

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

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MAR 10 2010

SC SUPREME COURT

JAMES EDWARD JOHNSON, JR.

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE # 2015-001062

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-)
6 Jalek J. Miller and)
7 James Edward Johnson, Jr.,)
8 Defendants.)
9
10
11 B E F O R E :
12 HONORABLE J. DERHAM COLE, JUDGE
13
14
15 A P P E A R A N C E S :
16 TIMI POULOS, ESQUIRE
17 Attorney for the State
18 ROBERT B. HALL, ESQUIRE
19 Attorney for Defendant Miller
20 ANDREA LEAH PRICE, ESQUIRE
21 Attorney for Defendant Johnson
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23 Linda D. Moffitt
24 Circuit Court Reporter
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Guilty plea -- page 3.

No sworn testimony; no exhibits entered into evidence.

3
1 MS. POULOS: Your Honor, these are multiple charges,
2 one incident. The defendants are involved in the same
3 incident.

4 Mr. Johnson, Your Honor, is on your -- your right.
5 He's before the Court on 11 charges, Your Honor.

6 2012-GS-42-4474 is a true-billed indictment for armed
7 robbery; 2012-GS-42-4475, a true-billed indictment for
8 armed robbery; 2012-GS-42-4476, a true-billed indictment
9 for kidnapping; 2012-GS-42-4477, a true-billed indictment
10 for kidnapping; 2012-GS-42-4478, failure to stop for a blue
11 light; 2012-GS-42-4481 for kidnapping; 2012-GS-42-4482 for
12 kidnapping; 2012-GS-42-4483 for attempted armed robbery;
13 2012-GS-42-4484 for attempted armed robbery;
14 2012-GS-42-4485 for possession of a stolen pistol;
15 2012-GS-42-5167 for armed robbery, Your Honor. These are
16 all straight-up pleas, Your Honor, with Mr. Johnson.

17 Do you want me to call Mr. Miller's out next?

18 With regard to Jalek Miller, Your Honor, he's on your
19 left. He's pleading guilty to six charges, Your Honor.

20 The first is 2012-GS-42-4502, a true-billed indictment
21 for a possession of stolen pistol; 2012-GS-42-4505, a
22 true-billed indictment for attempted armed robbery;
23 2012-GS-42-4506 for attempted armed robbery;
24 2012-GS-42-4508 for attempted armed robbery;
25 2012-GS-42-4511 for armed robbery; and 2012-GS-42-4512 for

1 armed robbery.

2 These are also straight-up pleas, Your Honor.

3 THE COURT: All right. You are James Edward Johnson,
4 Jr.

5 DEFENDANT JOHNSON: Yes, sir.

6 THE COURT: Ms. Price is your lawyer.

7 DEFENDANT JOHNSON: Yes, sir.

8 THE COURT: And you are Jalek Jonques Miller.

9 DEFENDANT MILLER: Yes, sir.

10 THE COURT: Mr. Hall is your lawyer?

11 DEFENDANT MILLER: Yes, sir.

12 THE COURT: Each of you have indicated by your
13 signatures on these sentencing sheets that you're offering
14 to plead guilty to various charges.

15 Before I can accept your guilty pleas I've got
16 questions to ask you. The purpose of the questions is for
17 me to determine whether or not your decision to plead
18 guilty is freely and voluntarily made, that you understand
19 what you're charged with, that you understand the potential
20 punishment that may be imposed, that you have no defenses
21 to the charges, or if you do you wish to give your right up
22 to assert those defenses; and that you understand fully the
23 consequences of your decision to plead guilty and what a
24 conviction brings for each of you.

25 So if during the course of this process you don't

1 understand the question, you be sure to ask me to clarify
2 it, because I will expect that any response you give me to
3 a question is a truthful and accurate response to the
4 question I'm asking.

5 Now, Mr. James Edward Johnson, Jr., you are charged in
6 11 separate indictments with 11 separate and distinct
7 offenses, although they may have arisen out of one
8 particular event or a course of events which the state
9 alleges occurred back on July the 12th of this year. But
10 you are charged in Indictment 2012-4474(A) with armed
11 robbery and possession of a weapon during the commission of
12 a violent crime.

13 The state alleges that on July the 12th you did while
14 armed with a deadly weapon or while alleging either by
15 actions or words that you were armed while using a
16 representation of a deadly weapon or some object which a
17 person present during the commission of the robbery
18 reasonably believed to be a deadly weapon, that you did
19 take, steal and carry away from the person or presence of
20 Annette Smith who was an employee of the Family Dollar
21 store a cell phone or money that belonged to the Family
22 Dollar Store by the use of force or violence or by way of
23 intimidation.

24 And they allege that you did also possess or visibly
25 display a firearm during the commission of a violent crime.

1 The violent crime is alleged to have been armed robbery.

2 If I accept your plea of guilty as to the armed
3 robbery you could receive a sentence of up to 30 years in
4 jail.

5 It requires a mandatory minimum sentence of not less
6 than ten years in jail. And you can receive an additional
7 sentence of five years in jail on the possession of the
8 firearm during the commission of an armed robbery.

9 Indictment 2012-4475 also charges you with armed
10 robbery and possession of a firearm during the commission
11 of a violent crime.

12 And they allege again on July the 12th of 2012 you did
13 while armed with a deadly weapon take, steal and carry away
14 from the person or presence of Christina Hughes, an
15 employee of the Family Dollar Store, a cell phone and/or
16 money that belonged to the Family Dollar Store by the use
17 of force, violence or by way of intimidation, and that that
18 armed robbery was committed by possession or use of a -- or
19 display of a firearm.

20 That carries an additional potential punishment of up
21 to 30 years in jail and -- on the armed robbery and five
22 years on the weapon's charge.

23 Indictment 2012-5167 also charges you with armed
24 robbery and possession of a firearm during the commission
25 of a violent crime. Again, they allege that those offenses

7
1 occurred on July the 12th of 2012.

2 They allege similar allegations except that the victim
3 is alleged to be a different person. That person is Alice
4 Williams.

5 Was she not an employee at the Family Dollar Store?

6 MS. POULOS: She was a customer, Your Honor.

7 THE COURT: She was a customer?

8 MS. POULOS: Yes, sir.

9 THE COURT: And she was not an employee but was at the
10 Family Dollar Store. And, again, they allege you took
11 property that belonged to her with the use of a firearm and
12 that you possessed it during the armed robbery.

13 So that carries an additional potential sentence of 30
14 years in jail on armed robbery and five years on the
15 weapon's charge.

16 Indictments 2012-4484, 4483 charge you -- and 4483
17 charge you with attempted armed robbery.

18 These indictments allege that on July the 12th of 2012
19 you did attempt to take property that belonged to Tameka
20 Young and also property that belonged to Mattison Dawkins
21 while armed with a deadly weapon. You attempted to commit
22 a robbery of those people.

23 Attempted armed robbery as to each those separate
24 indictments carries a potential sentence of up to 20 years
25 in jail.

1 Indictments 2012-4482, 4481, 4477 and 4476 each charge
2 you with the crime of kidnapping.

3 They allege on July the 12th of 2012 you did
4 unlawfully and with a criminal intent seize, confine,
5 inveigle, decoy, kidnap, abduct or carry away without
6 authority of law Annette Smith, Christina Hughes, Mattison
7 Dawkins and Alice Williams.

8 Those are four separate charges, four separate
9 victims, four separate indictments. Each carry a potential
10 sentence of up to 30 years in jail.

11 Indictment 2012-4478 charges you with failing to stop
12 when signaled by a law enforcement officer.

13 (Pause for coughing.)

