ms.
16 Upchurch, obviously you see they are both in the same boat.
17 Judge, obviously this is a significant young man and you're
18 about to give him a sentence that obviously, potentially,
19 probably is going to put him in more years than ...

20 The Court: He want be a young man when he gets out.

21 Mr. Brooks: I understand. But I do want to ask the
22 court to show as much leniency and mercy for this young man
23 considering there was no father figure in his life and
24 obviously what he and Mr. Upchurch did obviously was very,
25 very stupid. It put peoples lives in danger.

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 26

1 The Court: Do you know how lucky he is. He's lucky
2 that he and Mr. Upchurch are not facing murder. The reason
3 that Mr. Sam here is alive they have escaped capitol murder
4 charges but his being alive has nothing to do with what
5 they did.

6 Mr. Brooks: Judge, when it happened just remember he
7 was seventeen, so they were under the age of eighteen under
8 the law, so I don't know if it would ... But nonetheless
9 ...

10 The Court: His living had nothing to do with them.

11 Mr. Brooks: I agree with that. I agree with that. I
12 don't know if his family wants to say anything. They are
13 up here today. Obviously it is a very difficult situation
14 for them. He has been in jail since his arrest back in
15 2010. And, Judge, obviously we would just ask you to
16 consider, even though you're not bound by the deal that Mr.
17 Upchurch is getting, obviously I want to ask the court to
18 use that as a barometer when you're issuing a sentence to
19 Mr. Johnson understanding that there is a difference
20 between Mr. Upchurch and Mr. Johnson after the fact but
21 actually during the commission of the crime because there
22 really was no difference.

23 I don't know if his grandmother would want to say
24 anything to the Court. You do? State your name for the
25 record.

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA

27

1 Ms. Johnson: My name is Hazel Johnson.

2 The Court: Yes, ma'am.

3 Ms. Johnson: And I would like to say to the court and
4 the young fellow over here.

5 The Court: You talk to me.

6 Ms Johnson: My daughter was killed in '69. Stabbed in
7 the back. The girl got not more than seven. Because they
8 was two black kids. And I want to say to him, thank God
9 that you got your life because I haven't got my daughter
10 back yet and I'm still dealing with it.

11 The Court: I'm sorry about your lost.

12 Ms. Johnson: I deal with him, his mother died when he
13 was a baby. So, I'm still dealing with a lot of stuff that
14 I cannot handle. So, I'm just asking you to please have
15 some mercy on him because we all get off at times.

16 The Court: Yes ma'am.

17 Speaker: (Can't understand)

18 The Court: She is going to have to speak up. You need
19 to speak in the microphone.

20 Ms. Johnson: My name is Hattie Johnson and I beg you
21 please have mercy on him. I beg you just have some mercy.
22 I apologize for what happened. This is my first time
23 hearing this but I beg you, literally beg you, please have
24 mercy on him. That's all I have to say.

25 The Court: Thank you.

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 28

1 Mr. Johnson: Your Honor, I'd like to apologize for the
2 crimes that I've done. I apologize to Mr. Sam. That's all
3 I got to say.

4 Mr. Brooks: Judge, this is a young guy. He's not very
5 articulate. He just wanted to convey to the court that he
6 is truly, truly sorry.

7 The Court: Anything further? Anything further from
8 the State?

9 Mr. Meadors: Thank you, Judge. That's it.

10 The Court: All right. I have considered the
11 statements made and I have considered the posture of the
12 case at this time. There are three charges and ordinarily
13 the way they happened I would sentence consecutively if he
14 would have been found guilty. However, because he is
15 pleading guilty I am going to make them concurrent. These
16 are still very serious charges. I am of the belief that
17 Mr. Johnson had he not had his cousin on him would have
18 been defiant to the end and would not have plead guilty
19 until he was in a trap that he couldn't get out of. He
20 certainly did plea voluntary and he has admitted to me, on
21 the record, in open court exactly what he did do. It was my
22 understanding they were age nineteen and seventeen at the
23 time. These gentlemen just went on a crime spree. They
24 were a two man terror on Sumter County and for that he did
25 not plea until the end. I understand that his cousin did

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 29

1 it and he's certainly not going to get what I gave his
2 cousin but I am going to run them consecutive ...

3 Mr. Brooks: Excuse me, Judge, you said consecutive.
4 You mean concurrent?

5 The Court: Excuse me, concurrent. The sentence of the
6 court under indictment 2011-GS-43-469 charging him with
7 Armed Robbery. This will be the armed robbery of the first
8 El Cheapo's that you be committed to the State Department
9 of Corrections for a period of Twenty-five (25) years.
10 Under indictment number 2011-GS-43-469 on the charge of
11 possession of a weapon during a violent crime you are
12 sentenced to five (5) years in the State Department of
13 Corrections. On the Attempted Murder charge I am giving
14 him the maximum sentence of twenty (20) years. On the
15 charge of Attempted Armed Robbery, the sentence of the
16 court is twenty-five (25) years. On the Young's Market,
17 you will also be receiving five (5) years for the
18 possession of a weapon during a violent crime. On the
19 charge under indictment 2011-GS-43-939, on the armed
20 robbery of the Young's Market the sentence is that you be
21 committed to the State Department of Corrections for a
22 period of twenty-five (25) years. These will run
23 concurrent and he will be given credit for time served. I
24 did not max him out on all these because I do take into
25 consideration that he is a young man and I want to give him

KADEEM JOHNSON VS. THE STATE OF SOUTH CAROLINA 30

1 an opportunity to have a life rather than give him a
2 hundred and twenty (120) years that he could have had.

3 Mr. Meadors: Your Honor, I may have inadvertently
4 heard the attempted armed robbery carries twenty (20) and
5 I didn't know ...

6 The Court: Okay.

7 Mr. Meadors: I apologize.

8 The Court: Good luck.

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CERTIFICATE

This is to certify that the hearing in the matter of Kadeem Johnson vs. State of South Carolina, consisting of Thirty (30) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 31st day of December, 2012.

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA

RECORDED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

2012 APR 27 PM 1:07

STATE OF SOUTH CAROLINA

JAMES C. CAMPBELL
CLERK OF COURT

Case No: 2011-GS-43-469

2011-GS-43-481

2011-GS-43-939

Plaintiff,

vs.

KADEEM JOHNSON

Defendant,

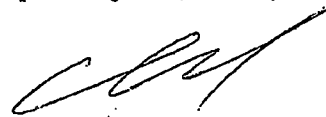
MOTION FOR RECONSIDERATION
OF SENTENCE

This Motion made by Defendant through his undersigned attorney requests the Court reconsider his sentence.

The Honorable Jeffrey Young sentenced the Defendant to aggregate sentence of Twenty-five (25) years at his guilty plea. The Defendant's co-defendant received a sentence of Fifteen (15) years.

Each defendant was equally culpable and although the co-defendant plead guilty the day before, the defendant contended that the disparity in sentence is unfair between the two co-defendants.

Respectfully Submitted,



CHARLES T. BROOKS, III
Attorney for the Defendant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

Sumter, South Carolina
April 27, 2012

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Campbell

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

RECORDED
12 APR 27 PM 1:08

Case No: 2011-GS-43-469

2011-GS-43-481

2011-GS-43-939

STATE OF SOUTH CAROLINA

SUMTER COUNTY, S.C.

Plaintiff,

vs.

KADEEM JOHNSON

Defendant,

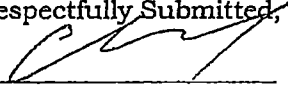
CERTIFICATE OF SERVICE

The undersigned counsel certifies that the attached Motion for Reconsideration of Sentence was personally delivered on April 27, 2012, to the parties indicated below:

The Honorable W. Jeffrey Young
Third Judicial Circuit
141 North Main Street
Sumter, South Carolina, 29150

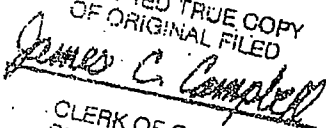
Ernest A. Finney, III, Solicitor
Third Judicial Circuit
141 North Main Street
Sumter, South Carolina, 29150

Respectfully Submitted,


CHARLES T. BROOKS, III
Attorney for the Defendant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

Sumter, South Carolina
April 27, 2012

CERTIFIED TRUE COPY
OF ORIGINAL FILED


CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA



State of South Carolina
The Circuit Court of the Third Judicial Circuit

W. JEFFREY YOUNG
JUDGE

141 North Main STREET
SUMTER, SOUTH CAROLINA 29160
TELEPHONE: (803) 438-2162
FAX: (803) 774-6169
E-MAIL: wjyoungsc1@sccourts.org

Tina M. Christmas
Administrative Assistant

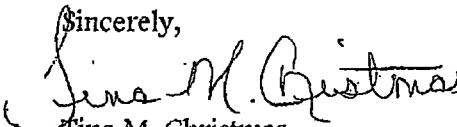
RULING

To : Charles Brooks
From : W. Jeffrey Young
Re : State of South Carolina v. Kadeem Johnson
Case No. : 2011-GS-43-469
2011-GS-43-481
2011-GS-43-939

Dear Charles:

Judge Young has considered your Motion for Reconsideration of Sentence for the above named party and has *DENIED* this motion. Should you have any questions please do not hesitate to contact our office.

Sincerely,


Tina M. Christmas

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions
The Honorable W. Jeffrey Young

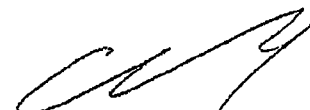
Case No. 2011-GS-43-469
2011-GS-43-481
2011-GS-43-939

The State,.....Respondent
V.
Kadeem Johnson,.....Appellant

NOTICE OF INTENT TO APPEAL

Kadeem Johnson through his Attorney files this Notice of Intent to Appeal his conviction and sentence in this case. The sentence was imposed by the Honorable W. Jeffrey Young, April 17, 2012. A Motion for Reconsideration was filed and denied without a hearing. We received the denial May 17, 2012.

Dated: May 18, 2012



Charles T. Brooks, III
Post Office Box 3512
309 Broad Street
Sumter, South Carolina 29151
(803) 418-5708
Attorney for Appellant

Other Counsel on Record:

Ernest A. Finney, III
Solicitor-Third Judicial Circuit
Sumter County Courthouse
141 N. Main Street
Sumter, SC 29150
(803) 436-2185

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KADEEM JOHNSON

APPELLANT

APPELLATE CASE NO. 2012-212033

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's guilty plea complied with the mandates set forth in Boykin v. Alabama?

STATEMENT OF THE CASE

On April 17, 2012, appellant appeared before the Honorable R. Jeffrey Young in Sumter County and pled guilty to three (3) armed robberies, two (2) counts of possession of a weapon, and one (1) count of attempted murder. Sentences of twenty-five (25) years were imposed on the armed robberies, five (5) year sentences were imposed on the possession of a weapon charges, and a twenty (20) year sentence was imposed for attempted murder. Charles Brooks, Esquire, was plea counsel. The assistant solicitor was John Meadows, Esquire.

This appeal follows.

ARGUMENT

Appellant's guilty plea failed to comply with the mandates set forth in Boykin v. Alabama.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), this Court held that the "essence" of Boykin, was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the states. In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), this Court held that for there to be a valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it.

In Boykin, *supra*, the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of rights occurring with the guilty plea. This is because the difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry V. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). The Boykin court went on to note that "a plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." 395 U.S. at 242-243, 89 S.Ct. at 1712.

In this case, plea counsel filed a motion for reconsideration of the sentence on April 27, 2012. Plea counsel noted that appellant was sentenced to an aggregate sentence of twenty-five (25) years at his guilty plea. Appellant's co-defendant received a sentence of fifteen (15) years. Each was equally culpable and plea counsel contended that the disparity in the sentences was unfair to appellant. The plea judge even told appellant during the plea that he had already sentenced the co-defendant to fifteen (15) years. (Tr. p. 17, line 25 – p. 18, line 2). The disparity in sentencing violates the equal protection clause under the Fourteenth Amendment to the United States Constitution.

CONCLUSION

Appellant's case should be remanded for re-sentencing.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of March, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KADEEM JOHNSON

APPELLANT

APPELLATE CASE NO. 2012-212033

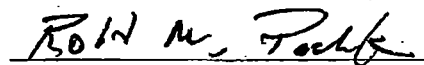
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kadeem Johnson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on April 17, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Kadeem Johnson.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of March, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KADEEM JOHNSON

APPELLANT

APPELLATE CASE NO. 2012-212033

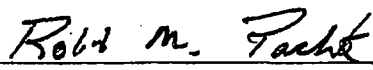
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Guilty Plea Hearing Transcript (April 17, 2012)
- (3) Motion for Reconsideration of Sentence

I certify that this designation contains no matter which is irrelevant to this appeal.

March 18th, 2013


Robert M. Pachak
Appellate Defender

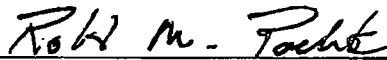
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 18, 2013



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KADEEM JOHNSON

APPELLANT

APPELLATE CASE NO. 2012-212033

CERTIFICATE OF SERVICE

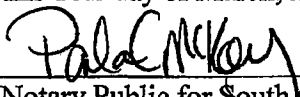
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and true copy of the Anders Brief of Appellant and Designation of Matter, and Record on Appeal, have been served on Kadeem Johnson, #350533 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 18th day of March, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of March, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Kadeem Johnson, Appellant.

Appellate Case No. 2012-212033

Appeal From Sumter County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2013-UP-331
Submitted July 1, 2013 – Filed July 31, 2013

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, THOMAS, and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



CLOSING LETTER SENT

ON 8-1-13Attorney initials RMP

The South Carolina Court of Appeals

Assistant initials [Signature]

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 23, 2013

The Honorable James C. Campbell
141 N Main St Rm 308
Sumter SC 29150-4965

REMITTITUR

Re: The State v. Kadeem Johnson
Lower Court Case No. 2011GS4300469, 2011GS4300481, 2011GS4300939
Appellate Case No. 2012-212033

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Jenny A. Kitchings
CLERK

cc: Salley W. Elliott
Robert M. Pachak

FORM 5

STATE OF SOUTH CAROLINA

RECORDED

COUNTY OF Sumter

2014 APR 25 PM 2:31 THE COURT OF COMMON PLEAS

Kadeem Johnson 350533
Full name and prison number (if any) of Applicant.JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2014-CP-43.794

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee CI
2. Name and location of Court which imposed sentence General Sessions, Sumter County
3. Name(s) of co-defendant(s) (if any) Karene Upchurch
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-65-43-0939
 - (b) 2011-65-43-0481
 - (c) 2011-65-43-0469
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4-17-12, 25 years concurrent with all charges
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 1st 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) My Constitutional Right to effective assistance of counsel was violated.
- (b) My Constitutional Right to speedy trial ~~was~~ was violated.
- (c) My Constitutional Right to Equal protection was violated

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

- (a) Counsel failed to ^(conduct adequate) investigation and prepare for trial. ^{Therefor providing me} inadequate legal advice.
- (b) Between the filing of speedy trial motion and trial, ^(the delay) it was helpful to the state.
- (c) Discrimination ~~to~~ in sentencing between me and a defendant.

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

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (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? yes

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

- (a) the specific nature thereof:
 - i. Motion for reconsideration of sentence
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. General Sessions, Sumter county
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. denied without hearing
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. May 17 2012
- 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) N/A
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Charles T. Brooks III, 309 Broad Street, Sumter, SC 29151
- ii. Robert M. Pachak, 1330 Lady Street, Suite 401 Columbia, SC 29201
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Mr. Brooks: During my plea, sentencing and reconsideration
- ii. Mr. Pachak: During my Direct Appeal
- iii. _____

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

~~New Trial~~ New Trial

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

no

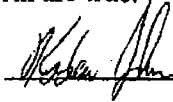
STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 15th
day of April, 2014

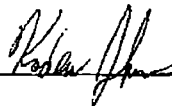
Angela V. Smith (L.S.)
Notary Public

My Commission Expires: 9/30/2023

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

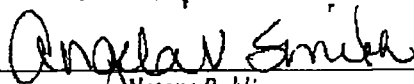
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.



Applicant

SWORN or affirmed to, and subscribed before me this
15 day of April, 2014



Notary Public

My Commission Expires: 9/30/2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Kadeem Johnson, # 350533	)	2014-CP-43-794
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 25, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the March 2011 term of the Sumter County Grand Jury under a three count indictment for Attempted Murder, Attempted Armed Robbery, and Possession of a Weapon During the Commission of a Violent Crime (2011-GS-43-0481) and under a two count indictment for Armed Robbery, and Possession of a Weapon During Violent Crime (2011-GS-43-0469). Subsequently, Applicant was true bill indicted at the July 2011 term of the Sumter County Grand Jury for Armed Robbery (2011-GS-43-0939). Charles Brooks, Esquire represented Applicant. On April 17, 2012, Applicant pled guilty before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant to twenty-five year term of imprisonment for Armed Robbery (2011-GS-43-0939), twenty year term of imprisonment for Attempted Armed Robbery (2011-GS-43-0481), twenty year term of imprisonment for Attempted Murder, five year term of imprisonment for Possession of a Weapon During Violent Crime (2011-GS-43-0481), twenty

five years for Armed Robbery (2011-GS-43-0469), five year term of imprisonment for Possession of a Weapon During Violent Crime (2011-GS-43-0469). The Applicant did not appeal his guilty plea or sentence. All sentences were to run concurrently.

A timely Notice of Appeal was filed and an Anders¹ brief was submitted on Applicant's behalf by Robert M. Pachak, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Kadeem Johnson, Op. No. 13-UP-331 (Ct. App. filed July 31, 2013). The Remittitur was issued on August 23, 2013.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to conduct adequate investigation and prepare for trial. Therefore providing me inadequat (sic) legal advise."
 - b. "Between the filing of speedy trial motion and trial. The delay was helpful to the state."
2. "Discrimination in sentencing between me and my co-defendant.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

¹ Anders v. California, 386 U.S. 738 (1967).

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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

trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Respondent submits that the second allegation should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss these allegations as they are not proper in a post-conviction relief action.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

[signature block on following page]

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

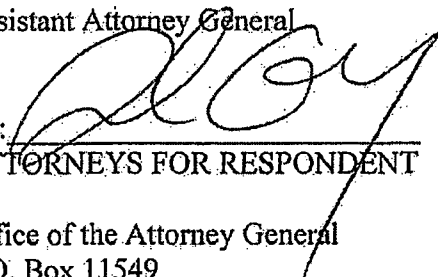
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

August 28, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

KADEEM JOHNSON, #350533,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

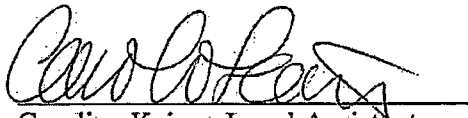
2014-CP-43-794

AFFIDAVIT OF SERVICE BY MAIL

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 28th day of August, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

DOCKET NO.: 2014-CP-43-0794

KADEEM JOHNSON,

RECORDED
2014 FEB 11 PM 3:07
JAMES CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
Applicant,

v.

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

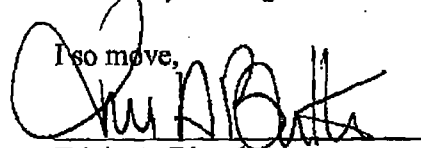
STATE OF SOUTH CAROLINA,

Respondent,

This matter comes before the Court by way of an Application for Post Conviction Relief filed on April 25, 2014. Applicant would move to amend his claims of ineffective assistance of trial/plea counsel as follows:

1. Ineffective Assistance of trial/plea counsel for failure to prepare and investigate Applicant's case during the two years leading up to trial, which resulted in a failure to review the evidence with Applicant and properly prepare Applicant for trial culminating in an involuntary guilty plea. Specifically, but not limited to:
 - a. Ineffective assistance of counsel for failure to move for dismissal at the preliminary hearing or anytime thereafter since the arrest warrant was issued based upon the statements of Randy Lowery, which do not name Applicant.
 - b. Ineffective assistance of counsel for failure to either obtain the statements of Higgins and Gordon in time to prepare for trial and investigate the statements or make a Brady motion regarding the State's disclosure of the statements. Pre-trial Transcript pp. 21-24.
 - c. Ineffective assistance of counsel for failure to have knowledge of and/or review the SLED findings with Applicant and make sure such findings were properly reflected in the record.
 - d. Ineffective assistance of counsel for failure to address the differing language in the indictments and for failure to clarify if Applicant was being charged as a principal or under the theory of hand of one is the hand of all.
 - e. Ineffective assistance of counsel for failure to prepare to cross-examine and impeach the testimony of co-defendant Upchurch.

- f. Ineffective assistance of counsel for failure to act on Applicant's request for a speedy trial.
2. Ineffective assistance of counsel for appearing to not know what charges the State planned to proceed with at trial and for not preparing Applicant for the charges he would face at trial, which resulted in an involuntary guilty plea. Pre-trial Transcript. Pp. 25-6.
3. Ineffective assistance of counsel for failure to object to the Court's opening comments to the jury regarding a true and just verdict. Pre-trial Transcript p. 6, lns. 8-12. See State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012).
4. Ineffective assistance of counsel for inducing Applicant's guilty plea on advice that the court would sentence him close to the fifteen year sentence of his co-defendant and failing to put such information on the record during the plea and reconsideration phase.
5. Pursuant to United States v. Cronig, 466 U.S. 648, 104 S.Ct. 2039 (1984) and Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006), Applicant alleges that counsel rendered ineffective assistance in violation of the Sixth Amendment's requirement that Applicant have counsel acting in the role of an advocate and in violation of the adversarial process the Sixth Amendment protects when counsel failed to subject the State's case to a meaningful adversarial testing.
6. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

I so move,


Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 Attorney for Applicant

February 10, 2016
 Columbia, SC

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT

2016 FEB 11 PM 3:07

Kadeem Johnson, #350533,

2014-CP-43-0794

Applicant,)
CLERK OF COURT
SUMTER COUNTY, S.C.

v.

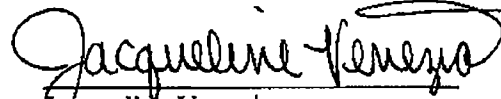
CERTIFICATE OF SERVICE

State of South Carolina,

Respondent.

I, Jacqueline Venezia, Law Clerk to Tricia A. Blanchette, Esq., hereby certify that I placed in the mail this 10th day of February, 2016, a copy of an Amendment to Application for Post Conviction Relief, to Daniel Gourley of the Attorney General's Office, at:

Office of the Attorney General
Att: Daniel Gourley, Ast. AG
PCR Division
PO Box 11549
Columbia, SC 29211



Jacqueline Venezia
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Law Clerk

February 10, 2016

State of South Carolina)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2014-CP-43-0794

Kadeem S. Johnson,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

March 16, 2016
Sumter, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

Tricia A. Blanchette, Esquire
Attorney for Applicant

Jessica E. Kinard, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

Proceedings	4
Kadeem Johnson,	
Direct Examination by Ms. Blanchette	10
Cross-Examination by Ms. Kinard	55
Redirect Examination by Ms. Blanchette	68
Recross-Examination by Ms. Kinard	72
Charles Brooks, III, Esq.,	
Direct Examination by Ms. Blanchette	74
Cross-Examination by Ms. Kinard	108
Redirect Examination by Ms. Blanchette	121
Certificate Page	142

3

E X H I B I T S

NO.	DESCRIPTION	I.D.	EVID.
P-1	Correspondence/Affidavit	4	9
P-2	Letter of Representation	4	14
P-3	Voluntary Statement - Lowery	4	20
P-4	Voluntary Statement - Lowery	4	21
P-5	Voluntary Statement - Higgins	4	25
P-6	Voluntary Statement - Gordon	4	26
P-7	SLED Forensic Lab Report	4	33
P-8	Rap Sheet - Upchurch	4	44
P-9	Motion for Speedy Trial/ Motion for Release	4	41
P-10	Motion for Reconsideration	4	49
P-11	Transcript		8
P-12	State's Witness List		89

TRANSCRIPT OF RECORD

(Whereupon, the proceedings commenced at 1:22 p.m.)

(Whereupon, Plaintiff's Exhibit Nos. 1 through 10 were premarked for identification.)

THE COURT: Good afternoon.

MS. KINARD: Good afternoon, Your Honor. May it please the Court?

THE COURT: Certainly.

MS. KINARD: Thank you. This is the matter of *Kadeem Johnson v. the State of South Carolina*. It's Docket Nol 2014-CP-43-794. The applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Sumter County Clerk of Court.

The applicant was true-billed at the March 2011 term of the Sumter County Grand Jury under a three-count indictment for attempted murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime, as well as under a two-count indictment of armed robbery and possession of a weapon during a violent crime.

He was later indicted at the July 2011 term of Sumter County Grand Jury for armed robbery. Charles T. Brooks, III, represented the applicant.

On or -- excuse me -- April 17th, 2012, applicant pled guilty before the Honorable W. Jeffrey Young. Judge Young

1 sentenced the applicant to 25 years for armed robbery; 20
2 years for attempted armed robbery; 20 years for attempted
3 murder; 5 years for -- excuse me -- 5 years for possession
4 of a weapon during a violent crime; 25 years for armed
5 robbery; and another 5 years for possession of a weapon
6 during a violent crime. All sentences were to run
7 concurrently.

8 A motion for reconsideration of sentence was filed on
9 April 27th, 2012, and it was denied.

10 A timely notice of appeal was filed. And an *Anders*
11 brief was submitted on applicant's behalf by Mr. Robert M.
12 Pachak. The South Carolina Court of Appeals affirmed the
13 applicant's conviction. Remittur was issued August 23rd,
14 2013.

15 We're before the Court on a application for
16 postconviction relief. That was timely filed on April
17 25th, 2014, alleging that Mr. Johnson was held in custody
18 unlawfully for ineffective assistance of counsel and
19 discrimination in sentencing. The state filed its return
20 on August 28th, 2014.

21 Lance Boozer was appointed to represent the applicant
22 but was replaced by Ms. Blanchette via an order of
23 substitution signed by the Honorable R. Ferrell Cothran,
24 Jr., on March 13th, 2015. After the substitution applicant
25 moved for an order granting discovery March 21st, 2015,

1 which was granted by the Honorable George C. James, Jr.,
2 April 27th, 2015.

3 And lastly, applicant filed an amendment by and
4 through counsel, amending his PCR application on February
5 10th, 2016.

6 I have placed the judge's packet on the bench. The
7 state is present and ready to proceed. Applicant is
8 present and represented by Ms. Tricia Blanchette.

9 THE COURT: Ms. Blanchette?

10 MS. BLANCHETTE: Thank you, Your Honor. May it please
11 the Court: Tricia Blanchette here on behalf of Kadeem
12 Johnson. Just wanted to ensure that Your Honor does have a
13 copy of the amendment that was filed?

14 THE COURT: I ---

15 MS. BLANCHETTE: Okay.

16 THE COURT: --- I do not.

17 MS. BLANCHETTE: I do have ---

18 THE COURT: I just ---

19 MS. BLANCHETTE: --- a copy ---

20 THE COURT: --- went through the packet.

21 MS. BLANCHETTE: --- that I can hand up.

22 THE COURT: Thank you.

23 MS. KINARD: My apologies, Your Honor.

24 MS. BLANCHETTE: Your Honor, by way of this amendment,
25 I have referred to the pretrial transcript a number of

1 times and a number of our allegations go to that. What
2 happened in this case is Mr. Johnson actually began trial
3 on April 16th, 2012. And a number of motions were heard
4 and discussions were made on the record. And then he
5 proceeded to the guilty plea.

6 Once I discovered, when the state had just provided me
7 with the record on appeal, that only had the guilty-plea
8 portion of the transcript, I independently ordered the
9 pretrial transcript, or the beginning of this proceeding.
10 I thought that at that time I had provided that to Dan
11 Gourley, the assistant attorney general. And up until
12 yesterday I had been primarily dealing with him on this
13 case.

14 I spoke -- we spoke yesterday morning for the first
15 time about this case. And when I found out that it didn't
16 appear that she had the transcript, I provided it to her.
17 I thought that it may be something that would just be
18 included in the judge's packet, since it is -- the
19 beginning of these proceedings started actually on April
20 16th, 2012, in front of Judge Young.

21 If I need to move that in as an applicant's exhibit,
22 I'm happy to do that.

23 THE COURT: Without -- without objection?

24 MS. KINARD: Actually, I would object, Your Honor. I
25 don't believe this is technically part of the proceedings,

1 as we are proceeding on the entry of a guilty plea. What
2 Ms. Blanchette has classified as the pretrial transcript
3 are pretrial motions, as well as the jury selection.
4 Ultimately, all of that became moot when the applicant pled
5 guilty. So I don't believe that any reference to the
6 pretrial transcript is relevant or germane in this matter.

7 I would also rely on the matter of *Pelzer v. State*,
8 which states that in resolving PCR issues relating to
9 guilty pleas, it is proper to consider the guilty-plea
10 transcript, as well as any testimony presented at the PCR
11 hearing.

12 THE COURT: Okay. I'll overrule the objection and
13 allow it.

14 MS. BLANCHETTE: Okay.

15 MS. KINARD: Thank you, Your Honor.

16 MS. BLANCHETTE: Your Honor, would you like for me to
17 mark the original that I received from the court reporter?

18 THE COURT: That would be perfectly fine.

19 MS. BLANCHETTE: Okay. Your Honor, so at this time,
20 I'd mark this as Applicant's No. 1. Oh -- and I apologize.
21 We've already premarked. So this would be Applicant's
22 Number ---

23 THE COURT REPORTER: It should be No. 10 [sic].

24 MS. BLANCHETTE: Yes. Applicant's No. 10.

25 (Whereupon, Plaintiff's Exhibit No. 11 was marked and

1 entered into evidence.)

2 MS. BLANCHETTE: And, Your Honor, as the state has
3 already indicated, there was an order authorizing
4 discovery. In response to that order, I did receive one
5 affidavit from the sheriff's department, indicating they
6 had provided the entire file. Whenever I received those, I
7 like to make those part of the record. So I'd move to
8 introduce that as Applicant's No. 1 at this time.

9 MS. KINARD: No objection.

10 THE COURT: All right.

11 MS. KINARD: Thank you.

12 (Whereupon, Plaintiff's Exhibit No. 1 was entered into
13 evidence.)

14 MS. BLANCHETTE: Your Honor, would you like for me to
15 go over the amendment and our allegations or go ahead and
16 call my first witness in this case?

17 THE COURT: It's your choice.

18 MS. BLANCHETTE: Your Honor, I would call my first
19 witness, which is my client, Kadeem Johnson. And we will
20 be going over each of the allegations.

21 THE COURT: All right, sir.

22 (Whereupon, the witness came forward.)

23 KADEEM JOHNSON, having been first duly sworn,
24 testified as follows:

25 MS. BLANCHETTE: Your Honor, before I proceed, I do

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 10

1 have an additional copy of the preliminary-hearing
2 transcript if you needed that for reference.

3 THE COURT: That would be nice.

4 MS. BLANCHETTE: Okay.

5 THE COURT: Thank you.

6 MS. BLANCHETTE: And I apologize again. I told you in
7 the prior case my copier cut off a couple lines, but I
8 think everything can be read.

9 DIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q Mr. Johnson, where are you currently incarcerated?

12 A At Lee Correctional Institution.

13 Q Okay. And are you serving time there as a result of
14 convictions you received on three indictments here out of
15 Sumter County?

16 A Yes, ma'am.

17 Q Okay. And did you file the PCR application that we're
18 here about today, 2014-CP-43-794?

19 A Yes, ma'am.

20 Q Okay. And by way of that application and the
21 amendment, you have alleged that your attorney was
22 ineffective; is that correct?

23 A Yes, ma'am.

24 Q And the -- what is the relief that you're asking the
25 Court to give you?

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 11

1 A I'm asking for a new trial.

2 Q Okay. Now, like I said, you received -- or sorry --
3 you pled guilty on three separate indictments to multiple
4 charges. You understand, by asking the Court to give you a
5 new trial today, you're essentially asking him to set aside
6 your guilty plea and those sentences and allow you to face
7 the charges essentially anew. We discussed the fact that
8 there's risk. You could potentially get more time than you
9 received when you pled guilty. Knowing there's a risk, do
10 you still want to go forward today?

11 A Yes, ma'am.

12 Q Okay. Now, the first allegation that is contained in
13 the amendment that I filed on your behalf is that your
14 attorney was ineffective for failing to prepare and
15 investigate your case during the two years leading up to
16 your trial, which resulted in a failure to review the
17 evidence with you and properly prepare you for a trial,
18 which culminated in an involuntary guilty plea. I'm going
19 to ask you some questions about that allegation. First, do
20 you remember how it came to be that Mr. Brooks was retained
21 in your case?

22 A Yes. Previously, I had a juvenile case at one point
23 in time, and he was -- he was representing me. And when it
24 came about, this particular case here, my grandmother just
25 proceeded to retain him for this case also.

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 12

1 Q Okay. And so was he your attorney essentially from
2 the time that you knew you were going to get charges
3 forward?

4 A Yes, ma'am.

5 Q Okay. And, Mr. Johnson, we've talked about this
6 before. I'm a loud talker. I don't even need this
7 microphone. You're a quiet talker. So if you could just
8 speak up the best you could and talk into that microphone,
9 because I know it's an important day and we all want to
10 hear what you have to say. Okay?

11 A Yes, ma'am.

12 Q Okay. So he got involved very early on in your case.
13 And these charges didn't actually go to trial until 2012;
14 is that correct?

15 A Yes, ma'am.

16 Q Okay. And you said he'd previously represented you;
17 is that correct?

18 A Yes, ma'am.

19 Q Okay. So you were familiar with him?

20 A Somewhat.

21 Q Okay. Let me show you what has been premarked as
22 Applicant's No. 2.

23 (Whereupon, Ms. Blanchette and Ms. Kinard conferred.)

24 Q And just to be clear for the record, you're aware of
25 the fact that we got an order for discovery in this case?

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 13

1 A Yes, ma'am.

2 Q And as a result of that, Mr. Brooks turned over a copy
3 of his file to us, as well as the solicitor, the sheriff's
4 department, and SLED; is that correct?

5 A Yes, ma'am.

6 Q Okay. Can you identify what that appears to be for
7 the record?

8 A This is the letter that he sent to the investigator,
9 stating that he was retained as my counsel.

10 THE COURT: You're -- you're going to have to speak up
11 a little bit louder, because I just really cannot
12 understand you.

13 THE APPLICANT: Oh.

14 A This is the letter that he sent to the investigator,
15 Tripp Mays, letting -- well, notifying him that he's been
16 retained as my counsel.

17 Q And what's the date on this letter?

18 A July 14th, 2010.

19 Q Okay.

20 MS. BLANCHETTE: Your Honor, at this time I would move
21 this letter in as Applicant's No. 2.

22 MS. KINARD: I would ask that they specify exactly
23 from whom this letter was received.

24 A This was from Mr. Charles Brooks, III.

25 MS. KINARD: I'm sorry. I meant through discovery

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 14

1 process, what file this was contained in.

2 THE APPLICANT: This was Rule 5, I believe. It was in
3 the court file.

4 Q Did you see this in both the solicitor's file and in
5 Mr. Brooks' -- I'm sorry -- in the sheriff's department
6 file and in Mr. Brooks' file?

7 A Yes, ma'am.

8 Q Okay.

9 MS. KINARD: Thank you.

10 Q And so as early as July of 2010, he's, it appears from
11 this letter, informing the Court -- or I'm sorry --
12 informing the investigator that he's the attorney working
13 on your case?

14 A Yes, ma'am.

15 MS. BLANCHETTE: And, Your Honor, I apologize. I
16 don't think I continued to ask to have this admitted. I
17 move to have this admitted as Applicant's No. 2.

18 THE COURT: Granted.

19 (Whereupon, Plaintiff's Exhibit No. 2 was entered into
20 evidence.)

21 Q Now, from when he began representing you until the
22 time you went to trial, do you remember how many times you
23 met with Mr. Brooks?

24 A Yes, ma'am.

25 Q How many times was that?

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 15

1 A Three times.

2 Q And what happened during those three meetings?

3 A Those three meetings -- well, we met at the bond
4 hearings in court. And he really basically just discussed
5 with me -- well, he was, like, "Well, today we're going in
6 here to try to get you this bond, and I have everything
7 under control. Just work with me."

8 Q Okay. So he took you up how many times for a bond
9 hearing?

10 A Three times.

11 Q Okay. And your discussions about your case took place
12 during those bond hearings; is that correct?

13 A Yes, ma'am.

14 Q And were you all talking about case preparation and
15 defenses, or were you focusing on getting bond and getting
16 home?