14 THE COURT: Indictment 2012-4478 charges you with
15 failing to stop. And the state alleges on July the 12th of
16 2012 you did wilfully fail to stop a motor vehicle that you
17 were driving on a street or highway in this county after
18 you were signaled to do so by a law enforcement officer
19 using a blue light or siren, or both.

20 That carries an additional potential punishment of up
21 to three years in jail.

22 And the remaining indictment, 2012-4485, charges you
23 with unlawful possession of a stolen pistol. Again, on
24 July the 12th of 2012 they allege you did wilfully,
25 knowingly possess a stolen handgun.

1 That also carries an additional punishment of up to
2 five years in jail.

3 Each of these sentences may be run with the other
4 concurrently or consecutively. I make that determination.
5 That's up to me in my discretion.

6 Do you understand each of the charges to which you've
7 offered to plead guilty?

8 DEFENDANT JOHNSON: Yes, sir. I believe so.

9 THE COURT: Do you understand the potential
10 punishments that I may impose if I accept those pleas of
11 guilty?

12 DEFENDANT JOHNSON: Yes, sir. I believe so.

13 THE COURT: All right. Do you still wish to go
14 forward?

15 DEFENDANT JOHNSON: Yes, sir.

16 THE COURT: All right. Jalek Jonques Miller, you are
17 charged in Indictments 2012-4512, 4511, 4508 with the
18 crimes of armed robbery and possession of a firearm during
19 the commission of a violent crime.

20 These indictments allege that you committed the crime
21 of robbery while armed with a deadly weapon, that weapon
22 being a firearm.

23 They allege that each of these offenses occurred on
24 July the 12th of 2012, and they allege the victims were
25 Alice Williams, Christina Hughes and Annette Smith. Each

1 of those persons were employees -- excuse me --
2 Ms. Williams was not an employee of the store. But
3 Ms. Hughes and Ms. Smith were employees of the Family
4 Dollar Store.

5 But they allege that you used a firearm and that you
6 threatened the use of a firearm by way of intimidation, the
7 threat of the use of force or violence in committing the
8 theft or the robbery of these people, and that you
9 committed the robbery while armed with a deadly weapon, a
10 firearm. And those are two separate offenses.

11 Each indictment charges you with armed robbery, which
12 carries up to 30 years in jail, requires a mandatory
13 minimum sentence of not less than ten. And each of those
14 indictments also has a count two charging you with
15 possession of a firearm during the commission of an armed
16 robbery carrying an additional potential punishment of five
17 years in jail.

18 Indictments 2012-4506 and 4505 charge you with
19 attempted armed robbery. And these indictments allege that
20 on July the 12th of 2012 you did while armed with a firearm
21 attempt to steal property that belonged to Tameka Young and
22 Mattison Dawkins.

23 Attempted armed robbery carries a potential sentence
24 of up to 20 years in jail as to each.

25 And the remaining indictment that you have is

1 2012-4502 charging you with the unlawful possession of a
2 stolen pistol.

3 Again, they allege on July the 12th of 2012 you
4 unlawfully possessed a stolen handgun. And that carries up
5 to five years in jail.

6 Each of the sentences that may be imposed as to your
7 charges may be run concurrently or consecutively. I make
8 that determination in my discretion.

9 Do you understand each of the charges to which you've
10 offered to plead guilty and the potential punishments that
11 may be imposed?

12 DEFENDANT MILLER: Yes, sir.

13 THE COURT: Do you still wish to go forward and plead
14 guilty?

15 DEFENDANT MILLER: Yes, sir.

16 THE COURT: When I ask these questions they'll apply
17 to both of you. I'm going to start with Mr. Johnson, and
18 then Mr. Miller.

19 So, Mr. Johnson, you'll be answering my questions
20 first.

21 The answers to these questions might be the same.
22 They may be different. That will depend upon how they
23 apply to you.

24 So, Mr. Miller, just because Mr. Johnson says one
25 thing doesn't mean that you give the same answer. It

1 depends on what your answer actually is.

2 Do you understand?

3 DEFENDANT MILLER: Yes, sir.

4 THE COURT: Have each of you had plenty of time and
5 opportunity to talk with your lawyers about the nature of
6 these charges and the consequences of a conviction?

7 DEFENDANT MILLER: Yes, sir.

8 DEFENDANT JOHNSON: Yes, sir.

9 THE COURT: Mr. Johnson will go first and Mr. Miller
10 will go second. Can we follow those instructions?

11 DEFENDANT JOHNSON: Yes, sir.

12 DEFENDANT MILLER: Yes, sir.

13 THE COURT: Have each of you had the opportunity to
14 discuss these charges with your lawyers, as well as
15 potential punishments that might be imposed?

16 DEFENDANT JOHNSON: Yes, sir.

17 DEFENDANT MILLER: Yes, sir.

18 THE COURT: Have you explained to your respective
19 lawyers all of the facts and circumstances that relate to
20 these allegations as you understand the facts and
21 circumstances to be?

22 DEFENDANT JOHNSON: Yes, sir.

23 DEFENDANT MILLER: Yes, sir.

24 THE COURT: Did you and your lawyers determine whether
25 or not you have a defense, a reason why you should not be

1 found guilty, as to any of the charges to which you've
2 offered to plead guilty?

3 DEFENDANT JOHNSON: No.

4 THE COURT: No, what?

5 DEFENDANT JOHNSON: No defense.

6 THE COURT: You have no reason why you should not be
7 found guilty?

8 DEFENDANT JOHNSON: No.

9 THE COURT: Mr. Miller?

10 DEFENDANT MILLER: No, sir.

11 THE COURT: Do each of you understand that armed
12 robbery is classified as a violent offense, a most serious
13 offense and a no-parole offense under the law of this
14 state?

15 DEFENDANT JOHNSON: Yes, sir.

16 DEFENDANT MILLER: Yes, sir.

17 THE COURT: And have your lawyers explained to you the
18 significance of those designations as being classified as
19 violent, most serious and no-parole offenses?

20 DEFENDANT JOHNSON: Yes. I know about the violent and
21 most serious, but I didn't know about the parole, but I
22 guess now I do.

23 THE COURT: No parole.

24 DEFENDANT JOHNSON: No parole.

25 MS. PRICE: That means you have to max out your

1 sentence.

2 DEFENDANT JOHNSON: Yes, sir.

3 THE COURT: For purposes of making a decision to plead
4 guilty you must assume for the purpose of making your
5 decision that whatever sentence I impose you'll have to
6 serve every single day, hour and minute of it.

7 DEFENDANT JOHNSON: Yes, sir.

8 THE COURT: Mr. Miller.

9 DEFENDANT MILLER: Yes, sir.

10 THE COURT: Have you talked to your lawyer about the
11 significance of these crimes being classified as most
12 serious, violent and no-parole offenses?

13 DEFENDANT MILLER: Yes, sir.

14 THE COURT: Did each of your lawyers also explain to
15 you that the crimes of attempted armed robbery are also
16 classified as violent, most serious and no-parole offenses?

17 DEFENDANT JOHNSON: Yes, sir.

18 DEFENDANT MILLER: Yes, sir.

19 THE COURT: And this applies to Mr. Johnson only.

20 Did your lawyer also explain to you that the crime of
21 kidnapping is also classified as a violent, most serious
22 and no-parole offense?

23 DEFENDANT JOHNSON: Yes, sir.

24 THE COURT: Have each your lawyers explained to you
25 the constitutional rights that you have that you must waive

1 or give up if you want to plead guilty?

2 DEFENDANT JOHNSON: Yes, sir.

3 DEFENDANT MILLER: Yes, sir.

4 THE COURT: Do each of you understand your rights to
5 remain silent, to confront and to examine any witness that
6 would offer evidence against you in court and to have a
7 jury determine whether or not you're guilty of any crime
8 the state claims you committed?