17 A We was focusing on getting bond and getting home.

18 Q Now, at your last bond hearing, were you put on notice
19 that your court date would be coming up pretty soon?

20 A No. Not necessarily.

21 Q Okay. So were you expecting to be called to court
22 following that third bond hearing?

23 A I was expecting, but I was not notified, like, prior
24 that week.

25 Q Okay. So how did you find out you were going to court

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 16

1 for your trial?

2 A That morning, when I was sitting at the holding cell,
3 I was really expecting to go in and get a bond. But they
4 -- they pulled me out the holding cell and put me in the
5 other holding cell and dressed me out and said, "Are you
6 ready to go to trial?"

7 Q Did Mr. Brooks give you personal notice that you were
8 going to be going to court that Monday for your trial?

9 A No, ma'am.

10 Q Okay. When did you first interact with him at the
11 courthouse and him give you that information?

12 A That morning. He pulled me out the holding cell and
13 he sit down in another little room next to the holding
14 cell.

15 Q And what did he tell you at that time?

16 A Well, he was telling me that I should take a plea at
17 that time. And I was really, like, I don't see no need in
18 taking a plea right now because we were pushing for trial
19 the entire time.

20 Q Now, you said you were pushing for trial. But what
21 were you all doing to prepare for trial?

22 A Nothing, really.

23 Q Now, as far as discovery, did he go over the discovery
24 with you?

25 A No, ma'am.

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 17

1 Q And I'm going to hand you a copy of what's already
2 been marked as an exhibit. It is the beginning of your
3 trial for the preliminary-motion stage. And I direct your
4 attention to page 21, please.

5 A Yes, ma'am.

6 Q On page 21, beginning at line 10, Mr. Brooks says that
7 his first motion is basically an inventory motion to make
8 sure that he has gotten everything. He goes on to say: "I
9 feel confident that the state has complied with Rule 5, but
10 I want to make sure we have those issues out and we
11 understand we've got everything in the case."

12 Then he goes on to list items that he does have. And
13 then he indicates that as late as Friday afternoon, he had
14 gotten a statement from Mike and he yet needs to review the
15 video.

16 Now, Mr. Brooks represented you from 2010 until the
17 time that your trial takes place. Would you have thought
18 that he would already have reviewed those things and know
19 if he has -- has all the evidence in your case?

20 A I would think so.

21 Q Okay. And are you sitting next to him, getting ready
22 to go to trial, as he's making this motion?

23 A Yes, ma'am.

24 Q And what crossed your mind at that time?

25 A Like, what is really going on here? I'm, like,

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 18

1 there's no way that you do not know about these things.

2 Q And as part of this PCR -- I've already said it -- we
3 got the -- we got the files from SLED, the sheriff's
4 department, the solicitor's office, and from Mr. Brooks.
5 I've provided you a copy of each of those; is that correct?

6 A Yes, ma'am.

7 Q Okay. In the list that Mr. Brooks gives here, have I
8 provided you more information than what he lists that he
9 has?

10 A Yes, ma'am.

11 Q Okay. So at this point, now that you've actually seen
12 the files that are out there, were you even more concerned
13 about what he's saying he had, leading up to your trial?

14 A Yes. I was definitely concerned.

15 Q How did him stating what he had and didn't have, as
16 your trial's starting, factor into your decision to take a
17 guilty plea?

18 A Really, I was looking into it as in, like, all the
19 evidence that I see -- now seen that -- got a copy of his
20 file, copy of the sheriff's file, and all the other
21 information that I never seen and how was he was saying,
22 like -- basically, how was he saying he -- he's ready to go
23 trial all this time, up until this date we picked this
24 jury. Now he's telling me to take plea. How is he ready?
25 I don't . . .

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 19

1 Q So did you have serious concerns as to whether or not
2 your -- your attorney had reviewed your case, done an
3 independent investigation, and was prepared to actually
4 fight in your case, go forward with your case?

5 A Yes. I was having lots of concerns. I was actually
6 terrified, sitting in the courtroom, seeing he doesn't have
7 these things.

8 Q Now, I want to ask you about one of the items that you
9 reviewed from the files that we received.

10 MS. BLANCHETTE: And, Your Honor, I apologize. I
11 didn't ask before. Do you mind if I approach the witness?

12 THE COURT: You may approach the witness all afternoon

13 ---

14 MS. BLANCHETTE: Thank you, Your Honor.

15 THE COURT: --- without asking.

16 Q Mr. Johnson, I'm going to hand you what's been
17 premarked as Applicant's No. 3. Can you look over that and
18 identify what it is for the record, please?

19 A This is a voluntary statement written by Randy Lowery.

20 Q Okay. And what is the date on this statement?

21 A The date is 7/7/10. I think that's what it said.

22 Q I'm sorry. Can you speak up and repeat that. What's
23 the date on this?

24 A I think it's 7/7/10.

25 Q Okay. 7/7/10, is that what you stated?

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 20

1 A Yes, ma'am.

2 Q Okay. And what is the time next to that?

3 A 6:12.

4 Q Okay. And is this a document that you received from
5 me as part of the discovery that we received in this case
6 via court order?

7 A Yes, ma'am.

8 MS. BLANCHETTE: Your Honor, at this time I would move
9 this as Applicant's No. 3.

10 MS. KINARD: No objection.

11 THE COURT: It's admitted without objection.

12 (Whereupon, Plaintiff's Exhibit No. 3 was entered into
13 evidence.)

14 MS. BLANCHETTE: Thank you.

15 Q And you can hold onto that, Mr. Johnson. I'm going to
16 hand you what's been premarked as Applicant's No. 4. Can
17 you do the same thing and identify that for us for the
18 record?

19 A This is a voluntary statement written by Randy Lowery
20 also. And the date is 7/12/10; time is 3:35.

21 Q And is this a statement that you received as part of
22 the court-ordered discovery in this PCR case?

23 A Yes, ma'am.

24 Q Okay.

25 MS. BLANCHETTE: Your Honor, at this time I would move.

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 21

1 in the second statement of Randy Lowery, dated 7/12 of 2010
2 as Applicant's No. 4.

3 MS. KINARD: No objection.

4 THE COURT: Admitted without objection.

5 MS. BLANCHETTE: And, Your Honor, I do have additional
6 copies of all these if you would like any of those.

7 THE COURT: Okay.

8 (Whereupon, Plaintiff's Exhibit No. 4 was entered into
9 evidence.)

10 Q Now, Mr. Johnson, did you review these statements with
11 Mr. Brooks prior to the beginning of your trial?

12 A No, ma'am.

13 Q Have you reviewed them now?

14 A Yes, ma'am.

15 Q Okay. And for your reference let me hand you, unless
16 you have it with you, a copy of your arrest warrant. Do
17 you need a copy of your arrest warrants?

18 A I may have it.

19 Q Well, for the record, I will just hand you a copy of
20 the sentencing sheets, indictments, and arrest warrants
21 that I received from the state. And it contains your
22 arrest warrants on these charges.

23 A All right.

24 Q Mr. Johnson, in reviewing those statements, is there
25 something that you noticed as it relates to your arrest

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 22

1 warrant?

2 A Yes, ma'am.

3 Q And please explain that for us.

4 A Well, in the arrest warrant, it says: "A witness has
5 given law enforcement a statement, implicating the
6 defendant."

7 Q Okay. And who did you understand that witness to be?

8 A Mr. Randy Lowery.

9 Q But prior to the beginning of your trial and your
10 ultimate guilty plea, had Mr. Brooks gone over those
11 statements with you?

12 A No. I had never seen them at that time.

13 Q And now that you've reviewed those statements, what
14 were you able to discover or ascertain about the statements
15 that Mr. Lowery gave?

16 A I was able to discover that it -- the statement itself
17 does not implicate me. It does not state my name at all,
18 any description of me.

19 Q So what is it you're alleging today that you would've
20 wanted Mr. Brooks to do regarding that issue?

21 A I would -- I would want him to push for a dismissal or
22 something that -- it just -- I don't -- I don't know how to
23 describe it.

24 Q Okay. And the state had intended to call Randy
25 Lowery, was your understanding, at your trial; is that

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 23

1 correct?

2 A Yes, ma'am.

3 Q Did you and Mr. Brooks ever discuss how those
4 statements could've been used to impeach Mr. Lowery?

5 A No, ma'am.

6 Q Okay. And did you ever discuss him moving for a
7 dismissal at any time because the statements didn't state
8 your name and there being a conflict with the arrest
9 warrant in that regard?

10 A No, ma'am.

11 Q Now, did Mr. Brooks represent you in a preliminary
12 hearing?

13 A No. We actually didn't have a preliminary hearing.

14 Q Okay. And do you know why you didn't have a
15 preliminary hearing?

16 A Because he waived it without ---

17 Q Okay.

18 A --- my permission.

19 Q It -- I'm sorry. You said he waived it without what?

20 A Without my permission.

21 Q Okay. Would you have wanted a preliminary hearing?

22 A Yes, ma'am.

23 Q And would you have wanted him to raise this issue
24 regarding the statements in the arrest warrant at your
25 preliminary hearing?

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 24

1 A Yes, ma'am.

2 Q Now, let me -- we'll flip back here to page 21 for a
3 minute of the pretrial transcript. He makes reference
4 there that he had just gotten the statement from Mike. And
5 you have alleged in your amendment that he was ineffective
6 for failing to either obtain the statements of Higgins and
7 Gordon in time to prepare for trial and investigate the
8 statements or make a *Brady* motion regarding the state's
9 disclosure of statements.

10 From 21 through 24, this issue of these statements of
11 Mr. Higgins and Mr. Gordon just being turned over the
12 Friday before trial is discussed. He ultimately asks for a
13 continuance, because he says their information is blacked
14 out so he can't go find them, even though the judge kind of
15 indicates he can have some time that day to go find him.
16 But at any time, did he ever make any type of motion,
17 saying that the state had violated *Brady* in not giving him
18 these prior to?

19 A No, ma'am.

20 Q Okay. And specifically, that issue is addressed by
21 the solicitor. And he says: "Oh, there's no problem
22 here."

23 But did Mr. Brooks ever push it and say, "Yes, there
24 is. You know, I've been on this case for two years; I
25 should've reviewed these statements. You know, them

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 25

1 failing to turn these statements over, that's a *Brady*
2 violation"?

3 A Yes, it is.

4 Q Well -- I'm sorry. Did he ever bring that up to the
5 Court, Mr. Brooks?

6 A No. He never stated anything about a *Brady* violation.
7 (Whereupon, Ms. Blanchette and Ms. Kinard conferred.)

8 Q Let me show you what's been premarked as Applicant's
9 No. 5. And can you identify what that is for the record?

10 A Yes, ma'am. This is a voluntary statement by Brady
11 Higgins, dated 10/5/11, time 1:19.

12 Q Okay. And is this a document that you received from
13 me based upon the discovery that was court ordered in your
14 case?

15 A Yes, ma'am.

16 MS. BLANCHETTE: Your Honor, at this time I would move
17 this as Applicant's -- or this statement of Brady Higgins
18 as Applicant's No. 5.

19 MS. KINARD: Without objection.

20 THE COURT: Admitted without objection.

21 MS. BLANCHETTE: (To the court reporter) This one is
22 for the judge.

23 THE COURT REPORTER: Okay.

24 (Whereupon, Plaintiff's Exhibit No. 5 was entered into
25 evidence.)

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 26

1 Q And, Mr. Johnson, I'm going to hand you what's been
2 premarked as Applicant's No. 6.

3 A All right.

4 Q Could you identify what that is for the record,
5 please?

6 A This is a voluntary statement from Michael Gordon,
7 dated 10/5/11, time 1:28.

8 Q And is this statement a document that we received as
9 part of the court-ordered discovery in this case?

10 A Yes, ma'am.

11 MS. BLANCHETTE: Your Honor, at this time I would move
12 the statement of Michael Gordon in as Applicant's No. 6.

13 MS. KINARD: No objection.

14 THE COURT: Admitted without objection.

15 (Whereupon, Plaintiff's Exhibit No. 6 was entered into
16 evidence.)

17 Q Not to be redundant, Mr. Johnson, but you have
18 reviewed these statements as a result of the files that I
19 provided you from the discovery in this PCR case; is that
20 correct?

21 A Yes, ma'am.

22 Q Now, in the pretrial transcript, when you're sitting
23 there, doing motions, getting ready to start your trial,
24 Mr. Brooks is saying he had just gotten these statements on
25 Friday. Did you ever have the chance to go over with --

DIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 27

1 these with him prior to that?

2 A No, ma'am.

3 Q Okay. And you've already said these statements are
4 both dated 2011. Did he ever make an argument to the
5 Court, saying, "These statements are more than a -- you
6 know, they're a year old. There's -- they should've been
7 turned over to me by now. This is some type of violation
8 or misconduct"?

9 A I believe he stated something similar to it, but he
10 never pushed, like, an actual violation or anything.

11 Q He did ask for a continuance -- is that correct? --
12 because of the late timing of them being turned over?

13 A Yes, ma'am.

14 Q Okay. Are these statements something you would've
15 wanted to review with Mr. Brooks to prepare for your trial?

16 A Yes, ma'am.

17 Q Why is that?

18 A Because that way we can better prepare for it so we
19 would know exactly how we would go about maybe -- what was
20 the term before? -- like, impeaching them or something like
21 that.

22 Q Okay. And we carry the burden. And this is your one
23 day, so we got to be really specific here, okay? What
24 exactly would you have wanted him to do if he had gone over
25 these statements with you?

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1 A Actually go about investigating them and asking them
2 about and -- and researching the credibility of them.

3 Q Okay. And he indicates to the Court: "Hey, I don't
4 -- I don't have their addresses. I don't even know where
5 to find them." Would you have wanted him to go out and
6 speak to them and see if they intended to testify and what
7 they were going to testify to?

8 A Yes, ma'am.

9 Q Okay. And would you agree that in these statements
10 they're essentially saying -- and the state later says it
11 at your plea -- that these two are going to testify that
12 you essentially told them you had done these crimes?

13 A Uh-huh.

14 Q Yes or no?

15 A Repeat the question.

16 Q In reading these statements and then later at your
17 plea, the state actually says that they intend to call
18 these two to establish that you had kind of bragged to them
19 about doing these crimes.

20 A Yes. They -- they intended to call them.

21 Q Okay. So would it have been important for your
22 attorney to look into that before you proceeded to trial
23 and before you ultimately decided to enter a guilty plea?

24 A Yes, ma'am.

25 Q Why?

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1 A Because these are two witnesses that they're trying to
2 use as prime witnesses against me.

3 Q Okay. And were you surprised to hear that he had just
4 gotten these statements the Friday before and you've never
5 seen them?

6 A Yes. I was definitely surprised.

7 Q How did that factor into your decision to forego a
8 trial and enter a guilty plea?

9 A It was -- made me think, like, how are we ready for
10 trial and we have not seen any of this in use and just
11 recently received this?

12 Q Did it shake your confidence in Mr. Brooks'
13 preparation for your case and ability to represent you at
14 your trial?

15 A Yes, most definitely.

16 Q And just to make sure we're clear for the record, do
17 you have a copy of the record on appeal up there with you?
18 I'll just hand you one so that we don't ---

19 A Yeah. I got it. I got it.

20 Q If you could look at page 13 in the record on appeal.

21 A Thirteen. Yep. I'm there.

22 Q Okay. If you could look at line 10 -- and this is
23 during essentially the recitation of the facts of your
24 guilty plea. And there, does the solicitor go into the
25 fact that you were with Brady Higgins and Michael Gordon

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1 when they were looking for you and what Mr. Higgins and Mr.
2 Johnson had told them: that you had admitted doing some
3 bops recently?

4 A You said ---

5 Q I'm on page 13, beginning ---

6 A Okay.

7 Q --- at line 10 through about line 23. Do you want to
8 review that?

9 A No. I'm saying you -- you stated Mr. Higgins and Mr.
10 Johnson. Mr. Higgins and Mr. Gordon.

11 Q I'm sorry. What -- Mr. Higgins and Mr. Gordon. Here,
12 they state Mr. Higgins and Mr. Johnson ---

13 A Oh.

14 Q --- had told him ---

15 A I apologize.

16 Q --- that he had done some bops recently. First of
17 all, did your attorney correct them as far as the names
18 there?

19 A No.

20 Q Okay. Secondly, as part of the facts given at your
21 plea, the state saying that they have these two witnesses
22 that told law enforcement that you admitted essentially
23 doing these crimes to them, was that something that your
24 attorney had investigated and was prepared to refute as to
25 whether that was true or false?

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1 A No. He hadn't investigated that.

2 Q Okay. And as you already pointed out, he didn't even
3 correct that they didn't have the right names?

4 A Yes, ma'am.

5 MS. KINARD: Your Honor, I'd like to object to this.
6 That was a speculative answer. He does not necessarily
7 know what his attorney investigated.

8 THE COURT: He doesn't know what? I'm -- didn't
9 understand.

10 MS. KINARD: He doesn't necessarily know what his
11 attorney investigated.

12 MS. BLANCHETTE: I -- I thought my question was, was
13 it his perception. I can reask the question if you're --
14 if you're -- if you grant their ---

15 THE COURT: Well, that's ---

16 MS. BLANCHETTE: --- objection.

17 THE COURT: --- what I thought too. But -- but go
18 ahead and ---

19 MS. BLANCHETTE: Okay.

20 THE COURT: --- restate the question.

21 MS. KINARD: Thank you, Your Honor.

22 Q As the state is giving these facts during your guilty
23 plea about what a Mr. Higgins and Mr. Johnson are going to
24 say -- and your attorney has already said that he had just
25 gotten these statements -- were you aware of whether or not

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1 he had investigated and looked into that to make sure that
2 was factually correct?

3 A I was not aware that he investigated anything at all.

4 Q Okay. Now, we have also -- you have also alleged that
5 your attorney was ineffective for failing to have knowledge
6 of and/or review the SLED filings with you. When we
7 received Mr. Brooks' file, did we -- did you see any SLED
8 reports in that?

9 A No, ma'am.

10 Q Okay. And on page 21 that I've already referred to,
11 when he's listing off the things that he's received, does
12 he ever make any comment about the SLED findings? And
13 that's page 21, lines 10 through 22.

14 A Not right there, he doesn't state anything about any
15 SLED findings.

16 Q Okay.

17 (Whereupon, Ms. Blanchette and Ms. Kinard conferred.)

18 Q Mr. Johnson, I'm going to hand you what has been
19 premarked as Applicant's No. 7.

20 A All right.

21 Q Pursuant to the discovery order, we received a complete
22 -- complete copy of the SLED file and did I turn that over
23 to you?

24 A Yes, ma'am.

25 Q Okay. And did you review that entire file?

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1 A Yes, ma'am.

2 Q Okay. And in doing that, did you point out some
3 documents to me that you thought that you should've
4 reviewed with counsel or that you had concerns about?

5 A Yes.

6 Q Okay. And can you identify what I've just handed to
7 you?

8 A This is the South Carolina Enforcement Division of the
9 Forensic Service laboratory report.

10 Q Okay. And what is the date on this report?

11 A The date, January 7th, 2011.

12 Q Okay. And this document is actually stapled together,
13 and it's one, two, three, four, five, six, seven. Did you
14 receive all of these documents from me that I had received
15 from SLED pursuant to court order as the evidence
16 processing file from SLED?

17 A Yes, ma'am.

18 Q Okay. And you've reviewed all of theses?

19 A Yes, ma'am.

20 MS. BLANCHETTE: Your Honor, at this time I would move
21 in this seven-page document as Applicant's No. 7.

22 MS. KINARD: No objection.

23 THE COURT: Admitted without objection.

24 (Whereupon Applicant's Exhibit. No. 7 was entered into
25 evidence.)

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1 Q Now, Mr. Johnson, if you can just hold onto that for
2 one second, I'm going to actually reference you to the
3 transcript. When this discussion that we keep talking
4 about, about what Mr. Brooks has and doesn't have as your
5 trial is beginning, is occurring on pages 21 through 24.
6 If you could look at page 23, and specifically lines 14
7 through 20.

8 And the solicitor says: "Judge, in addition to that,
9 Your Honor, we'll review the file before this afternoon.
10 There was some other stuff submitted by SLED, which I gave
11 him. No testing was done, which I told him that. And
12 there may be some change sheets, which I don't think will
13 be an issue, since we have nothing to offer. But I'll make
14 sure he sees all of that."

15 Was it your perception at that point that your
16 attorney hadn't really been brought up to speed on what
17 SLED had and hadn't done in this case?

18 A Yes, ma'am.

19 Q Okay. And what was your thought process as a result
20 of the solicitor putting that on the record?

21 A That he didn't have any idea about anything that had
22 to do with the DNA analysis at -- at all.

23 Q Okay. Did Mr. Brooks ever go over the SLED file with
24 you leading up to that trial date?

25 A No, ma'am.

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1 Q Okay. And you have reviewed the SLED files; is that
2 correct?

3 A Yes, ma'am.

4 Q And in those seven pages we have admitted into the
5 record in this case, what would you have wanted your
6 attorney to review with you or why -- why is that a factor
7 in your case today?

8 A It's a factor in my case because it states in it that
9 they tried to analyze it but they couldn't. And seeing
10 that they couldn't, there was no way they could actually
11 physically put anyone at the scene of the crime.

12 Q So please tell me specifically what you're referring
13 to in that document, what you would've specifically wanted
14 to talk to Mr. Brooks about, just so we're really clear
15 here today.

16 A I would specifically want to talk to him -- I would
17 specifically want to talk to him about the -- the actual
18 attempt that was made where they said it's possible hair
19 fragments but no hair suitable for the DNA analysis.

20 Q So in there it says there's no hair suitable. Here,
21 the solicitor is saying there was no testing done. To you,
22 were those two different things?

23 A That is definitely two different things.

24 Q Is that something you would've wanted to go over with
25 Mr. Brooks prior to the call of your case -- prior to your

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1 trial?

2 A Yes, ma'am.

3 Q Okay. How would that have factored into your ultimate
4 decision to take the guilty plea in this case?

5 A It would've factored as in, like -- like I just said,
6 it -- there's no way that no one could be actually
7 physically put at the scene of the crime due to this DNA
8 supposedly they tried to analyze but ---

9 Q Okay. Is ---

10 A --- never came.

11 Q --- there anything else on that DNA issue that you'd
12 like to explain to the Court today?

13 A Not necessarily.

14 Q Okay.

15 A Not necessarily.

16 Q And let me get that document back from you so we get
17 it properly . . .

18 Mr. Johnson, you've also made an allegation that your
19 attorney was ineffective because he failed to address the
20 differing language in the indictments you were facing and
21 he failed to clarify that you were being charged as a
22 principal or under the theory of hand of one is the hand of
23 all. Did you all discuss whether you were being charged as
24 a principal or as simply -- or essentially an accomplice
25 under the "hand of one/hand of all" theory?

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1 A No, ma'am. We never discussed that.

2 Q Okay. Now, do you -- you have a copy of your arrest
3 warrants there in front of you. Is there differing
4 language in those indictments and what is it?

5 A Where is it at? This right here? Which indictment is
6 this? I can't find the actual indictment number, right.
7 But it's -- it's the indictment -- no. It's the indictment
8 -- the Count 1 indictment.

9 Q Yeah. You have the one-count indictment. And then,
10 you have the multicount indictment. I can hand them to you
11 if that would be easier to help you out. On the Count 1,
12 armed robbery indictment, what does it allege as far as you
13 and your codefendant? What's the language that they use
14 there?

15 A Language they use -- ". . . that the defendant,
16 Kareene Abdul Upchurch, along with Kadeem S. Johnson . . ."
17 That's -- that the language they use.

18 Q Okay. Who is Mr. Upchurch in this case?

19 A This would be my codefendant.

20 Q So here, they're alleging that the defendant, being
21 Kareene Abdul Upchurch, along with Kadeem Johnson ---

22 A Yes, ma'am.

23 Q --- is that correct?

24 Okay. And then, let me show you your multicount
25 indictment. And what is the language used in the

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1 multicount indictment, as far as the defendants?

2 A ". . . that Kadeem S. Johnson and Kareene Upchurch,
3 did . . . " Yeah. That's -- that's the language they
4 used.

5 Q Okay. And is that a difference to you, that language
6 used?

7 A Yes, ma'am.

8 Q Okay. You, along with your codefendant; and the other
9 one says that you and him did. Is that something that you
10 talked with Mr. Brooks about?

11 A No, ma'am.

12 Q Okay. And as part of the motions leading up to the
13 trial, if you could look at the pretrial transcript -- and
14 I'll give you a page cite. On pages 25 through 26, he
15 actually makes a motion asking them to elect what charges
16 they're going to go forward with at your trial. What did
17 that motion convey to you? What was your thoughts when he
18 was making that motion?

19 A The thoughts that came to my mind was how -- how do we
20 not know exactly what we're going up here for today? How
21 did you not know?

22 Q So you all didn't talk about the language in the
23 indictments. Did you all talk about what indictments the
24 state was going forward on?

25 A No, ma'am.

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1 Q Is that something you would've wanted to discuss with
2 him prior to the beginning of your trial?

3 A Yes.

4 Q Now, you've also alleged that he was ineffective for
5 failing to prepare to cross-examine and impeach the
6 testimony of your codefendant. Do you know if Mr. Brooks
7 ever attempted to speak to your codefendant or investigate
8 what he would potentially say at your trial?

9 A No. I have no knowledge that he even attempted to try
10 to talk to him at all.

11 Q And if you look at your guilty-plea transcript -- do
12 you have that in front of you? That would be the record on
13 appeal.

14 A Yes, ma'am.

15 Q Okay. And on page -- beginning at the bottom of page
16 4, line 24, he -- I'm sorry -- he's asked about his --
17 whether or not essentially he things that you'd be found
18 guilty. And his response is: "In light of the fact that
19 the facts have changed in this case, we've talked about it.
20 Yes, sir."

21 What did he tell you were the facts that had changed
22 in your case?

23 A The only facts that he told me that had changed was
24 that my codefendant is willing to testify against me. That
25 was it.

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1 Q And when did he advise you that your codefendant was
2 going to testify against you?

3 A On the day that we picked the jury.

4 Q So up until that time, had you all talked about if
5 your codefendant was going to testify?

6 A No, ma'am.

7 Q Had you talked about what your codefendant could
8 potentially testify about?

9 A No, ma'am.

10 Q Now, he began representing you in 2010. And you
11 didn't go to court until 2012; is that correct?

12 A Yes, ma'am.

13 Q Okay. And were you aware that he had filed a motion
14 for speedy trial in your case?

15 A Yes, I was aware.

16 Q Had you asked him to file a motion for speedy trial?

17 A Yes, ma'am.

18 Q Okay. And can you identify this document that I've
19 handed to you for the record?

20 A This is a motion for a speedy trial and motion for
21 release on personal recognition [sic].

22 Q Okay. And whose signature is on this -- or whose --
23 who has the signature block on this?

24 A Let's see. Charles Brooks.

25 MS. BLANCHETTE: Your Honor, at this time I would move

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1 this in as Applicant's No. 9.

2 MS. KINARD: No objection.

3 THE COURT: Without objection.

4 (Whereupon, Plaintiff's Exhibit No. 9 was entered into
5 evidence.)

6 Q From 2010 when Mr. Brooks started representing you
7 till 2012, you had asked him to file speedy-trial motion;
8 is that correct?

9 A Yes, ma'am.

10 Q And he eventually files this on January 9th of 2012,
11 it appears. Well, it was actually filed on January 11th of
12 2012?

13 A Yes, ma'am.

14 Q Would you have wanted him to file that motion prior to
15 January 2012?

16 A Yes, ma'am.

17 Q What was he telling you as far as the state's case?

18 A He was basically telling me I had nothing to worry
19 about and he has everything under control.

20 Q Okay. Well, what did he tell you about the evidence
21 they had against you?

22 A He never really went into any evidence.

23 Q Now, your case essentially drug on for two years. And
24 then, the day of your trial, he says all the facts changed,
25 which he advised you was that your -- or your codefendant

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1 was going to testify against you. Did you want to go to
2 trial at a sooner date?

3 A Yes, ma'am.

4 Q Okay. And who -- from your understanding of the case
5 and how everything played out, who ended up with the
6 advantage in the fact that it took so long to get to trial?

7 A The state had the advantage.

8 Q Okay. And just to go back, you've alleged that your
9 attorney was ineffective for failing to prepare to cross-
10 examine and impeach this testimony that you found out about
11 last minute of your codefendant. What is it that you
12 would've wanted him to impeach him on?

13 A I would want him to impeach him on the fact that in --
14 in my Rule 5, it -- it has a -- what is a criminal record
15 of my codefendant. And in that criminal record, it states
16 that he had a false-information charge.

17 Q And is this something you actually raised to Mr.
18 Brooks prior -- prior to the entry of your guilty plea?

19 A Yes, ma'am.

20 Q Okay. And let me show you what has been premarked as
21 Applicant's No. 8. Can you identify that?

22 A Yes. This would be his criminal record.

23 Q Okay. And is that what you were just referring to?

24 A Yes, ma'am.

25 Q Okay. And this is what you were trying to discuss

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1 with him about using his record to impeach him?

2 A Yes, ma'am.

3 Q Okay.

4 MS. BLANCHETTE: Your Honor, at this time I would move
5 the NCIC of Mr. Upchurch in as Applicant's -- sorry --
6 Number 8.

7 MS. KINARD: The state does not have an objection to
8 this document being entered into evidence. But I do have
9 an objection to the line of questioning.

10 THE COURT: All right.

11 MS. KINARD: Which would be that this is entirely
12 speculation. We do not know what Mr. Upchurch could or
13 would have testified to at trial. So therefore, we cannot
14 know what would've been used to impeach him.

15 MS. BLANCHETTE: Would you like me to respond, Your
16 Honor?

17 THE COURT: Well, I think she would be trying to
18 impeach his -- anything that he said.

19 MS. BLANCHETTE: Yes. And, Your Honor, I was trying
20 to go to what did he point out to his attorney, based upon
21 the information contained on this ---

22 THE COURT: Yeah. I'll ---

23 MS. BLANCHETTE: --- document.

24 THE COURT: --- overrule and admit it.

25 MS. KINARD: Thank you, Your Honor.

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1 THE COURT: You may continue your line of questioning.

2 MS. BLANCHETTE: Okay.

3 (Whereupon, Plaintiff's Exhibit No. 8 was entered into
4 evidence.)

5 Q And just to be clear, what were you trying to point
6 out to Mr. Brooks that you wanted him to look into and
7 potentially use as far as your codefendant was concerned?

8 A I wanted to -- him to use the fact that he had a
9 false-information charge so his credibility is, I would
10 say, invalid.

11 Q Okay. And did you discuss that that's something that
12 he could explore potentially at trial, or what was the
13 feedback that you got?

14 A He was just -- he really didn't respond to it, really.

15 Q Okay. And I'll take that exhibit back from you.

16 If you could look at your pretrial transcript on page
17 6, you've alleged that your attorney was ineffective,
18 pursuant to *State v. Daniel*, to object to the Court's
19 opening comments to the jury regarding a true and just
20 verdict. If you look at page 6, line 8 through 12 -- and
21 I'm sorry. There it actually says -- so it should be
22 properly that you were alleging that he failed to object to
23 the Court's comments about a fair and impartial trial for
24 all those who participate. Now, you're the defendant in
25 this case.

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1 Did your attorney object and say, "No, the burden is
2 on the state here; they need to be fair and impartial, not
3 for all the parties, but for the defense in this case"?
4 Did he make any type of burden-shifting -- or anything like
5 that -- objection to those comments?

6 A No, ma'am.

7 Q And you've reviewed *State v. Daniels*; is that correct?

8 A Yes, ma'am.

9 Q And would you have wanted your attorney to object to
10 this language that the jury -- where he said a jury -- so
11 -- I'm sorry -- " . . . so must a jury be strong is the
12 basis for a fair and impartial trial for those who
13 participate"? Would you have wanted him to object to that
14 language?

15 A Yes, ma'am.

16 Q Okay. Now, we've gone through the pretrial transcript
17 and how much notice you had leading up to the start of your
18 trial and these different motions that was entered and
19 different things like that. But as that is proceeding, at
20 some point does Mr. Brooks advise you to take a guilty
21 plea?

22 A Yes, he does.

23 Q And when and how did that occur in the -- in -- from
24 the start of your trial to when you took the guilty plea,
25 tell me how you got to the point of the guilty plea.

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1 A Well, he initially told me to take a guilty plea
2 before we even picked a jury. He was trying to initiate me
3 to take a guilty plea. And I told him that I didn't want
4 to take a guilty plea.

5 Q Why did you tell him you didn't want to take a guilty
6 plea?

7 A Because this entire time I've been sitting in the
8 county, waiting on trial, he was telling me that I had
9 nothing to worry about and he had everything under control.

10 Q And after the pretrial motions, he's given some time,
11 it appears from the record, to review some of the
12 additional discovery that he hasn't reviewed during the two
13 years he's representing you. Does he come to you at that
14 point and you have another discussion about taking a guilty
15 plea?

16 A Repeat the question.

17 Q Let me ask you this way: We have the pretrial
18 transcript from April 16th that concludes with you not
19 taking a guilty plea. The next day you pick up; you take a
20 guilty plea. How did you get to the point from the
21 conclusion of the first day, no guilty plea, to deciding to
22 take a guilty plea on the second day? What was discussed
23 with your attorney?

24 A Oh. The next -- the next morning prior to when I came
25 back, he was basically still pushing the issue that I

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1 should take a guilty plea. And yet he never said anything
2 about investigating any witnesses, what came about. He
3 just said it would be in my best interest to take a guilty
4 plea.

5 Q Did he ever tell you at any point that he had any type
6 of discussions with the state or the judge as to what type
7 of time you'd be facing if you did enter a guilty plea?

8 A Yes. He -- he told me the -- first, he -- he -- he
9 said they didn't want to negotiate with me. That's the
10 first thing he told me. Then he said that I would not get
11 the same amount of time that my codefendant got, because
12 that was a negotiated sentence, but I wouldn't get far from
13 it. He said it -- it may range -- maybe between 16/17, no
14 more maybe than 20 -- no more.

15 Q And I understand he told you your codefendant had
16 negotiated; you weren't negotiated on your time. But did
17 the amount of time that he told you was being talked about
18 factor into your decision to take a guilty plea?

19 When he said, "I think you're going to get," and then,
20 the amount of years you just said, and that's been
21 discussed, was that a factor in you deciding to take the
22 guilty plea?

23 A Yes, ma'am.

24 Q Okay. At any point during your guilty plea, did he
25 tell the Court, "And I've advised my client that I've

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1 gotten feedback from the Court or from the state that he
2 will be sentenced in this certain range," that he told you?

3 A No, ma'am. He never stated anything on the record
4 about that.

5 Q Okay. Is that something that you would've wanted him
6 to put on the record?

7 A Yes, ma'am.

8 Q And did you receive the amount of years that he told
9 you that you could anticipate receiving?

10 A No, ma'am. I actually received more.

11 Q Now, he did file a posttrial motion on your behalf; is
12 that correct?

13 A Yes, ma'am.

14 Q Okay. And I believe this may be part of the record on
15 appeal, but I'm going to hand you what has been premarked
16 as Applicant's No. 10. Can you identify that for the
17 record, please?

18 A This is a motion for reconsideration, dated April
19 27th, 2012.

20 Q Okay.

21 MS. BLANCHETTE: And, Your Honor, at this time I would
22 move this motion for reconsideration of sentence in as
23 Applicant's No. 10.

24 MS. KINARD: No objection.

25 THE COURT: Admitted without objection.

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1 (Whereupon, Plaintiff's Exhibit No. 10 was entered
2 into evidence.)

3 Q Mr. Johnson, can you review this for a minute for me?
4 Just read the contents of it.

5 A It says this motion ---

6 Q Oh. You don't have to review it in the record. Just
7 look over it yourself real quick ---

8 A Yes, ma'am.

9 Q --- and then I'll ask you a question.

10 A (Complied.)

11 Q Now, here does he argue that you received 25 years and
12 your codefendant received 25 years? Does that appear to be
13 the basis of his argument?

14 A Repeat the question.

15 Q In looking at this, does it appear that he's trying to
16 ask the judge to reconsider because you received 25 years
17 years and your codefendant got 15 years?

18 A Yes, ma'am.

19 Q That's the issue that appears to be raised to the
20 judge?

21 A (Nodded head up and down.)

22 Q Does he ever, either on the record or in this motion,
23 bring it to the Court's attention: "And we had a
24 discussion that I conveyed to my client that you were going
25 to sentence him to a certain amount of years and I advised

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1 him of that before he entered his guilty plea"? Does that
2 come up in this motion or at any point in your court
3 proceedings?

4 A Not at all.

5 Q Is that something you would've wanted him to bring up
6 in -- at court? We've already -- you've already suggested
7 that -- or in this posttrial motion.

8 A Yes, ma'am.

9 Q Okay. And are you alleging today that he was
10 ineffective for failing to do that?

11 A Yes, I am.

12 Q Mr. Johnson, we have spent quite a bit of time
13 together preparing for this case. And do you recall me
14 going over the state's -- or the cases of *United States v.*
15 *Cronic* and *Nance v. Ozmint* and those being the basis of
16 your Allegation No. 5 in your amendment?

17 A Yes, ma'am.

18 Q Okay. And by way of your amendment, it says (As
19 read): "Applicant alleges that counsel rendered
20 ineffective assistance in violation of the Sixth
21 Amendment's requirement that applicant have counsel acting
22 in the role of an advocate and in violation of the
23 adversarial process the Sixth Amendment protects when
24 counsel failed to subject the state's case to a meaningful,
25 adversarial testing."

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1 Now, that's some fancy lawyer language taken directly
2 from those cases. But what does that mean to you? What
3 are you saying that Mr. Brooks failed to do on your behalf?

4 A What am I saying? That he failed the fact that he
5 continued to tell me that everything was okay; I had
6 nothing to worry about; and throughout the -- throughout
7 the process, just all of a sudden, soon as we get into the
8 courtroom, he's telling me that, you know, I should take --
9 I should take a guilty plea. But prior to all that, he's
10 not investigating anything; he's not giving me any feedback
11 to anything. He's not answering any of these questions I'm
12 asking him.

13 He's just telling me it's okay; he has everything
14 under control. But I'm looking at it as in I'm asking you
15 about what's going on with the -- with this DNA. I haven't
16 heard anything about that. I'm asking you about all of
17 this. But it -- it's -- it's no particular feedback I get
18 out of it.

19 Q And he says essentially that he agrees with your
20 guilty plea because the facts of your case have changed.
21 But for you was the fact that changed that day that you
22 discovered that your attorney was not prepared?

23 A That was the fact that changed for me.

24 Q And what ultimately led to your decision to enter your
25 guilty plea?

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1 A What led to my decision was the fact that he was not
2 prepared. But throughout this -- throughout these two
3 years, he was telling me that we're ready to go.

4 Q Would you have been willing to go forward with your
5 trial if it had appeared to you that your attorney was
6 prepared to properly represent you at that trial?

7 A Yes, ma'am.

8 Q And are you alleging today that as a result of either
9 a complete breakdown of the adversarial process or
10 ineffective assistance, whatever word you want to use
11 there, that your guilty plea was actually involuntary in
12 this case as a result of Mr. Brooks's actions in this case?

13 A Yes, ma'am.

14 Q Mr. Johnson, I know that you have your one day in
15 court. We have prepared. We've gone over your amendment.
16 We've gone over all the discovery.

17 Since this is your one day, I just want to ask you:
18 Is there anything that I have failed to ask you about that
19 you would like to explain to the Court in support of your
20 allegations or anything further that you would like to
21 testify to today? And you can take a moment.

22 A I'm not -- I'm not quite sure about this right here,
23 that in my plea transcript ---

24 Q Please go ahead.

25 A In the plea transcript, on page 15, even coincide to

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1 the -- the factual basis of the plea, what -- what was
2 talked about between ---

3 Q And where are you at in the transcript? You said page
4 15, but ---

5 A Page 15.

6 Q --- are you looking at certain lines?

7 A Yes, I'm looking at certain lines. And ---

8 THE COURT: Is this the record on appeal?

9 Q You're -- you're in the record on appeal?

10 A Yeah. Yes, ma'am.

11 Q Okay. Page 15, and what lines? I'm sorry. I didn't
12 hear you.

13 A It was -- I would say it was lines 3 through 9.

14 Q Okay.

15 A In reference to that he -- he didn't even -- I -- from
16 what I see, he wasn't really even paying attention to what
17 was going on.

18 Q And explain why that's conveyed to you from reading
19 this portion of your transcript.

20 A Because of the factual basis that the solicitor was
21 stating. He -- what -- what was said between these --
22 these lines, 3 through 9, the factual basis was that it was
23 an attempt and it was no correction in the actual
24 questioning of me when they was saying that it was
25 allegedly an armed robbery right there.

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1 Q So on line 7 the Court says: "After you committed
2 armed robbery, you shot the man." Do you take issue with
3 that statement?

4 A Yes, I do.

5 Q And what is the issue?

6 A The issue is that the factual basis states attempted.
7 And the judge initially asked me about an alleged armed
8 robbery, not an attempted armed robbery.

9 Q Okay. But you say: "Yes, sir." Did you catch that
10 at the time?

11 A No, I didn't.

12 Q Okay. Did your attorney catch it at the time?

13 A No.

14 Q Okay. And so you're saying that's something that he
15 should've been paying attention to as well?

16 A Yeah. That -- that -- that -- when I look at it now,
17 it -- it tells me that he really wasn't paying attention to
18 the proceeding. He was just going with the flow.

19 Q Okay. And that's your perception in reviewing this;
20 is that correct?

21 A Yes, ma'am.

22 Q Okay.

23 MS. BLANCHETTE: Your Honor, if I could beg the
24 Court's indulgence just one moment.

25 THE COURT: Certainly.

CROSS-EXAMINATION BY MS. KINARD - KADEEM JOHNSON 55

1 Q Mr. Johnson, did you have anything further to add?

2 A Not that I can think of at the moment.

3 MS. BLANCHETTE: Your Honor, I have no further
4 questions of this witness.

5 THE COURT: All right. Cross-examination?

6 MS. KINARD: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. KINARD:

9 Q Good afternoon, Mr. Johnson. I'm going to start with
10 a basic question. It's did you plead guilty to all of
11 these crimes?

12 A Yes, I pled guilty.

13 Q Okay. What made you decide to plead?

14 A The fact that my lawyer basically told me that it
15 would be in my best interest to plead guilty.

16 Q And you trusted his advice?

17 A Yes, I did.

18 Q Okay. When did you make the decision to plead?

19 A On this -- not the day I picked a jury, but the day
20 after.

21 Q Okay. Because you testified on direct -- I believe
22 you testified it was the day the jury was picked. You --
23 you're stating now it was the day after?

24 A Yes, I'm stating that.

25 Q So in terms of days of the week, I believe the

1 pretrial transcript we've been looking at was on a Monday.

2 Does ---

3 A Yes.

4 Q --- that sound right?

5 A Yes, ma'am.

6 Q And the trial was set to begin on Tuesday, but that's
7 when you entered your plea?

8 A Yes, ma'am.

9 Q So you're saying Tuesday morning, before you entered
10 your plea, that's when your decision was made?

11 A Yes, ma'am.

12 Q Thank you. Who is Mike?

13 A Mike?

14 Q We're talking about the video that was not received by
15 Mr. Brooks that included something about Mike. Who was he?

16 A Repeat that question.

17 Q Who was Mike? Do you remember ---

18 A Mike?

19 Q --- the question?

20 A Michael ---

21 Q Uh-huh.

22 A --- Gordon?

23 Q I don't know. When Ms. Blanchette was questioning you
24 about the motion for an inventory of the evidence that Mr.
25 Brooks had received ---

CROSS-EXAMINATION BY MS. KINARD - KADEEM JOHNSON

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- 1 A Yes. That's ---
- 2 Q --- and there was discussion about a video that he
- 3 needed to watch.
- 4 A Mike is Michael Gordon, I would believe. And the
- 5 video ---
- 6 Q Okay.
- 7 A --- I have never seen the video.
- 8 Q Okay. Would Mr. Brooks have known to talk to Mr.
- 9 Gordon?
- 10 A Not to my knowledge.
- 11 Q So you never asked him to interview Mr. Gordon?
- 12 A That day at trial -- he -- he said he was going to.
- 13 But nothing ever came ---
- 14 Q You asked ---
- 15 A --- of that.
- 16 Q --- Mr. Brooks to interview Mr. Gordon ---
- 17 A Not ---
- 18 Q --- prior to trial?
- 19 A No. I didn't ask him. He ---
- 20 Q Okay.
- 21 A --- told me initially that he was going to.
- 22 Q When?
- 23 A That day.
- 24 Q That day?
- 25 A That Monday.

1 Q Okay. After he received the discovery.

2 A Yes.

3 Q Does the same thing stand for Mr. Higgins?

4 A Yes.

5 Q Okay.

6 A Because the -- the two statements came right at the --
7 simultaneously.

8 Q So Mr. Brooks had no way of knowing about those
9 statements before that Monday?

10 A Not to my knowledge.

11 Q You never asked him to interview those individuals?

12 A I hadn't found out about that till that Monday.

13 Q Okay. How did those two statements of Mr. Gordon and
14 Mr. Higgins change your mind?

15 A How did it change my mind?

16 Q Uh-huh. About how to proceed with your case?

17 A You mean as in my plea or as in going to trial?

18 Q You stated earlier they changed your mind.

19 A Yes. They changed my mind as ---

20 Q Yes, sir.

21 A --- in -- how would I elaborate this? It changed my
22 mind as in the fact that I never -- at that time I haven't
23 -- I haven't seen the statements. And seeing that me and
24 my lawyer haven't reviewed them to see how we would go
25 about challenging it, that's how it changed my mind.

CROSS-EXAMINATION BY MS. KINARD - KADEEM JOHNSON 59

1 Q Okay. Do you recall -- strike that. I believe Ms.
2 Blanchette asked -- or you testified regarding the record
3 stating that Mr. Brooks did raise a motion for a
4 continuance regarding this recently provided evidence; is
5 that correct?

6 A Repeat the question.

7 Q Did Mr. Brooks raise a motion to continue the case
8 based on the recent receipt of this evidence?

9 A I believe so.

10 Q Okay. After that, when that was denied, do you recall
11 Mr. Brooks making any further motions regarding this
12 discovery?

13 A He did say about he was trying to get the full
14 inventory, I think he said.

15 Q I'm sorry. I can't hear you.

16 A He said something about he -- he filed the inventory
17 motion.

18 Q Well, after ---

19 A Trying to ---

20 Q --- that -- regarding these witness statements in
21 particular, do you remember anything about a motion to
22 suppress?

23 A I believe -- I believe so. I'm not -- I'm . . .

24 Q Okay.

25 MS. KINARD: May I approach the witness, Your Honor?

CROSS-EXAMINATION BY MS. KINARD - KADEEM JOHNSON 60

1 THE COURT: You may.

2 MS. KINARD: Thank you.

3 Q I'm going to show you the record on appeal, which
4 you've been referring to with Ms. Blanchette.

5 A Yes, ma'am.

6 Q Page 24, line 12 -- beginning at line 12 (As read):
7 "Obviously, my first position is that issue be suppressed
8 in its entirety and the witnesses not be allowed to
9 testify." And then, he goes on to discuss -- and correct
10 me if I'm wrong -- that he has not had a chance to speak to
11 these men.

12 A Yes.

13 Q Is that correct?

14 A Yes, ma'am.

15 Q And then, what -- what does the Court rule on lines 19
16 and 20?

17 A That the motion was denied.

18 Q Motion was denied. So that's both the motion to
19 suppress, as well as the motion for continuance?

20 A (Nodded head up and down.)

21 Q So would you agree that Mr. Brooks took two different
22 actions to try and keep those statements from having any
23 effect on you at your trial?

24 A Yes. He attempted.

25 Q Let's move onto the SLED findings that were discussed.

CROSS-EXAMINATION BY MS. KINARD - KADEEM JOHNSON 61

1 You stated that the report showed that no testing was done?

2 A Yes. That's what the report says.

3 Q Is that what the report said, or is that what the
4 transcript said?

5 A That's what the report says.

6 Q Okay. Regardless, there was no material evidence that
7 was produced from the SLED report; is that correct?

8 A Yes, ma'am.

9 Q At trial would that be in your favor?

10 A I believe it could be in my favor because there's no
11 way you can actually physically put anyone on the actual
12 scene of the crime.

13 Q Thank you. Let's go on to the indictments. Now,
14 there were three indictments, meaning three separate pieces
15 of paper with charges on them in this case; is that
16 correct?

17 A Repeat the question. I'm ---

18 Q Were there three separate indictments in this case?

19 A Yes, ma'am.

20 Q One had three charges, one had two charges, and one
21 had one charge; is that correct?

22 A Yes, ma'am.

23 Q Okay. The indictment that Ms. Blanchette asked you
24 read had stated -- and I'm paraphrasing -- Mr. Upchurch
25 along with Mr. Johnson. That was only on the one, one-

1 count indictment; is that correct?

2 A Yes. That's was on the one-count.

3 Q So all the rest said Upchurch and Johnson, as if you
4 acted together in concert?

5 A No, ma'am.

6 Q Do you have those?

7 A Yes, I have them, I believe.

8 Q I can certainly hand them to you again to look at.

9 MS. KINARD: If I may approach again, Your Honor?

10 THE COURT: Certainly.

11 Q Just for clarity, this is the -- the one-count
12 indictment for armed robbery that say Upchurch, along with
13 Kadeem Johnson.

14 A Yes, ma'am.

15 Q And then, if we look at the three-count indictment,
16 for attempted murder, attempted armed robbery, and
17 possession of a weapon, that says Johnson and Upchurch --
18 capitals and Upchurch and Johnson and Upchurch, correct?

19 A Yes. But that -- the second count says Kadeem Johnson
20 and Kadeem Upchurch also.

21 Q That does. Would you say that's a scrivener's error
22 or a fatal error?

23 A I don't know what either one of those words mean.

24 Q Okay. Fair question. And then, the second -- or
25 excuse me -- the final indictment with the two counts,

CROSS-EXAMINATION BY MS. KINARD - KADEEM JOHNSON

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1 Kadeem Johnson and Kareene Upchurch -- Kadeem Johnson and
2 Kareene Upchurch. So all of them except for that very
3 first one read the same, except for that one error,
4 correct?

5 A Uh-huh. Yeah.

6 Q Okay.

7 A Somewhat.

8 Q And regardless of any of those errors, did you know
9 why you were in court that day? Meaning do you know what
10 you had been charged with?

11 A Which day?

12 Q When you were -- the -- that Monday and Tuesday.

13 A Yes. When I was dressed in dress clothes, I found out
14 what I was in there for.

15 Q Let me clarify. You knew you had these six charges
16 pending against you?

17 A Yes.

18 Q Okay.

19 A No, no, no. Except I didn't know anything about the
20 -- what is it? -- the possession of a weapon. That --
21 those were just brought to my attention that day.

22 Q Okay.

23 A Those possession -- those counts.

24 Q So you're stating you hadn't seen your indictments
25 before that day?

- 1 A No.
- 2 Q Okay.
- 3 A I actually received my indictments after the
- 4 sentencing.
- 5 Q Okay. Did you sign the sentencing sheets?
- 6 A Yes, ma'am.
- 7 Q You did?
- 8 A (Nodded head up and down.)
- 9 Q When did you sign those?
- 10 A I signed those that Tuesday.
- 11 Q After you entered your plea?
- 12 A No. Before. He -- he ---
- 13 Q Before?
- 14 A --- told me to sign before we go in.
- 15 Q Okay. Did you read them?
- 16 A Yeah.
- 17 Q Okay. So you knew what you were pleading to?
- 18 A Yeah.
- 19 Q Okay. When you talked to Mr. Brooks about the
- 20 potential length of your sentence, I believe you used the
- 21 numbers 16 and 17 and no more; is that correct?
- 22 A And no more than 20.
- 23 Q No more than 20?
- 24 A That's ---
- 25 Q Okay.

CROSS-EXAMINATION BY MS. KINARD - KADEEM JOHNSON

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1 A --- what I said.

2 Q That's what he said? He -- he used the words "no more
3 than 20"?

4 A Yeah.

5 Q Okay. When you went to plea, when you actually stood
6 up before the judge, did you ever try to stop the plea?

7 A I was actually shocked of the outcome. I was just ---

8 Q Because of the outcome?

9 A Yes. I was actually just -- just hearing everything
10 and just -- I -- I don't know how to describe it. I was
11 really emotional, really.

12 Q Did you understand everything that was said?

13 A I understood it. But I was just emotional, just -- it
14 was a very emotional state for me that day.

15 Q That's fair. Did you tell the judge that you were
16 indeed guilty?

17 A I said that.

18 Q Did you tell the judge that you did shoot those people
19 -- or excuse me -- that person?

20 A I said that.

21 Q Was -- were your wits about you, so to speak, when you
22 were testifying in court that day?

23 A Not necessarily. Because he didn't -- I'm going to --
24 I'm going to go back to what I -- what was just elaborating
25 on when it was the differentiating between the factual

1 basis when he -- on the fact -- when you asked me about the
2 shot just now? You go back to that -- what is it?

3 Q You can go ahead. But I was trying to ask is ---

4 A Oh.

5 Q --- kind of what the judge asked you. Were you on any
6 medications that day?

7 A No.

8 Q Were you drunk?

9 A No.

10 Q Had you been using any street drugs?

11 A No.

12 Q Were you under any neurological conditions or stress
13 that would prevent you from knowing what you were doing
14 that day?

15 A What is neurological?

16 Q Was there anything wrong with your brain that would've
17 kept you from knowing what you were doing that day?

18 A Not to my knowledge.

19 Q Okay. So you knew what you were doing and you
20 realized what you were saying?

21 A Yes.

22 Q Okay. Do you recall the solicitor stating that Mr.
23 Upchurch was prepared to testify against you at trial?

24 A Yes, I recall that.

25 Q I'm sorry?

CROSS-EXAMINATION BY MS. KINARD - KADEEM JOHNSON

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1 A I said yes, I ---

2 Q You recall that?

3 A --- recall that.

4 Q Thank you. Did you apologize for committing these
5 crimes?

6 A Yes, I did.

7 Q So basically, all of the issues that Ms. Blanchette
8 discussed and that you have testified to, you knew about at
9 the time of the plea?

10 A Repeat the question.

11 Q All of these issues that we've raised, whether it's
12 failure to investigate, failure to prepare, any of those,
13 you knew about all of these when you entered your guilty
14 pleas?

15 A I mean, I would say I knew about them, but I didn't
16 know what we would come about during the investigation.
17 Because I never seen any of the statements. Even in the
18 Rule 5, it does not state -- if you -- if you see my Rule 5
19 discovery, it states statements not available.

20 Q I'm -- I'm having trouble seeing how that's relevant,
21 because you knew that there were statements. You knew that
22 all these things had come about, but you still pled guilty
23 that day; is that correct?

24 A Yeah. But we didn't discuss the statements. We
25 didn't go over them. We didn't -- he didn't investigate

REDIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 68

1 them.

2 Q You knew they existed?

3 A Yes, I knew they existed.

4 Q Okay. That was my question. Okay.

5 MS. KINARD: That's all I have at this time, Your
6 Honor. Thank you.

7 THE COURT: Redirect?

8 MS. BLANCHETTE: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q Now, the state's asking you about what you knew and
12 what you were aware of when you entered your guilty plea
13 and essentially asked the question that you knew about all
14 the problems that we have raised today, but you chose to
15 enter a guilty plea. Did you also know and realize at that
16 point that your attorney was not prepared to go forward
17 with the trial and was advising you to take a guilty plea?

18 A Yes.

19 Q And did you take your guilty plea as a result of what
20 you evidenced to be a lack of preparation and his advice to
21 take a guilty plea?

22 A Yes, ma'am.

23 Q Did he advise you to apologize during the guilty plea?

24 A Yes, he did.

25 Q Okay. And the state was asking you about the fact

REDIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 69

1 that you -- and in response you testified that you signed
2 the sentencing sheets prior to the entry of your guilty
3 plea. But on the sentencing sheets, did it give you the
4 facts and the basis for what the charge was or is in that
5 in the indictments?

6 A That's in the indictments.

7 Q And did Mr. Brooks go over the indictments with you?

8 A No, ma'am.

9 Q And as your trial's starting, he was even making a
10 motion, asking that the state have to say which indictments
11 they were going forward on; is that correct?

12 A Yes, ma'am.

13 Q Okay. Now, the state asked you some questions about
14 these statements of Michael Gordon and Brady Higgins. And
15 I just want to kind of look at that issue as a whole, just
16 so nothing's taken out of context. If you could look on
17 page 22, because the discussion begins on 21, where I think
18 they just say the word "Mike." But then, on 22 Mr. Meadors
19 begins explaining about these two statements. And he says
20 on line 11 (as read): "As far as the two statements last
21 Friday, they came into my possession then, and I turned
22 them over as quickly as I could."

23 I'm going to stop there and ask you this question: On
24 Friday did Mr. Brooks make you aware of, as he says later,
25 that he got these statements at 4:30 or five o'clock on

REDIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 70

1 Friday? He says that on page 23.

2 Does he let you know, after he gets these statements
3 at 4:30 or five o'clock on Friday before you're going to
4 trial on Monday, that these statements are in his
5 possession and does he review them with you?

6 A Not at all.

7 Q Now, the solicitor is questioned then by the Court,
8 going back to page 22, line 14: "Did the police hold them
9 back?"

10 And the solicitor responds: "It was nothing
11 intentional, Judge."

12 Mr. Brooks says: "That's going to be my next motion."

13 But if we continue reading, he only makes a motion on
14 lack of notice. He never says there's a *Brady* violation or
15 the state intentionally held these back and it has
16 prejudiced our case. Does he ever make that argument?

17 A Not at all.

18 Q The only person who comments about whether or not
19 these statements were intentionally held for one year is
20 Mr. Meadors on line 15 on page 22; is that correct?

21 A Yes, ma'am.

22 Q Is that something you would've wanted your attorney to
23 address, not just allow Mr. Meadors to offer one sentence
24 to the Court and move on?

25 A Yes. I would ---

REDIRECT EXAMINATION BY MS. BLANCHETTE - KADEEM JOHNSON 71

1 Q Okay.

2 A --- definitely want him to address that.

3 MS. BLANCHETTE: Your Honor, if I could beg the
4 Court's indulgence for just one moment.

5 THE COURT: Certainly.

6 Q And the state asked you some questions about your
7 attorney investigating these statements. Did you tell him
8 that you wanted him to talk to these two witnesses? Did
9 you know about these statements before you were being
10 called to trial on that day?

11 A No. I actually found out about them that day.

12 Q So did you have the ability to ask him to go
13 investigate these two and find out what they intended to
14 testify to at trial before you were being told about them
15 in your pretrial proceedings?

16 A No, I didn't have the ability.

17 Q If you would have known about them, would you have
18 wanted him to investigate those sooner?

19 A Yes.

20 Q Okay.

21 MS. BLANCHETTE: Your Honor, I have no further
22 questions.

23 THE COURT: Recross?

24 MS. KINARD: Very briefly, Your Honor.

25

1 RE CROSS EXAMINATION

2 BY MS. KINARD:

3 Q To follow up on that immediate point, Mr. Brooks could
4 not have investigated them previously because you did not
5 know about these witnesses?

6 A No. I didn't know about them.

7 Q So therefore, up until that Monday, he had
8 investigated everything that he had in his possession?

9 MS. BLANCHETTE: Your Honor, that calls for
10 speculation. I don't think he can answer ---

11 MS. KINARD: I'm happy ---

12 MS. BLANCHETTE: --- that question.

13 MS. KINARD: --- to rephrase.

14 THE COURT: I'm sorry?

15 MS. BLANCHETTE: Okay.

16 MS. KINARD: I'll rephrase.

17 THE COURT: All right.

18 Q To your knowledge, up until that Monday, had Mr.
19 Brooks investigated all of the information he had in his
20 possession?

21 A Not necessarily. Because if you read through the
22 police reports, it stated that Randy Lowery wrote a
23 statement, but we never had the statement. So there's no
24 way he could've actually investigated everything.

25 Q Okay. Regarding the -- those two witnesses, however,

RECROSS EXAMINATION BY MS. KINARD - KADEEM JOHNSON 73

1 had he investigated everything he knew about those
2 witnesses, to your knowledge? Which I realize is a
3 convoluted question.

4 A Yeah. I -- I ---

5 Q He didn't ---

6 A --- I ---

7 Q --- know about those witnesses, so therefore, he could
8 not have investigated them; is that correct?

9 A He -- well, you know, like he said in the -- in the
10 transcript, he knew about it Friday.

11 Q Could he have contacted you over the weekend?

12 A Yeah.

13 Q Okay. And because Ms. Blanchette brought it up, you
14 took this plea -- different reasons for taking this plea.
15 She alleges and you allege that you took this plea because
16 you thought your attorney was not prepared.

17 A Yes.

18 Q Did you take this plea to avoid the possibility of a
19 longer sentence?

20 A I wouldn't necessarily say that because I was just
21 looking at the fact that if we were to go in there, him not
22 being prepared, it -- that's -- that's pretty much what
23 would've happened. Yeah.

24 Q Do you recall how much time you were facing?

25 A All together, 120 years.

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1 Q And you ended up receiving how much?

2 A Twenty-five.

3 MS. KINARD: No further questions, Your Honor.

4 MS. BLANCHETTE: Nothing further, Your Honor. Thank
5 you.

6 THE COURT: Thank you, sir. You may step down.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness exited the witness stand.)

9 THE COURT REPORTER: Your Honor, we have -- I'm sorry.
10 We have some exhibits that are unaccounted for. Can we
11 take a moment to get them together?

12 THE COURT: All right.

13 (Off the record briefly.)

14 THE COURT: All right.

15 MS. BLANCHETTE: Your Honor, I would call Attorney
16 Charles Brooks to the stand.

17 THE COURT: Mr. Brooks.

18 (Whereupon, the witness came forward.)

19 CHARLES BROOKS, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BLANCHETTE:

23 Q Mr. Brooks, we are familiar with each other. We're
24 both usually handling PCRs in circuits together. What do
25 you prefer that I call you on the record today?

DIRECT EXAMINATION BY MS. BLANCHETTE - CHARLES BROOKS 75

1 A Whatever you want to do, that's -- doesn't matter to
2 me.

3 Q Okay. I'm going to hand you -- you have a copy of the
4 pretrial transcript that we've been referring to, just so
5 you have that for your reference.

6 A Okay.

7 Q Do you also need a copy of the plea transcript?

8 A Nope.

9 Q Okay. Mr. Brooks, I have introduced a letter that you
10 wrote to Investigator Tripp Mays, I believe it was, in July
11 of 2010, putting him on notice that you were representing
12 Mr. Johnson. Do you recall specifically when you began
13 representing Mr. Johnson?

14 A No, not really. But I guess it would've been
15 somewhere around this time, since I sent this letter.

16 Q Okay. Do you recall if you were retained in time to
17 request a preliminary hearing in this case?

18 A I -- I don't know.

19 Q Okay. And we -- and I gave you that pretrial
20 transcript. And it referenced, starting on page 21, quite
21 frequently where you asked to do an inventory of what you'd
22 received. And you start discussing things that were just
23 turned over that Friday afternoon: a video that you still
24 need to watch.

25 A Correct.

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1 Q What was the issue going on with the discovery in this
2 case?

3 A If I recall correctly, Kadeem had been sitting jail
4 for a considerable period of time. And there wasn't much
5 evidence against him. He had a codefendant. And I think
6 we had come up for several motions to try to either get a
7 bond hearing or speedy-trial motion.

8 But I do recall the state being under a bit of
9 pressure to dispose of his case in some manner. Otherwise,
10 he was going to get out of jail. And I think there was a
11 sentiment with law enforcement that they didn't want him to
12 get out of jail. .

13 So also, you have to place this in the context that
14 when he was originally arrested, you had one regime in the
15 -- in -- in terms of being the solicitor. And then, of
16 course, when we disposed of the case, you had an entirely
17 new regime. And I think, from -- from what I know as far
18 as the transition with the solicitor's office, I think
19 there might've been some issue about whether or not they
20 had gotten files from the old regime to the new regime.

21 But at any rate, John Meadors had -- who been a
22 longtime prosecutor in Richland County, he had ended up, I
23 guess, being hired by Mr. Finney to come in and do some
24 prosecutions here. And I think he was trying to put the
25 file together, so to speak, from the solicitor's

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1 standpoint, knowing that they were under some pressure.
2 Because if they didn't try his case -- Kadeem's case,
3 Kadeem was going to get out of jail.

4 So he was kind of sending these things and saying,
5 "Charles, this is what I got. I'm sending it to you. I'm
6 sending it to you when I got it."

7 And in all honesty, they still did not have much
8 evidence against Kadeem in Kadeem's case. I hope that
9 answers your question.

10 Q Now, you filed a speedy-trial motion in January of
11 2012. What was your reasoning in filing that motion? Was
12 it similar to what you were just explaining?

13 A As I was explaining, he was sitting in jail for, I
14 guess -- from looking at my letter, he would've been in
15 jail for roughly 18 months.

16 Q Uh-huh.

17 A And there wasn't any movement on his case. Like,
18 there wasn't any talk of, you know, hey -- the -- as
19 solicitors would talk to lawyers -- hey, we'll offer your
20 guy this if he do this. It was never any discussion about
21 a plea, never any discussion. The -- that only came about
22 after the judge had ordered him to be tried; otherwise, he
23 was going to get out.

24 Now they were under a little pressure. Keep in mind
25 that now you had an -- a -- a -- a -- I know there was some

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1 transition, even though this was a -- a -- a year after Mr.
2 Finney had taken over. You know, he had brought John
3 Meadors in. And I guess they were trying to -- they were
4 trying to do everything they could to get their case ready
5 for trial to dispose of it so that Kadeem would not just
6 walk out of jail.

7 Q Now, when you filed that speedy-trial motion, did you
8 feel confident that you had all the discovery? I guess my
9 question is why is it coming up on -- at the trial date?
10 Why didn't you raise that pretrial?

11 A Well, because I -- they didn't have -- they didn't
12 have much of a case on Kadeem.

13 Q How did you know that if you didn't have all the
14 discovery?

15 A Well, from everything that I had -- and even all the
16 stuff that he sent me on that Friday -- he still didn't
17 have much of a case on Kadeem.

18 Q So let's talk about that Friday and kind of this Brady
19 Higgins/Michael Gordon issue. And I can hand you the
20 statements that have already been introduced.

21 A Okay.

22 Q Now, you put in the record you get them at 4:30 or
23 five o'clock that Friday before.

24 A That's correct.

25 Q Did you then reach out to Kadeem and say, "Hey, we

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1 have a problem. We need to discuss some new evidence I'm
2 getting"? What kind of occurred after you get these
3 statements?

4 A I didn't see it as a problem. I didn't see these
5 statements as much of anything, other than some -- I'm --
6 I'm -- since I'm on the record, I better use some correct
7 terminology there. I -- I saw these statements as kind of
8 frivolous at best, as far as this -- the strength of the
9 case against Kadeem as ---

10 Q In making ---

11 A --- far as a ---

12 Q I'm sorry. Go ahead.

13 A As far as a trial attorney, this didn't faze me, as
14 far as the case against him. You've got somebody who said,
15 "Me and my friend Mike just got off work, so we wanted some
16 weed. We went to Kadeem's house to buy some weed; heard
17 him talking about a lick."

18 I mean, come on. That's -- you know, you're not going
19 to -- he's not going to get convicted over that. I mean, I
20 -- that -- that didn't trouble me, okay ---

21 Q Okay.

22 A --- based on everything I had at that point and all of
23 a sudden I got this statement. And I agree. Yes. The
24 solicitor should've sent it to me long before then. And
25 that's -- I -- I think I started talking about that on

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1 Monday. But in the grand scheme of things, this wasn't --
2 this was -- this was not much of anything that was going to
3 convict this guy.

4 Some -- I don't even know if they even had these guys,
5 okay? And these guys -- normally, having tried as many
6 cases as I have, you get some statements from somebody
7 named Brady Higgins, somebody named Michael who -- who
8 claims that a few days before Brady Higgins and me was
9 arrested, Kadeem mentioned that he made some bops. He
10 didn't use specific details. What -- I mean, come on. It
11 ain't -- that's not going to convict anybody in these
12 specific offenses.

13 So I understand what you're saying, Ms. Blanchette, as
14 far as the state should've given them to me long before
15 then. Because these statements are dated, like, October of
16 2011 ---

17 Q Uh-huh.

18 A --- which would have been -- I think we had tried this
19 case -- started this case in April, which would've been
20 like six months earlier. But when I saw them, I made that
21 standard motion. But I was, like, hey, y'all got to do
22 better than this. Because this is -- this is nothing.

23 Some -- you know, some associate of his -- supposed to
24 be a cousin -- in the hood says, "Oh, I heard him say he
25 going to do some licks. I heard the codefendant say he was

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1 going to hit a lick or something like that."

2 That -- that wasn't much evidence to go to -- for them
3 to go to trial on the serious nature of the charges he had.
4 Kadeem had not given a statement. He kept his mouth shut.
5 There wasn't much evidence at all against him.

6 Q And since there wasn't much evidence, wouldn't these
7 two witnesses that are going to come in and say he's made
8 some type of admission -- I mean, maybe the state was
9 grasping at straws. I agree with you. But if they don't
10 have much evidence ---

11 A Right.

12 Q --- in your opinion of the case, doesn't that give
13 more weight to this evidence of these two potential
14 witnesses?

15 A I want to make sure I understand what you're saying.
16 If they don't have much evidence, are you saying -- I --
17 I'm -- I'm trying to make sure I understand ---

18 Q If all ---

19 A --- what you're saying.

20 Q --- the evidence they potentially have are these two
21 witnesses and then the codefendant, doesn't it ---

22 A Well, no, no ---

23 Q --- matter then ---

24 A --- no, no, no. Hold on -- hold on a second. We
25 didn't -- there was no codefendant. I mean, there was a

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1 codefendant.

2 Q Uh-huh.

3 A But this trial was going to be Kadeem and -- I guess
4 the fella's name was Upchurch. So up until -- all the way
5 on Friday, up until Monday, it was going to be Kadeem and
6 Upchurch -- Kadeem and Upchurch. There was no -- no just
7 Kadeem.

8 Until Monday morning, when Tim Murphy, who represents
9 him -- him being Upchurch -- says -- leans over to me and
10 says -- well, we getting ready to pick the jury. And I'm
11 sitting there when it's just Kadeem at the table. And I'm,
12 like, "Hey, where's Mr. Upchurch?"

13 And, of course, Tim says, "Oh. Well, we going to
14 plea."

15 I said, "No. Don't plea. Don't plea. We can win
16 this case. We can win this case."

17 And Tim says, "Oh, no, Brooks. My guy says he wants
18 to go ahead and take a plea."

19 I said, "No. Don't do it. Don't do it."

20 He said, "I know. I know. That's going to hurt your
21 guy. But he wants to take a plea. He wanted to take a
22 plea, Brooks, not me."

23 Of course, I'm not privy to the conversation between
24 Mr. Murphy and his client. So I was, like, okay. We went
25 ahead; did our pretrial stuff; picked our jury. Kadeem was

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1 there. Our posture was we were going to go to trial.

2 And then I sat there that afternoon, and Upchurch pled
3 in front of Judge Jeff Young. I sat there and watched it.
4 And Upchurch took the plea. His plea -- his sentence was
5 deferred, okay, which mean that he was going to -- the
6 minimum he was going to get was 15 years. And that was
7 based on him cooperating against Kadeem. That mean he's
8 going to testify against Kadeem. Or else if he didn't
9 cooperate, obviously he's out there to be screwed by the
10 judge in sentencing.

11 Kadeem came back over Tuesday morning. And he said,
12 "Mr. Brooks, I heard my cousin pled."

13 I said, "Yes, he did."

14 And I -- I remember this. Because I said, "Kadeem,
15 your case -- the dynamics of your case have changed
16 drastically. They had no case against you. Now they only
17 -- they got your codefendant cousin, which means now they
18 got a strong case against you."

19 And he said, "What's the situation with my cousin?"

20 I told him, "He's looking at getting 15, but it's been
21 deferred."

22 "Any way my cousin can get out of it?"

23 I said, "If he testifies and he screws the state,
24 they're going to screw him when it comes to sentencing. So
25 he's got to deliver you in order to save his behind."

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1 And he said, "Oh" -- Kadeem said, "Oh, man. Man, I
2 got to plea now."

3 I said, "I'll go back here and I'll talk to them."
4 When I say go back here and talk to them, them being John
5 Meadors and, of course, Judge Young, I'll never forget
6 this. Because this only happened on his case.