9 DEFENDANT JOHNSON: Yes, sir.

10 DEFENDANT MILLER: Yes, sir.

11 THE COURT: And do each of you understand those
12 rights?

13 DEFENDANT JOHNSON: Yes, sir.

14 DEFENDANT MILLER: Yes, sir.

15 THE COURT: And understanding those rights, do you
16 wish to give them up in order to plead guilty?

17 DEFENDANT JOHNSON: Yes, sir.

18 DEFENDANT MILLER: Yes, sir.

19 THE COURT: Has anyone promised you anything that
20 caused you to make your decision to plead guilty?

21 DEFENDANT JOHNSON: No.

22 DEFENDANT MILLER: No, sir.

23 THE COURT: Has anyone threatened you or forced you in
24 any way that caused to arrive at your decision to plead
25 guilty?

1 DEFENDANT JOHNSON: No, sir.

2 DEFENDANT MILLER: No, sir.

3 THE COURT: Has anyone placed any type of pressure
4 upon you that caused you to arrive at the conclusion to
5 plead guilty?

6 DEFENDANT JOHNSON: May I -- may I speak, sir?

7 THE COURT: Absolutely. I want you to answer my
8 question.

9 DEFENDANT JOHNSON: I know with my plea, I know that
10 if I didn't take a plea I had a paper saying that I would
11 get life without parole. So I don't know if you mean
12 pressure by life without parole or --

13 (Pause to confer with Ms. Price.)

14 DEFENDANT JOHNSON: She said something. She said
15 something else. Okay. So I guess no.

16 THE COURT: Okay. Well, what's -- what's the
17 discussion of life without parole?

18 MS. PRICE: Your Honor -- and this was going to come
19 up later in the plea.

20 Due to his criminal history and due to the fact that
21 he has been charged with a second most serious crime he
22 actually would -- was eligible under the statute for life
23 without parole.

24 THE COURT: Okay.

25 MS. PRICE: In consideration for this plea Ms. Poulos

1 has agreed not to seek life without parole in this instance
2 in exchange for his straight-up plea, Your Honor.

3 THE COURT: All right. Mr. Johnson, that's apparently
4 the case, is that you have prior convictions for a most
5 serious offense. And as you have indicated earlier, you
6 understand the significance of a most serious conviction.

7 DEFENDANT JOHNSON: Yes, sir.

8 THE COURT: Where you have two you may -- or the state
9 may seek to have a sentence of life in prison without the
10 possibility of parole imposed under the law. It's in their
11 discretion. They can seek it or decline to seek it.

12 Now, what I am told is, is that Ms. Poulos has agreed
13 not to seek a life sentence if you plead guilty to these
14 offenses.

15 If you don't plead guilty, then she may call your
16 cases for trial and may serve notice on you that she's
17 going to seek a sentence of life without parole.

18 DEFENDANT JOHNSON: Right.

19 THE COURT: So that's a concession she's made, and
20 that might be some circumstance or reason why you've made a
21 decision to plead guilty today. But you understand it's
22 still your decision. You don't have to.

23 Now, if you don't, there may be different
24 consequences, but it's still your decision.

25 DEFENDANT JOHNSON: I understand. I don't want to go

1 to trial. I wanted to plead. And they said if I plead
2 today that I wouldn't go through trial. So that's what I
3 want to do. I don't want to go to trial.

4 THE COURT: Okay. So your decision to plead guilty is
5 freely and voluntarily made?

6 DEFENDANT JOHNSON: Yes, sir.

7 THE COURT: And you're satisfied with that decision?

8 DEFENDANT JOHNSON: Yes, sir.

9 THE COURT: Mr. Miller -- does Mr. Miller fall under
10 the same?

11 MS. POULOS: No, sir, Your Honor, he doesn't.

12 THE COURT: He has no prior most serious conviction?

13 MS. POULOS: No, sir.

14 THE COURT: All right. Mr. Miller, are you pleading
15 guilty freely and voluntarily?

16 DEFENDANT MILLER: Yes, sir.

17 THE COURT: Nobody's pressured you into it or forced
18 you into it?

19 DEFENDANT MILLER: No, sir.

20 THE COURT: You're satisfied with your decision.

21 DEFENDANT MILLER: Yes, sir.

22 THE COURT: All right. Mr. Johnson, you're 27 years
23 old.

24 DEFENDANT JOHNSON: Yes, sir.

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

1 DEFENDANT JOHNSON: Twelfth grade.

2 THE COURT: Are you married?

3 DEFENDANT JOHNSON: No, sir.

4 THE COURT: Do you have children?

5 DEFENDANT JOHNSON: Yes, sir.

6 THE COURT: Do you work?

7 DEFENDANT JOHNSON: Not currently, but at one point in
8 time, yes, sir.

9 THE COURT: What were you working?

10 DEFENDANT JOHNSON: I was working for a sales company
11 called Sea Four.

12 THE COURT: And what were you doing for them?

13 DEFENDANT JOHNSON: I was a sales manager at one point
14 in time.

15 THE COURT: What were you selling?

16 DEFENDANT JOHNSON: A T & T, fiberoptic, T.V.,
17 internet, phone products, stuff like that.

18 THE COURT: How long have you been in jail?

19 DEFENDANT JOHNSON: Five months.

20 THE COURT: Have you ever been treated for any type of
21 substance abuse or addiction, Mr. Johnson?

22 DEFENDANT JOHNSON: No, sir. I've never been treated
23 for substance abuse or addiction.

24 THE COURT: Do you suffer from any addiction?

25 DEFENDANT JOHNSON: No, sir. I don't have a drug

1 problem or an alcohol problem. No, sir.

2 THE COURT: Have you ever been treated for any type of
3 mental illness or emotional disturbance?

4 DEFENDANT JOHNSON: No. I've never been treated for
5 anything.

6 THE COURT: Do you suffer from any such a condition
7 today?

8 DEFENDANT JOHNSON: I have -- in the past I've seen a
9 psychiatrist personally. But for, like I say, personal
10 issues with family and I -- my children. Me and my
11 children were separated, so I had some issues with that
12 like stressful situations. But not like in a court or
13 anything like that.

14 THE COURT: But you have no mental condition that
15 prevents you from understanding fully what you're doing
16 right now?

17 THE DEFENDANT: No, sir. I'm not schizophrenic or
18 nothing like that. No, sir.

19 THE COURT: Well, that's not what I'm asking. I'm
20 saying do you suffer from any type of a mental or emotional
21 condition that would preclude you from understanding fully
22 what you're doing right now.

23 DEFENDANT JOHNSON: Oh, no, sir. I don't have any.

24 THE COURT: All right. Mr. Miller, you're 22 years
25 old.

1 DEFENDANT MILLER: Yes, sir.
2 THE COURT: How far did you go in school?
3 DEFENDANT MILLER: Twelfth.
4 THE COURT: Are you married?
5 DEFENDANT MILLER: No, sir.
6 THE COURT: Do you have children?
7 DEFENDANT MILLER: Yes, sir.
8 THE COURT: Do you work?
9 DEFENDANT MILLER: Yes, sir. I did.
10 THE COURT: Where?
11 DEFENDANT MILLER: Sea Four Communications.
12 THE COURT: Have you ever been treated for any type of
13 substance abuse or addiction?
14 DEFENDANT MILLER: No, sir.
15 THE COURT: Do you suffer from any condition today?
16 DEFENDANT MILLER: No, sir.
17 THE COURT: Have you ever been treated for any type of
18 mental illness or emotional disturbance?
19 DEFENDANT MILLER: No, sir.
20 THE COURT: Do you suffer from any such a condition
21 today?
22 DEFENDANT MILLER: No, sir.
23 THE COURT: All right. I'm going to ask the solicitor
24 to tell me about the facts that relate to your cases.
25 Listen to what she tells me because when she's through

1 I'm going to ask you if you agree with her version of the
2 facts, as well as your criminal history, or whether you
3 disagree with it.

4 MS. POULOS: Thank you, Your Honor.

5 These charges all stem from an incident that took
6 place on July 12th of 2012 at the Family Dollar located at
7 362 West Main Street in Spartanburg.

8 The defendants entered the Family Dollar, Your Honor,
9 wearing masks. Defendant Jalek Miller was carrying a
10 pistol and codefendant James Johnson walked in carrying an
11 AK-47 with sawed-off stock.

12 There were several customers, Your Honor, employees.
13 There was an 11-year-old child as well in the store at the
14 time.

15 One of the employees was forced to open the store's
16 safe. They took cash and cell phones from people inside
17 the store and fled out of the back of the store as police
18 were arriving.

19 An officer saw the defendants' vehicle parked next to
20 the store when he used his patrol vehicle to block the
21 defendants in. James Johnson was the driver. He rammed
22 the patrol car and sped off.

23 Officers pursued them, Your Honor, and apprehended
24 them after the defendants wrecked the vehicle at a home at
25 [REDACTED] Avenue.

1 Present, Your Honor, are Officer Brendall Mathis and
2 Officer Chris Layton, as well as two of the victims, Your
3 Honor, Annette Smith and Christina Hughes. I do believe
4 that most if not all of them would like to address the
5 Court.

6 THE COURT: Tell me again. What kind of gun was it
7 Mr. Johnson had?

8 MS. POULOS: Mr. Johnson had the pistol. I'm sorry,
9 Your Honor. The other codefendant had the AK-47. I'm
10 sorry.

11 THE COURT: Mr. Miller had the AK-47.

12 All right. What would y'all like to tell me?

13 OFFICER MATHIS: Your Honor, Officer Brendall Mathis
14 with the Spartanburg City Police Department.

15 We arrived on the scene. We were advised by the
16 victims inside that Mr. Miller did come in with a -- an
17 assault rifle.

18 As we could see from the video of the store, he came
19 in with Mr. Johnson who was carrying a pistol, actually
20 grabbed one of the employees that was at the computer at
21 the front door by the back of the head and began to take
22 them towards the back, we're assuming to where the safe was
23 at as the video shows.

24 The other subject, Mr. Miller, actually walked over
25 and approached the mother and the 11-year-old child that

1 was laying in the floor and began demanding cell phones and
2 money from those two individuals, as well as the other
3 subjects that were inside the store.

4 They -- they did receive a sum of cash from the store
5 that was out of the safe up front and from the back, left
6 out of the store out the back, got into their car.

7 As they were leaving we observed their car on the
8 street behind the store. They -- other officers were in
9 the area and began to converge on the car.

10 That's when they actually ran into the other patrol
11 car and sped off, and the chase began there. They were
12 apprehended shortly after that with the money, the gloves,
13 the mask.

14 During the pursuit the subject in the passenger seat
15 actually threw out the assault rifle out of the window onto
16 the -- onto the street. And then they were apprehended
17 with the -- the other handgun that was actually inside of
18 the vehicle.

19 CHRISTINA HUGHES: My name is Christina Hughes, and I
20 just want to let you know how this affected me.

21 I have a four-month-old daughter. She was four months
22 at the time. She's ten months now. And I have an
23 11-year-old, eight-year-old and a two-year-old.

24 I was so scared that I would never get to see my kids
25 again. They have really ruined my life. I'm scared to go

1 to work; I'm scared to go out at night; I'm scared for my
2 kids to be outside or anything.

3 I've had to move. I get so nervous when I have to
4 work second shift. When it gets dark I just get really
5 scared. I'm having panic attacks now, anxiety attacks.

6 They have really ruined my life, and my kids, because
7 I won't let them go out and socialize with other people
8 because of this. I don't trust anybody. I'm having
9 issues.

10 I'm married. I've been married for a year. I'm
11 having issues trusting anybody. Every time somebody knocks
12 on my door I'm scared. I'm scared for my life when I'm at
13 work. I'm scared when I got out in public. This has just
14 really taken a toll on me.

15 THE COURT: Okay. Thank you, ma'am.

16 Anything else?

17 MS. POULOS: No, sir, Your Honor.

18 THE COURT: Where was the store? Where is the Family
19 Dollar?

20 MS. POULOS: It was --

21 THE OFFICER: 362 West Main Street.

22 THE COURT: West Main?

23 THE OFFICER: Yes, sir.

24 THE COURT: All right. Mr. Johnson, you heard what
25 the solicitor has told me about the facts that relate to

1 your cases. Do you agree or disagree with it?

2 DEFENDANT JOHNSON: Yes, sir. I agree.

3 THE COURT: Mr. Miller, you've heard what the
4 solicitor told me about the facts that relate to your case.
5 Do you agree or disagree?

6 DEFENDANT MILLER: I agree.

7 THE COURT: Tell me about Mr. Johnson's and
8 Mr. Miller's record, criminal history.

9 MS. POULOS: Your Honor, Mr. Johnson has a 2008
10 attempted armed robbery. Mr. Miller has a 2011 D.U.S.

11 THE COURT: Do each of you agree with the
12 criminal-history recitation?

13 DEFENDANT JOHNSON: Yes, sir.

14 DEFENDANT MILLER: Yes, sir.

15 THE COURT: And you still want to plead guilty?

16 DEFENDANT JOHNSON: Yes, sir.

17 DEFENDANT MILLER: Yes, sir.

18 THE COURT: All right. I'll accept your pleas and
19 hear from you and your lawyers.

20 MS. PRICE: Thank you, Your Honor.

21 On behalf of Mr. Johnson, Your Honor, he is throwing
22 himself at your feet today. He has absolutely no defense
23 to these charges. During the time I've been representing
24 him I've told him that.

25 The city and the prosecution has one of the best cases

1 I have ever seen as far as the strength of their case.

2 It's on video. There are multiple witnesses.

3 He just, Your Honor, for lack of a better term -- it's
4 one of the stupidest things I've ever seen as far as his
5 decision to do this -- walk into a store with people in it
6 armed, with a mask, in the city limits where they were met
7 by the police as they were leaving, Your Honor.

8 Additionally -- and we do need to take this up as
9 well. Mr. Johnson is on probation. He was scheduled to
10 get off probation next month, but five months ago he made
11 this incredibly egregious decision to do this.

12 He does want to address the Court on his own behalf,
13 Your Honor. He wants to tell you about some things that
14 were going on in his life at that time.

15 But the only thing I can really do on his behalf, Your
16 Honor, is to ask for mercy on him. He understands that
17 he's looking at least ten years on the robbery charges
18 being mandatory.

19 He was -- if he decided to go to trial, for which he
20 had no defense, he would be looking at life without parole.
21 This is in his best interest to enter this plea today. I
22 fully support that and fully believe that. And he would
23 like to address the Court at the appropriate time.

24 THE COURT: All right. Tell me about his probation,
25 please.

1 PROBATION AGENT: Your Honor, Mr. Johnson was placed
2 on probation January the 11th of 2008 before Judge Hayes
3 for the offense of attempted armed robbery, and that's
4 under Indictment 2007-GS-42-4434.

5 He received a sentence of 15 years suspended to time
6 served and five years probation. Special conditions were
7 to pay restitution and pay fine. No guns, no contact with
8 Food Lion. Random alcohol and drug testing. Your Honor,
9 he has --

10 THE COURT: How much time had he served?

11 PROBATION AGENT: How much time had he served?

12 THE COURT: You said 15 suspended to time served. How
13 much time?

14 PROBATION AGENT: 290 days, Your Honor.

15 He has prior violations on the case, Your Honor. He

16 has one, two, three, four, five -- five prior violations.