7 I go back in chambers. I say, "John" -- before we get
8 to Judge Young's chambers, I said, "Hey, can we work
9 something out now?"

10 Of course, now John's got leverage. He says, "Well,
11 Brooks, I can just let your man plead straight-up."

12 All right. Yeah. And he knows he got me in front of
13 Judge Jeff Young. I don't know how many times you been in
14 front of Judge Jeff Young. But Jeff Young is not a very
15 practical person that I want to take a plea in front of.

16 And he knows this. So then we go back in front of the
17 judge -- we go in Judge Young's chambers. Judge Young says
18 to me, "Hey, Brooks, if your guy takes a plea, I ain't
19 going to do him much worse than Upchurch. I ain't going to
20 give him 15, but I ain't going to do him much worse than
21 that."

22 Okay? Now, I interpret that to be 16/17/18 -- no more
23 than 20. That's what I interpreted it to be.

24 I go back and I tell Kadeem, "This is what the judge
25 says," exactly verbatim. Get the plea sheets from John

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1 Meadors; he signs them. We go out in front of the judge.

2 We go through the whole thing. And in Kadeem's
3 defense, it wasn't a whole lot of wavering. His position
4 was we going to trial; we going to trial; we going to
5 trial. They don't have anything.

6 And I never had anything to go to Kadeem and say,
7 "Hey, man, they got some strong evidence. You might want a
8 plea." Never had anything of that sort. He was sitting in
9 jail the whole time. Never had anything of the sort.

10 After Monday afternoon and we got up Tuesday morning,
11 things have now changed. We go and plea in front of Judge
12 Young after I told Kadeem what Judge Young had said. And
13 Judge Young gave him 25 years.

14 Shocked me, okay? I'm still in shock. I mean, I -- I
15 was, like, wait a minute. This is what you said. I mean,
16 in my mind I was saying this. That's why I filed the
17 motion for reconsideration.

18 Judge says, "I'm not going to make it much -- I'm not
19 going to -- I'm not going to do him much worse than that."
20 I was, like, okay. Well, that means between 15 and 20.
21 And he gave him 25.

22 I didn't agree with that because he's given him 10
23 more years and he wasn't any more culpable or any less
24 culpable than Mr. Upchurch. The only difference is
25 Upchurch had pled first. And I can see him rewarding

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1 Upchurch for that.

2 But my problem was it wasn't like Kadeem was screwing
3 with law enforcement or screwing with the court system by
4 saying, "I'm going to plead and I'm not going to plea," or
5 "I'm not going to plea," things that would antagonize the
6 judge.

7 Less than 24 hours later, we had a discussion. His --
8 his case and the evidence against him had totally changed
9 because his cousin decided to take a deal. And as a result
10 of that, Kadeem pled. And then Judge Young gave him what I
11 consider to be a probably -- a -- a little bit more than
12 unfair sentence. Obviously, it was within the statute.
13 But I thought he was going to give him something between 15
14 to 20 years.

15 That's -- that's the case in a nutshell.

16 Q Okay. So let me go back and ask you a couple
17 questions, just things to get in. I'm going to start back
18 with kind of my original question that took us down that
19 road.

20 A Okay.

21 Q The two statements that are in front of you that you
22 get between 4:30 and five o'clock on Friday, you've already
23 shared what your opinion was of those.

24 A Right.

25 Q But did you do any type of investigation to determine

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1 the legitimacy of that evidence and discuss it with Mr.
2 Johnson before he appears for his trial?

3 A On Monday -- I don't think I did, because I didn't --
4 I -- I don't -- I don't think -- I don't recall because
5 this didn't worry me. And let me -- do you want me to tell
6 you why? Because these fools probably got records too.
7 Usually, when they got these things, they -- they got --
8 look, the incident occurred in 2010. All of a sudden, they
9 got some statements in October 2011.

10 Well, I know the law enforcement around here. These
11 two guys probably -- and we never even got to it. Because
12 normally, the state would not have to disclose if a person
13 has a record until they call them up to the stand and then
14 that give me the record -- or they give me a record as far
15 as for purposes of cross-examination.

16 But these are two guys who -- obviously, you see they
17 all blacked out. So it's not like I can go and check them
18 online and look at the SLED Web site with their social
19 security numbers and all that stuff. So I couldn't do that
20 on my own.

21 But then, I look at it. And I said, "Look, they --
22 they got these guys probably stretched out" -- stretched
23 out, using that as a phrase, they probably got them
24 arrested on something. That did not trouble me when you
25 look at the statements on their face and something that

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1 they got in October 2011. That's what I thought about over
2 the weekend.

3 So it wasn't something that I was particularly
4 concerned about. Because up until that time, they had
5 nothing. And there was nothing they had ever given me.
6 And this is the best you got? I was, like, Oh, we're going
7 to try this.

8 (Whereupon, Ms. Blanchette and Ms. Kinard conferred.)

9 A I hope that answers your question.

10 Q I'm going to show you this document. Can you identify
11 it for the record?

12 A Okay. Let's see here. This is a witness list. Yeah.
13 Witness list they usually give us with a bunch of people
14 that most -- most often not, they don't use.

15 Q Okay. And do you recall getting that in this case?

16 A He would've given it to me at the time we were getting
17 ready to try the case.

18 Q Okay.

19 MS. BLANCHETTE: Your Honor, at this time I would move
20 that -- state's witness list in as -- and I'm sorry. I'm
21 just checking my numbers.

22 THE COURT REPORTER: It'd be Plaintiff's 12.

23 MS. BLANCHETTE: Yeah. As Applicant's No. 12.

24 MS. KINARD: No objection, Your Honor.

25 THE COURT: Admitted without objection.

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1 (Whereupon, Plaintiff's Exhibit No. 12 was marked and
2 entered into evidence.)

3 Q And can you review that for me, Mr. Brooks?

4 A Sure. What you want ---

5 Q And specifically ---

6 A --- to know?

7 Q --- looking for names that may be similar to Brady
8 Higgins or Michael Gordon.

9 A There's a Brandy Higgins, and there's a Michael
10 Gordon. The rest of the people on here are typically,
11 like, law enforcement, chain of custody. And the most
12 important person name on here is Kareene Upchurch.

13 Q And so just to be clear, you thought, leading up to
14 that Monday, you were having a joint trial with Mr.
15 Upchurch?

16 A That's right. That's right. Because it -- there had
17 never been any indication that Kareene -- up until Monday,
18 that he was pleading guilty; that there was any type of
19 deal. We were -- we -- I had postured this case -- Kadeem
20 knows this. We -- we going to trial: me and him, Mr.
21 Murphy and Mr. Upchurch.

22 Q Now, Randy Lowery's name is also mentioned on this
23 list. And we've introduced his statement. Did you do any
24 type of independent investigation into the statements --
25 we've already talked about Brady Higgins and Michael Gordon

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1 -- but into Randy Lowery's or any other evidence ---

2 A Do you ---

3 Q --- that was turned over to you?

4 A Do you have Randy Lowery's statement for me ---

5 Q I can ---

6 A --- to look at?

7 Q --- hand those to you. Yeah. They are marked as
8 Applicant's No. 3 and 4.

9 A Okay. Let's see. Yeah. If -- I do remember there
10 was a statement of somebody that was somewhat implicating
11 Kareene. And this may be the Randy Lowery statement.

12 Q Okay.

13 A Well, obviously, from my standpoint representing
14 Kadeem, that didn't implicate him in any way, shape, or
15 form. Does that make sense?

16 Q Yes. But you would agree, he's on the state's witness
17 list?

18 A Well, he's on the state's witness list. But this
19 statement I had for some time, it didn't implicate Kadeem.
20 It only implicated Kareene.

21 Q Uh-huh.

22 A So the -- there was nothing implicating that man about
23 doing these robberies.

24 Q And did you hire an investigator or do any type of
25 investigation to confirm these opinions you were reaching?

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1 A Nope. Well, when you say opinions reaching, no. I --
2 I did not -- I didn't need an investigator to help me with
3 my opinion. I had the statement that they had from Randy
4 Lowery. It did not implicate Kadeem.

5 There was nothing else. This -- this pretrial thing,
6 I think it was April 16th, 2012. Prior to April 16th, 2012
7 -- and that might've been one of the things I argued on my
8 speedy-trial -- there was no evidence against him. It was
9 a statement from Randy Lowery. Nothing, zero.

10 Q Did you do an investigation, though, to try to locate
11 Randy Lowery to determine what he would testify to if he
12 was called for the state? Did you try to find out, beyond
13 what was turned over to you, what could potentially be out
14 there, as far as evidence?

15 A No. Because I had this. And it didn't say anything
16 about Kadeem.

17 Q Okay.

18 A So I didn't need to do that.

19 Q Okay. And I just want to be clear so I don't
20 mischaracterize what you're saying. You didn't need to do
21 an investigation ---

22 A In my ---

23 Q --- in this case?

24 A --- I did -- no. I didn't say that. What I said was
25 yeah, I had Randy Lowery's statement. I didn't need to do

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1 anything else because it does not implicate Kadeem. It
2 talks -- it -- it kind of touches on Kareene, his cousin.
3 But it does not implicate Kadeem, in my estimation.

4 So there was nothing else. There was no other
5 evidence. There was nothing else in discovery saying this
6 man had committed these robberies. There was no statement,
7 no confession by him, nothing from Kareene Upchurch saying
8 that he committed -- he being Kadeem -- was involved in
9 this.

10 The whole posture of the case was, oh, we're going to
11 try this. Y'all don't have anything.

12 Q So with that in mind, wouldn't it have been better to
13 try this case sooner than later and kind of catch the state
14 unprepared?

15 A That's why I filed a speedy-trial motion. But a lot
16 of times, you file speedy-trial motions because our client
17 been -- my client had been sitting there for well over a
18 year. It was really no movement.

19 When I say movement, it's not like it was a whole lot
20 of discussion with the solicitor's office: What we going
21 to do; you think your guy can plead to this; and you think
22 he can -- nothing. Nothing. He was just sitting.

23 And obviously, if I was him, I wouldn't want to
24 continue to just sit, because he didn't have any bond. So
25 that's what put them in the pressure that they had to try

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1 to do something, was there was now an order saying if they
2 didn't dispose of the case after this term, he was going to
3 get out of jail.

4 So now John Meadors is kind of, you know, trying to
5 gather this stuff up together and sending me this stuff.
6 And John -- he -- there wasn't much of a case against
7 Kadeem Johnson. His problem was his cousin. Once his
8 cousin decided to take that deal, he went from -- the state
9 went from no case to a strong case.

10 Q Why didn't you file your motion for speedy trial
11 sooner than January 2012?

12 A I have no idea.

13 Q Okay. And now I'm going to kind of jump to the end of
14 all of these proceedings.

15 A Okay.

16 Q You have already testified about your conversations
17 with Judge Young and your conversations with the solicitor
18 regarding the range of sentence that he would -- likely to
19 receive. You already testified that you conveyed that to
20 him. Did you ever put that understanding on the record
21 during the guilty plea, or did you have the opportunity to
22 have a hearing on your motion to reconsider where you
23 addressed that?

24 A We -- we -- no. I -- I was never granted a hearing on
25 the reconsidering. Judge just denied it without a hearing.

1 I do remember that.

2 Did I raise that as far as the sentencing at the
3 sentencing hearing? Well, at that time I was kind of in
4 shock because of what Judge Young had said and what I
5 thought was -- would be "I'm not going to do him too much
6 worse than that."

7 And then I got back to my office and thought about
8 what could I do. And then that's what -- I filed the
9 motion for reconsideration.

10 Q And are you aware that in South Carolina, it's truly
11 not recognized on appeal that a basis for overturning a
12 guilty plea is disparity in sentencing between
13 codefendants?

14 A Well, I -- I -- yes. But I didn't think -- I just
15 didn't think it was fair. Because I thought it -- it -- it
16 wasn't just a fair sentence.

17 Q But prior to today in your testimony in your testimony
18 today, is there any record of the discussions you had with
19 the judge, what you conveyed to him, or is it true that
20 it's just ---

21 A It ---

22 Q --- your very short written motion saying there's
23 essentially disparity ---

24 A Yeah.

25 Q --- in sentencing?

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1 A Exactly. There was ---

2 Q Okay.

3 A --- no -- there -- that -- that was -- that was an
4 off-the-record -- as many times as we do as lawyers,
5 sometimes you go and you -- you're having off-the-record
6 discussions on what the judge is feeling. I'm sure, you
7 know, Judge knows what I'm talking about. Kind of say,
8 "Hey, this is kind of the situation."

9 And -- and -- and because -- because, of course, Judge
10 Young, he already knows the facts, because he took the plea
11 from the day before. So he already knows the facts. Okay?

12 So when we were back there, this is -- this is kind of
13 what he says. But no. That's not on the record in any
14 way, shape, or form. And that's why, you know, I explained
15 that to you just like I explained to Madam Attorney General
16 what happened in this case.

17 Q And you would agree that as attorneys, especially in
18 the adversarial process, when you're defending somebody,
19 it's our duty to make sure we're putting things on the
20 record; is that correct?

21 A There's -- more often than not, yes. But sometimes we
22 don't do that.

23 Q And please, I hate to -- you know, I -- I'm just
24 trying to sum up what you said, you know, kind of quickly.
25 Essentially, you felt that Judge Young had done you wrong,

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1 based on what he had told ---

2 A Well, no.

3 Q --- versus ---

4 A He ---

5 Q --- how he sentenced him?

6 A Well, no. He ain't done me wrong. I felt he done my
7 client wrong. Because I wasn't the one on trial.

8 And I wasn't the one that pled and had this
9 sentencing. And I was doing what I thought I could do in
10 order to try to protect him.

11 Q And the amount of time that the judge had kind of
12 thrown out to you, that was conveyed to Mr. Johnson before
13 he entered his plea ---

14 A Well ---

15 Q --- is that right?

16 A --- now, in fairness to Judge Young, he never gave me
17 a number. He just said, "I'm not going to do him much
18 worse than that. I'm not going to give him 15."

19 Because that's what Upchurch -- he understood that the
20 only reason now that Kadeem was contemplating pleading is
21 because his cousin had pled. Okay? And he knew his
22 cousin, Kareene Upchurch, I'm going to give him 15.

23 So he's basically saying, "Look, he's not going to get
24 the benefit like the first guy." Totally understand that.
25 And he says to me, "I'm not going to do him much worse than

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1 that, but I'm not going to give him 15."

2 And the way that I characterized that or equated that
3 was not going to be more than 20: not much worse than
4 that. That's how I characterized it. And that's what I
5 relayed to -- to Kadeem.

6 Q And you would agree, that was advice you gave him
7 before he entered his guilty plea?

8 A And that's true.

9 Q Okay.

10 A That's true.

11 Q And I apologize. I'm jumping around a little bit
12 here. But ---

13 A That's fine.

14 Q --- you -- do you recall making a motion to elect
15 during the Monday pretrial motions, asking that the state
16 have to identify which of the charges they were going to go
17 forward on?

18 A I may have. Because this was a series of alleged
19 armed robberies at some convenience stores over a span of
20 time -- I want to say over, like, a three-day window. So I
21 -- I think I may have done that. I'm not sure. I would
22 have to rely on the record.

23 Q To refresh your memory, if you look at the April 16th
24 transcript, on pages 24 through 25, I believe -- I'm sorry
25 -- pages 25 to 26.

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1 A Okay. I did.

2 Q Okay. So you've already said you -- you thought you
3 were going to a joint trial with his codefendant. Did you
4 have an idea of what charges you were going to be going
5 forward on?

6 A I -- I -- I did not know which specific ones. What
7 Mr. Meadors was going to try to do is he was going to try
8 the -- to try the whole thing, the whole thing that had
9 occurred on three days. It was three separate incidents.
10 I think it was two armed robberies, two -- on attempted
11 armed robbery. Because then there was a -- a gunfight that
12 ensued as a part of the one that was attempted armed
13 robbery.

14 And obviously, at this point, I am now learning that
15 Mr. Upchurch has taken a deal and is not going to be
16 sitting at the table with us. So, of course, I'm trying to
17 do what I can to -- to -- to protect my client at that
18 point. And I obviously made a motion to elect which ones
19 you're going to try him on. Try -- basically, I'm trying
20 to do everything I can to prevent the state from getting as
21 much leverage as they can in the course of trying to
22 convict my client.

23 Q Now, we've talked about the fact that you thought you
24 were going to trial with Mr. -- or -- sorry -- Mr.
25 Upchurch, find out he's going to plea. You say clearly at

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1 the plea hearing, the facts have changed. Did you ever ask
2 the judge for a continuance for more time to prepare or
3 were you prepared to go to trial?

4 A I was prepared to go to trial, walking in there Monday
5 morning. Okay? Because they didn't have anything. Even
6 with this stuff John Meadors had faxed to me that day.
7 They didn't have anything.

8 Obviously, when we was getting ready -- we doing jury
9 qualification and we're getting ready to pick the jury, Tim
10 Murphy says, "Oh, my guy is going to plea."

11 I was, like, "What? No. Don't do that."

12 "I'm sorry, Charles."

13 So now at this point, you know, I'm sitting at the
14 table and we're going through it. And I go through the
15 pretrial stuff. Because then I found out from scheduling
16 purposes, Upchurch is allegedly going to plea after we
17 select our jury and we do our pretrial stuff.

18 So, of course, I'm, like, well, I got to wait and see
19 what's going to happen. Because I learned that he's going
20 to plead. But he hadn't pled yet. Okay? And I'm hopeful,
21 maybe he'll back out of his plea and things will change.

22 But he doesn't. But, of course, all of this in this
23 pretrial stuff, this is before Upchurch has actually
24 officially pled. The -- Kadeem's plea takes place on
25 Tuesday morning after Upchurch had pled.

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1 So there's some things -- it's some moving parts that
2 are going on all at the same time. So prior to Monday
3 morning, everything was static; everything was stable.

4 We're going to trial. Upchurch and Johnson is all he
5 got. Randy Lowery's statement only implicates Kareene.
6 They don't have anything.

7 I'll take that and I'll try that. Oh, we got this.
8 Y'all going with Jeff Young. He can't stop you from -- he
9 can't make the case for you. We can try this.

10 Get there Monday morning. We qualify the jury. Next
11 thing I know, Tim Murphy leans over. "Hey, my man is going
12 to plea."

13 "No. Don't do that. Don't do that."

14 So then we -- we -- I'm sitting at the table. And
15 it's just Kadeem. Well, I go through the standard pretrial
16 stuff that I was kind of -- you know, I'm going to do to
17 protect him.

18 But Upchurch has not pled yet. This is only because
19 Mr. Murphy and John Meadors announced it: "Oh, yeah. He
20 going to plea; he going to plea."

21 After we go through picking our jury on Kadeem's case
22 and we -- we -- we deal with the pretrial stuff, Kadeem
23 goes back to the jail. I hang around, and I watch
24 Upchurch's plea that afternoon, hopeful that maybe, just
25 maybe, Upchurch doesn't plea. Upchurch goes forward with

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1 the plea and admits to everything and he's going to testify
2 against his cousin. I said, "Durn."

3 So Tuesday morning Kadeem comes over and he already
4 knows that his cousin has pled. And he says to me, "Mr.
5 Brooks, my cousin pled? I heard my cousin pled guilty."

6 I said, "Yes. And his plea and his sentence is tied
7 to him testifying against you. He's trying to get 15.
8 He's going to serve you up on a platter in order to get
9 that 15."

10 And Kadeem says, "Man, I got to plead now."

11 Q So on Tuesday morning, though, were you capable of
12 telling him, "I've investigated Randy Lowery's statements.
13 You know, here's what I found. I have investigated Brady
14 Higgins and Michael Gordon. Here's what I found. Here's
15 what we can do to defend this case"? Did he actually have
16 an option, as far as ---

17 A Wait.

18 Q --- you saw it?

19 A Listen -- listen ---

20 Q Can I finish ---

21 A --- Tricia.

22 Q --- just real quick?

23 A We didn't talk about no Randy Lowery, Higgins, Gordon.
24 We ain't talk about none of that. It was his cousin. His
25 cousin sold him out. Okay?

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1 It was Upchurch -- Upchurch, Upchurch, Upchurch.

2 Upchurch is the one that facilitated Kadeem pleading ---

3 THE COURT: Mr. Brooks?

4 A --- guilty.

5 THE COURT: Mr. Brooks, try to listen to the question
6 being ---

7 THE WITNESS: Okay.

8 THE COURT: --- asked, as you so often tell witnesses.

9 THE WITNESS: I -- I know. I'm ---

10 THE COURT: Try to ---

11 THE WITNESS: --- I'm just ---

12 THE COURT: --- respond to the question ---

13 THE WITNESS: I know, Judge.

14 THE COURT: --- that's asked.

15 THE WITNESS: I -- I'm upset ---

16 Q Giving you a lot of grace here, Charles.

17 A I -- I -- I'm upset about it because there was no real
18 case against Kadeem.

19 Q But were you ready to defend the case on Tuesday
20 morning? Did you say, "Kadeem, let's go. I'm ready.

21 Here's what I have prepared"? Or was the plea essentially
22 the only option, as far ---

23 A Oh, no ---

24 Q --- as you ---

25 A --- no, no, no.

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1 Q --- saw?

2 A This is -- this -- I'll take you -- to answer your
3 question, he's in the holding cell. I don't know if you're
4 familiar with how the old -- we were at the old courthouse
5 then. Go over there; he's in the back.

6 I said, "Kadeem, how you doing this morning?"

7 And he says, "I heard my cousin pled yesterday."

8 I said, "Yes. I sat there and I witnessed it, the
9 whole thing."

10 And he asked me some questions about his cousin's
11 plea: Can he get out of it? What does this mean? I said,
12 "Well, his sentence is deferred. It is contingent upon him
13 testifying against you. If he backs out of it now, he
14 going get hammered by the judge, because the judge hasn't
15 sentenced him yet."

16 His whole issue of trying to get the minimum under his
17 deal is he has to testify against you. He said, "Man, my
18 cousin's going get screwed. He can get a whole bunch of
19 time."

20 I said, "Yes, he can."

21 He said, "I got to plead now."

22 I said, "Okay. I'll go back and I'll talk to them."

23 That's what happened. And then that's picks up to the
24 conversation we had off the record with Mr. Meadors and
25 Judge Young. But that's what happened.

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1 MS. BLANCHETTE: Your Honor, if I could just beg the
2 Court's indulgence ---

3 THE COURT: Certainly.

4 MS. BLANCHETTE: --- one moment. Just one more
5 moment, Your Honor.

6 THE COURT: Okay.

7 Q And just going back to Randy Lowery's statements that
8 I asked you about before.

9 A Okay.

10 Q I know that you've already spoke on it extensively.
11 So I just have a very succinct question, I believe.

12 A Okay.

13 Q Did you review those statements during your two-year
14 course of representation and find a conflict with what was
15 stated in the arrest warrant? And I can provide you a copy
16 of the arrest warrant if you'd like.

17 A I -- to be honest with you, Ms. Blanchette, I -- I
18 don't really necessarily recall if I looked at it and said,
19 "Okay. I found a conflict in the arrest warrant." What I
20 looked at was this doesn't implicate my client. This is
21 all they got.

22 And, you know, it's not like I -- I go to the
23 solicitor's office and say, "Hey, will y'all give me more
24 evidence against my client?" I've already sent them my
25 discovery motion. I'm not trying to beat them across the

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1 head.

2 But I kind of got the impression that they were stuck
3 in this case. And they were. So that's why I tried to put
4 pressure on them by doing a speedy-trial motion. John
5 Meadors had taken over the case. And then, of course, they
6 were under pressure from the Court.

7 So I don't know if that kind of answers the question.

8 Q And just as a follow-up to that, in the arrest
9 warrants, it says: "A witness has given law enforcement a
10 statement implicating the defendant." Did you ever
11 identify what that statement was and how you were going to
12 defend against it?

13 A Looking at the arrest warrant, no. But I don't pay --
14 to be honest with you, I don't really get keyed up in
15 arrest warrants, because the arrest warrant is not
16 necessarily evidence. What I'm looking at is evidence,
17 things they're going to use in a court case. All I had was
18 this Randy Lowery's statement up until that Friday. Then I
19 get these other statements.

20 It was nothing against Kadeem: no -- SLED and all
21 that stuff. They couldn't match it. Video -- the -- the
22 guys had masks on or -- or -- or hoodies on. There wasn't
23 any identification. They didn't have any evidence to go to
24 trial on. That's why I was really stunned that Mr.
25 Upchurch took a deal.

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1 Q And in your file do you know if you had this
2 statement? .

3 A What statement?

4 Q These statements of Randy Lowery.

5 A I had -- I had these statements of Randy Lowery.

6 Q Okay.

7 A Because that -- I -- these statements of Randy Lowery
8 actually goes somewhat towards implicating his -- Kadeem's
9 cousin, Mr. Upchurch.

10 MS. BLANCHETTE: And if could just beg the Court's
11 indulgence one moment.

12 THE COURT: All right.

13 MS. BLANCHETTE: And, Your Honor, I apologize. It's
14 going to be a couple moments.

15 (Off the record briefly.)

16 Q Mr. Brooks, do you recall turning the file over to me
17 in August of 2014?

18 A That's when I did it. I remember you asked for it,
19 and I sent it to you.

20 Q Okay. And if I hand you that, does that help refresh
21 your memory?

22 A Yes, ma'am.

23 Q Okay. Can you flip through what's contained there and
24 then see if the statements of Randy Lowery appear to be in
25 there?

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1 A I'm not necessarily putting my hands on it right now
2 or ---

3 Q So are you absolutely certain that you had those
4 statements of Randy Lowery?

5 A I wouldn't say I put my hand on the chopping block.
6 But if I had it, I had it. I -- I knew there was -- there
7 wasn't much in there. But I thought I had that statement.
8 But it wasn't something that implicated my client. So it
9 wasn't something that -- that -- that concerned me.

10 Q But you can't say for a fact that they were part of
11 your file, and you're not seeing that in the packet you
12 provided me?

13 A Based on what you sent me, if it's not in here, it's
14 not in here. That's all ---

15 Q Okay.

16 A --- I can say.

17 MS. BLANCHETTE: Your Honor, one more time, I have to
18 beg your indulgence.

19 THE COURT: That's fine.

20 (Off the record briefly.)

21 MS. BLANCHETTE: Your Honor, I have no further
22 questions of this witness.

23 THE COURT: Cross-examination?

24 MS. KINARD: Thank you, Your Honor.

25

1 CROSS-EXAMINATION

2 BY MS. KINARD:

3 Q Good afternoon, Mr. Brooks. I want to back up a
4 little bit and ask just some basic background questions.

5 A Okay.

6 Q How long have you been practicing law?

7 A Oh, man. Well, now it's like 20 years.

8 Q Has the bulk of that been in criminal defense?

9 A Criminal defense, personal injury, little real estate,
10 -- you know, I dabble around. I do some PCR work, some
11 family-court work. You know, law -- that kind of stuff.12 Q But you're not unfamiliar with criminal defense, nor
13 were you at this time?

14 A That's correct.

15 Q Thank you.

16 A I -- I -- I used to be a public defender years ago.
17 So I'm familiar with the criminal process.

18 Q Is this the first time you'd represented Mr. Johnson?

19 A He said earlier that I represented, like, on a DJJ
20 case. And I think that did refresh my memory. I think I
21 did represent him on -- on something like that.

22 Q But you were retained on this matter?

23 A His -- his grandmother. She's seated back there.
24 She's a sweet lady. She come by to see me. Yeah. I
25 worked on his case from the -- I would imagine from the

CROSS-EXAMINATION BY MS. KINARD - CHARLES BROOKS 109

1 time Ms. Blanchette showed me that letter that I sent to
2 the sheriff department up until his plea.

3 Q Do you recall how many times you met with him?

4 A I don't. I do remember meeting a -- a -- maybe a few
5 times at the jail. But -- and he might send a letter. But
6 there wasn't -- and then, of course, when we came up here
7 for -- for the various speedy-trial hearings and that sort
8 of thing.

9 But there wasn't anything -- you know, after I got in
10 the case, there wasn't anything to talk to him about.
11 Because his posture was I'm -- I'm going to trial. I was,
12 like, yeah. You ain't got nothing against you.

13 You know, I hadn't got anything that -- a lot of
14 times, when you represent somebody, you would go to them
15 and say, "Okay. This is what the state got against you.
16 You may want to think about a plea."

17 But there was never that situation in -- in Kadeem's
18 case. Our whole posture was we were going to go to trial
19 from the very moment that I represented him all the way up
20 until he actually ended up pleading guilty.

21 Q Did you file any Rule 5, or *Brady*, motions?

22 A I did.

23 Q And I believe you testified you thought you had
24 received everything you expected to receive in this case;
25 is that correct?

1 A Yes. I -- I do recognize there was -- there was a --
2 it was some -- I think the solicitor's office was still
3 kind of dealing with transition. Mr. Finney had come on
4 board in beginning of 2011. And he kind of was going -- he
5 being Mr. Finney -- I know there was a thing he was kind of
6 going through who was going to be the solicitor on some --
7 assistant solicitors, staff, whatever.

8 Anyway, to make a long story short, Mr. Meadors had
9 come on sometime later on maybe towards the end of 2011 or
10 maybe the beginning of 2012 or somewhere around that time.
11 So I -- I -- I -- I -- I know I'm rambling. But I'm just
12 kind of thinking out loud as you ask me your questions.

13 Q So you received some discovery piecemeal, so to speak?

14 A In Kadeem's case I didn't really get much of anything
15 until I -- I -- I had -- I knew there was a statement that
16 -- but it wasn't anything -- you know, you got your
17 standard incident reports from law enforcement. You know,
18 the -- the standard stuff that you -- they give you that's
19 really not evidence, it's just documents what the police
20 position is in the case.

21 And there was no confession from Kadeem. We knew
22 that. There was none of that.

23 Q Was there a confession from Kareene, Mr. Upchurch?

24 A I don't recall there being a confession from Upchurch.
25 I think that what -- they -- they said that, and that's

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1 where the Randy Lowery statement is. I couldn't remember
2 the guy's name. But there was a alleged statement that
3 Kareene Upchurch had admitted to some cousin that -- or
4 some relative that he and Kadeem had gone and, as they say,
5 hit a lick or hit a few licks or done some bops, which is
6 kind of slang for going out, doing some robberies.

7 Q Regardless, there was no voluntary statement to the
8 police ---

9 A Correct.

10 Q --- by Mr. Upchurch?

11 A Correct.

12 Q Did you discuss and review all this discovery with Mr.
13 Johnson?

14 A That point -- yes. He knew ---

15 Q So ---

16 A --- he knew there wasn't anything.

17 Q Did ---

18 A Now, sometimes I would say -- you know, he'd call on
19 the phone -- "Hey, they ain't got nothing. I ain't got
20 nothing else."

21 So it wasn't a situation of me running out to the
22 jail, you know -- go out there every month to tell you,
23 "They don't have anything else." Now it's May. "They
24 don't have anything else." Now it's June. "They don't
25 have anything else."

1 So there wasn't -- you know, that would be just a
2 waste of time. But they didn't have anything. Now,
3 obviously, when they had something that I felt, hey, was a
4 problem, obviously, I would've gone out to see him.

5 Q But you never really found anything that was a
6 problem, correct?

7 A That's correct.

8 Q Okay. Did you discuss Mr. Johnson's version of the
9 facts of the case?

10 A We never -- you know, we never really talked about
11 what's your version of what happened. And sometimes that
12 can get kind of precarious because, you know, sometimes
13 your client is going to tell you some things you really
14 don't want to hear or don't need to hear. But granted,
15 there was -- there was no allegations to say, "X is saying
16 this about you. What are you -- what are you -- tell me
17 what you -- how would you say or what would you say about
18 X?"

19 There wasn't that situation. Because remember, up
20 until April 16th, 2012, or that Friday before, there was
21 nothing except this stuff from -- this alleged statement
22 from Randy Lowery. We got the incident report from the
23 police.

24 "Hey, Kadeem, they don't have anything. You know,
25 SLED" -- just like he had testified about, you know, I

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1 guess ballistics or whatever he had testified earlier --
2 there was nothing saying this kid had done anything. There
3 was nothing they could implicate to him.

4 So I hope that kind of answers the question.

5 Q Sure. So is it fair to say that really, the defense
6 you focused on was innocence?

7 A Yes.

8 Q Did you discuss the elements of the various charges
9 that Mr. Johnson faced?

10 A I don't think I went through and say, "In order for
11 them to prove armed robbery, they got to prove Element A,
12 Element B, Element C." But we talked about it in context:
13 "Hey, man, this is what they got to prove."

14 Because it wasn't a situation of, you know, we're
15 disputing that an armed robbery occurred. What we were
16 disputing is can they even prove he was the one that done
17 it.

18 Q Did he give you any potential leads or witnesses to
19 investigate?

20 A No.

21 Q So he never informed you of Mr. Higgins or Mr. Gordon,
22 whose statements you received that Friday afternoon?

23 A You talking about beforehand?

24 Q Yes, sir.

25 A No. No. There was never a situation like that.

1 Q Had he provided you any information, any leads, any
2 potential witnesses, would you have followed up on those?

3 A Sure.

4 Q Now, let's go to some of the pretrial motions that
5 were discussed.

6 A But -- and let me say this. Let me tell you. In
7 fairness to him, there wasn't a need to do that because the
8 state has the burden of proving him guilty. They didn't
9 have anything.

10 Q Regardless, he never said, "Hey, Brooks, I was hanging
11 out with this guy," or, "I saw this" ---

12 A Like -- like an alibi witness?

13 Q No alibi witnesses, nothing.

14 A No. No.

15 Q Okay.

16 A No.

17 Q The inventory motion that you made during pretrial
18 motions, is that a standard motion, just to make sure that
19 you've got everything the state has?

20 A Well, I kind of -- I -- I kind of did that sometimes.
21 Because sometimes solicitors will kind of start playing
22 little fast and loose with the rule. "Oh, here's this
23 right here. I just want to say, hey, this is what I got."
24 And I just kind of put it on the record.

25 And -- and Mr. Meadors kind of answered those

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1 questions. He said,, "Well, yeah. I just got this and
2 sent it in," and that -- that sort of thing.

3 So that's something I try to do as a practice because
4 what'll happen is you'll be in the trial. And sometime the
5 solicitors will say, "Oh, this" -- try to sneak something
6 in or try to do something. And then you'll be, like, "Wait
7 a minute. You didn't give me that."

8 And -- and -- and that's why I do that is kind of the
9 -- to say, "Okay. This the rules that we playing with,"
10 or, "This is what -- this is the cards I got." Okay?

11 Q Was the motion to elect which charges they were
12 proceeding on another standard-practice motion?

13 A Well, yes. In -- in light of the situation of what he
14 was charged with, he had -- the -- the allegation was that
15 he and his cousin had gone and done these robberies or
16 armed robberies, all within this span or period. So I was
17 trying to get the solicitor to have to focus on one thing
18 at a time.

19 Q Let's go to that Tuesday morning when you first saw
20 Kadeem. Whose idea was it to plea?

21 A Oh, it was his at that point in response to his cousin
22 pleading, who was the codefendant.

23 Q So after hearing his cousin pled and after discussing
24 with you the pros and cons of proceeding with the trial
25 that y'all had planned for, he said, "Man, I got to plea"?

1 A That's correct.

2 Q When you talked to him about sentencing after your
3 chambers conference ---

4 A Right.

5 Q --- did you ever guarantee him any amount of time?

6 A Can't guarantee anybody something except they going
7 die one day. So no. I didn't guarantee him.

8 I did tell him what was relayed to me. And in
9 fairness to him, I'm sure he -- he relied on that. Because
10 I relied on that. But did I say, "I guarantee you this is
11 the" -- no, I didn't say anything like that.

12 Q Did you remind him that he could always get more, that
13 he was always facing the full amount of time that his
14 charges bore?

15 A Oh. Now, I told him this, now. I said, "If you go to
16 trial and you get convicted, this guy right here" --
17 talking about Judge Young -- "he is going to load you up
18 with time."

19 Everybody knew that. When I say everybody, every
20 lawyer, even defendants knew that's what Judge Young did.
21 That was his standard. He was going to load you up.

22 Now, what does "load you up" mean? That could be, you
23 know, 40 years, 50 years. He was going to load you up with
24 a ton of time. That -- that's what he was going do.

25 That's why I made it a practice that I was not going

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1 to just standardly take somebody and plead in front of him.
2 But, of course, in Kadeem's situation, you know, we really
3 didn't have much choice because the case had been called to
4 trial.

5 Q Regardless, you reminded him that he still was facing
6 the entire amount of time at the plea, but he would
7 probably get less?

8 A That's correct.

9 Q Regarding Mr. Upchurch, was he represented the whole
10 time?

11 A Mr. Upchurch?

12 Q Yes.

13 A As far as I know, he had Tim Murphy, who was a public
14 defender here. And I think Tim's still a public defender
15 here.

16 Q Okay. And to your knowledge, did he ever give a
17 statement regarding his guilt, innocence, or involvement?

18 A Prior to his plea?

19 Q Correct.

20 A I don't recall Mr. Upchurch giving any statement prior
21 to his plea.

22 Q Would you ever have had any reason to contact Mr.
23 Upchurch regarding testifying for or against Mr. Johnson?

24 A No. Not until Monday morning, when Mr. Murphy tells
25 me his client is going to plea.

1 Q Considering preparing for trial -- now, I realize you
2 didn't necessarily know if Mr. Upchurch would have
3 testified if you'd gone forward with the -- the joint
4 trial. Were you prepared to impeach him on his prior
5 convictions?

6 A Mr. Upchurch?

7 Q Yes, sir.

8 A Yeah. I would've had to. It -- it -- but, you know,
9 as far as cross-examining him, the only -- I'm going to
10 impeach him on, "Hey, you got" -- if -- if -- if Kadeem had
11 opted to go forward to trial, the only thing I could do
12 would've been to try to hammer away to the fact that
13 Kareene is getting a deal and try to impeach him in regards
14 to that and, of course, whatever other convictions he
15 would've had that the state would've turned over to me.

16 Q Regarding the colloquy at the guilty plea itself, do
17 you remember it proceeding as a normal guilty-plea colloquy
18 would?

19 A Pretty much.

20 Q And you've been through several of those, to ---

21 A Pretty much.

22 Q --- say the least?

23 Okay. Do you remember the judge reminding Mr. Johnson
24 how much time each charge carried?

25 A It -- it -- I would -- I would have to rely on the --

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1 if it's in the record, I don't have anything to dispute it.

2 So ---

3 Q It's page 16 and forward, if you'd like to ---

4 A Okay.

5 Q Do you remember Mr. Johnson admitting to each charge
6 individually?

7 A It -- if it's in the record, I -- I -- I can't really
8 recall. I was still kind of hurt by this whole Upchurch
9 rolling on us.

10 Q Fair enough.

11 A I was really, really hurt by that.

12 MS. KINARD: And, Your Honor, if you're interested,
13 that begins the middle of page 5 and continues ---

14 THE COURT: I read it.

15 Q Did Kadeem seem to understand what was happening
16 during the plea?

17 A He did.

18 Q Is it fair to say he was hurt and offended as well, to
19 use your words?

20 A Oh, I'm sure he was. His cousin had rolled on him,
21 which -- which changed his whole posture in this case.

22 Q Regardless, did Mr. Johnson ever try to stop the plea
23 for any reason?

24 A On Tuesday morning?

25 Q (Nodded head up and down.)

1 A No.

2 Q Did he ever say he was unhappy with your services?

3 A No.

4 Q In fact, did he testify to the fact that he was happy
5 with your services?

6 A I would ---

7 Q --- rely on the record?

8 A --- rely on the record.

9 MS. KINARD: And, Your Honor, that is toward the end,
10 as is typical. I can find the cite. Would you like that?

11 Q And so he went forward with it, answered the questions
12 as expected?

13 A Yep.

14 Q And you were not surprised by anything, except for the
15 final numbers at the end; is that correct?

16 A That is correct.

17 Q Okay. So you believe that Mr. Johnson was competent
18 and entered this plea freely and voluntarily?

19 A Yes.

20 Q I apologize. That was a compound question. But to
21 all elements your answer is yes?

22 A That's correct. Yes.

23 Q Okay.

24 MS. KINARD: Your Honor, nothing further on direct.

25 MS. BLANCHETTE: One question, Your Honor.

REDIRECT EXAMINATION BY MS. BLANCHETTE - CHARLES BROOKS 121

1 MS. KINARD: I meant cross. Sorry.

2 THE COURT: Cross?

3 MS. BLANCHETTE: And you didn't acknowledge me. I'm
4 sorry, Your Honor. I just jumped up.

5 REDIRECT EXAMINATION

6 BY MS. BLANCHETTE:

7 Q The state had asked if you did the inventory motion as
8 kind of a standard practice or procedure. And you
9 explained that yes and, essentially, you're doing that to
10 hold the state so they don't surprise you with things
11 during the course of the trial; is that correct?

12 A Correct.

13 Q So what you listed as having ---

14 A I thought you said you only had one question.

15 Q I'm sorry. I have two now.

16 A Okay. I'm sorry. I got a bad ---

17 Q And here ---

18 A --- cold.

19 Q --- I am ---

20 A I'm sorry.

21 Q --- apologizing to a witness.

22 A Go ahead.

23 Q My second question, if Your Honor allows, is: So the
24 items that you listed as having as part of that motion,
25 were those the only items that you had?

REDIRECT EXAMINATION BY MS. BLANCHETTE - CHARLES BROOKS 122

1 A That's correct. If -- whatever I put down as
2 inventory, that's all I had.

3 Q Okay.

4 MS. BLANCHETTE: Your Honor, I have no further
5 question.

6 THE COURT: All right.

7 MS. KINARD: No ---

8 THE COURT: Thank you, sir.

9 MS. KINARD: No, thank you ---

10 THE COURT: You may ---

11 MS. KINARD: --- Yes, Your Honor.

12 THE COURT: --- step down.

13 THE WITNESS: Your Honor, can I be excused?

14 THE COURT: Witness be excused?

15 MS. KINARD: No objection.

16 MS. BLANCHETTE: I have no objection, Your Honor.

17 THE WITNESS: I don't think they want me here no more.

18 THE COURT: You may be excused from your subpoena.

19 THE WITNESS: Thank you, Judge.

20 (Whereupon, the witness exited the witness stand.)

21 MS. BLANCHETTE: Your Honor, I have no further
22 witnesses. I just have some case law and legal argument
23 for the Court when that's appropriate.

24 MS. KINARD: The state will not be presenting any
25 witnesses. However, we would ask for a brief closing.

1 THE COURT: All right.

2 MS. KINARD: Thank you.

3 MS. BLANCHETTE: Thank you, Your Honor. Before I
4 begin, because I failed to do this in the last case, I have
5 a copy of *State v. Daniels* for Your Honor, if you'd like
6 it; *United States v. Cronin*; *Nance v. Ozmint*, which are all
7 referenced in the amendment. And then, I have copies of
8 *Ford v. State*, *Harris v. State*, *Battle v. State*, *Jackson v.*
9 *State*, and -- and *Geter v. State* and *Knuckles v. Cartledge*,
10 which all go to an issue I'll be discussing of overwhelming
11 evidence of guilt.

12 Your Honor, you've heard a -- a lot of testimony
13 today. So I'm going to try to be succinct and kind of
14 break it down into three points. I don't intend to go
15 through each allegation as they are on the amendment, but
16 kind of over -- address them as a whole.

17 First of all, I'd just ask that you consider the
18 testimony that was offered. And I would submit that the
19 testimony of my client and Mr. Brooks established that
20 there was no investigation done in this case. Mr. Brooks
21 was coasting on the idea that the state had no case, it
22 sounds like, up until the second day of trial, which then
23 turned into the day of the guilty plea.

24 He filed a speedy-trial motion. But that wasn't until
25 2012. And it's not disputed that he began representing him

1 in 2010. So essentially, I'd submit to the Court that he
2 sat back, did not prepare, did not investigate, allowed the
3 state to essentially build their case for two years, and
4 put Mr. Johnson in a position where he had no choice but to
5 enter a guilty plea.

6 We'd ask that you consider each of the allegations
7 raised in the amendment and discussed today under the
8 *Strickland* analysis, looking at ineffective assistance and
9 prejudice. But we'd also ask that you make two additional
10 considerations: One, I think it is clear from the record
11 we've established today that Mr. Johnson relied upon errant
12 advice from Mr. Brooks regarding the sentence he would
13 receive and that induced his guilty plea.

14 I don't think it's a stretch to argue to the Court
15 that Mr. Brooks made that clear from the stand that that
16 was part of his consideration. Also, Mr. Brooks never put
17 that on the record, never raised that in the posttrial
18 motion. So therefore, that issue was never preserved or
19 brought up until today, where this Court can find that
20 that's ineffective assistance.

21 I'd also ask this Court to apply a *Davie*-type
22 analysis, *Davie v. State*, where I know that deals with a
23 plea offer that was not communicated. But there, the Court
24 found that it was appropriate to find prejudice from the
25 length of the sentence that was received. And we have a

1 line of cases, actually, that address that type of
2 prejudice even leading up to *Davie*.

3 But here, we would ask that you consider prejudice as
4 far as this errant advice that was never put on the record
5 up until today by looking at the amount of time that was
6 received versus the amount of time that Mr. Brooks told
7 him. And I'd submit there's clearly prejudice there.

8 And finally, my third point is I ask the Court to take
9 all our allegations as a whole and consider the cases of
10 *United States v. Cronin* and *Nance v. Ozmint* that I have
11 handed up, along with our allegation that counsel rendered
12 ineffective assistance in violation of the Sixth
13 Amendment's requirement that applicant have counsel acting
14 in the role of an advocate and in violation of the
15 adversarial process the Sixth Amendment protects, when
16 counsel failed to subject the state's case to a meaningful
17 adversarial testing.

18 I submit, Your Honor, that both my client's testimony
19 and Mr. Brooks' testimony fit that language exactly. Here,
20 I would submit, the facts didn't change. What changed is
21 Mr. Johnson realized that his attorney was not prepared and
22 that his attorney was not going to provide him with a
23 proper adversarial testing.

24 Honestly, from the testimony I've heard today, I see
25 no evidence of any type of adversarial testing of this

1 case. There was a sit-back; they don't have anything; oh,
2 now we're backed into a corner.

3 And, Your Honor, I apologize. I've done it once
4 again. I said I had three points, and I have a fourth
5 point.

6 It has been a common practice that I have seen in
7 argument that has been made that in guilty-plea cases, an
8 automatic finding of overwhelming evidence of guilt should
9 be made because my client admitted his guilt under oath on
10 the record. I would submit that an overwhelming-evidence-
11 of-guilt finding must go beyond that. Common sense says it
12 must go on beyond that.

13 There must be overwhelming evidence that if he went to
14 trial, he would have been convicted, not just that he
15 admitted his guilt under the errant advice of his ill-
16 prepared counsel. So I ask Your Honor to consider that and
17 look at the fact that Mr. Brooks said countless times there
18 was no evidence. Furthermore, I've handed up cases and I
19 have done research.

20 And so far in South Carolina in the Fourth Circuit, I
21 cannot find a case where the appellate court is considering
22 overwhelming evidence in a guilty-plea case just merely
23 because it's a guilty-plea case. If that was a hard and
24 fast rule of law, there would be no sense in having PCR in
25 guilty-plea cases. And I know there's many in the state

1 would -- that would think that would be a great thing.

2 But, Your Honor, that isn't the rule of law. That
3 isn't what our legislature currently provides for. There
4 is a number of cases where relief is given in guilty-plea
5 cases. So I ask Your Honor just to consider that in making
6 the prejudice analysis: Consider *Davie*, *Cronic*, and the
7 arguments that I have submitted regarding overwhelming
8 evidence of guilt, in conjunction with the standard
9 *Strickland* analysis.

10 If Your Honor has any questions, I'd be happy to
11 answer that. But that is all that I have on the
12 applicant's behalf.

13 THE COURT: Thank you, Ms. Blanchette.

14 MS. KINARD: Thank you, Your Honor. May it please the
15 Court: First of all, I'd like to renew my objection
16 regarding the use of the pretrial transcript, as I still do
17 not believe that is a proper consideration under current
18 case law in the state.

19 That being said, the state entirely disagrees with Ms.
20 Blanchette's characterization of this case as a whole. To
21 be said there is no adversarial testing is simply false.
22 There was nothing to test. As Mr. Brooks stated over and
23 over again, there was no evidence to convict Mr. Johnson.
24 That's why he was prepared for trial with what seemed like
25 little investigation, is because there was nothing to

1 investigate: nothing given from the state, nothing
2 provided by Mr. Johnson, nothing to look at, nothing to
3 convict him, except for Mr. Upchurch's testimony.

4 And as Mr. Brooks testified repeatedly, as is evident
5 in the trial transcript -- or excuse me -- the plea
6 transcript, that was the linchpin of the case. And that is
7 what changed Mr. Johnson's mind. He testified to that
8 himself: that a change in Mr. Upchurch's decisions and his
9 plan to plead guilty and testify against him led him to
10 plead guilty to these charges.

11 As far as investigation does go, a -- an attorney's
12 duty to investigate is limited to a reasonable
13 investigation. Therefore, again, because very little, if
14 anything, had been presented to Mr. Brooks, there was very
15 little, if anything, to investigate. So it is truly
16 reasonable for him not to have hired a private
17 investigator, not to have gone and hunt -- hunted down
18 these gentlemen that provided the statements, particularly
19 after he witnessed Mr. Upchurch plead guilty.

20 Because let's remember, the two statements that were
21 provided were provided Friday afternoon. And no action
22 could have been taken until Monday afternoon because there
23 were no addresses provided to Mr. Brooks. So he -- he
24 quite literally had to wait until he finished watching Mr.
25 Upchurch plead in order to even begin to investigate those

1 two gentlemen. That's simply unreasonable.

2 When it goes to looking at a standard, we need to
3 remember that a defendant who pleads guilty upon the advice
4 of counsel may only attack the voluntary and intelligent
5 character of the guilty plea by showing the advice he
6 received from counsel was not within the range of
7 competence demanded of attorneys in criminal cases. That's
8 *Richardson v. State*. It's a 1993 case.

9 This advice that Mr. Brooks provided him certainly was
10 competent and certainly was reasonable. He relayed
11 information that was provided to him by the judge. It was
12 information that he did not feel comfortable putting on the
13 record because it was a conference chamber -- excuse me --
14 a conference in chambers. Yes.

15 Therefore, when he relayed to Mr. Johnson what Judge
16 Young had stated, which is uncontroverted by both Mr.
17 Johnson and Mr. Brooks -- that he wouldn't get 15 years but
18 he'd get a little more -- that's all they had to go on.
19 Mr. Brooks stated there was no guarantee; he never put a
20 finite number on it. And he reminded Mr. Johnson that he
21 still faced up to 120 years. He faced everything that
22 those charges carried, whether he pled or went to trial.

23 In order for a guilty plea to be knowingly and
24 voluntarily entered, according to *Boykin v. Alabama*, which
25 is the -- still the standard, a guilty plea must be made

1 knowingly and voluntarily. The record must establish the
2 defendant was advised of the constitutional rights he was
3 waiving, including the right against self-incrimination,
4 the right to a jury trial, and the right to confront his
5 accusers. All of that is done in a very thorough plea
6 colloquy by Judge Young.

7 Mr. Johnson knew all of these -- information before he
8 entered his plea. He was aware of every single allegation
9 that he brought up today prior to his plea. He did not
10 attempt to stop the plea. He testified at the plea and
11 today he was competent, he understood what was happening,
12 and he was aware of the questions he was answering. The
13 judge found that he was competent and accepted the plea
14 after a thorough colloquy. There's simply nothing to say
15 that this plea was guilty or involuntary or that anything
16 that Mr. Brooks did could have induced it.

17 I ask that you find that Mr. Brooks performed within
18 the prevailing professional norms of defense attorneys;
19 that he was not deficient in his representation; and that
20 there can be no prejudice found against Mr. Johnson because
21 of Mr. Brooks' performance under the *Strickland* test.

22 The state therefore respectfully requests that you
23 deny any application and any relief that Mr. Johnson is
24 seeking. Thank you.

25 THE COURT: Let me ask you a question about the issue

1 of overwhelming evidence of guilt. Ms. Blanchette argues
2 that that should not be a finding of the Court because it's
3 not appropriate to make a finding of the Court in a plea.
4 Is that -- is that correct? ?

5 MS. BLANCHETTE: And, Your Honor, I -- somewhat. I
6 want to be clear, too, because the Court of Appeals got
7 misconstrued and we had to go back and forth. I am arguing
8 that simply because it's a guilty plea, there shouldn't be
9 an automatic finding. And furthermore, there shouldn't be
10 a finding in this case because counsel went on and on about
11 how there was no evidence, essentially, against Mr.
12 Johnson.

13 So I'd ask that the Court do the full analysis of
14 overwhelming evidence of guilt, not just find that because
15 it's a guilty plea, there is overwhelming evidence. Does
16 that clarify ---

17 THE COURT: Thank you.

18 MS. BLANCHETTE: --- the point, Your Honor?

19 THE COURT: It does.

20 MS. KINARD: I would like to distinguish that, though,
21 if you don't mind. In this case I believe it's necessary
22 to look at it in two sections, before and after Upchurch's
23 plea. Before that I would agree with Mr. Brooks: There
24 was not overwhelming evidence. There was potentially no
25 evidence, as he said. However, after Upchurch's plea,

1 there was indeed overwhelming evidence, because Mr.
2 Upchurch's testimony would've been the linchpin that
3 would've put possibly Mr. Johnson in jail.

4 So while that may not necessarily speak to Ms.
5 Blanchette's argument about and automatic finding of
6 overwhelming evidence, I do think overwhelming evidence
7 would've existed in this case, had he gone to trial.

8 THE COURT: Well, let me ask you this: It -- it would
9 be virtually the only evidence, based on what I've heard?

10 MS. KINARD: Yes, Your Honor. That's my
11 understanding, and I believe that's what the testimony has
12 presented.

13 THE COURT: But we haven't actually heard that
14 testimony.

15 MS. KINARD: That's correct.

16 THE COURT: So all we know is that it potentially --
17 it was going to be some kind of testimony by a codefendant.
18 But how do we get from there to that -- that being
19 overwhelming? I guess it could've been disbelieved.

20 MS. KINARD: That's fair. It -- it could've been
21 impeached. It could've been found unbelievable. Yes, sir.

22 But it also stands to reason that Mr. Upchurch would
23 testify and state: "I was there; Mr. Johnson was there.
24 This is what we did," on and on and on. And Mr. Johnson
25 would not be able to refute that under oath. That is

1 presumably the thought process that Mr. Johnson and Mr.
2 Brooks were going through.

3 THE COURT: Okay. I understand.

4 MS. KINARD: Thank you, Your Honor.

5 THE COURT: Help me out, Ms. Blanchette. I -- I
6 missed something when you first started your ---

7 MS. BLANCHETTE: Yes, Your Honor.

8 THE COURT: --- presentation.

9 MS. BLANCHETTE: Uh-huh.

10 THE COURT: Did -- did -- dealing with the issue of
11 the sentence received as a result of the advice of the
12 attorney?

13 MS. BLANCHETTE: Uh-huh.

14 THE COURT: Did you cite a specific case on that? I
15 thought ---

16 MS. BLANCHETTE: I did not ---

17 THE COURT: --- you ---

18 MS. BLANCHETTE: --- Your Honor. And I can ---

19 THE COURT: --- through ---

20 MS. BLANCHETTE: --- provide it, because there are a
21 line of cases. And I don't want to just say one off the
22 top of my head that's incorrect. The line of cases that I
23 usually start with is when there's errant advice given on
24 parole.

25 And essentially, my understanding, from any cases that

1 deal with errant advice, is typically in the state, there's
2 not a duty to advise on a number of things. But the
3 overall standard appears to be that if you are going to
4 advise, you need to advise correctly.

5 And what Mr. Brooks admitted on the stand is he took
6 what Judge Young said, he interpreted, he advised him on
7 that, and I'm not sure if he went as far as to say the word
8 "induced." But essentially, what I took it to be is that
9 was part of the inducement in pleading guilty.

10 And he told him he came up with a number. Now, I know
11 he then said on -- on cross that there was no guarantee.
12 But I would submit to you that that is errant advice. And
13 I'd be happy to submit some cases in support of that
14 argument.

15 THE COURT: Well, wait a minute. Did -- did Mr.
16 Brooks say that he told -- gave a number?

17 MS. BLANCHETTE: He did. My recollection from his
18 testimony is he said that Judge Young told him it wouldn't
19 be 15.

20 THE COURT: Right.

21 MS. BLANCHETTE: But it wouldn't be more, I think,
22 than the codefendant. And I'm sorry if I'm getting that
23 wrong. I can look back at my notes.

24 And then, he said he went and told him it could be
25 something like 16, 17, or 18, definitely below 20. So that

135

1 was Mr. Brooks's spin on what Judge Young had said. So I
2 think that's when we get into the ineffective assistance.
3 He's ineffective in pitching him numbers that the judge
4 didn't give him.

5 And we didn't know, essentially until the testimony
6 came out today either, because he didn't put it on the
7 record, that he had discussed numbers with the judge and
8 had some belief or understanding that he conveyed to him.

9 THE COURT: You know, I thought it was the other way
10 around. I thought the applicant is the one who put -- who
11 said these are the numbers but that Mr. Brooks did not say
12 numbers. Am I wrong?

13 MS. KINARD: I agree with your basic interpretation.
14 Mr. Brooks did say numbers. However, my memory of his
15 testimony is he said he told -- I believe he used the word
16 "verbatim" -- Mr. Johnson, what Judge Young had said in
17 chambers, which was: "I'm not going to give him what
18 Upchurch -- Upchurch got, but I'm not going to do him much
19 worse."

20 I have spoken to Mr. Brooks several times. That --
21 that's the phrase he kept ---

22 THE COURT: I'm not going to do him what?

23 MS. KINARD: "I'm not going to do him much worse."

24 THE COURT: Right. That's what I mean. But he didn't
25 -- he didn't -- he didn't say -- my recollection is Mr.

1 Brooks did not say what the applicant said.

2 MS. BLANCHETTE: My --- .

3 MS. KINARD: The ---

4 MS. BLANCHETTE: I'm sorry.

5 THE COURT: That their --

6 MS. BLANCHETTE: Go ahead.

7 MS. KINARD: Sorry.

8 THE COURT: --- interpret -- their ---

9 MS. KINARD: My understanding ---

10 THE COURT: --- that there's a ---

11 MS. KINARD: --- is ---

12 THE COURT: --- disagreement between the two of them
13 as to what was said.

14 MS. KINARD: Yes, sir. My understanding is he -- he
15 relayed it verbatim and perhaps had a conversation and
16 tried to interpret what "not going to do him much worse"
17 may have meant. And I believe that's where the numbers
18 might've come up.

19 But again, he did not guarantee him any numbers. And
20 to my understanding, Judge Young did not provide any
21 numbers. And because Mr. Brooks did not say, "Hey, I think
22 you're going to get 17 years," I don't think that's errant
23 advice.

24 And to distinguish from the line of cases that she's
25 brought up, regarding parole, actively incorrect advice is

1 ineffective assistance of counsel. But playing a guessing
2 game regarding how many years you might get, when you have
3 a -- an offhand statement from a judge, I don't think could
4 be actively incorrect advice.

5 MS. BLANCHETTE: Your Honor, respectfully, I disagree.
6 I was having my law clerk check her notes too. Because
7 obviously, we don't have a transcript to rely upon at this
8 point.

9 Mr. Brooks repeatedly kind of addressed the same
10 issues. But at one point I clearly remember him responding
11 to me that he told him 16, 17, or 18 years, nothing more
12 than 20. And then he continued on and at some point in
13 that answer -- it was a very long answer -- he said, "I
14 told him that; essentially, he relied upon it; and I
15 shouldn't have done it."

16 I took it as a straight-up admission, Your Honor. I
17 made a big star when he said that. So that's all I have is
18 just my brief note. Because it was either the second or
19 third time he revisited that topic in his very long answers
20 that he did say the exact number, not less than 20; he
21 conveyed that to Mr. Johnson; and that was his own doing,
22 essentially, that was wrong, because it's not exactly what
23 Judge Young had said.

24 So that's why I think we have two issues here: (1)
25 his ineffective assistance in providing that errant advice;

1 and (2) his failure to put on the record or raise in the
2 posttrial motion what Judge Young had conveyed and this
3 utter shock he testified about multiple times about the
4 sentence that was received. So I think it's -- it's two
5 issues encompassed in this one.

6 MS. KINARD: The state would submit that regardless of
7 those issues, the very thorough colloquy by Judge Young
8 would cure any misadvice that Mr. Brooks may have presented
9 to Mr. Johnson.

10 THE COURT: And when I find that in the record on
11 appeal, I just didn't remember seeing that. I guess it is
12 in here, but where?

13 MS. KINARD: Well, Your Honor, it depends on what we
14 want to look at specifically. The actual ruling regarding
15 years is on page 29. He does go through what each charge
16 carries individually. That is on pages 16, 17 -- 16 and
17 17. And he also ---

18 THE COURT: There you -- okay. I see it.

19 MS. KINARD: Thank you.

20 THE COURT: I see it. Anything further?

21 MS. KINARD: Nothing from the state, Your Honor.

22 MS. BLANCHETTE: No, Your Honor.

23 THE COURT: I agree with the position of and the
24 argument made by the state as to each of the issues before
25 the Court today, except for the following: I -- I've -- I

1 do not think there should be a finding of overwhelming
2 evidence of guilt; and (2) I'm going to take under
3 advisement the issue of whether or not the advice given
4 relating to sentencing was sufficient to warrant a new
5 trial.

6 And in that regard, my recollection is -- I think
7 everybody agrees -- but that the applicant stated that the
8 advice that he was given was more than 15, something in the
9 line of 16/17/18, or something like that, which means I
10 would like for y'all to brief this issue. And I think we
11 need a copy of the transcript of Mr. Brooks' testimony.
12 Because y'all can't -- y'all don't agree on what he said.

13 And I'm not sure -- I'm clear enough on what he said,
14 after listening to the two attorneys tell me what they
15 thought he said. But I -- in that regard I think we -- I
16 think we all agree with -- with what Mr. Johnson said. So
17 I don't know that we need his testimony.

18 Does that make any sense?

19 MS. KINARD: Yes, Your Honor. But I would request,
20 out of an abundance of fairness to both parties, that we
21 get at least the portion pertaining to that topic of both
22 Mr. Johnson and Mr. Brooks's testimony.

23 THE COURT: I'm just trying not to delay things ---

24 MS. KINARD: I understand.

25 THE COURT: --- further. All right. We'll do both

1 testimonies.

2 MS. KINARD: Thank you, Your Honor. Do you have
3 suggestions on how to handle that? Should one of our
4 offices formally order it from the reporter?

5 THE COURT: (Nodded head up and down.)

6 MS. KINARD: I'll do it.

7 THE COURT: You're going to order it from the court
8 reporter ---

9 MS. KINARD: Yes, sir.

10 THE COURT: --- who I think knows it's being
11 requested. Ms. Blanchette, I can't remember. Have -- do
12 we have another one that's under advisement that we're
13 waiting on that you're involved in with me?

14 MS. BLANCHETTE: Your Honor, we have a York County
15 case where we were going back and forth on the orders.
16 That may be what you're thinking of.

17 THE COURT: Yeah. I've got another one that we're
18 waiting on a transcript.

19 MS. BLANCHETTE: Oh, okay. I'm waiting on a
20 transcript with Judge Dickson, but I don't think I'm
21 waiting on a transcript with Your Honor.

22 THE COURT: All right. Anything else we need to do?

23 MS. KINARD: Time line on the briefs? Will that
24 depend on when we get the transcript?

25 THE COURT: What, five days? Just kidding.

1 MS. BLANCHETTE: Luckily, I knew you were kidding, so
2 I remained sitting.

3 THE COURT: All right. Well, I'll -- let's -- let's
4 see how this is going to work. Court reporter is going to
5 send it to you; you're going to send it to Ms. Blanchette?

6 MS. KINARD: Certainly.

7 THE COURT: Is that right? Twenty days after receipt.

8 MS. KINARD: Thank you, Your Honor.

9 MS. BLANCHETTE: That's perfectly fine, Your Honor.
10 And I assume, if some issue comes up that we get the
11 transcript and, you know, both of us are in terms of court
12 back to back or something, that may be something we could
13 address with Your Honor. Thank you.

14 MS. KINARD: Thank you very much, Your Honor.

15 THE COURT: All right. Court's adjourned.

16 (Whereupon, the proceedings were concluded at 4:06
17 p.m.)

18 --- END OF TRANSCRIPT OF RECORD ---
19
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23
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25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 16TH
DAY OF MARCH, 2016.

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



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

APRIL 3, 2017



SUMTER COUNTY SHERIFF'S OFFICE

ANTHONY DENNIS, SHERIFF

June 19, 2015

Tricia Blanchette, Esquire
Law Office of Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211

RE: Kadeem Johnson v. State of South Carolina
Docket No.: 2014-CP-43-0794

Dear Counselor:

In response to your subpoena in the above referenced matter, I am forwarding you a copy of the case file in Sumter County Sheriff's Office case #10071488, along with an Affidavit of Custodian of Records.

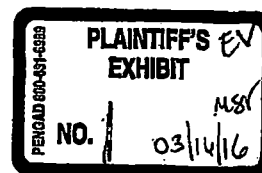
Please do not hesitate to contact me if you have questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy L. Ward".

Kathy L. Ward,
General Counsel for
Sumter County Sheriff's Office

KLW/lle
Enclosures: 1



STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

KADEEM JOHNSON, #350533,)

Applicant,)

V.)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-43-0794

AFFIDAVIT OF CUSTODIAN
OF RECORDS

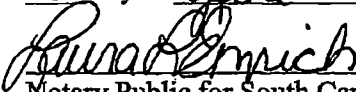
Personally appeared before me, Investigator Tommy Mims, who, being duly sworn, states:

1. I am Investigator Tommy Mims. I am employed by Sumter County Sheriff's Office.
2. I am the duly authorized and designated custodian of records and I am duly authorized to certify such records.
3. I certify that the attached documents for Case # 10071488, consisting of eighty four (84) pages, which were provided to Tricia A. Blanchette, Attorney at Law, per subpoena, are true and correct copies of the original documents. Said records were prepared in the ordinary course of business.


(Signature)

Investigator Tommy Mims
(Printed Name)

SWORN to before me this
22 day of June, 2015.


Notary Public for South Carolina
My Commission Expires: 3-13-2016

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

Irma R. Brooks
Attorney

July 14, 2010

Tripp Mays
Criminal Investigator
Sumter County Sheriff's Office
107 E. Hampton Avenue
Sumter, South Carolina, 29150
Via U. S. Mail & Facsimile 803 436-2018

RE: Kadeem Johnson

Dear Investigator Mays:

Please accept this letter as notification that I have been retained to represent Mr. Johnson and ask that any further contact with Mr. Johnson be made through me.

If you have any questions please contact me at the address or telephone number shown above.

Thank you for your cooperation in this matter.

With kind regards,

Sincerely,



Charles T. Brooks, III

CTB/jlb

cc: Kadeem Johnson and Hazel Johnson





VOLUNTARY STATEMENT

CASE # _____

LAST NAME <u>Lowery</u>	FIRST NAME <u>Randy</u>	MIDDLE NAME <u>Mukerthin</u>	AGE <u>21</u>	D.O.B. [REDACTED]
NICKNAME/AKA	M ☒ F ☐	SSN	STREET ADDRESS [REDACTED]	
CITY <u>Santee</u>	STATE <u>SC</u>	ZIP [REDACTED]	MAILING ADDRESS IF DIFFERENT	
HOME TELEPHONE [REDACTED]	WORK TELEPHONE [REDACTED]	CELL TELEPHONE [REDACTED]	OCCUPATION	
EMPLOYER		EMPLOYER ADDRESS		
DRIVER'S LICENSE NUMBER/STATE		DATE AND TIME OF INTERVIEW <u>7-7-10 @ 5:30pm</u>		
LOCATION OF INTERVIEW <u>Mother</u>				
INTERVIEWING AGENT <u>Jim Trip May</u>	DEPARTMENT <u>SCSO</u>	INTERVIEWING AGENT <u>Col. J. Thomas</u>	DEPARTMENT <u>SCSO</u>	

I, Randy Lowery understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can ~~can~~ read and write and completed the 9th grade in school.

Re J. Randy Lowery was show picture and what it look like Ken upchro
but if I hear ^{RL} ^{RL} something I will ^{call} ^{RL} the Detective RL

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

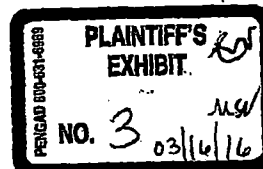
Date: 7-7-10 Time: 6:12

Signature of person giving voluntary statement Randy Lowery

WITNESS: Shirley B. Lowery

WITNESS: Jim Trip May

I certify that I have been given a copy of this statement consisting of 1 pages.





VOLUNTARY STATEMENT

CASE # _____

LAST NAME <u>Lowery</u>	FIRST NAME <u>Randy</u>	MIDDLE NAME <u>Mukerthin</u>	AGE <u>31</u>	D.O.B. <u>[REDACTED]</u>
NICKNAME/AKA _____	M ☒ F ☐	SSN _____	STREET ADDRESS <u>[REDACTED]</u>	
CITY <u>Sumter</u>	STATE <u>S.C.</u>	ZIP <u>[REDACTED]</u>	MAILING ADDRESS IF DIFFERENT _____	
HOME TELEPHONE <u>[REDACTED]</u>	WORK TELEPHONE <u>[REDACTED]</u>	CELL TELEPHONE <u>[REDACTED]</u>	OCCUPATION _____	
EMPLOYER _____		EMPLOYER ADDRESS _____		
DRIVER'S LICENSE NUMBER/STATE _____		DATE AND TIME OF INTERVIEW <u>7-12-10 3:35</u>		
LOCATION OF INTERVIEW <u>Cherokee Community Center Confederate Rd Sumter, SC</u>				
INTERVIEWING AGENT <u>Lawrence Mays</u>	DEPARTMENT <u>SCSO</u>	INTERVIEWING AGENT <u>Sgt. J. Thomas</u>	DEPARTMENT <u>SCSO</u>	

I, Randy Lowery, understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can ~~read~~ read and write and completed the 10th grade in school.

RL Me and My girl friend Michelle when to my mother house I saw Karrie I ask him if he did the store robber he told me yes he did and I told him the police is asking me if I know something about it. he say yes he and has Caion did it in there grandmother van and i told him to turn has ^{RL} self in cause I aint going down for something I dont do ^{RL} he also told me they robber the FICO on 376 when they walk in the store ^{RL} Sam start it to pick up a rate a shang it at them an they start shooting an they ran back to the van an left an way to they grandma RL

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 7-12-10 Time: 3:35

Randy M. Lowery
Signature of person giving voluntary statement

WITNESS:

Michelle A. Curtis WITNESS: Lawrence Mays

I certify that I have been given a copy of this statement consisting of 1 pages.





CASE # _____

VOLUNTARY STATEMENT

LAST NAME <u>Higgins</u>	FIRST NAME <u>Brady</u>	MIDDLE NAME <u>Alexander</u>	AGE <u>18</u>	D.O.B. [REDACTED]
NICKNAME/AKA <u>None</u>	☒ M ☐ F SSN [REDACTED]	STREET ADDRESS [REDACTED]		
CITY <u>Sumter</u>	STATE <u>S.C.</u>	MAILING ADDRESS IF DIFFERENT <u>None</u>		
HOME TELEPHONE [REDACTED]	WORK TELEPHONE [REDACTED]	TELEPHONE [REDACTED]	OCCUPATION <u>Student</u>	
EMPLOYER <u>None</u>		EMPLOYER ADDRESS [REDACTED]		
DRIVER'S LICENSE NUMBER/STATE [REDACTED]		DATE AND TIME OF INTERVIEW <u>10-5-2011 11:19 pm</u>		
LOCATION OF INTERVIEW <u>Sumter County Sheriff's Office</u>				
INTERVIEWING AGENT <u>J.L. Herbert</u>	DEPARTMENT <u>SCSO</u>	INTERVIEWING AGENT	DEPARTMENT	

I, Brady Higgins understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can read and write and completed the 11th grade in school.

Me and my friend Mike just got off work with my uncle the day it happened. So we went some weed. We went to Kadem Johnsons house to buy some weed. Me and Mike get there and he hopped in the car to his guys house. We get pulled over shortly after he gets in. Before the officer got to the window I tell Kadem not to put the weed in my car and to say it was his. He didn't and me and Mike go to jail. Before all this I heard him say that he moved some ~~some~~ lick's on some gas station. That he was going to Florida for a ~~car~~ car. Then he asked a friend if any one got hurt in the robbery's because we told him about it being on the news about the gas station shooting. So I find that we're then when we were in jail he said what he was going to do and what he did.