17 We issued a warrant on July the 16th of 2012. That's
18 warrant W-42-120311 for the violations of failing to report
19 as instructed. He missed reports on April the 10th and
20 July the 3rd of this year. Failure to refrain from
21 possession of any firearms as evidenced by the incident at
22 Family Dollar; failing to refrain from violating federal,
23 state or local laws in that he was arrested for driving
24 under suspension by the public safety department on 11/2/11
25 and was convicted in Spartanburg Municipal Court in

1 January 2012.

2 The offender was ticked for D.U.S. second by
3 Spartanburg Public Safety and convicted in Spartanburg
4 Municipal Court in February of 2012.

5 Your Honor, they list the pending charges of the armed
6 robbery, four counts of kidnapping, attempted murder, blue
7 light violation, D.U.S. third, weapons, failing to pay his
8 supervision fee, failing to pay fine, failing to pay
9 D.N.A., failing to comply with the special conditions.
10 They converted \$700 supervision fee to 140 hours of public
11 service.

12 His paperwork was pulled. He failed to complete that.
13 He failed to follow the advice and instructions of his
14 supervising agent.

15 THE COURT: All right. Mr. Johnson, you've heard what
16 the probation officer has told me about your failure to
17 comply with the probationary sentence you're now being
18 supervised for.

19 DEFENDANT JOHNSON: Yes, sir.

20 THE COURT: Do you agree or disagree with what she's
21 just recited?

22 DEFENDANT JOHNSON: Yes, sir.

23 THE COURT: Do you agree or disagree with what she's
24 just recited?

25 DEFENDANT JOHNSON: Oh, I'm sorry. Yes, sir. I was

1 on probation and I did violate of course having the
2 firearms and everything else. Yes. I agree. Yes.

3 THE COURT: You agree with what she's told me?

4 DEFENDANT JOHNSON: Yes, yes, sir. I agree. Yes.

5 THE COURT: All right. Anything else you'd like to
6 add to what your lawyer has told me?

7 DEFENDANT JOHNSON: I just -- I just want to say, is
8 that when I got on probation in 2008, you know, it really
9 was a situation in my life where I wanted to turn and
10 leave. I knew that five years probation was a long time,
11 and I knew that, you know, it was going to be hard, but I
12 felt like I could do it.

13 I did four and a half years, and of course five months
14 into it, Your Honor, I was off of it, and I did -- I tried
15 my best to do as well as I could.

16 I had a lot of issues with my family as far as my --
17 my kids and my -- at the time my fiancée. They wound up
18 leaving. And I just really had a hard time with my family.

19 I was homeless several times in that time period, and
20 I had, like I say, just mainly family problems, which I
21 mentioned I spoke to a psychiatrist privately about.

22 I know that I told Ms. Andrea Price that I would be at
23 the mercy of the Court. I know what my crimes carry. I
24 know what I did was wrong. And I never got a chance to
25 apologize to the victims because I didn't understand what

1 -- I didn't understand that my -- my action caused that
2 much problem and that much pain to them. And now I'm
3 finally seeing that, you know, what I'm doing is not
4 getting me nowhere but further and further in this hole.

5 I want to thank Ms. Price for doing everything she
6 could for me and I want to thank the solicitor also for
7 helping me as much as they have.

8 And I just ask again that, you know, whatever,
9 whatever your decision, please have as much mercy as you
10 possibly can -- can muster up for me, please. Thank you.

11 THE COURT: All right. Mr. Hall.

12 MR. HALL: If it please the Court, Your Honor.

13 I agree with Ms. Price that this is one of the more
14 unusual cases. The police were right there. It was a good
15 case for the state in the sense that the police were there.

16 Almost everything is on video.

17 I've talked with Mr. Miller a good bit about this.
18 He -- this seems out of character for him.

19 He does have family members here. His mother is here
20 on the second row -- his brother's fiancée, some other
21 friends. And his fiancée that he has the children with are
22 here in the court. And I've spoken with them this morning,
23 and I have spoken with Ms. Morris, Janie Morris, who is a
24 fiancée, several times over the phone.

25 Jalek understands what he's facing and they understand

1 what he's facing. They understand at the very, very
2 minimum is ten years that he could get. And of course
3 that's what they're hoping for.

4 And what they have been doing because of the type
5 person he was outside of this -- be a -- was a hardworking
6 young man who supported his children.

7 His mother and stepfather -- his stepfather is the one
8 who raised him -- could depend on him. His stepfather had
9 lupus. Finances were rough. He was working. He helped
10 them with their finances while he was meeting his
11 responsibilities with his children, his own family.

12 Your Honor, he was working as an employee under Mr.
13 Johnson. He was a manager, a supervisor. And they both
14 lost their job. And this plan came out of that. They lost
15 their job, no income. And they did this horrible, stupid
16 thing.

17 But Mr. Miller is -- beyond this is a nice,
18 respectful, hardworking, responsible young man. He made a
19 horribly bad decision.

20 In the chase he tried at least once if not twice to
21 get out of the vehicle. His arm was broken in the chase.
22 I'm not sure if it was from the wreck or from one of the
23 times he opened the door. And I think the police car hit
24 the car.

25 But getting out of the car would not have helped him

1 get away. He could not have gotten away. There were -- I
2 forget how many police cars were in it, but there were
3 police everywhere, Your Honor.

4 He is here hoping that you see the young man that he
5 can be and was before this and that you give him a chance.

6 I have talked to him about the impact that this has
7 not just on the victims but the severe impact it has on the
8 victims, the business, the police officers. He realizes
9 that. He has expressed regret for that.

10 And, Your Honor, he is asking you for every
11 consideration that you can give him. I would -- and I
12 spoke to -- quite candid, with the solicitor and the
13 officers, that I'm going to ask you to hold what type of
14 time you can over his head and sentence him to the
15 mandatory minimum of ten years and, Your Honor, hold --
16 after he does the ten years that he has some time on
17 probation.

18 This is his first brush. He obviously understands a
19 brush with the law other than D.U.S. -- he understands that
20 when he gets out if it's after a 10-year sentence or
21 whatever sentence you give him if he ever does anything
22 again he's not going to get a break, he's not going to get
23 the break that Mr. Johnson has. He will be looking at life
24 without parole. He understands that.

25 Your Honor, I'm going to ask that the folks that were

1 here in support of him, if y'all will just stand up for a
2 moment.

3 That's his fiancée, the mother of his children, on
4 your right, Your Honor, and his mother on the left. And,
5 Your Honor, on their behalf they've expressed to me that --
6 what a good young man he was. And this was just a foolish
7 mistake he made.

8 Thank you. Y'all can have a seat.

9 out of -- he didn't want to admit that he lost his
10 job. And he jeopardized these officers, these people.
11 And, Your Honor, we're asking you give him every
12 consideration you can and give him an opportunity to -- to
13 get out in a reasonable amount of time.

14 His mother and his brother's fiancée both have
15 contacts. If he would have swallowed his pride and gone to
16 them he could have had a job, but he didn't do that. He
17 had that what I call false pride and made this stupid
18 decision.

19 Your Honor, on his behalf we're asking you to consider
20 giving him as little time as you can understanding that ten
21 is the bear minimum.

22 He's a smart, articulate man who made a horrible,
23 horrible decision that impacted on so many lives. Thank
24 you.

25 THE COURT: All right. Mr. Miller, anything you want

1 to add?

2 DEFENDANT MILLER: Yes, sir.

3 I want to apologize to all the victims that were
4 involved.

5 I also want the victims to know that I've been praying
6 for them because I know what I've done is wrong. And now
7 that I see the impact on their life I will continue to pray
8 for them.

9 I want to ask that the officers also forgive me for
10 being in the car.

11 And I want to apologize to my family for not being the
12 person that I can be, I know I can be. And I want to
13 pretty much apologize and ask you to forgive me and have
14 mercy on me.

15 THE COURT: Where did you get the assault rifle?

16 DEFENDANT MILLER: Off the street.

17 THE COURT: From where?

18 DEFENDANT MILLER: A friend of mine.

19 THE COURT: Who?

20 DEFENDANT MILLER: His name is Stan.

21 THE COURT: Stan what?

22 DEFENDANT MILLER: I don't know his last name.

23 THE COURT: He's a friend of yours and you don't know
24 his name?

25 DEFENDANT MILLER: I don't know his last name, no,

1 sir.

2 THE COURT: How much did you pay for the rifle?

3 DEFENDANT MILLER: Three hundred.

4 THE COURT: And what did you think you needed it for?

5 DEFENDANT MILLER: I didn't. I didn't need it at all.

6 MR. HALL: Your Honor, if I may say one more thing,
7 the rifle he had -- I think it's the standard
8 semiautomatic. It's not a -- I don't think there's any
9 indication it was converted.

10 THE COURT: Did y'all give me sentencing sheets for
11 the count two of the --

12 MS. POULOS: Your Honor, we are dismissing count two.

13 THE COURT: Dismissing count two.

14 MS. POULOS: I apologize for not mentioning that.

15 Yes, sir.

16 THE COURT: All right. With regard to Mr. Johnson and
17 his probation matter, I find that he has wilfully failed to
18 comply with the conditions of probation, and therefore that
19 sentence is to be revoked in full.

20 So far as the remaining indictments are concerned,
21 Indictment 2012-4474, armed robbery, Sentence of the court
22 is you, James Edward Johnson, Jr., be confined to the South
23 Carolina Department of Corrections for a period of 30
24 years. That sentence is consecutive to the probation
25 revocation just imposed.

1 Indictment 2012-4475 and 5167, each of those for armed
2 robbery, Sentence of the Court is you be confined to the
3 South Carolina Department of Corrections for a period of 30
4 years.

5 Indictments 2012-4483 and 4484, attempted armed
6 robbery, Sentence of the Court is you be confined to the
7 South Carolina Department of Corrections for a period of 20
8 years.

9 Indictments 2012-4476, 4477, 4481 and 4482,
10 kidnapping, Sentences of the Court, you are to be confined
11 to the South Carolina Department of Corrections for a
12 period of 20 years.

13 Indictment 2012-4478, failing to stop, three years.

14 Indictment 2012-4485, possession of a stolen handgun,
15 five years.

16 All right. Jalek Jonques Miller, Indictment 2012-4512
17 and 4511 and 4508, those are the indictments for armed
18 robbery, Sentence of the Court is you be confined to the
19 South Carolina Department of Corrections for a period of 20
20 years.

21 Indictment 2012-4506, 4505, attempted armed robbery,
22 Sentences of the Court is you be confined to the South
23 Carolina Department of Corrections for a period of 20
24 years.

25 Indictment 2012-4502, unlawful possession of a stolen

1 handgun, sentence of the Court is you be confined to the
2 South Carolina Department of Corrections for a period of
3 five years.

4 PROBATION AGENT: Your Honor, may we have a civil
5 judgment for the balance of the restitution?

6 THE COURT: Yes, ma'am.

7 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 18th day of December 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 8, 2013



Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)James Edward Johnson Jr #353643)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-42-2352

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 Perry Correction Institution
2. Name and location of Court which imposed sentence Spartanburg General Sessions Court
180 Magnolia st. 3rd fl suite 500 Spartanburg, SC. 29306
3. Name(s) of co-defendant(s) (if any) Jalek Jonques Miller
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) N245081, N245082, N245085, N245089, N245090, N245094
 - (b) N245097, N245098, N245101, N245103, N245105

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Dec 18, 2012 30 year, 15 year for a total of 45 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Guilty Plea
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My Attorney told me "I was too late and I had no grounds."
- (b) _____

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- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of counsel
- (b) involuntary Plea
- (c) Due Process Violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Inadequate Investigation or Research leading to Plea
- (b) Erroneous legal Advice leading to Plea
- (c) Denial of right to trial based on erroneous legal advice and inadequate research
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

~~yes~~ no

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

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? Andrea Leah Price, Yes
 (b) your trial, if any? _____
 (c) your sentencing? Andrea Leah Price, Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

(a) the name and address of each attorney who represented you:
 i. Andrea Leah Price, 366 North Church St suite 3000
Spartanburg, SC 29303
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Guilty Plea, sentencing
 ii. _____
 iii. _____

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 E-VERIFY
 E-WITNESS
 E-EXHIBIT
 E-DEPOSITION
 E-INTERVIEW
 E-CONFERENCE
 E-TRANSCRIPT
 E-APPENDIX
 E-INDEX
 E-FILED
 E-RECORD
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 E-DEPOSITION
 E-INTERVIEW
 E-CONFERENCE
 E-TRANSCRIPT
 E-APPENDIX
 E-INDEX

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 SPARTANBURG, SC

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

Reverse and Remand this conviction

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

no

21. I reserve the right to amend this Application once counsel is appointed.

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, James Johnson, 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 29th
day of APRIL, 2013.
Patricia Buchanan (L.S.)
Notary Public

My Commission Expires: 4-26-2020

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M. HOPE ALDRIDGE

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

I, James Johnson, 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.

James Johnson
Applicant

SWORN or affirmed to and subscribed before me this

24th day of APRIL, 2013.

Leticia Buchanan
Notary Public

My Commission Expires: 4-26-2020

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 M. BOB L. CANNLEY
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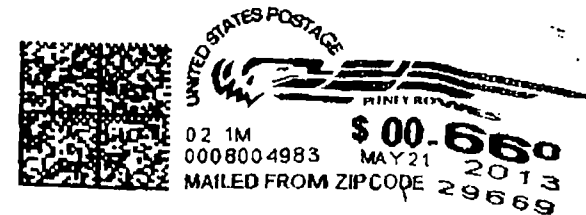
James E Johnson SDC # 353643
 PLI Q2-A-220
 430 Oak Lawn rd
 Pelzer, South Carolina 29669

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 MAY 21 2013

P.C.I. MAILROOM

LEGAL MAIL

M. Hope Blackley
 Clerk of Court, Spartanburg County
 PO Box 3483
 Spartanburg SC, 29304



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Q-2

1. The first question is whether the defendant is a "person" within the meaning of the statute. The answer is yes. The defendant is a natural person, and the statute applies to natural persons.

2. The second question is whether the defendant is a "resident" within the meaning of the statute. The answer is yes. The defendant is a resident of the state, and the statute applies to residents.

3. The third question is whether the defendant is a "member" within the meaning of the statute. The answer is yes. The defendant is a member of the organization, and the statute applies to members.

4. The fourth question is whether the defendant is a "leader" within the meaning of the statute. The answer is yes. The defendant is a leader of the organization, and the statute applies to leaders.

5. The fifth question is whether the defendant is a "person" within the meaning of the statute. The answer is yes. The defendant is a natural person, and the statute applies to natural persons.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-02352
James Edward Johnson Jr, #353643,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed April 29, 2013, 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 Spartanburg County Clerk of Court. He was indicted at the August 2010 term of the Spartanburg County Grand Jury for four counts of kidnapping (2012-GS-42-4476, -4477, -4481, -4482), three counts of armed robbery (2012-GS-42-4475, -5167, -4474), two counts of attempted armed robbery (2012-GS-42-4483, -4484), one count of failure to stop for a blue light without injury or death (2012-GS-42-4478), and one count of possession of a stolen pistol (2012-GS-42-4485). The Applicant was represented by Andrea Leah Price, Esquire. On December 17, 2010, the Applicant pled guilty as indicted to all charges. The Honorable J. Derham Cole sentenced Applicant to concurrent sentences of thirty years for armed robbery, as well as concurrent sentences of twenty years for the four counts of kidnapping and two counts of attempted robbery, and revoked his probation in full. The Applicant did not appeal his plea, sentences, or probation revocation.