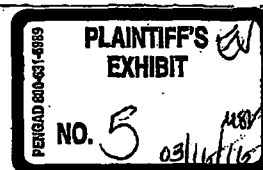
Nothing Further

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 10/5/11 Time: 11:19 pm Brady Higgins
Signature of person giving voluntary statement

WITNESS: [Signature] WITNESS: _____

I certify that I have been given a copy of this statement consisting of 1 pages.





CASE # _____

VOLUNTARY STATEMENT

LAST NAME <u>Gordon</u>	FIRST NAME <u>Michael</u>	MIDDLE NAME <u>James</u>	AGE <u>19</u>	DOB [REDACTED]
NICKNAME/AKA <u>Mike</u>	☒ M ☐ F	SSN [REDACTED]	STREET ADDRESS [REDACTED]	
CITY <u>Dalzell</u>	STATE <u>S.C.</u>	ZIP [REDACTED]	MAILING ADDRESS IF DIFFERENT [REDACTED]	
HOME TELEPHONE [REDACTED]	WORK TELEPHONE [REDACTED]	CELL TELEPHONE [REDACTED]	OCCUPATION <u>unemployed</u>	
EMPLOYER <u>None</u>	EMPLOYER ADDRESS <u>None</u>			
DRIVER'S LICENSE NUMBER/STATE [REDACTED]	DATE AND TIME OF INTERVIEW <u>10-5-11 12:30pm</u>			
LOCATION OF INTERVIEW <u>Santer County Sheriff's Office</u>				
INTERVIEWING AGENT <u>L. Herbert</u>	DEPARTMENT <u>SCSO</u>	INTERVIEWING AGENT	DEPARTMENT	

I, Michael Gordon understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can cannot read and write and completed the 12th grade in school.

I Michael Gordon know of the following information. A few days before Brady Higgins and me was arrested kadern mentioned that he made some hops. He didn't say specific details about what kind of hop. All I know is he was building up money quickly. Following the robbery's he asked a friend if anyone got hurt. But did not lead my friend to believe he did it. And I myself had no knowledge. When Brady Higgins and me picked him up we had no knowledge of what he did. We were taking him to his cousin's house when we were pulled over and arrested.

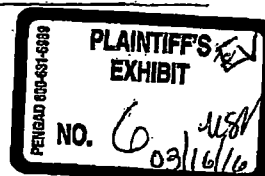
Nothing
Follows

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 10/5/11 Time: 12:30pm X Michael Gordon
Signature of person giving voluntary statement

WITNESS: [Signature] WITNESS: _____

I certify that I have been given a copy of this statement consisting of 1 pages.



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Jim Atkinson
Sumter County Sheriff's Department
107 East Hampton Avenue
Sumter, SC 29150

EVIDENCE PROCESSING

January 07, 2011
SLED LAB: L10-06683
Your Case No: 10071488
Incident Date: 6/11/2010
(V) Ollethia Dinkins
(B) Young's #637
(S) Kadeem Johnson
(S) Kareene Upchurch

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 1 Stocking cap

RESULTS:

Potential evidence collected and sent to the DNA Department.

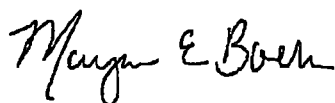
These examinations were conducted by DNA Evidence Processing Technician Jozetta Blair and were reviewed by Forensic Scientist Maryann E. Boehm in the DNA Casework Department.



L10-06683

Page 2 of 2

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Maryann E. Boehm
Forensic Scientist



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



SLED Lab # L10-06683 Narrative

Date : 04/17/2012
Type : Phone Log
Analyst : Lorian S. Pitts

Conv With:
Phone:
Affiliations:

Comments

Emailed Stephanie,

Bobby Richardson - Sumter CSO wanted to let you know that the subjects involved in this case have pled guilty, and for you to disregard in reference to court. Please call him back at 803-436-2042.

Date : 04/17/2012
Type : Phone Log
Analyst : Lorian S. Pitts

Conv With:
Phone:
Affiliations:

Comments

Emailed Stephanie,

Please call Mike Bean- Sumter Co in regards to this case. 803-774-3866

Date : 05/25/2015
Type : Case Event
Analyst : Stephanie M. Stanley

Conv With:
Phone:
Affiliations:

Comments

DNA assignment admin closed based on notification from Bobby Richardson (Sumter CSO) that subjects pled guilty.

This Space Reserved For Lab Receipt Barcode



SLED LABORATORY FORENSIC SERVICES REQUEST

SLED LAB No. L10-06683
Submission: 1 6/18/2010 10:08:33AM

Name of Investigating officer: <u>Cindy Pierson</u>		ORI No: <u>SC0430000</u>
Agency: <u>Sumter County Sheriff's Department</u>	Phone No: <u>775-0117</u>	Agency Case No: <u>10071488</u>
Fax No: _____	Email: _____	Offense: <u>ROBBERY</u>
Mailing Address: <u>107 East Hampton Avenue</u>		County: <u>Sumter</u>
City / State / Zip: <u>Sumter, SC 29150</u>		Offense Date: <u>06/11/2010</u>
CC: _____		Officer Involved Shooting ☐ Yes
		Rush: ☐ Yes

Is this evidence related to another lab number?

☐ Yes ☒ No

If yes, Lab Number:

SLED ITEM No. LAB ONLY	Agency Item No.	Description of Evidence	Analysis Requested
1	001	Hat or Cap - ONE BLACK STOCKING CAP	DNA ANALYSIS

Business	Sex	Race	DOB	SSN
Young's #637				

Victim(s)	Sex	Race	DOB	SSN
Ollethia Dinkins	F	B		

Comments

Case Comments: Inv. Mays

All sealed evidence packages accepted by the laboratory are assumed to contain what they are "said to contain" by the submitter. The laboratory does not conduct a detailed inventory of evidence package contents during the evidence intake process.

1/2/11

This Space Reserved For Lab Receipt Barcode.



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

SLED LAB No. L10-06683
Submission: 1 6/18/2010 10:08:33AM

Submitted By :

Received By :

Cindy C Pierson

Cindy Pierson

Amy Stephens

Amy Stephens
Forensic Technician



L10-06683

1

EVIDENCE PROCESSING WORKSHEET

SLED Lab Number: L10-06683
Agency: Sumter County Sheriff's Office
Victim(s): Ollethia Dinkins
Subject(s):
Assigned To: Jozetta A. Blair
Assisted By:
Processing Rm: II
Date Processed: June 25, 2010

Reagents:

AP Spot	SC N/A	Quality Control Result N/A
Phenolphthalein	SR N/A	Quality Control Result N/A
Hydrogen Peroxide	SC N/A	Quality Control Result N/A

Item 1,0 *Stocking cap* – black in color, very thin.

- 1.1 Swab from scraping entire cap – any DNA.
- 1.2 Possible hair collected.

9/8/08



**DEPARTMENT OF
FORENSIC DNA ANALYSIS**

Evidence Worksheet

Lab #: L10-06683

Analyst: Stephanie M. Stanley

Date: 02/07/11

Victim: O. Dinkins; Young's
#637

Subject:

Item No.	Description	AP	Phc	PSC	HC	Other	Sample Remaining	Comments
1.1	Swab(s)-From stocking cap					DNA	Minimal	(1)
1.2	Debris-Possible hair collected							Possible hair fragments. No hair suitable for STR DNA analysis
2	Buccal swab-Kareene A Upchurch					DNA	Yes	(1) Cut 06/13/11
3	Buccal swab-Kadeem S Johnson					DNA	Yes	(1) Cut 06/13/11

Phenolphthalin SC
3% H₂O₂ SR
Quality Control

AP Spot SC
Quality Control

Workspace decontaminated prior to analysis

mmr

10mm



ICHR 003F921523 from SCCH

SUMSO424

.ICHR.003F921523.SCCH.20100818 10:44:29

TO: SUMSO424-1351 20100818 10:44:29 003F921523
 FROM: SCCH-9573667 20100818 10:44:29

ICHR REQUEST FOR RAP SHEET
 ORI-SC0430000 FBI-132901JD3 PUR-C
 ATN-MAYS, SR INV

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
 AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
 BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
 SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-08/18/2010 TIME-10:44:14
 REQ ORI-SC0430000 SUMTER CNTY SO
 SID-SC01950213 FBI-132901JD3
 NAME-UPCHURCH, KAREENE ABDUL SEX-M RACE-B
 HEIGHT-508 WEIGHT-155 EYES-BRO HAIR-BRO SKIN- BORN-CT
 FPC- HENRY-

PHOTOGRAPH AVAILABLE
 PALM PRINTS AVAILABLE
 1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--06/24/2010 DATE OF LAST UPDATE--07/13/2010

ADDITIONAL IDENTIFIERS	BIRTH	DATES	MARKS	SOC SEC	MISC NUM
NAME	11201992				

CONTRIBUTOR/SUBJECT	DOA/RCVD CHARGE/DISPOSITION/ETC
UPCHURCH, KAREENE ABDUL	06/24/2010

SC0430000 SUMTER CNTY SO
 CASE-10075144
 ATN-43D300017218
 WARR-A101484
 CIT-16-17-725 (C)-MISDEMEANOR

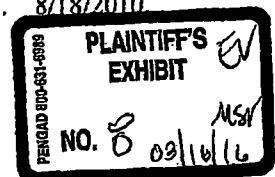
ARREST CHARGE 01-GIVING FALSE
 INFORMATION
 OFFENSE DATE-06/24/2010
 PHOTOGRAPH AVAILABLE
 PALM PRINTS AVAILABLE

UPCHURCH, KAREENE ABDUL
 SC0430000 SUMTER CNTY SO
 CASE-10070947
 ATN-43D300017693
 WARR-M441753
 CIT-16-3-29-FELONY

07/12/2010

ARREST CHARGE 01-ATTEMPTED
 MURDER
 OFFENSE DATE-07/12/2010

<http://10.1.2.28/lems/default.asp?Category=CriminalHistory-III&Service=PrMsg&MRpt=...> 8/18/2010



PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

WARR-M441754
CIT-16-11-330(8)-FELONY

ARREST CHARGE 02-ATTEMPTED
ARMED ROBBERY
OFFENSE DATE-07/12/2010

WARR-M441755
CIT-16-11-330(A)-FELONY

ARREST CHARGE 03-ARMED ROBBER
Y ARMED WITH DEADLY WEAPON
OFFENSE DATE-07/12/2010

WARR-M441756
CIT-16-11-330(A)-FELONY

ARREST CHARGE 04-ARMED ROBBER
Y ARMED WITH DEADLY WEAPON
OFFENSE DATE-07/12/2010

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/132901JD3
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

** S C CJIS END OF RECORD **

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

State of South Carolina)

-vs-)

Kadeem S. Johnson)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUITMOTION FOR SPEEDY TRIAL
MOTION FOR RELEASE ON PERSONAL
RECOGNIZANCEWarrant #'s M-441832, 441834
441835 and 441837JAN 11 2012
S.C. JUDGE
SUMTER COUNTY, S.C.

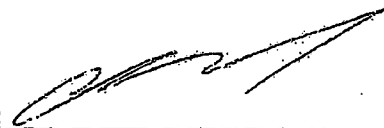
2012 JAN 11 PM 12:38

RECORDED

TO: ERNEST A. FINNEY, III, SOLICITOR OF THE THIRD JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that the above Defendant moves for and/or renews a Motion for Speedy Trial pursuant to rights given pursuant to State and Federal Constitutions.

Please take note that the Defendant also herewith moves the Court for Orders granting the Defendant a Personal Recognizance Bond or an Order of dismissal on all charges pending before the Court (and Order lifting any bench warrants that may have been imposed upon him) if the Defendant has not been tried within two (2) terms of the first day of the term of Court immediately following the date of this Motion For a Speedy Trial. Defendant herewith requests and moves that this Motion for bond reduction, orders and/or dismissal be granted forthwith for the Defendant upon the expiration of the second term by the Court, pursuant to Code Section 17-23-90 South Carolina code of Laws of 1976 (as amended).

CERTIFIED TRUE COPY
OF ORIGINAL FILED*James G. Campbell*CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINASumter, SC
January 9, 2012BY: Charles T. Brooks, III, Esquire
Attorney for the Defendant
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708

STATE OF SOUTH CAROLINA

RECORDED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

2012 APR 27 PM 1:07

STATE OF SOUTH CAROLINA

JAMES C. BROOKS, III
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No: 2011-GS-43-469

2011-GS-43-481

2011-GS-43-939

Plaintiff,

vs.

KADEEM JOHNSON

Defendant,

MOTION FOR RECONSIDERATION
OF SENTENCE

This Motion made by Defendant through his undersigned attorney requests the Court reconsider his sentence.

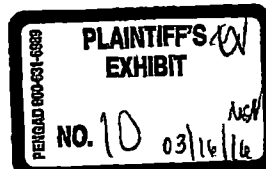
The Honorable Jeffrey Young sentenced the Defendant to aggregate sentence of Twenty-five (25) years at his guilty plea. The Defendant's co-defendant received a sentence of Fifteen (15) years.

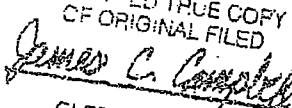
Each defendant was equally culpable and although the co-defendant plead guilty the day before, the defendant contended that the disparity in sentence is unfair between the two co-defendants.

Respectfully Submitted,


CHARLES T. BROOKS, III
Attorney for the Defendant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

Sumter, South Carolina
April 27, 2012



CERTIFIED TRUE COPY
OF ORIGINAL FILED

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

Kadeem Johnson,

PLAINTIFF,

v.

State of South Carolina,

DEFENDANT.

TRANSCRIPT OF JURY/PRE-MOTIONS
C/A No. 2011-GS-43-0469

Sumter County Courthouse
April 16, 2012

BEFORE:

HONORABLE R. JEFFREY YOUNG, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor John Meadors
Attorney for State of South Carolina

Charles Brooks, Esquire
Attorney for Kadeem Johnson

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

INDEX

Certificate of Service

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Kadeem Johnson vs. The State of South Carolina

3

1 The Court: All right, Mr. Solicitor.

2 Mr. Meadors: If it pleases, Your Honor.

3 The Court: Yes, sir.

4 Mr. Meadors: At this time the State would call the
5 State of South Carolina vs. Kadeem S. Johnson. Mr.
6 Johnson is in court with his attorney Mr. Charles Brooks.
7 Your Honor, we are here on three Sumter County true
8 billed indictments. 2011-GS-43-469, indictment for Armed
9 Robbery and Possession of a weapon during a violent
10 crime. 2011-GS-43-481, Attempted Murder, Attempted Armed
11 Robbery, Possession of a weapon during the commission of
12 a violent crime. 2011-GS-43-939, Armed Robbery.

13 The Court: All right, Ladies and Gentlemen, we are
14 about to begin the case of State vs. Kadeem S. Johnson.
15 Mr. Johnson is charged under three indictments. The
16 first indictment will be indictment 2011-GS-43-469 which
17 reads that Kadeem S. Johnson, did in Sumter County on or
18 about June 9, 2010 violate session 16-11-330 of the South
19 Carolina Code of Laws, as amended. While armed with a
20 deadly weapon and with a firearm, did felonious take from
21 Alicia Moses and Abraham Alebe by means of force or
22 intimidation goods or monies said such goods or money being
23 Three Hundred (\$300) Dollars in U.S. currency. Count two
24 reads that Kadeem S. Johnson did in Sumter County on or
25 about June 9, 2010 violate section 16-23-490, South

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1 Carolina Code of Laws and that while armed with a deadly
2 weapon to wit a firearm, did felonious take from the
3 presence of Alicia Moses and Abraham Alebe by force or
4 intimidation goods or monies, said such goods or money
5 being described as Three Hundred (\$300.00) Dollars in
6 U.S. currency. The next indictment under indictment
7 number 2011-GS-43-481. The indictment reads on the
8 charge of attempted murder Kadeem S. Johnson did in
9 Sumter on or about June 10, 2010 violate section 16-3-29
10 of the South Carolina Code of Laws as amended in that
11 Kadeem S. Johnson did shoot Bashem Mohammed at the scene
12 multiple times in an attempt to kill the victim with
13 malice aforethought either expressed or implied. Count
14 two reads that Kadeem S. Johnson in Sumter County on or
15 about June 10, 2010, while armed with a deadly weapon, a
16 handgun, attempted to take and carry away the personal
17 property from Bashem Mohammed with the intent to deprive
18 him by use of force, threats or intimidation in violation
19 of section 16-11-330(b) of the South Carolina Code of
20 Laws 1976, as amended. Count three reads possession of a
21 weapon during the commission of a violent crime that
22 Kadeem S. Johnson did assault on or about June 10, 2010
23 violate section 16-3-29 of the South Carolina Code of
24 Laws, as amended and that Kadeem S. Johnson did attempt to
25 kill Bashem Mohammed, with malice aforethought either

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1 expressed or implied by shooting the victim multiple
2 times with a firearm by carrying a handgun without the
3 authority to do the same in violation of section 16-23-
4 490 of the South Carolina Code. And then, finally, under
5 indictment 2011-GS-43-939, the indictment reads that on
6 or about June 11, 2010 in Sumter County, South Carolina
7 the defendant Kadeem S. Johnson at 2264 Peach Orchard
8 Road by use of force, threats or intimidation and while
9 armed with a deadly weapon and while alleging either by
10 words or action that he was armed by using the
11 representation of a deadly weapon or a object which a
12 person present during the commission of a robbery
13 reasonably believed to be a deadly weapon did take and
14 carry away goods and/or monies from the person present of
15 Ollethia Dinkins to deprive the victim of possession
16 thereof in violation of section 16-11-330(a) of the South
17 Carolina Code.

18 Now, Ladies and Gentlemen, let me remind you that
19 the fact that the defendant was arrested, charged and
20 indicted is in no way indicative that he committed these
21 crimes. The defendant has plead not guilty and therefore
22 the State has the burden of proving each and every
23 element of these crimes beyond a reasonable doubt.

24 Now, Ladies and Gentlemen, the indictment again,
25 these are only the documents to get the case into court

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1 and in no way are indicative that he's guilty of the
2 charges contained therein.

3 Now, Ladies and Gentlemen, before we select the
4 jury, there are several questions that I am going to need
5 to ask you and I remind you that you are still under
6 oath. Now, Ladies and Gentlemen, the reason that you're
7 under oath is because this is such a crucial stage of the
8 trial. Just like a building must have a firm foundation
9 and be strong and protective of those who live in it, so
10 must a jury be strong as the basis for a fair and
11 impartial trial for those who participate. The Solicitor
12 for the State and the Defendant who is on trial.

13 Your answers to these questions are the foundation
14 by which the attorneys will build a jury and they are
15 relying on your truthful answers to help them strike an
16 unbiased jury who will diligently listen to the evidence
17 and will deliver a just verdict. Again, thank you ladies
18 and gentlemen for your complete truthfulness concerning
19 these questions.

20 The first question is, has anyone ever been related
21 by blood or marriage or have a close personal
22 relationship to the Defendant, Kadeem S. Johnson, if so
23 please stand.

24 Thank you, no one is standing.

25 Is any member of the jury panel had a close personal

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1 relationship or business relationship with any of the
2 alleged victims? That would be Aleshia Moses and Abraham
3 Alebe and Bashem Mohammed or Ollethia Dinkins? If so,
4 please stand.

5 Mr. Meadors: Your Honor, if it please the Court.
6 That Aleisha may also be Felicia Moses.

7 The Court: She may also be Aleisha or Felicia.

8 Mr. Meadors: And Mr. Bashem, is also known as Sam,
9 Your Honor.

10 The Court: Bashem Mohammed?

11 Mr. Meadors: He's known as Sam, Your Honor.

12 The Court: Anybody know the possible victims or
13 related by blood or marriage or have any relationship
14 with any of these people. If so, please stand.

15 Thank you. No one is standing.

16 All right. Ladies and Gentlemen, this I a list of
17 possible witnesses in this case and I'm going to go
18 through it. It's a long list. I'm going to go through
19 it and then I am going to ask you if you are related by
20 blood or marriage or have a business or personal
21 relationship with any of these witnesses.

22 Felicia Moses, Basel Mohammed, also known as Sam.
23 Randy Lowery. Ophelia Dinkins, Brady Higgins, Deputy M.
24 Jordan, Sgt. R. Reynolds of the Sumter County Sheriff's
25 Office. Investigator Wesley Gardner of the Sumter County

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1 Sheriff's Office. Investigator Tripp Mayes of the Sumter
2 County Sheriff's Office. Investigator Michael Bean of
3 the Sumter County Sheriff's Office. Corporal C. Hice of
4 the Sumter County Sheriff's Office. Investigator T.
5 Herbert of the Sumter County Sheriff's Office. Michael
6 Grier, Antonia Nolan. Corporal J. Thomas of the Sumter
7 County Sheriff's Office. Kareemee Upchurch. Deputy S.
8 Deberry of the Sumter County Sheriff's Office. Michael
9 Gorton. Investigator James Atkinson of the Sumter County
10 Sheriff's Office. Doris Yarborough of the State Law
11 Enforcement Division. Donna Welch, registered nurse.
12 Tommy Barron. Mary Ann Baum of the State Law Enforcement
13 Division. Stephanie Stanley, Cindy Person, Michael
14 Anderson Young, of Young's and Abraham Alebe.

15 Does any member of the jury panel know any of these
16 victims or have any relationship with them? If so, please
17 stand.

18 Yes, sir. Please state your name and juror number.

19 Juror: My name is Rodney, I don't know what my
20 number is.

21 Bailiff: 213, Your Honor.

22 The Court: Yes, sir.

23 Juror: I know Michael Jordan.

24 The Court: Would the fact that you know Michael
25 Jordan make it so that you can't be fair and impartial to

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1 the State or the Defendant?

2 Juror: No, sir.

3 The Court: Okay. Thank you, sir. Anyone else?

4 (Juror stands)

5 The Court: Yes, ma'am.

6 Juror: I know ...

7 The Court: What's your ...

8 Juror: Amanda Arden, Juror #7.

9 The Court: Yes, ma'am.

10 Juror: I know multiple of the officers and the
11 investigators but nothing personal just came in contact
12 with them.

13 The Court: But you can listen to the evidence and be
14 fair and un-bias to both the State and the Defendant?

15 Juror: Yes.

16 The Court: All right. Thank you, ma'am.

17 Juror: Thank you.

18 The Court: Yes, ma'am.

19 Juror: I do know some of the officers.

20 The Court: Name and number.

21 Juror: #21, Tara Groom. I also know some of the
22 officers but I could certainly be impartial.

23 The Court: All right. Thank you. Now, Ladies and
24 Gentlemen, the attorneys who will be trying this case are
25 Mr. John Meadors for the Solicitors office and Mr.

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1 Charles Brooks for the Defendant. Has any member of the
2 jury panel ever been represented by either of these
3 attorneys and Mr. Meadors works for the Solicitor's
4 office and Mr. Brooks has a private practice. So, if
5 you've ever been represented by them, please stand at
6 this time. Alright. Thank you. No one is standing.

7 Has any member of the jury panel formed or expressed
8 an opinion about any issue involved in this case. If so,
9 please stand.

10 Has any member of the jury panel had a family member
11 who has been the victim or the perpetrator of a violent
12 crime. If so, please stand. Yes, ma'am. State your
13 name and number.

14 Juror: Number 4, Ms. Anderson.

15 The Court: All right. Ms. Anderson.

16 Juror: Two years ago my niece was murdered.

17 The Court: The fact that you have a niece who was
18 murdered several years ago make it so that you could not
19 be fair and impartial to the State or the Defendant in
20 this case?

21 Juror: I can be.

22 The Court: You can be?

23 Juror: Yes.

24 The Court: You can be?

25 Juror: Yes.

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1 The Court: All right. Thank you. Is there any
2 member of the jury panel that is aware of any bias or
3 prejudice towards either the State or the Defendant in
4 this case. If so, please stand. Thank you, no one is
5 standing.

6 Is there any member of the jury panel that was also
7 a member of the grand jury which issued the indictment in
8 this case. If so, please stand. Thank you, no one
9 standing.

10 Is there any member of the jury panel who is a
11 member of or a contributor to, any group which has as
12 its primary concern promotion of law enforcement or
13 victims rights. These groups would include but certainly
14 not be limited to Mothers Against Drunk Drivers.
15 Students Against Drunk Drivers or Citizens Against
16 Violent Crime. If so, please stand. Thank you, no one
17 standing.

18 Does any member of the jury panel know of any reason
19 whatsoever why he or she should not serve in this case
20 with particular interest being placed on your ability to
21 be fair and impartial to both the State and the
22 Defendant. If so, please stand. Thank you, no one is
23 standing.

24 Does the State have any additional questions that
25 you'd like for me to ask?

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1 Mr. Meadors: May we approach?

2 The Court: You may.

3 (Mr. Meadors and Mr. Brooks approach the bench)

4 The Court: All right. Ladies and Gentlemen, I
5 pronounced Randy Higgins. It's Grady Higgins. So if
6 anybody knows a Grady Higgins, please stand at this time.
7 Okay. Any additional questions Mr. Meadors?

8 Mr. Meadors: No, sir.

9 The Court: Mr. Brooks?

10 Mr. Brooks: No, sir.

11 The Court: All right. Now, Ladies and Gentlemen,
12 what is going to happen now is the computer is going to
13 generate a list of possible jurors. When your name is
14 called, if your name is called, please come forward and
15 bring your personal items with you and turn around and
16 face General Thomas Sumter. Ladies and Gentlemen, the
17 attorneys will then have an opportunity to then strike
18 you or accept you to the jury. Please do not take it
19 personally if they strike you from the jury. Attorneys
20 have an idea who they want for the jury and they can
21 strike for any reason or no reason except for your race
22 or your gender. Again, please don't take it personally
23 if you are stricken. You'll have another opportunity to
24 go before Judge Cothran if you are not selected in this
25 case.

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1 Bailiff: Please the Court, Your Honor..

2 The Court: Yes, sir.

3 Bailiff: Ladies and Gentlemen, when your name is
4 called, please come through the double gate or your left
5 or the single gate on your right, which is most
6 convenient come up to the front of the Courtroom and face
7 the back, please.

8 Juror Number 160. Maryland Timmons. (Juror
9 approaches). What sayeth the State?

10 Mr. Meadors: Please present the juror.

11 Bailiff: What sayeth the Defendant?

12 Mr. Brooks: Please strike this juror.

13 Bailiff: Please have a seat back with the panel,
14 you've been excused from this trial, please ma'am.
15 (Juror returns to seat). Juror Number 25, Angel Brown.
16 (Juror approaches). What sayeth the State?

17 Mr. Meadors: Please present the juror.

18 Bailiff: What sayeth the Defendant?

19 Mr. Brooks: Please seat the Juror.

20 Bailiff: Please have a seat in the jury box, please
21 ma'am. This way ma'am. Juror Number 170, Camelia
22 Washington. (Juror approaches). What sayeth the
23 State?

24 Mr. Meadors: Please present the juror.

25 Bailiff: What sayeth the Defendant?

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1 Mr. Brooks: Please seat this juror.

2 Bailiff: Have a seat in the jury box, please, ma'am.

3 Juror Number 181, Robert Ross. (Juror approaches). What
4 sayeth the State?

5 Mr. Meadors: Please present the juror.

6 Bailiff: What sayeth the Defendant?

7 Mr. Brooks: Please seat this juror.

8 Bailiff: Have a seat in the jury box, please, sir.

9 Juror Number 105, Ruthie McClary. (Juror approaches).
10 What sayeth the State?

11 Mr. Meadors: Please present the juror.

12 Bailiff: What sayeth the Defendant?

13 Mr. Brooks: Please seat this juror.

14 Bailiff: Have a seat in the juror box, please,
15 ma'am. Juror Number 69, Brenda Green. (Juror
16 approaches). What sayeth the State?

17 Mr. Meadors: Please excuse the jury.

18 Bailiff: Have a seat back with the panel, you've
19 been excused from this trial, please, ma'am. Juror Number
20 111, Tina Merritt. (Juror approaches). What sayeth the
21 State?

22 Mr. Meadors: Please present the juror.

23 Bailiff: What sayeth the Defendant?

24 Mr. Brooks: Please seat this juror.

25 Bailiff: Have a seat in the jury box, please, ma'am.

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1 Juror Number 141, Sherod Shaw. (Juror approaches). What
2 sayeth the State?

3 Mr. Meadors: Please present the jury.

4 Bailiff: What sayeth the Defendant?

5 Mr. Brooks: Please seat this juror.

6 Bailiff: Have a seat in the jury box, please, sir.

7 Juror Number 154, Timothy Sumpter, Jr. (Juror
8 approaches). What sayeth the State?

9 Mr. Meadors: Please present the jury.

10 Bailiff: What sayeth the Defendant?

11 Mr. Brooks: Please seat this juror.

12 Bailiff: Have a seat in the jury box, please, sir.

13 Juror Number 121 Albert Perry. (Juror approaches). What
14 sayeth the State?

15 Mr. Meadors: Please present the jury.

16 Bailiff: What sayeth the Defendant?

17 Mr. Brooks: Please present this juror.

18 Bailiff: Have a seat in the jury box, please, sir.

19 Juror Number 80, Andrew House. (Juror approaches). What
20 sayeth the State?

21 Mr. Meadors: Please present the juror.

22 Bailiff: What sayeth the Defendant?

23 Mr. Brooks: Please excuse this juror.

24 Bailiff: Have a seat back with the panel, you've
25 been excused from this trial, please, sir. (Juror

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1 returns to panel). Juror Number 50, Scott Hay. (Juror
2 approaches). What sayeth the State?

3 Mr. Meadors: Please present the juror.

4 Bailiff: What sayeth the Defendant?

5 Mr. Brooks: Please seat this juror.

6 Bailiff: Have a seat in the jury box, please, sir.

7 Juror Number 17, Natasha Blackmon. (Juror approaches).

8 What sayeth the State?

9 Mr. Meadors: Please excuse the juror.

10 Bailiff: Have a seat back with the jury panel,
11 you've been excused from this trial, please, ma'am.

12 Juror Number 139, James Skaf, Jr. (Juror approaches).

13 What sayeth the State?

14 Mr. Meadors: Please present the jury.

15 Bailiff: What sayeth the Defendant.

16 Mr. Brooks: Please excuse this juror.

17 Bailiff: Have a seat back with the panel, you've
18 been excused from this trial, please sir. Juror Number
19 97, Alexander Lane. (Juror approaches). What sayeth the
20 State?

21 Mr. Meadors: Please excuse the juror.

22 Bailiff: Have a seat back with the panel, you've
23 been excused from this trial, please, sir. Juror Number
24 63, Danielle Glover. (Juror approaches). What sayeth
25 the State?

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1 Mr. Meadors: Please present the juror.

2 Bailiff: What sayeth the Defendant?

3 Mr. Brooks: Please seat this juror.

4 Bailiff: Have a seat in the jury box, please, ma'am.

5 Juror Number 48, Stacy Durant. (Juror approaches). What
6 sayeth the State?

7 Mr. Meadors: Please excuse the juror.

8 Bailiff: Have a seat back with the panel, you've
9 been excused from this trial, please, ma'am. (Juror
10 returns to panel). Juror Number 21, Terra Bradham.
11 (Juror approaches). What sayeth the State?

12 Mr. Meadors: Please present the juror.

13 Bailiff: What sayeth the Defendant?

14 Mr. Brooks: Please excuse this juror.

15 Bailiff: Haven a seat back with the panel, you've
16 been excused from this trial, please, ma'am. Juror
17 Number 29, Nathalie Butler. (Juror approaches). What
18 sayeth the State?

19 Mr. Meadors: Please present the juror.

20 Bailiff: What sayeth the Defendant?

21 Mr. Brooks: Please seat this juror.

22 Bailiff: Have a seat in the jury box, please, ma'am.

23 Juror Number 7, Amanda Arnold. (Juror approaches). What
24 sayeth the State?

25 Mr. Meadors: Please present the juror.

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1 Bailiff: What sayeth the Defendant?

2 Mr. Brooks: Excuse the juror.

3 Bailiff: Have a seat back with the jury panel,
4 you've been excused from this trial, please, ma'am.

5 Juror Number 79, Benjamin Holladay, Sr. (Juror
6 approaches). What sayeth the State?

7 Mr. Meadors: Please present the juror.

8 Bailiff: What sayeth the Defendant?

9 Mr. Brooks: Please seat the juror.

10 Bailiff: Have a seat in the jury box, please, sir.
11 For our alternate juror. Juror Number 173, Bessie
12 Williams. (Juror approaches). What sayeth the State?

13 Mr. Meadors: Please present the juror.

14 Bailiff: What sayeth the Defendant?

15 Mr. Brooks: Please seat this juror.

16 Bailiff: Have a seat in the jury box, please, ma'am.

17 The Court: Please call the juror names.

18 Bailiff: Ladies and Gentlemen. When I call your
19 name, please raise your hand. Angel Brown, Camile
20 Washington, Robert Ross, Ruthie McClary, Tina Merritt,
21 Sherod Shaw, Timother Sumpter, Albert Parrott, Scott Eck,
22 Danielle Glover, Nathaniel Buckman, Benjamin Holladay,
23 Sr., Bessie Williams.

24 The Court: Thank you. Ladies and Gentlemen, you all
25 have been selected as the jurors for this case. I'm

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1 going to send you back to the jury room for a few minutes
2 while we take up a few matters of law up here in Court
3 outside of your presents. While you are back there, of
4 the primary jurors you all decide who you want to be your
5 foreperson. It can be any of the twelve of you. But you
6 all talk amongst yourselves during this brief period of
7 time. When you come out the foreperson needs to sit in
8 this chair. Thank you.

9 (Jury break 11:55)

10 The Court: Are there any objections to the jury that
11 has been selected and the manner in which it has been
12 selected from the State?

13 Mr. Meadors: No, sir.

14 The Court: From the Defendant?

15 Mr. Brooks: No, sir.

16 The Court: All right. (Panel excused from this
17 trial to the other courtroom for jury selection).

18 (Jury panel excused)

19 The Court: All right. Gentlemen, how do you all
20 want to handle this. We've got pretrial motions. Do you
21 all want to let the jury go and have them come back
22 tomorrow morning?

23 Mr. Meadors: Yes, sir.

24 Mr. Brooks: We would request that. That's fine.

25 The Court: Okay.

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1 Mr. Meadors: Judge, what time will you bring them
2 back?

3 The Court: 9:30.

4 Mr. Meadors: Okay. That's fine.

5 The Court: Let's bring our jury back.

6 (Jury enters courtroom 11:58)

7 The Court: All right, you're my forelady, right.
8 All right. Very good. Ladies and Gentlemen, because of
9 the pretrial stuff we need to take up before we actually
10 start the trial, we are going to need that time this
11 afternoon to do that. So, what I'm going to do is I'm
12 going to release you for the afternoon with instructions
13 that you return here tomorrow morning. Now, Ladies and
14 Gentlemen, please do not discuss with anyone about this
15 case. Please do not go looking on the internet to see
16 what you can find out. The idea is that all the
17 information you are going to need to make your decision
18 of the Defendant's guilt or not guilt will come from this
19 witness stand and from what is presented in court.

20 I am going to dismiss you. Be back tomorrow morning
21 at 9:30 and have a nice afternoon.

22 Bailiff: Ladies and Gentlemen, come to the juror
23 room, do not come back in the courtroom. Thank you.

24 The Court: You will be sworn at that time. Thank
25 you.

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1 (Jury exits courtroom 12:00)

2 The Court: What is your pleasure. Do you all want
3 to do the motions now or do you want to break and come
4 back and do them at 2:00. It makes no difference to me.

5 Mr. Brooks: We'll do them now, Judge.

6 The Court: All right. Let's go ahead and do them
7 now.

8 Mr. Brooks: Are you ready, Judge?

9 The Court: Yes, sir.

10 Mr. Brooks: My first motion basically is the
11 inventory motion of discovery to make sure that we have
12 gotten everything. I feel confident that the State has
13 complied with Rule 5, but I want to make sure we have
14 those issues out and we understand we've got everything
15 in our case.

16 What I've got basically is the incident reports from
17 the various officers involved in the case and I've got a
18 statement from, it's a report from I believe officer
19 Tripp Mays, was the detective in this case. I've also
20 got, as of late Friday afternoon, I've got statement from
21 Mike, and obviously that is going to be another motion
22 I'm going to raise and I did get a video and some
23 pictures, I do need to take a break so that I can look at
24 that video because I wasn't able to look at it. I've
25 talked with Mr. Meadors about that. I've got the

1 pictures and I believe that's all of the discovery in
2 this case.