Attached herewith and incorporated herein are the records of the Spartanburg 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:

- a. Ineffective assistance of counsel, in that;
 - i. Counsel's inadequate investigation or research leading to plea,
- b. Involuntary guilty plea, in that;
 - i. Erroneous legal advice led to the plea,
- c. Due process violation, in that;
 - i. The due process right to trial was denied based on erroneous legal advice and inadequate research.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

The Applicant also alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra;

Dover, *supra*. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-

conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
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June 27, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

))

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

James Edward Johnson, Jr.,

)

2013-CP-42-2352

)

Applicant,

)

)

v.

)

)

State of South Carolina,

)

)

Respondent.

)

)

CERTIFICATE 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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

J. Brandt Rucker, Esquire
522 N. Church Street
Greenville, SC 29601

Anne Mueller

Anne A. Mueller

Legal Assistant for the Respondent.

DATED this 27th day of June, 2014.

1	STATE OF SOUTH CAROLINA	}	COURT OF COMMON PLEAS NONJURY	
2	<u>COUNTY OF SPARTANBURG</u>			
3				
4	JAMES EDWARD JOHNSON, JR.,	}	TRANSCRIPT	
5	Applicant,		OF	
6	vs.		RECORD	
7	THE STATE OF SOUTH CAROLINA,		}	2013-CP-42-2352
8	<u>RESPONDENT.</u>			

9

10 January 12th, 2015

11 Spartanburg, South Carolina

12

13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.

15

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

17 J. BRANDT RUCKER

18 ESQ.

Attorney for the Applicant

19 SUZANNE H. WHITE

20 ASSISTANT ATTORNEY GENERAL

Attorney for the Respondent

21

22

23 PAMELA E. GREEN

24 Circuit Court Reporter

Seventh Judicial Circuit

25

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P R O C E E D I N G S

THE COURT: Is the Applicant ready?

MR. RUCKER: Yes, ma'am, we are.

THE COURT: State ready to proceed?

MS. WHITE: Yes, ma'am.

THE COURT: You may proceed.

MS. WHITE: Thank you, Your Honor.

This is James Edward Johnson versus the State. It's Case Number 2013-CP-42-2352. He's represented today by Mr. Brandt Rucker.

Mr. Johnson was indicted August of 2010, four counts of kidnapping, three counts of armed robbery, two counts of attempted armed robbery, failure to stop for a blue light, and possession of a stolen pistol. He proceeded, represented by Ms. Andrea Price, to a plea on December 17th, 2012. Received concurrent sentences of 20 years on the kidnapping, 30 years on each armed robbery, 20 on each attempted armed robbery, a three year sentence for failure to stop for a blue light, and five years for possession of a pistol, and that was a total 30 years that the judge ran consecutive to a probation revocation that occurred at the same time.

Mr. Johnson has filed his application alleging ineffective assistance of counsel, involuntary guilty plea,

James Johnson - Direct examination
by Mr. Rucker

1 and due process violations alleging that counsel's
2 inadequate investigation and research led to his plea. He
3 was given erroneous legal advice and that his right to trial
4 was denied based on the erroneous legal advice and
5 inadequate research.

6 At this time I can turn it over to Mr. Rucker.

7 THE COURT: You may proceed.

8 MR. RUCKER: Your Honor, I call my client, James
9 Johnson, to the stand.

10 THE COURT: Sir, raise your right-hand and be sworn.

11 JAMES JOHNSON, being first duly
12 sworn, testified as follows:

13 THE COURT: You can take a seat please and state your
14 full name for the record spelling your last name for the
15 court reporter.

16 THE DEFENDANT: James Edward Johnson, Junior. Johnson
17 is J-O-H-N-S-O-N.

18 THE COURT: You may proceed.

19 MR. RUCKER: Thank you, Your Honor.

20 THE COURT: You welcome.

21 DIRECT EXAMINATION

22 BY MR. RUCKER:

23 Q Mr. Johnson, what is it -- just to make it clear for
24 the record, what's your current sentence?

25 What, what are you serving right now?

James Johnson - Direct examination
by Mr. Rucker

1 A I'm currently serving a sentence of 45 years.

2 Q Okay. And do you know what the convictions were for
3 the -- that sentence?

4 A The, the individual times?

5 Q Right.

6 A Yes.

7 Q Okay. What are those?

8 A Thirty years for armed robberies, multiple armed
9 robberies, 20 years for multiple attempted armed robberies,
10 and 20 years for multiple kidnappings and then there was
11 some smaller charges. Like five and three years for, I
12 think, possession of pistol and the driving charge. I
13 believe she, she read them all. And then I also have 15
14 years because they, because they added a probation
15 revocation.

16 Q Okay. What was the underlying sentence that the -- for
17 the probation that was revoked?

18 A The -- what was the charge?

19 Q Yeah.

20 A Attempted armed robbery.

21 Q Okay. Do you recall what you were originally sentenced
22 for in that original attempted armed robbery?

23 A I don't recall.

24 Q Okay. Specifically what are you alleging that Mr. --
25 first of all, who was your attorney at the, at the guilty

James Johnson - Direct examination
by Mr. Rucker

1 plea?

2 A Ms. Andrea Price.

3 Q Okay. How often did you meet with Ms. Price before you
4 went to that hearing?

5 A I believe we met three times in the county. She came
6 and see me two times, you know, when she first, of course,
7 was my -- was appointed my attorney, and then the second
8 time also appointed my attorney and then the third time I
9 saw her at a preliminary hearing. She waived the
10 preliminary hearing and, you know, then, of course, we did
11 the guilty plea.

12 Q Okay. Did you have a codefendant in this case?

13 A Yes.

14 Q Do you know -- who was that codefendant?

15 A A Jalic Miller.

16 Q All right. And did you -- do you know what sentence he
17 got?

18 A Yes.

19 Q Okay. What was that sentence?

20 A It was 20 years.

21 Q All right. Do you understand that the, the judge will
22 have a copy of your transcript of your guilty plea that
23 she'll be reviewing?

24 A Yes.

25 Q Okay. Specifically what is your complaint about Ms.

James Johnson - Direct examination
by Mr. Rucker

1 Price's representation of you in this case?

2 A Specifically I'm alleging that my guilty plea was
3 involuntary. It was involuntary due to the ineffective
4 assistance of counsel. I believe -- I think she said that I
5 had it down as erroneous advice of counsel---

6 Q Uh-huh. (Affirmative).

7 A -- that led to my plea. Also the lack of investigation
8 or research that led to my plea.

9 Q Are you, are you admitting that you did any of the
10 crimes that you were alleged to have done---

11 A I---

12 Q ---at this point?

13 A I believe -- yes, I committed crimes and I, and I'm not
14 gonna come in here and say that there were no crimes
15 committed. But I also believe that the fact that she gave
16 me -- the, the, the advice she gave me about my guilt is, is
17 a determining factor. You know, I had -- I'm trying to
18 speak as well as I can.

19 Q well, I understand.

20 what was the erroneous advice that she gave you about
21 your guilty plea?

22 A well, she told me I had no defense. She told me that,
23 you know, I shouldn't go to trial because I would be found
24 guilty and given life without parole. She told me that it
25 was in my best interest to plead and the whole time -- cause

James Johnson - Direct examination
by Mr. Rucker

1 she was my lawyer for about five months. The entire time
2 I'm asking her like, you know, I have a lot of charges and
3 this stuff I didn't do.