3 Mr. Meadors: Judge, during our break for this
4 afternoon I will go over everything with him. There's
5 basically, obviously three separate incidences. On the
6 investigative report it looks like two-thirds of it are
7 basically the same thing with a different caption on the
8 top describing that incident and then it goes through the
9 investigation for the rest of it. I want to look, I want
10 him to look over that, over all three of them during the
11 lunch hour. As far as the two statements last Friday
12 they came into my possession then and I turned them over
13 as quickly as I could.

14 The Court: Did the police hold them back?

15 Mr. Meadors: It was nothing intentional, Judge.

16 Mr. Brooks: That's going to be my next motion,
17 Judge, whenever we finish with the discovery issue, I'm
18 going to get into, directly get into that if we can.

19 Mr. Meadors: But, Judge, as far as discovery there
20 were some still photos from, Judge, basically the June 9
21 incident which is a El Cheapo's, at 949 North Main
22 Street, the video just wasn't --- you couldn't download
23 it so the officers just came and had to take individual
24 pictures from the monitor. He's got those.

25 Judge, the June 10, incident is from the El Cheapo's

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1 at 4756 Broad Street, that's the one Mr. Sam is the
2 victim in back here, go ahead and stand up.

3 (Victim stands)

4 Mr. Meadors: I appreciate it. (Victim sits down).
5 The video just wasn't working. Just wasn't working.
6 It's one of those things. So, no video on that one.

7 June 11, 2010, was the incident at the Young's Store
8 at 2264 Peach Orchard Road where we do have a video that
9 I will make sure he --- we gave it to him last week and
10 we'll make sure we look at that and it does show two
11 individuals stepping inside, the victims, Ms. Dinkins,
12 they had coats and masks on but there is a video of that
13 incident.

14 Judge, in addition to that --- Your Honor, we'll
15 review the file before this afternoon. There was some
16 other stuff submitted by SLED, which I've gave him. No
17 testing was done, which I told him that and there may be
18 some change sheets which I don't think will be an issue
19 since we have nothing to offer but I'll make sure that he
20 sees all of that.

21 Mr. Brooks: As long as those witnesses answers
22 appropriate, Judge. Judge, the second motion I have is
23 in regards to the statements allegedly from my client to
24 these witnesses. We got that basically after ---
25 basically 4:30-5:00 Friday. There addresses are blacked

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1 out so there is no way that I can actually investigate
2 those guys to try to determine the liability or
3 credibility to be prepared to ...

4 The Court: Y'all can provide him with that
5 information?

6 Mr. Meadors: Yes, sir. Yes, sir. I just came from
7 a seminar where they had said to black that out. If,
8 Your Honor, orders me to, I will do it.

9 Mr. Brooks: Judge, on the statements themselves were
10 taken October 5, 2011. And, of course, they are just now
11 giving them to us. I just want to answer the question.
12 Obviously, my first position is that that issue be
13 suppressed in its entirety and the witnesses not be
14 allowed to testify. But, in addition to that, obviously
15 we just haven't had a chance, my client doesn't know
16 about it, the State doesn't know about it, I told what I
17 saw, I mean I told them that this morning and obviously
18 we couldn't check out these guys ...

19 The Court: Well, you'll have this afternoon. Motion
20 denied.

21 Mr. Brooks: Judge, I'll also as the Court for
22 sequestration motion. Obviously, you know, a lot of
23 these things are fact witnesses and I want to make sure
24 everybody keeps their story straight.

25 The Court: Okay. I will sequestrate the witnesses

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1 with the exception of the chief investigator on each one
2 of these charges will be allowed to stay.

3 Mr. Brooks: Judge, I did raise a motion to elect
4 which incident they were going on because we've got three
5 robberies on three different days. At this point in time
6 there is nothing that actually officially connects the
7 first robbery to the second robbery to the third robbery
8 to assume that who did it was one in the same. We talked
9 about it in chambers. I wanted to put that motion on the
10 record.

11 The Court: Mr. Meadors.

12 Mr. Meadors: If it pleases, Your Honor. Judge, some
13 of the elements made, Your Honor, did consider this case
14 whether or not the indictments arise out of a single
15 change of circumstances, approved by the same evidence or
16 the same general nature and no right of the defendant has
17 been prejudiced, real right. Judge, this is a type of
18 case where in the earlier morning hours of the 9th, 10th
19 and 11th three convenient stores in Sumter were robbed.
20 Same motives. We believe the same two individuals coming
21 into the store. We anticipate and believe that the co-
22 Defendant Mr. Kareeme Upchurch, who was involved with the
23 defendant will testify that he and this defendant did
24 basically these robberies. So, I guess the practical
25 consideration of judicial economy with the exception of

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1 the three victims, Mr. Sam, Ms. Moses and Ms. Dinkins,
2 the chief investigating officer is the same, the co-
3 defendant, we believe, will be the same. And besides a
4 few chain witnesses, even Mr. Lowery, one of the
5 witnesses who came forward initially gave a statement
6 against Mr. Upchurch, he'd be the same in each case.
7 These two other witnesses, which again, we just got these
8 two statements last week they are exculpatory, those two
9 witnesses will be the same in all three. They were
10 basically just that he told me they did some bops and
11 there's nothing earth shattering in those just that he
12 told them they had done some robberies and he was trying
13 to save enough money to buy a Corvette from his uncle in
14 Florida and then was going to come back up here. So that
15 witness would actually be brought in all three incidents,
16 so. With all those factors as, Your Honor, as already
17 ruled, that we can join these charges and try them
18 together. I just want to put that on the record.

19 The Court: Of course, if the co-defendant does not
20 testify that's a different matter. Motion denied.

21 Mr. Brooks: We ask for the State to disclose any
22 deals. At this point, I was unaware that there was a co-
23 defendant testifying until I got here this morning.
24 Obviously, I relayed that to my client and we feel that
25 we should be privy to that for purposes of getting ready

Kadeem Johnson vs. The State of South Carolina 27

1 to go to trial. Mr. Meadors can speak on that.

2 The Court: Mr. Meadors.

3 Mr. Meadors: Your Honor, in participating a plea to
4 all the charges were negotiated to fifteen (15) years,
5 Mr. Upchurch and Mr. Sam is in agreement to that. He was
6 personal, up close and personal, he got shot a few times.
7 Glad he is still here today.

8 Judge, Mr. Murphy worked on this last week. He
9 approached me with this. After consultation with him
10 made that agreement and hopefully we will finalize that
11 this afternoon.

12 The Court: All right. A plea arrangement will be
13 done this afternoon.

14 Mr. Brooks: Is he going to plea this afternoon?

15 Mr. Meadors: Your Honor, we discussed that with you
16 in chambers but that is anticipating that. His lawyer is
17 here and we are anticipating that.

18 The Court: Anything else?

19 Mr. Brooks: Judge, I think that's all --- I do have
20 one other motion. There was some mention in the report
21 about anonymous tip and obviously we are going to delve
22 into that because even though it is an anonymous tip we do
23 have an opportunity to see whether or not that anonymous
24 tip is actually genuine and obviously demonstrates
25 knowledge of a concealed criminal activity and pretrial

Kadeem Johnson vs. The State of South Carolina 28

1 motion that the officer can testify outside the jurors
2 presence to determine if it is a safe anonymous tip,
3 assuming, I use that word carefully, Judge, I'm assuming
4 that Officer Mayes is going to say that, that is how he
5 got to Mr. Lowery who eventually got to Mr. Upchurch
6 because that's in his report.

7 The Court: I guess it all depends on what happens
8 this afternoon.

9 Mr. Meadors: I've never used an anonymous tip, I
10 don't plan on using one.

11 Mr. Brooks: It's in his report.

12 Mr. Meadors: I want to listen to ...

13 Mr. Brooks: That's fine, if you're not going to say
14 that then ...

15 Mr. Meadors: Judge, this afternoon, we were going to
16 try to get the video up and getting it running in here
17 and if there are any other issues up this afternoon we
18 will come back before, Your Honor.

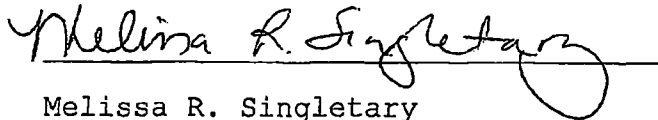
19 The Court: All right. Very well.
20
21
22
23
24
25

CERTIFICATE

This is to certify that the motion transcript in the matter of James Earnest Butler vs. State of South Carolina, consisting of Twenty-Eight (28) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 2nd day of November, 2014.


Melissa R. Singletary
Certified Court Reporter

MELISSA R. SINGLETARY
Certified Verbatim Court Reporter
2797 State Road
Summerville, South Carolina 29483

PAID IN FULL

THANK YOU :-)

November 2, 2014

Tricia A. Blanchette, Esquire
LAW OFFICE OF TRICIA A. BLANCHETTE
Post Office Box 12725
Columbia , South Carolina 29211

Re: Kadeem Johnson vs. State of South Carolina
2011-GS-43-0469
D/H: April 16, 2012
Presiding Judge: R. Jeffrey Young

Transcript of Jury/Pretrial Motions \$ 96.25

TOTAL DUE: \$ 96.25

PLEASE PAY UPON RECEIPT
(Please return copy with remittance)

Thank you

:mrs

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER)

INDICTMENT NO. 2011-GS-43-469

The State of South Carolina,)

2011-GS-43-481

v.)

STATE'S WITNESS LIST

Kadeem S. Johnson,)

Defendant(s))

ATTORNEY FOR THE STATE: John P. Meadors

DEFENSE ATTORNEY: Charles Brooks

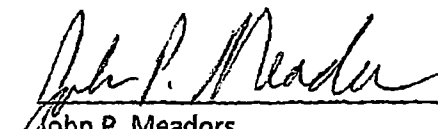
Charges: Attempted Murder Armed Robbery (Three counts) Possession of a Firearm during
Commission of a Violent Crime

WITNESS(ES):

- 1) Felicia Mose
- 2) Basem Mohammed a/k/a Sam
- 3) Randy Lowery
- 4) Ollethia J. Dinkins
- 5) Brandy Higgins
- 6) Deputy M. Jordan
- 7) Sgt. R. Reynolds, SCSO
- 8) Inv. Wesley Gardner, SCSO
- 9) Inv. Tripp Mayes, SCSO
- 10) Inv. Michael Bean, SCSO
- 11) Corp. C.Hice, SCSO



- 12) Inv. T. Herbert, SCSO
- 13) Michael Buero
- 14) Antonlal Nolan
- 15) Corporal J. Thomas, SCSO
- 16) Kareeme Upchurch
- 17) Deputy S. DeBerry, SCSO
- 18) Michael Gordon
- 19) Inv. James Atkinson, SCSO
- 20) Doris Yarborough, SLED
- 21) Donna Welch, RN
- 22) Tommy Barron
- 23) Maryann Boehm, SLED
- 24) Stephanie Stanley
- 25) Cindy Pierson
- 26) Michael Anderson, Youngs
- 27) Ibrahim Awid
- 28)


John P. Meadors
Asst. Solicitor Sumter County

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Kadeem Johnson, #350533

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2014-CP-43-794

ORDER OF DISMISSAL

This matter came before the Court by way of an application for post-conviction relief (PCR) filed April 25, 2014. Respondent filed its return on or about August 28, 2014. Applicant filed an amended application on or about February 10, 2016, to which Respondent did not file a response. An evidentiary hearing was convened regarding this matter on March 13, 2016 at the Sumter County Judicial Center. Applicant was represented by Tricia Blanchette, Esquire, and Respondent was represented by Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office.

Testimony was provided by the Applicant and Charles T. Brooks, III, Esquire ("plea counsel"). At the close of testimony, argument was heard from the attorneys regarding whether plea counsel provided Applicant with a definitive amount regarding the number of years he was likely to receive during sentencing after a guilty plea. The attorneys and the Court could not reach a consensus as to what the testimony revealed, and the Court ordered Respondent to request the transcript of the testimony of the witnesses to be used in preparation of briefs on this issue. The Court had before it a copy of the PCR transcript, a copy of the plea and pre-trial transcript, the records of the Sumter County Clerk of Court regarding the subject conviction,

Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the March 2011 term of the Sumter County Grand Jury under a three count indictment for Attempted Murder, Attempted Armed Robbery, and Possession of a Weapon During the Commission of a Violent Crime (2011-GS-43-0481) and under a two count indictment for Armed Robbery, and Possession of a Weapon During Violent Crime (2011-GS-43-0469). Subsequently, Applicant was true bill indicted at the July 2011 term of the Sumter County Grand Jury for Armed Robbery (2011-GS-43-0939). Charles Brooks, Esquire represented Applicant. On April 17, 2012, Applicant pled guilty before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant to twenty-five year term of imprisonment for Armed Robbery (2011-GS-43-0939), twenty year term of imprisonment for Attempted Armed Robbery (2011-GS-43-0481), twenty year term of imprisonment for Attempted Murder, five year term of imprisonment for Possession of a Weapon During Violent Crime (2011-GS-43-0481), twenty five years for Armed Robbery (2011-GS-43-0469), five year term of imprisonment for Possession of a Weapon During Violent Crime (2011-GS-43-0469). All sentences were to run concurrently.

A timely Notice of Appeal was filed and an Anders¹ brief was submitted on Applicant's behalf by Robert M. Pachak, Esquire. The South Carolina Court of Appeals affirmed

¹ Anders v. California, 386 U.S. 738 (1967).

Applicant's conviction. State v. Kadeem Johnson, Op. No. 13-UP-331 (Ct. App. filed July 31, 2013). The Remittitur was issued on August 23, 2013.

II. Allegations

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to conduct adequate investigation and prepare for trial. Therefore providing me inadequat (sic) legal advise."
 - b. "Between the filing of speedy trial motion and trial. The delay was helpful to the state."
2. "Discrimination in sentencing between me and my co-defendant."

The amended application contained the following additional allegations:

1. Ineffective Assistance of trial/plea counsel for failure to prepare and investigate Applicant's case during the two years leading up to trial, which resulted in a failure to review the evidence with Applicant and properly prepare Applicant for trial culminating in an involuntary guilty plea. Specifically, but not limited to:
 - a. Ineffective assistance of counsel for failure to move for dismissal at the preliminary hearing or anytime thereafter since the arrest warrant was issued based upon the statements of Randy Lowery, which do not name Applicant.
 - b. Ineffective assistance of counsel for failure to either obtain the statements of Higgins and Gordon in time to prepare for trial and investigate the statements or make a Brady motion regarding the State's disclosure of the statements. Pre-trial Transcript pp. 21-24.
 - c. Ineffective assistance of counsel for failure to have knowledge of and/or review the SLED findings with Applicant and make sure such findings were properly reflected in the record.
 - d. Ineffective assistance of counsel for failure to address the differing language in the indictments and for failure to clarify if Applicant was being charged as a principal or under the theory of hand of one is the hand of all.
 - e. Ineffective assistance of counsel for failure to prepare to cross-examine and impeach the testimony of co-defendant Upchurch.
 - f. Ineffective assistance of counsel for failure to act on Applicant's request for a speedy trial.

2. Ineffective assistance of counsel for appearing to not know what charges the State planned to proceed with at trial and for not preparing Applicant for the charges he would face at trial, which resulted in an involuntary guilty plea Pre-trial Transcript, Pp. 25-6.
3. Ineffective assistance of counsel for failure to object to the Court's opening comments to the jury regarding a true and just verdict. Pre-trial Transcript p. 6, Ins. 8-12. See State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012).
4. Ineffective assistance of counsel for inducing Applicant's guilty plea on advice that the court would sentence him close to the fifteen year sentence of his codefendant and failing to put such information on the record during the plea and reconsideration phase.
5. Pursuant to United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984) and Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006), Applicant alleges that counsel rendered ineffective assistance in violation of the Sixth Amendment's requirement that Applicant have counsel acting in the role of an advocate and in violation of the adversarial process the Sixth Amendment protects when counsel failed to subject the State's case to a meaningful adversarial testing.
6. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

III. Findings of Fact and Conclusions of Law

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Summary of Testimony

Kadeem Johnson, Applicant

The Applicant began by testifying that counsel had represented him on a juvenile case and that his grandmother retained him for this matter. He stated that they met approximately three times, and were focusing getting him bond, to the point where he thought they were going

for a bond hearing when they were actually ready to proceed to trial. Applicant testified that counsel "told" him to take a plea and that they were pushing for a trial, but did not seem to be preparing for it. He testified that he reviewed the discovery in the case with counsel, including a video. He further testified that he believed counsel waived a preliminary hearing without consulting him.

PCR counsel presented two statements from Randy Lowery as evidence in the matter. Applicant testified that neither statement had his name on them, even though they were used to implicate him. Two other statements were admitted, one from Brady Higgins and one from Michael Gordon, for the proposition that plea counsel did not review their testimony. When questioned about whether he provided this information to his attorney, though, Applicant admitted that he did not give this information to plea counsel. Similarly, PCR counsel admitted reports from the South Carolina Law Enforcement Division ("SLED") regarding DNA evidence on the basis that it was no in plea counsel's file.

Applicant testified that he did not discuss the indictments with plea counsel, particularly the difference between his indictment as a principal versus a participant under the "hand of one is the hand of all" theory. He further testified that he was not consulted on any preparation regarding cross examination of his co-defendant, particularly regarding to what he could or would testify. He did, however, understand that the fact that his co-defendant pled and would testify against him changed the dynamics of his case.

Applicant testified to several motions that were made prior to the trial. One was a motion for a speedy trial because he wanted to have a trial before January of 2012. He was also aware of a motion to elect charges that was made by plea counsel, as well as a motion for a continuance



due to the late revelation of some statements through the discovery process. None of these resulted in rulings in the Applicant's favor.

Applicant testified at length regarding his understanding of the changes and the advice of counsel regarding taking a plea deal. He understood that if he testified, the solicitor could use his prior record to impeach him. He testified that counsel urged him to take a plea before a jury was ever pulled, and that counsel told him that he would not be sentenced to the same term of fifteen years as his co-defendant, but he would not get much more than that. Applicant testified that he ultimately pled because he did not believe his counsel was prepared to go forward with trial. He further testified that he did not believe that counsel fairly submitted his case to adversarial testing as required by Cronic, supra, and Ozmin, supra, because plea counsel continued to tell Applicant that everything was okay and refused to answer questions. Applicant testified that even though he was aware at the time of all of these issues that he has raised as allegations in this PCR, he decided to plead guilty, regardless. Ultimately, Applicant agreed that he knew of all of these issues before he entered his plea, yet he still entered his plea freely, knowingly, intelligently, and voluntarily, as well as with the advice of counsel.

Charles T. Brooks, III, Esquire – plea counsel

Plea counsel was called by PCR counsel and began by testifying that he did not recall any facts about a preliminary hearing in this matter. He did recall that there were problems receiving discovery, and that he filed an inventory motion due to that. The discovery was sent piecemeal, and there was still not much harmful evidence because no one could put the Applicant at the scene. He further recalled that the Applicant had been in jail for quite a while, which led him to file a motion for a speedy trial. He was aware that the solicitor's office was under pressure to

dispose of this case, or else the Applicant may be released. Part of this pressure was due to the fact that there had been changes in the solicitor's office during Applicant's pre-trial detention.

PCR counsel inquired of plea counsel why he did not raise more issues regarding discovery problems in pre-trial conference, and he stated that with everything that he had been provided, the State had no case and, even with the items that were provided the first day of trial, the State still did not have a case, so there was no value in fighting. This opinion led him to state that he did not investigate the statements that he received on the first day of trial because they were written a year after the crime occurred and the affiants probably had criminal records, on top of the fact that they still did not provide any hard evidence. He agreed with PCR counsel that the solicitor's office should have sent the discovery far earlier than it did.

Regarding further possibility of investigation, plea counsel testified that he remembered many of the statements implicating the co-defendant, rather than the Applicant. This was particularly true regarding the statements of Randy Lowery, which he recalled and remembered having in his file at the time of trial/plea entry.

The majority of testimony from plea counsel is revolved around the plea negotiation that occurred in chambers on the first day of trial after Applicant and plea counsel learned that the co-defendant was going to plead and become a state's witness. Plea counsel recalled telling Applicant that, "The dynamics of your case have changed drastically," as co-defendant's testimony was the only way Applicant could be linked to the crime. Plea counsel testified that, upon hearing this information, Applicant stated, "Man, I got to plea now." Regarding the chambers conference, plea counsel recalled the plea judge stating that he would not give Applicant the same sentence that he gave his co-defendant, but he would not give him much more. PCR counsel relayed this information to the Applicant with the understanding that this



meant a 16-18 year range. Based on this information, the Applicant pled, even though he had never wavered in his desire for a trial until that point due to the lack of evidence against him. When he received a sentence of twenty-five years, plea counsel testified that they were both shocked. He further testified that the Applicant had not done anything to antagonize the judge, such as waffling on whether he would take the plea, and plea counsel had no explanation for the sentencing. For this reason, he filed a motion for reconsideration of the sentence. When asked by PCR counsel if he believed he should have put the chambers conference on record, plea counsel testified that he did not believe he had an affirmative duty to do that – sometimes it is done and sometimes it is not. In this particularly case, because he was not given a definite number by the judge, only the information that the Applicant would not get the same benefit of pleading early that his co-defendant had received.

Plea counsel testified that he was ready to go to trial and proceed under a defense of actual innocence because the State simply did not have enough evidence to make a case against the Applicant. However, when the co-defendant decided to plead guilty, everything changed. He would have had to try to work around any testimony of the co-defendant, which would have certainly linked the Applicant to the crimes, and attempt to impeach his testimony. Based on the totality of those circumstances, he believed that his best advice for the Applicant was to plead guilty.

Ineffective Assistance of Counsel²

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his 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

² This case law will cover all following allegations and subsections of this order that involve ineffective assistance of counsel.

assistance of counsel as a ground for relief, Applicant must prove 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether counsel 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). 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 Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced 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.

Similarly, in order to warrant a new trial after a guilty plea, an applicant must prove that (1) counsel's performance was deficient and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. Johnson v. Catoe, 336 S.C. 354, 520 S.E.2d 617 (1999); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Satterwhite v. State, 325 S.C. 254, 481 S.E.2d 709 (1997).

a. Failure to prepare and investigate Applicant's case leading to an involuntary guilty plea

To establish that counsel failed to adequately prepare for trial, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel prepared more fully. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result). This Court finds that Applicant failed to present any credible evidence that either counsel was actually unprepared in the preparation that was done, or that any extra preparation would have produced a different result. The record and testimony reflects that, although pleading guilty was not the original plan for the Applicant nor his primary desire, he understood the ramifications of the plea deal, as well as the alternative he faced in going to trial.

b. Ineffective assistance of counsel for failure to move for dismissal at the preliminary hearing or anytime thereafter since the arrest warrant was issued based upon the statements of Randy Lowery, which do not name Applicant.

Applicant's testimony at the PCR hearing was that, upon initially reviewing his arrest warrants and indictments, he believed the implicating witness was a man named Randy Lowery; however, upon review of discovery received for purposes of the PCR, he discovered that Mr. Lowery's statements to law enforcement do not implicate him by name. He further testified that he would have wanted plea counsel to try to dismiss the indictments, and that plea counsel did not discuss the possibility of using these statements to impeach Mr. Lowery if the State had called him as a trial witness. He also stated that plea counsel waived a preliminary hearing without his permission. Plea counsel did not recall if he was retained in time to request a preliminary hearing.

An underlying flaw in this allegation is the apparent belief of the Applicant that the laws of this State require arrest warrants to reveal the sources of information upon which they are issued. "...[A] requirement in arrest warrants [to disclose the source of their information] would tend to a

miscarriage of justice in many instances, and would be tantamount to requiring the prosecution to furnish defendant with the names of the witnesses against him, and this has never been required in this State, even in felonies." Town of Mayesville v. Clamp, 149 S.C. 346, 147 S.E. 455 (1920), citing State v. Robinson, 61 S. C. 106, 39 S. E. 247. The warrant was not required to list the name of the person providing the statement, and the Applicant presented merely his own belief and no evidence as to whether Randy Lowery was the implicating witness. Furthermore, arrest warrants are not required to include the name of the individual to be arrested if they include a particular description so that the suspect may be positively identified. See generally U.S. Const., Fourth Amendment; S.C. Const., Art. I, Sect. 10. This Court finds that Applicant did not meet his burden in establishing ineffective assistance of counsel regarding this allegation.

- c. Ineffective assistance of counsel for failure to either obtain the statements of Higgins and Gordon in time to prepare for trial and investigate the statements or make a Brady motion regarding the State's disclosure of the statements. Pre-trial Transcript pp. 21-24.

Applicant alleged that the statements of Higgins and Gordon should have been investigated or plea counsel should have moved to have them excluded pursuant to Brady³ because of their late receipt by plea counsel. These documents were turned over by the State on the Friday before trial began on Monday. Applicant testified that he was not aware of these statements before they were turned over, nor was he aware of these men as potential witnesses. Plea counsel testified credibly that, at the time that he could address the issue of these statements with the trial court, he did not see them as a threat or in any way detrimental to the case against the Applicant. Furthermore, when it became apparent that Applicant's best course of action would be to plead guilty, the statements and any details surrounding them became irrelevant.

³ Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963).

This Court finds that Applicant did not meet his burden in establishing ineffective assistance of counsel regarding these statements.

- d. Ineffective assistance of counsel for failure to have knowledge of and/or review the SLED findings with Applicant and make sure such findings were properly reflected in the record.

Applicant alleged that plea counsel was ineffective because he failed to have knowledge of a SLED report, as well as to discuss it with Applicant and reflect the findings in the record. Applicant testified that, after reviewing the SLED files himself, he wished that plea counsel had discussed with him the fact that testing could not be done on the items that were received. He believed that, because there was no physical evidence that could put him at the scene, these SLED reports were key evidence in a possible exoneration. Plea counsel testified that the inconclusive SLED reports were but one piece of evidence that proved nothing against the Applicant – part of his strategy of actual innocence. Certainly this is a reasonable and articulated trial strategy and, “where counsel articulates a valid reason for employing such strategy, such conduct is not effective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). This Court finds that Applicant did not meet his burden in establishing ineffective assistance of counsel regarding the SLED reports.

- e. Ineffective assistance of counsel for failure to address the differing language in the indictments and for failure to clarify if Applicant was being charged as a principal or under the theory of hand of one is the hand of all.

Applicant alleged that the differing language in the three indictments, which contained multiple counts in total, raises questions as to how he was actually charged, whether it is as principal or under accomplice liability. This Court finds that Applicant failed to present any evidence as to how this alleged failure by plea counsel was actually a deficiency on his part or

caused any prejudice. As a result, this Court further finds that Applicant failed to meet the burden of establishing ineffective assistance of counsel regarding this allegation.

- f. Ineffective assistance of counsel for failure to prepare to cross-examine and impeach the testimony of co-defendant Upchurch.

Applicant alleged that plea counsel was not prepared to cross-examine and/or impeach the testimony of Kareene Upchurch if the case had proceeded to trial. The only evidence provided at the PCR hearing regarding this allegation is Applicant's testimony that he was unaware if plea counsel ever tried to speak with Mr. Upchurch, and he was unaware of what trial counsel would ask Mr. Upchurch during trial. Conversely, plea counsel testified that both he and Applicant were aware that Mr. Upchurch was the only evidence, so to speak, linking Applicant to the crime, and that Mr. Upchurch's decision to plead changed the entire posture of Applicant's case. This Court finds that Applicant has failed to present any credible evidence to support his claim that plea counsel was unprepared. There is no evidence in the record to support this claim and, therefore, Applicant has failed to meet his burden of establishing ineffective assistance of counsel regarding this allegation.

- g. Ineffective assistance of counsel for failure to act on Applicant's request for a speedy trial.

Applicant alleged and testified that, due to plea counsel's failure to act on his request for a speedy trial, the State gained an advantage due to the delay. Plea counsel testified that he was aware that the State was under pressure to dispose of this case, as Applicant could be released from jail due to his long stay and lack of any movement or negotiation on the case. He was further aware of issue within the solicitor's office due to the change in the elected solicitor. Plea counsel again testified that he knew the State had no evidence against the Applicant, and was therefore not too concerned about the time that had passed. This Court finds that plea counsel's

decision to file a speedy trial motion and pursue it in the timeframe and manner that he did is a valid trial strategy and, as discussed above, a valid trial strategy cannot be considered ineffective assistance of counsel. Applicant has failed to meet his burden of proof regarding ineffective assistance of counsel on this matter.

- h. Ineffective assistance of counsel for appearing to not know what charges the State planned to proceed with at trial and for not preparing Applicant for the charges he would face at trial, which resulted in an involuntary guilty plea

Applicant alleged that plea counsel appeared not to know which charges the State planned to proceed on and, thereby, provided ineffective assistance of counsel. As a subpart of this allegation, Applicant contended that this caused him to be unprepared for the charges he would face at trial, which resulted in an involuntary guilty plea. Applicant testified that plea counsel's making of the motion to elect charges sent him a message that his attorney did not know why there in court that day. Conversely, plea counsel testified that he made this motion out of an abundance of caution – the charges against Applicant were crimes that occurred over a three day span, and he was attempting to limit his client's exposure as much as possible, especially as he was only then learning of the co-defendant's guilty plea.

This Court finds that plea counsel's motion to elect charges is reasonable and articulable trial strategy. This is a motion that is regularly made during the course of criminal cases, and its existence has no bearing or indication on whether plea counsel knew what charges the Applicant was facing. Further, it stretches the imagination to believe this motion equates a lack of preparedness on the part of plea counsel for this matter to go forward at trial, or that it could lead to an involuntary guilty plea by the Applicant. Applicant has failed to meet his burden of proof regarding ineffective assistance of counsel on this matter.



- i. Ineffective assistance of counsel for failure to object to the Court's opening comments to the jury regarding a true and just verdict.

Applicant alleged that the plea court's statement to the jury regarding a true and just verdict should have drawn an objection from plea counsel, and this failure to object equals ineffective assistance of counsel. For this proposition, Applicant cites State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012). This court agrees with the Applicant's reading of the Daniels case, as well as that it applies in this matter. However, this court does not find that this is a case of ineffective assistance of counsel, as the Applicant ultimately pled guilty. Because a plea was entered, any actions involving the jury become moot and ultimately have no bearing on the outcome of this plea. Therefore, this court finds that Applicant did not meet his burden to prove ineffective assistance of counsel.

- j. Ineffective assistance of counsel for inducing Applicant's guilty plea on advice that the court would sentence him close to the fifteen year sentence of his codefendant and failing to put such information on the record during the plea and reconsideration phase.

Applicant alleged that he pled guilty upon the reliance of plea counsel's statement that he would not get a sentence of more than fifteen years, as that was the sentence that his co-defendant received. At the PCR hearing, plea counsel credibly testified that he did not advise Applicant that he would get fifteen years, but rather that he believed the plea judge was inclined to give him a sentence of "not much more" than what his co-defendant received fifteen years based on a chambers conference. Extensive testimony and argument was presented at the PCR hearing regarding both plea counsel's and Applicant's understanding of this conversation, and this court ordered that transcripts of their testimony be prepared to help produce this order.

After reviewing the information provided, this court finds that this claim does not satisfy the burden required to prove ineffective assistance of counsel, nor does it provide any indication

that this guilty plea was involuntarily entered. The testimony showed that, though the contents of the chambers conference was not put on the record, its recollection by plea counsel to the Applicant yielded a mutual understanding of the conversation – they both believed that the plea judge's statement indicated a likely sentence of sixteen or seventeen years. It is clear that plea counsel acted within reason based on his understanding of the situation. His decision not to put this conversation on the record, whether during sentencing phase or during reconsideration, is a decision made within the bounds of reasonable trial strategy and prevailing professional norms. Furthermore, Applicant testified that the fear of a long sentence was not his primary reason for pleading guilty. For these reasons, this court finds that Applicant did not meet his burden to prove ineffective assistance of counsel.

- k. Pursuant to United States v. Cronig, 466 U.S. 648, 104 S.Ct. 2039 (1984) and Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006), Applicant alleges that counsel rendered ineffective assistance in violation of the Sixth Amendment's requirement that Applicant have counsel acting in the role of an advocate and in violation of the adversarial process the Sixth Amendment protects when counsel failed to subject the State's case to a meaningful adversarial testing.

This court finds that this allegation is without merit, and no evidence was presented to satisfy the burden of proving ineffective assistance of counsel. Applicant testified that plea counsel told him that everything was okay and under control, but Applicant did not feel prepared for the proceedings. He felt that plea counsel had not investigated his case, and he did not realize that until the day that trial began, which ultimately led him to enter a guilty plea.

Though Applicant has alleged that plea counsel was ineffective in many ways, this court is not persuaded by any arguments presented during the PCR hearing or afterward by way of brief. Plea counsel testified credibly regarding his preparation, his analysis of the factors involved in the case, and his weighing of the options between proceeding with trial and advising

his client to take a guilty plea. This court is not convinced that any of the evidence presented rises to the level of a failure to submit this matter to adversarial testing or to perform as an advocate pursuant to the Sixth Amendment guarantees. For these reasons, this court finds that Applicant did not meet his burden to prove ineffective assistance of counsel.

The South Carolina Supreme Court has held that "a guilty plea need only represent a voluntary and intelligent choice among alternative courses of action open to the defendant." James v. State, 377 S.C. 81, 84, 659 S.E.2d 148, 150 (2008) (citing North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)). It is clear from the credible testimony of plea counsel, and echoed by portions of the Applicant's less credible testimony, that Applicant made a knowing, intelligent decision to plead guilty based on the information and advice provided to him by plea counsel.

Lastly, this court finds that there is no reason to conclude that there was overwhelming evidence of guilt in this matter, and specifically refrains from making such a finding. There is a presumption under South Carolina law that, if there is overwhelming evidence of guilt, deficient performance may not result in prejudice. Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). That matter is not at issue in this application.

All Other Allegations

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



IV. CONCLUSION

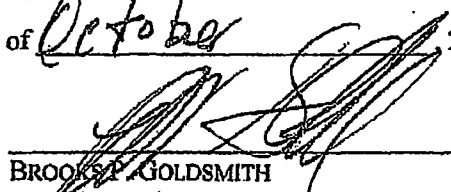
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. This Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 18th day of October 2016.


BROOKS P. GOLDSMITH
Presiding Judge
Third Judicial Circuit

 , South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS	FILED
COUNTY OF SUMTER)	DOCKET NO.: 2014-CP-43-0794	2016 NOV -3 PM 3:22
KADEEM JOHNSON,)		
Applicant,)		
v.)	MOTION PURSUANT TO	
STATE OF SOUTH CAROLINA,)	59(a) & (e), SCRCP	
Respondent,)		

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Sumter County Clerk of Court. Applicant was indicted during the March 2011 term of the Sumter County Grand Jury under a three count indictment for Attempted Murder, Attempted Armed Robbery, and Possession of a Weapon During the Commission of a Violent Crime (2011-GS-43-0481) and under a two count indictment for Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime (2011-GS-43-0469). During the July 2011 term of the Sumter County Grand Jury, Applicant was indicted for Armed Robbery (2011-GS-43-0939).

On April 16, 2012, Applicant was called to trial in front of the Honorable R. Jeffrey Young at the Sumter County Courthouse. Applicant was represented by Charles Brooks, III, Esquire. On April 17, 2012, Applicant pled guilty before the Honorable R. Jeffrey Young. Judge Young sentenced Applicant to a term of twenty-five years for Armed Robbery (2011-GS-43-0939), a term of twenty years for Attempted Armed Robbery (2011-GS-43-0481), a term of twenty years for Attempted Murder (2011-GS-43-0481), a term of five years for Possession of a Weapon (2011-GS-43-0481 & 0469),

and a term of twenty five years for Armed Robbery (2011-GS-43-0469). A motion for reconsideration was filed and denied, and an appeal was timely filed.

On or about March 18, 2013, an Anders Brief was submitted by Robert M. Pachak, South Carolina Office of Appellate Defense. Thereafter, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. Kadeem Johnson, Op. No. 2013-UP-331 (Ct. App. filed July 31, 2013). The Remittitur was issued on August 23, 2013.

On April 25, 2014, an Application for Post Conviction Relief was timely filed. Applicant, through counsel, filed an Amendment to his Application, which amended his claims of ineffective assistance of trial/plea counsel as follows:

1. Ineffective Assistance of trial/plea counsel for failure to prepare and investigate Applicant's case during the two years leading up to trial, which resulted in a failure to review the evidence with Applicant and properly prepare Applicant for trial culminating in an involuntary guilty plea. Specifically, but not limited to:
 - a. Ineffective assistance of counsel for failure to move for dismissal at the preliminary hearing or anytime thereafter since the arrest warrant was issued based upon the statements of Randy Lowery, which do not name Applicant.
 - b. Ineffective assistance of counsel for failure to either obtain the statements of Higgins and Gordon in time to prepare for trial and investigate the statements or make a Brady motion regarding the State's disclosure of the statements. Pre-trial Transcript pp. 21-24.
 - c. Ineffective assistance of counsel for failure to have knowledge of and/or review the SLED findings with Applicant and make sure such findings were properly reflected in the record.
 - d. Ineffective assistance of counsel for failure to address the differing language in the indictments and for failure to clarify if Applicant was being charged as a principal or under the theory of hand of one is the hand of all.

- e. Ineffective assistance of counsel for failure to prepare to cross-examine and impeach the testimony of co-defendant Upchurch.
 - f. Ineffective assistance of counsel for failure to act on Applicant's request for a speedy trial.
2. Ineffective assistance of counsel for appearing to not know what charges the State planned to proceed with at trial and for not preparing Applicant for the charges he would face at trial, which resulted in an involuntary guilty plea. Pre-trial Transcript. Pp. 25-6.
 3. Ineffective assistance of counsel for failure to object to the Court's opening comments to the jury regarding a true and just verdict. Pre-trial Transcript p. 6, lns. 8-12. See State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012).
 4. Ineffective assistance of counsel for inducing Applicant's guilty plea on advice that the court would sentence him close to the fifteen year sentence of his co-defendant and failing to put such information on the record during the plea and reconsideration phase.
 5. Pursuant to United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984) and Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006), Applicant alleges that counsel rendered ineffective assistance in violation of the Sixth Amendment's requirement that Applicant have counsel acting in the role of an advocate and in violation of the adversarial process the Sixth Amendment protects when counsel failed to subject the State's case to a meaningful adversarial testing.
 6. Pursuant to Rule 15(b), SCRPC, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On March 16, 2016, an evidentiary hearing was conducted at the Sumter County Courthouse in front of the Honorable Brooks P. Goldsmith. Applicant was present and was represented by Tricia A. Blanchette, Esquire. The State was represented by Jessica E. Kinard, Assistant Attorney General. At the close of the hearing, the Honorable Brooks P. Goldsmith instructed Respondent to obtain the testimony of Applicant and Charles Brooks, III, Esquire and for both parties to brief the matter of whether the advice given by counsel regarding Applicant's sentence prior to the entry of his plea warrants post conviction relief.

As requested, both parties submitted Briefs for the Court's review. Thereafter, the Court requested that the State submit a proposed Order. Upon Applicant's counsel's objection, the Court requested that Respondent revise the proposed Order. On October 18, 2016, the Honorable Brooks P. Goldsmith signed the Order of Dismissal. By copy of a letter dated October 28, 2016 to the Sumter County Clerk of Court, Applicant, through counsel, received notice of the signing of the Order on October 31, 2016. As a result, this Motion timely follows.

ARGUMENT

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Specifically, Applicant is concerned with the summary of his testimony stating that he testified that his plea was "freely, knowingly, intelligently and voluntarily" entered. Order p. 6. Applicant would further request that this Court obtain and review the full evidentiary hearing transcript, reconsider the standing Order of Dismissal, and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRCP.

In support of this argument, Applicant has attached the "Brief in Support of Granting Application for Post Conviction Relief" requested by this Court and submitted by counsel. Applicant would request that this Court review the Brief, including the case law and arguments made in support of relief in its entirety. Additionally, Applicant would

ask this Court to reconcile the standing Order of Dismissal with the following excerpt from the Brief:

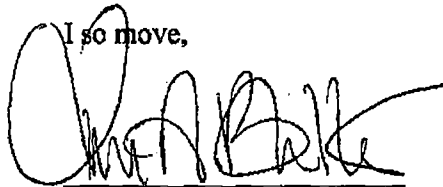
When Charles Brooks, III, Esquire, took the stand he recalled deciding it was time to enter into plea negotiations after being surprised by Applicant's co-defendant not being tried jointly, sitting through the co-defendant's plea hearing and admittedly not being prepared for trial since his take was the State did not have a case against Applicant. PCR pp. 76-80. Therefore, counsel engaged the solicitor in plea negotiations, which resulted in a straight up plea offer, so he requested a conference with the presiding judge. PCR pp. 76-80. Per counsel, the presiding judge said to him: "Hey Brooks, if your guy takes a plea, I ain't going to give him much worse than Upchurch. I ain't going to give him 15, but I ain't going to do much worse than that." PCR pp. 78, ln. 22 – 79, ln. 1. Even though he testified that the presiding judge "is not a very practical person that you want to take a plea in front of," counsel errantly decided to characterize the sentence the judge would hand down. PCR p. 78, lns. 19-20. He admitted that he told Applicant his interpretation, which was "16/17/18 – no more than 20." PCR p. 79, lns. 2-6. He further admitted that he understood that Applicant was relying upon his advice regarding the sentence he would receive when he decided to plead guilty. PCR p. 110. Counsel described the event as follows: "We go and plea in front of Judge Young after I told Kadeem what Judge Young had said. And Judge Young gave him 25 years... I am still in shock... That's why I filed the motion for reconsideration." PCR p. 79, lns. 15-22.

Unfortunately, for Applicant counsel was shocked but Applicant was the one prejudiced, and counsel decided to address his shock and the obvious prejudice by filing a motion to reconsider addressing disparity in sentencing that was decided without a hearing. Counsel immediately knew that was a problem with his advice that admittedly was relied upon by Applicant, yet he never put the matter on the record until the evidentiary hearing. Now that counsel's error had been put on the record, it is imperative that this Court properly find it amounts to ineffective assistance that requires Applicant's plea be set aside and a new trial granted.

For the above stated reasons and in consideration of the testimony and evidence offered at the evidentiary hearing, Applicant would respectfully request that this Court obtain and review the full evidentiary hearing transcript and hold a motion hearing to allow Applicant, through counsel, to address this Court regarding the standing Order of Dismissal. Applicant would further request that this Court reconsider the standing Order

of Dismissal and direct the entry of a new judgment or alter the standing Order of Dismissal to ensure that all arguments are fully addressed by this Court prior to appeal.

I so move,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over a horizontal line.

Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211

November 1, 2016
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	DOCKET NO.: 2014-CP-43-0794
 KADEEM JOHNSON,	)	
Applicant,	)	
v.	)	BRIEF IN SUPPORT OF GRANTING
	)	APPLICATION FOR POST
STATE OF SOUTH CAROLINA,	)	CONVICTION RELIEF
Respondent,	)	
_____	)	

PROCEDURAL HISTORY

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ARGUMENT

It is clear that counsel provided ineffective assistance by giving and allowing Applicant to rely upon erroneous advice regarding the sentence Applicant would receive as a result of his guilty plea. Going into the second day of trial, counsel decided to provide his own characterization of his discussion with the court regarding sentencing, which led to Applicant forego trial and enter a guilty plea. After Applicant's shocking sentence, counsel filed a motion for reconsideration, but he failed to admit his erroneous advice that induced Applicant's guilty plea until the evidentiary hearing before this Court.

It is well established that a guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). In South Carolina, the courts have consistently held that that a defendant must have a full understanding of the consequences of his plea and the charges against him. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997), Simpson v. State, (317 S.C. 506, 455 S.E.2d 175 (1995)). Additionally, a defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution.¹ See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In examining the assistance provided by counsel, "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all

¹ The "Sixth Amendment guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." Montejo v. Louisiana, 556 U.S. 778, 786, 129 S. Ct. 2079, 173 L. Ed. 2d 955 (2009) (quoting United States v. Wade, 388 U.S. 218, 227-228, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967)). Critical stages include arraignments, post-indictment interrogations, post-indictment lineups, and the entry of a guilty plea. See Hamilton v. Alabama, 368 U.S. 52, 82 S. Ct. 157, 7 L. Ed. 2d 114 (1961)(arraignment); Massiah v. United States, 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964) (postindictment interrogation); Wade, supra (postindictment lineup); Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972) (guilty plea).

significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007).

In a PCR stemming from a guilty plea, an applicant alleging a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Therefore, an applicant that entered a plea on the advice of counsel may only attack the voluntary nature of that plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, applicant would not have pled guilty and insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985), Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). In Hill, the Supreme Court of the United States made it clear that the "voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." 474 U.S. at 57, 106 S.Ct. at 369. In Hill and Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473 (2010), the Supreme Court of the United States examined the role of advising a client about a plea offer and ensuing guilty plea as was discussed in Missouri v. Frye, 132 S. Ct. 1399, 1405-06 (2012)(emphasis added), as follows:

Hill established that claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in Strickland. See Hill, *supra*, at 57, 106 S. Ct. 366, 88 L. Ed. 2d 203. As noted above, in Frye's case, the Missouri Court of Appeals, applying the two part test of Strickland, determined first that defense counsel had been ineffective and second that there was resulting prejudice.

In Hill, the decision turned on the second part of the test. There, a defendant who had entered a guilty plea claimed his counsel had misinformed him of the amount of time he would have to serve before he became eligible for parole. But the defendant had not alleged that, even if adequate advice and assistance had been given, he would have elected to plead not guilty and proceed to trial. Thus, the Court found that no

prejudice from the inadequate advice had been shown or alleged. Hill, supra, at 60, 106 S. Ct. 366, 88 L. Ed. 2d 203.

In Padilla, the Court again discussed the duties of counsel in advising a client with respect to a plea offer that leads to a guilty plea. Padilla held that a guilty plea, based on a plea offer, should be set aside because counsel misinformed the defendant of the immigration consequences of the conviction. The Court made clear that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." 559 U.S., at ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 298. **It also rejected the argument made by petitioner in this case that a knowing and voluntary plea supersedes errors by defense counsel.** Cf. Brief for Respondent in Padilla v. Kentucky, O. T. 2009, No. 08-651, p. 27 (arguing Sixth Amendment's assurance of effective assistance "does not extend to collateral aspects of the prosecution" because "knowledge of the consequences that are collateral to the guilty plea is not a prerequisite to the entry of a knowing and intelligent plea").

In South Carolina, a substantial number of cases have developed a body of case law that establish which consequences must be explained to a defendant by counsel prior to a plea. Generally speaking, a defense attorney must only inform a defendant of the direct consequences of his plea, and counsel has no obligation to inform his client of the collateral consequences of his plea. See Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983), Frasier v. State, 351 S.C. 395, 570 S.E.2d 172 (2002) (Finding that a defendant need not be informed of the collateral consequences of his sentence such as parole eligibility; however if an attorney undertakes to advise a defendant of the collateral consequences of his sentences, then the advice must be accurate).

Direct consequences have a "definite, immediate, and largely automatic effect on the range of the defendant's punishment." Cuthrell v. Director, Paxtuent Institution, 475 F.2d 1364, 1366 (4th Cir. 1973). If a criminal defendant does not properly understand the direct consequences of his plea, then the plea is invalid. State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). A defense counsel's failure to advise a client of the direct

consequences of a guilty plea constitutes ineffective assistance counsel. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Additionally, constitutionally defective performance is found when defense counsel offers erroneous advice concerning an issue that is central to the defendant's decision to plead guilty. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991)

In Glover v. United States, 531 U.S. 198, 203 (2003), the Supreme Court of the United States held "any amount of [additional] jail time has Sixth Amendment significance." In Davie v. State, 381 S.C. 601, 613, 675 S.E.2d 416, 422-23 (2009), the South Carolina Supreme Court reasoned that it is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice. See Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000) (Rejecting objective evidence requirement established in Judge and finding Petitioner proved he was prejudiced by counsel's deficient performance in failing to properly advise the Petitioner that he was pleading to a felony rather than a misdemeanor where Petitioner's uncontradicted testimony established that he would not have pled had he known the charge was a felony), overruling Judge v. State, 321 S.C. 554, 562, 471 S.E.2d 146, 150 (1996) ("The second prong of the ineffective assistance inquiry--prejudice--is shown by demonstrating through objective evidence . . . [the existence of] a reasonable probability that, but for counsel's advice, [the defendant] would have accepted the plea. Mere statements by the PCR petitioner that he would have accepted the plea agreement but for counsel's incompetence are insufficient to show prejudice because they are self-serving and inherently unreliable.") (citation omitted); See also Smith v. State, 369 S.C. 135, 138,

631 S.E.2d 260, 261 (2006) ("The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty."), Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000) (Holding that there was enough evidence to demonstrate that there was a reasonable probability that defendant would not have pled guilty even though defendant did not specifically testify that he would have insisted upon going to trial if he had known the solicitor was going to make a recommendation.).

Similarly to the instant case, in Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991), counsel was found to be ineffective for erroneously advising the defendant regarding the sentence he could receive, thus inducing a guilty plea. On appeal, the State agreed that the advice given was erroneous but argued that the lack of prejudice required reversal. Ray, 303 S.C. at 376, 401 S.E.2d at 153. In addressing the difference between the sentence Ray was advised he could receive (life) versus the actual sentence he could receive (possible 75 years without parole) and the issue of prejudice the Court reasoned:

We hold this distinction is sufficient to satisfy prong two of the Hill v. Lockhart test. Ray's steadfast maintenance of his innocence; his uncontroverted testimony that he would not have pled guilty absent the erroneous advice of counsel; and the real distinction between the penalty Ray faces and the advice given him, convince us to *REVERSE* the lower court and *REMAND* for a new trial.

Ray v. State, 303 S.C. 374, 376, 401 S.E.2d 151, 153 (1991).

As was addressed at the evidentiary hearing and in summary below, both Applicant and counsel testified that Applicant wanted a trial and a plea was not even in the picture going into the first day of trial. Here, the prejudice is abundantly clear and exceeds the above discussed cases since Applicant wanted and undertook a trial, chose to

forego trial during the second day due to counsel's errant advice, received a sentence in excess of the amount of time conveyed by counsel, and counsel repeatedly admitted that the State did not have a case against defendant. Additionally, this Court found at the conclusion of the evidentiary hearing that there was no demonstration that overwhelming evidence of guilt existed.

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).²

At the evidentiary Applicant testified regarding his lack of notice and preparation with counsel leading up to trial. Applicant recalled counsel advising him to take a plea prior to the jury selection. PCR p. 40. Going into the second day of trial, specifically, he recalled counsel advising him that he had spoken with the judge and he could not get the same amount his co-defendant received since it was a negotiated sentence. PCR p. 41. Counsel advised him the judge would sentence him to "16/17, no more than 20." PCR pp. 41, Ins. 18-20, 58-59. He admitted that he trusted counsel's advice and decided to enter a

² It is anticipated that the State will argue that relief is not warranted since the plea colloquy cured counsel's deficient conduct. See Holden v. State, 393 S.C. 564, 575, 713 S.E.2d 611, 616 (2011) ("[W]e conclude that any alleged deficiency in plea counsel's representation was cured by the plea colloquy."). Here, the record of the plea and courts statements to Applicant do not cure counsel's erroneous advice that counsel knew Applicant relied upon in entering his guilty plea. See Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473 (2010), Missouri v. Frye, 132 S. Ct. 1399, 1405-06 (2012). Whether his advice would have been about a direct or collateral consequence is really not the deciding factor here, as it was an erroneous mischaracterization of the court's statements regarding sentencing that amounted to ineffective assistance resulting in an involuntary guilty plea.

guilty plea. PCR p. 49. After receiving his twenty-five year sentence, counsel filed a motion for reconsideration, but he explained counsel never put the advice counsel gave him regarding the sentence he would receive on the record. PCR pp. 42-44. He made it clear that he would have wanted counsel to put the matter on the record for the court's consideration and he was alleging counsel was ineffective for inducing his plea in such a way and never addressing it. PCR pp. 42-44. Applicant and counsel also made it clear that Applicant wanted a trial, and Applicant explained that he only chose to forego trial mid-way through due to counsel's advice and apparent lack of preparation.³ PCR pp. 11, 40-41, 46, 49, 63, 103.

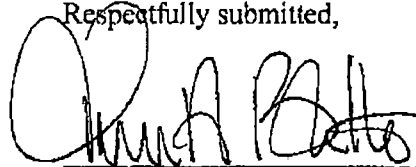
When Charles Brooks, III, Esquire, took the stand he recalled deciding it was time to enter into plea negotiations after being surprised by Applicant's co-defendant not being tried jointly, sitting through the co-defendant's plea hearing and admittedly not being prepared for trial since his take was the State did not have a case against Applicant. PCR pp. 76-80. Therefore, counsel engaged the solicitor in plea negotiations, which resulted in a straight up plea offer, so he requested a conference with the presiding judge. PCR pp. 76-80. Per counsel, the presiding judge said to him: "Hey Brooks, if your guy takes a plea, I ain't going to give him much worse than Upchurch. I ain't going to give him 15, but I ain't going to do much worse than that." PCR pp. 78, ln. 22 -- 79, ln. 1. Even though he testified that the presiding judge "is not a very practical person that you want to take a plea in front of," counsel errantly decided to characterize the sentence the judge would hand down. PCR p. 78, lns. 19-20. He admitted that he told Applicant his interpretation, which was "16/17/18 -- no more than 20." PCR p. 79, lns. 2-6. He further admitted that he

³ Counsel also testified that he advised Applicant that the presiding Judge would "load you up with time" if he got convicted at the conclusion of his trial. PCR p. 110, lns. 15-18.

understood that Applicant was relying upon his advice regarding the sentence he would receive when he decided to plead guilty. PCR p. 110. Counsel described the event as follows: "We go and plea in front of Judge Young after I told Kadeem what Judge Young had said. And Judge Young gave him 25 years... I am still in shock... That's why I filed the motion for reconsideration." PCR p. 79, lns. 15-22.

Unfortunately, for Applicant counsel was shocked but Applicant was the one prejudiced, and counsel decided to address his shock and the obvious prejudice by filing a motion to reconsider addressing disparity in sentencing that was decided without a hearing. Counsel immediately knew that was a problem with his advice that admittedly was relied upon by Applicant, yet he never put the matter on the record until the evidentiary hearing. Now that counsel's error had been put on the record, it is imperative that this Court properly find it amounts to ineffective assistance that requires Applicant's plea be set aside and a new trial granted.

Respectfully submitted,



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
Attorney for Applicant

July 28, 2016
Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Kadeem Johnson, #350533,)
Applicant,)

2014-CP-43-0794

v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 1st day of November 2016, a copy of Rule 59, SCRPC, Motion, to Julie Coleman of the Attorney General's Office, at:

Office of the Attorney General
Att: Julie Coleman, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

2016 NOV -3 PM 3:22
RECEIVED
CLERK OF COURT
THIRD JUDICIAL CIRCUIT
SUMTER COUNTY

November 1, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Kadeem Johnson, #350533	)	2014-CP-43-794
	)	
Applicant,	)	
	)	
v.	)	BRIEF REGARDING PCR HEARING
	)	ON MARCH 13, 2016
State of South Carolina,	)	
	)	
Respondent.	)	

This matter came before the Court by way of an application for post-conviction relief (PCR) filed April 25, 2014. Respondent filed its return on or about August 28, 2014. An evidentiary hearing was convened regarding this matter on March 13, 2016 at the Sumter County Judicial Center.

Testimony was provided by the Applicant and Charles T. Brooks, III, Esquire ("trial counsel"). Applicant was represented by Tricia Blanchette, Esquire, and Respondent was represented by Jessica E. Kinard, Esquire. At the close of testimony, argument was heard from the attorneys regarding whether trial counsel provided Applicant with a definitive amount regarding the number of years he was likely to receive during sentencing after a guilty plea. The attorneys and the Court could not reach a consensus as to what the testimony revealed, and the Court ordered Respondent to request the transcript of the testimony of the witnesses to be used in preparation of briefs on this issue. The ultimate question, as Respondent understands, is whether the advice given to Applicant by trial counsel regarding sentencing was sufficient to warrant the reward of a new trial.

After review of the transcript, Respondent submits the following:

Review of Testimony

Beginning on page 39 of the excerpted transcript before the parties and the Court, Applicant testified about the circumstances surrounding the entry of his guilty plea. This included the admission that trial counsel encouraged Applicant to enter a guilty plea before picking a jury; however, a jury was selected and some pre-trial matters were attended to before the ultimate entry of the guilty plea. On page 41, beginning with line 11, Applicant testified that trial counsel informed him “[Applicant] would not get the same amount of time that [his] codefendant got, because that was a negotiated sentence, but [he] wouldn’t get far from it. [Trial counsel] said it – it may range – maybe between 16/17, no more maybe than 20 – no more.” Applicant did not testify to the source of this information – whether from a solicitor or the judge – only that it was conveyed to him by trial counsel. He further testified that trial counsel did not put anything on the record at the plea hearing about this conversation regarding sentencing, but he did file a motion for reconsideration after the plea.

Upon cross-examination, beginning with line 24 of page 59, Applicant reiterated his statement that he understood he was likely to receive 16 or 17 years, but no more than 20. He further testified that he was “shocked” and “really emotional,” yet never tried to stop the entry of his plea and did, indeed, plead guilty. Tr. p.59:10-22. On re-cross, Applicant testified that he did not necessarily plead guilty because he was facing a long sentence, but was more concerned about whether his attorney was prepared. Tr. p.67:22-68:6.

During direct examination by PCR counsel, trial counsel explained that his encouragement of Applicant to take a plea was largely because Applicant’s co-defendant had flipped – he decided to plead to a deferred sentence that was dependent on his testimony against the Applicant. Tr. p. 76. Trial counsel testified regarding the conversation he had with Applicant

about how this would change the dynamics of his case beginning on page 77 of the transcript. This continues on to page 78, whereupon trial counsel recalls Applicant saying, "Man, I got to plea now" upon learning that the co-defendant (his cousin) would testify against him. Trial counsel went on to explain a conversation with the solicitor regarding the possibility of a plea deal as they went to speak in chambers with the Honorable Jeff Young, before whom they were appearing. He then explained what Judge Young told them in chambers:

"Hey, Brooks, if your guy takes a plea, I ain't going to do him much worse than Upchurch. I ain't going to give him 15, but I ain't going to do him much worse than that." Okay? Now, I interpret that to be 16/17/18 – no more than 20. That's what I interpreted it to be. I go back and I tell Kadeem, "This is what the judge says," exactly verbatim.

Tr. p.78:23-79:5. Later on page 79, trial counsel reiterates that he was shocked by the sentencing outcome because he believed Judge Young's statement to have meant "between 15 and 20." Ms. Blanchette questioned trial counsel (pages 89 and 90) about why he did not put information about this chambers conference on the record, which led to trial counsel repeating again, on pages 90 and 91, that his interpretation of Judge Young's comments was that Applicant would receive between 15 and 20. His reasoning behind this was that the co-defendant pled first, so he received a benefit that Applicant could not receive for following suit.

On cross-examination, Mr. Brooks testified that it was the Applicant's decision to plea after hearing that his co-defendant/cousin had pled. Tr. p. 109:23-110:1. Trial counsel testified that he never guaranteed the Applicant that he would receive any specific number of years as a

sentence.¹ Tr. p. 110:5-11. He further testified that he reminded the Applicant that he still faced a potential sentence for the entire amount of time when he entered his plea. Tr. p.111:5-8.

Applicable Law

The narrow question being considered at this time is whether the advice provided by trial counsel regarding the potential time Applicant faced at his plea is sufficient to warrant a new trial. In order to warrant a new trial after a guilty plea, an applicant must prove that (1) counsel's performance was deficient and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. Johnson v. Catoe, 336 S.C. 354, 520 S.E.2d 617 (1999); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Satterwhite v. State, 325 S.C. 254, 481 S.E.2d 709 (1997).

In the case at hand, part of Applicant's claim is that he felt that trial counsel was unprepared and, therefore, felt forced to plead guilty. He pointed to the fact that trial counsel did not show him statements that were produced in discovery and did not investigate his co-defendant/cousin. This is factually analogous to the matter of Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); however, the Court held that Stalk "needed to present some evidence that had counsel done an investigation he would have found a witness or evidence that was helpful to Stalk, that is, something that would have affected counsel's advice to Stalk to accept the plea bargain offered or that would have caused Stalk to decline to accept it." Applicant presented some evidence regarding an alleged failure to investigate, but this was refuted by trial counsel's testimony that he was prepared to go to trial and that any recently received evidence was inconsequential. Tr.p.93:7-10. In his direct examination, Applicant testifies that trial counsel

¹ "Can't guarantee anybody something except they going die one day. So no. I didn't guarantee him. I did tell him what was relayed to me. And in fairness to him, I'm sure he—he relied on that. Because I relied on that." Tr. p.110:6-11.

advised him to take a guilty plea when they were in the courtroom. This is congruent with trial counsel's testimony that it was a last minute change in posture of the case that caused him to advise Applicant to plead.² To frame it differently, no amount of investigation would have changed trial counsel's advice to Applicant regarding pleading guilty because his deciding factor was the entry of a plea by the co-defendant.

When reviewing whether the parties were of the same understanding regarding the potential sentence that Applicant faced, the record is clear that they were of the same mind. As described above, both men testified that they were of the impression that Judge Young was likely to sentence the Applicant to more than fifteen but fewer than twenty years, with both specifically referencing sixteen or seventeen years as a possibility. If the question is whether the Applicant understood trial counsel during that conversation, it is obvious that he did and that both were of the same understanding regarding possible sentences. Trial counsel did not misadvise Applicant of his understanding of the judge. For this reason, trial counsel cannot be seen to have erred in his representation of the Applicant, and is therefore unable to satisfy either prong of the test put forth in Johnson v. Catoe, 336 S.C. 354. Trial counsel's performance was not deficient, as evidenced by both men testifying to the same understanding of the fact that existed at the time of the plea. Because Applicant understood and acted on trial counsel's credible advice, there is no reason to believe that he would have gone to trial rather than plead guilty.

As a collateral matter, Respondent avers that this Court has already found trial counsel to be credible as evidenced by its decision to rule in favor of the Respondent on all other matters. Certainly this plea could not be considered involuntary, as it was made on the competent advice

² "And I – I remember this. Because I said, 'Kadeem, your case – the dynamics of your case have changed drastically. They had no case against you. Now they only – they got your codefendant cousin, which means now they got a strong case against you.'" Tr.p.77:19-23.

of counsel, and there are no allegations that Applicant lacked understanding of his actions or their consequences at the time of his plea. Lastly, the South Carolina Supreme Court has held that "a guilty plea need only represent a voluntary and intelligent choice among alternative courses of action open to the defendant." James v. State, 377 S.C. 81, 84, 659 S.E.2d 148, 150 (2008) (citing North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)). It is clear from the credible testimony of trial counsel, and echoed by portions of the Applicant's less credible testimony, that Applicant made a knowing, intelligent decision to plead guilty based on the information and advice provided to him by trial counsel.

For the above-stated reasons, Respondent argues that Applicant has not met the burden of proving that trial counsel was ineffective in any portion of his representation, including his conveyance of potential sentencing to the Applicant.

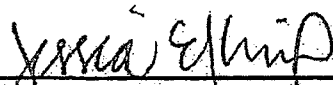
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

July 29, 2016

RECORDED
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2016 DEC -1 PM 3: 03
 COUNTY OF SUMTER) DOCKET NO.: 2014-CP-43-0794

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

Sherry H. Hester
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

KADEEM JOHNSON,)

Applicant,)

v.)

ORDER ON MOTION PURSUANT TO

59(a) &(e), SCRPC

STATE OF SOUTH CAROLINA)

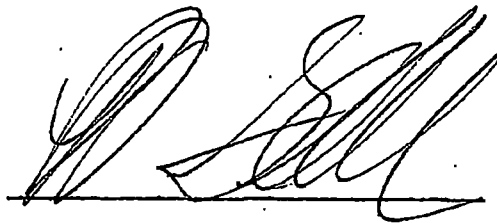
Respondent)

THIS MATTER COMES BEFORE THE COURT UPON APPLICANT'S MOTION DATED November 1, 2016. Both parties submitted briefs. After thoroughly reviewing the briefs and considering the issues raised therein I find no compelling reason to alter or amend the prior order of this court dated October 18, 2016.

ACCORDINGLY, Applicant's Motion is hereby denied.

IT IS ALL SO ORDERED.

November 28, 2016



Brooks P. Goldsmith

CIRCUIT JUDGE

WITNESSES

L Mays Sumter County Sheriff

DOCKET NO. 2011-GS-43-0469

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

March TERM 2011

THE STATE

vs.

KADEEM S. JOHNSON

KAREENE ABDUL UPCHURCH

ARREST WARRANT NUMBER

M441834 M441755

ACTION OF GRAND JURY

*True Bill**James T. Shuler*
Foreperson of Grand JuryDate: *3/31/2011*

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED WITH A
DEADLY WEAPON
AND
POSSESSION OF A WEAPON DURING A
VIOLENT CRIME

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

ROBBERY / ARMED ROBBERY, ROBBERY WHILE ARMED
 OR ALLEGEDLY ARMED WITH A DEADLY WEAPON
 AND
 POSSESSION OF A WEAPON DURING A VIOLENT
 CRIME

At a Court of General Sessions, convened on March 31, 2011 the Grand Jurors of
 SUMTER County present upon their oath:

COUNT ONE

ROBBERY / ARMED ROBBERY, ROBBERY WHILE ARMED OR ALLEGEDLY ARMED
 WITH A DEADLY WEAPON

That KADEEM S. JOHNSON and KAREENE ABDUL UPCHURCH did in Sumter County on or about 2010-08-09, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: firearm, did feloniously take from in the presence of Alicia Moses and Ibrahim Awid, by means of force or intimidation goods or monies of the said, such goods or monies being described: \$300 in U.S. currency.

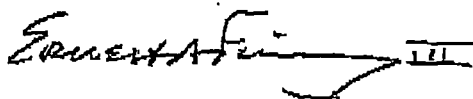
COUNT TWO

POSSESSION OF A WEAPON DURING A VIOLENT CRIME

That KADEEM S. JOHNSON and KAREENE ABDUL UPCHURCH did in Sumter County on or about 2010-08-09, violate Section 16-23-490 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: firearm, did feloniously take from in the presence of Alicia Moses and Ibrahim Awid, by means of force or intimidation goods or monies of the said, such goods or monies being described: \$300 in U.S. currency.

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

Solicitor



COUNTY OF Sumter
 STATE VS.
Kadeem S. Johnson
 AKA: _____
 Race: 2 Sex: M Age: 19
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Rembert, SC 29128
 DL#: [REDACTED] SID#: _____
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Robbery / Armed Robbery, ct /

INDICTMENT/CASE#: 2011-GS-43-0469
 A/W#: M441834
 Date of Offense: 6/9/2010
 S.C. Code § : 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST John P. Meador 10429 [Signature] [Signature] 11702
 Meadors, John P SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: w/ all other charges
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: _____ \$
 § 14-1-206 (Assessments 107.5 %) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114(BUI Breath Test Fee) \$50 \$
 § 56-5-2942(I) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

James C. Campbell
Malissa Singleton

[Signature]
2186
04-17-12

STATE OF SOUTH CAROLINA

COUNTY OF Sumter
 STATE VS.
Kadeem S. Johnson

AKA:

Race: 2 Sex: M Age: 19DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Rembert, SC 29128DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADSTO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death ct 2in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: John P. Meador10429[Signature][Signature]17762

Meadors, John P

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: W/ all Charges☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/en	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>390</u>
TOTAL		\$ <u>13390</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

James C. CampbellMelissa Singleton

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-43-0469A/W#: Direct PleadmentDate of Offense: 6/9/2010S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
2154
4-17-12

WITNESSES

J. Mays

Sumter County Sheriff

DOCKET NO. 2011-GS-43-0481

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH

TERM

2011

THE STATE

vs.

KADEEM S. JOHNSON

KAREENE ABDUL UPCHURCH

ARREST WARRANT NUMBER

M441837

M441835

M441753

M441754

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: *3/31/2011*

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

Attempted Murder

Attempted Arm Robbery

Possession of a Weapon During the Commission of a
Violent Crime

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR
 Attempted Murder
 Attempted Arm Robbery
 Possession of a Weapon During the
 Commission of a Violent Crime

At a Court of General Sessions, convened on MARCH 31, 2011 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE
ATTEMPTED MURDER

That Kadeem S. Johnson and Kareem Upchurch did in Sumter on or about JUNE 10, 2010, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Kadeem S. Johnson and Kareem Upchurch did shoot Basem Mohammad multiple times with intent to kill, the victim, with malice aforethought, either express or implied.

COUNT TWO
ATTEMPTED ARMED ROBBERY

That Kadeem S. Johnson AND Kareem Upchurch did, in Sumter County on or about June 10, 2010, while armed with a deadly weapon, to wit: hand gun attempted to take and carry away the personal property from Basem Mohammad with intent to deprive him of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S.C. Code of Laws, 1976, as amended.

COUNT THREE
POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Kadeem S. Johnson and Kareem Upchurch did in Sumter on or about June 10, 2010, did violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Kadeem S. Johnson and Kareem Upchurch did with intent to kill, attempt to kill Basem Mohammad, with malice aforethought, either express or implied, by shooting the victim multiple times with a firearm while carrying a hand gun with out authority to do same in violation of Section 16-23-490 of the Code of Laws of South Carolina(1976), as amended.

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

Solicitor

Ernest A. Finney III

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Sumter

VS.

Kadeem S. Johnson

INDICTMENT/CASE#: 2011-GS-43-0481

AKA:

A/W#: M441837

Race: 2

Sex: M

Age: 19

DOB: 1993

SS#: [REDACTED]

Address: 3310 Highway 261 N

City, State, Zip: Rembert, SC 29128

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Murder / Attempted Murder

in violation of § 16-03-0029

of the S.C. Code of Laws, bearing CDR Code #

3410

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Meadors, John P

SC Bar# 10429

Defendant

Attorney for Defendant

SC Bar# 11762

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

1% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

CCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

339

COUNTY OF
STATE

Sumter

VS.

Kadeem S. Johnson

INDICTMENT/CASE#: 2011-GS-43-0481

A/W#: M441835

Date of Offense: 6/10/2010

S.C. Code § 16-11-0330(B)

CDR Code # 0026

SUMTER COUNTY
SOUTH CAROLINA

SENTENCE SHEET

AKA:

Race: 2 Sex: M Age: 19

DOB: 993 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Rembert, SC 29128

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted armed☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Meadors, John P

SC Bar# 10420

Defendant

Attorney for Defendant

SC Bar# 11762

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years/or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 2500
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 500
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: Sentence Date:

Sentence Date: 04-11-12

WITNESSES

L Mays Sumter County Sheriff

DOCKET NO. 2011-GS-43-0939

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JULY TERM 2011

THE STATE

vs.

KAREENE ABDUL UPCHURCH

KADEEM S. JOHNSON

ARREST WARRANT NUMBER

M441758 M441832

ACTION OF GRAND JURY

True Bill

Indictment for

Robbery / Armed Robbery, robbery while armed or
allegedly armed with a deadly weapon

[Signature]
Foreperson of Grand Jury
Date: *7/21/2011*

VERDICT

[Signature]

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Robbery / Armed Robbery, robbery while armed or allegedly
armed with a deadly weapon

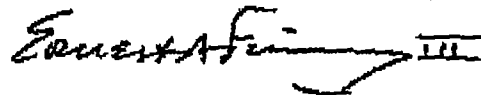
At a Court of General Sessions, convened on JULY 21, 2011 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE - ARMED ROBBERY
WHILE ARMED WITH A DEADLY WEAPON

That on or about June 11, 2010, in Sumter County, South Carolina, the Defendant, Kareene Abdul Upchurch along with Kadeem S. Johnson, at _____ d, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Ollethia Dinkins with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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

Solicitor



STAT. OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

343^cCOUNTY OF
STATE

Sumter

VS.

Kadeem S. Johnson

CERTIFIED TRUE COPY
OF ORIGINAL FILED

INDICTMENT/CASE#: 2011-GS-43-0939

M441832

AKA:

Race: 2

Sex: M

Age: 19

DOB: [REDACTED] 1993

SS#: [REDACTED]

Address:

City, State, Zip: Rembert, SC 29128

DL#:

SID#:

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

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

TO: Robbery / Armed Robbery,

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Meadors, John P

SC Bar# 10424

Defendant

Attorney for Defendant

SC Bar# 11762

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to-County (if paid in installments)

TOTAL

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ea

\$5

\$

\$

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PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

ICCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

James C. Campbell

Melissa Singletary

215

04-17-12