4 Q Okay. What specifically did you not do with the
5 charges?

6 A There were armed robberies. There were kidnappings.
7 Based on my knowledge at the time, you know, I didn't have
8 any legal knowledge at all, I just knew that, you know, I
9 didn't do a robbery or, for instance, I didn't take what
10 they said I took or---

11 Q Okay. And, and just to be as clear as possible for the
12 record --

13 A Okay.

14 Q -- what of -- did you plead guilty to crimes that you
15 believe you were innocent of?

16 A Yes.

17 Q And what were those crimes?

18 A Armed robbery, attempted armed robbery, kidnapping.

19 Q Okay. Now, who were the victims of that original
20 armed -- are you -- first of all, to be clear, how many
21 armed robberies did you plead guilty to?

22 A Three.

23 Q Okay. Do you admit that you did any of those armed
24 robberies?

25 A Like I say, again, I believe I committed a crime. I

James Johnson - Direct examination
by Mr. Rucker

1 don't believe it was armed robbery.

2 Q Okay. And why do you believe it was not armed robbery?

3 A From, from doing research after I was convicted, I read
4 that armed robbery is felonious taking a property with the
5 intent to permanently deprive. I tried to get an
6 understanding of what an armed robbery is and what an armed
7 robbery isn't, and based on just simple, you know, reading
8 of cases or just understanding the statute, what, what I've
9 gathered is that when you take something and your intentions
10 was to take it permanently or you were trying to take
11 somebody's car or, or wallet or whatever, you weren't gonna
12 give it back, then that's an armed robbery, and it
13 specifically says that if you didn't have an intention to
14 permanently deprive someone of something or if your
15 actions -- say, for instance, if, you know, you borrowed
16 something, that's not robbery or if, you know, it was never
17 taken to begin with, that's not robbery and, and so on, so
18 on and so forth.

19 Q Okay. Specifically what did you not take that you pled
20 guilty to taking?

21 A In the indictment that -- in the -- I have three
22 indictments. Two of them is, is -- the way it's set up is
23 really weird, but it says that I took cell phones from two
24 of the victims. It was a Christina Hughes and it was
25 another lady. I'm trying to remember her name.

James Johnson - Direct examination
by Mr. Rucker

1 Q Would that be Annette Smith?

2 A Annette Smith, yes, it says that I took cell phones
3 from those victims and with the intent to permanently -- it
4 says in the indictment, with the intent to permanently
5 deprive the owners of such property, and then I didn't have
6 those indictments whenever I was arrested. I sent a letter
7 to Ms. Price requesting my indictments, my sentencing sheets
8 in my motion. And she write me -- sent me a letter back
9 saying here's your indictments, the sentencing sheets. I've
10 already sent you a copy of your motion. So I won't be
11 sending that.

12 I got the indictments and sentencing sheets, and with
13 some help, you know, people were kind of giving me an
14 understanding, and she was saying in, in the indictment that
15 I took these things, but I never took them.

16 Q Okay. What was the evidence that you looked over that
17 showed that you did take them?

18 A That I didn't?

19 Q That you did.

20 Was there evidence, in reviewing the discovery, that
21 showed you took these items from these alleged victims?

22 A Well, there was a, there was a warrant that was looking
23 for the, the cellular phones, but there was no evidence
24 saying that I took them. The warrants were, were saying,
25 you know, you know, this is what your, your, your armed

James Johnson - Direct examination
by Mr. Rucker

1 robbery is for, for taking a cell phone from these
2 individuals.

3 But then I get my indictment and it says, you know, you
4 know, the thing about the intent to permanently deprive and
5 then I'm looking through my motion, after I've gotten that
6 understanding, and then I have a paper. It's a supplemental
7 report from the investigator. I believe it's Page 9 of 128
8 or 123 and it says that the phones were found at the scene
9 of the crime. They were found by the, the manager at the
10 store not even 12 hours later after the crime and they were
11 given back to the victims.

12 So if this was known, if I, if I didn't take this --
13 these, these, these phones that I'm serving 30 years for, I
14 felt like Ms., Ms. Price, she's a lawyer, you know, she
15 should know the law or at least read the information that's
16 in the, the motion and say okay, well, let's get this fixed,
17 let's get this taken care of.

18 Q All right. Was there any evidence showing that you
19 took these cell phones or your codefendant took those cell
20 phones anywhere?

21 A No, there, there was more evidence of the contrary. I
22 have victim statements, which I believe I sent you, that
23 said the -- one of the, one of the, the victims, she made
24 a -- she wrote a statement saying that the, the man with the
25 long gun by the register asked me to let or told me to lay

James Johnson - Direct examination
by Mr. Rucker

1 down, I'm paraphrasing here, it's, it's written exactly, but
2 told me to lay down and give me your phone and I did so and
3 he kicked the phone away.

4 I mean kicked the phone away is not take the phone.
5 I -- and then, on top of that, cause I didn't understand
6 completely, when I was reading the motion, you know, like I
7 say, I didn't know anything about the law, but I have an
8 attempted armed robbery for the exact same thing for another
9 victim. So if kicking the phone away, which my codefendant
10 did that time also, gives you an attempted armed robbery and
11 then kicking the phone away for another victim is a armed
12 robbery, there's something not there. I mean it can't be
13 the same. It can't be you're both armed robbery and
14 attempted armed robbery for kicking the phone away and this
15 from the victim statement in the motion for discovery.

16 Q All right. Did you obtain that motion of discovery
17 from Ms. Andrea Price?

18 A Yes, I got the motion of discovery from Ms. Price in
19 the county.

20 MR. RUCKER: Your Honor, may I approach the court
21 reporter?

22 THE COURT: Uh-huh. (Affirmative).

23 Did you show that to counsel?

24 MR. RUCKER: Yes, ma'am, I did.

25 THE COURT: Okay.

James Johnson - Direct examination
by Mr. Rucker

1 (WHEREUPON, a statement was marked as Applicant's
2 Exhibit No. 1 for identification purposes only at this
3 time.)

4 Q Mr. Johnson, I'm gonna show you what's been marked as
5 Applicant's Exhibit No. 1.

6 Do you recognize that document?

7 A Yes, I do.

8 Q All right. What is that document?

9 A This is the second page of voluntary statement from
10 Alice Lucille Williams, one of the victims in my case.

11 Q All right. And is that what you obtained from Ms.
12 Price as part of the discovery?

13 A Yes, this is some of the discovery material.

14 MR. RUCKER: Your Honor, I move Applicant's Exhibit No.
15 1 into evidence.

16 MS. WHITE: No objection, Your Honor.

17 THE COURT: Marked and admitted without objection.

18 (WHEREUPON, Applicant's Exhibit No. 1 was received into
19 evidence at this time.)

20 Q All right. And I believe you, in your testimony
21 earlier, you discussed what she says in that.

22 What does she say you believe is evidence that you were
23 given erroneous advice and you may of had a defense to an
24 armed robbery?

25 A Well, after -- when I first read it I didn't

James Johnson - Direct examination
by Mr. Rucker

1 understand. So I kind of went through my stuff again, and
2 it said that, for one, my codefendant is the man that's,
3 that's the alleged man with the long gun.

4 Q Okay.

5 A It's already been confirmed in my transcript. It's
6 already been confirmed from the police officers and the
7 investigation. The statement they have. All the, you know,
8 the video and things of that nature.

9 So when she's referring to the man at the register with
10 the long gun, and he said get down on the floor, I'm not
11 gonna hurt you, give me your cell phone, I put my green --
12 excuse me. Period. I put my green T-Mobile cell phone on
13 the ground and the male at the register kicked the phone
14 away.

15 So when I read that, and then I, and I, and I put it
16 together with my armed robbery paperwork, and then I read
17 the second one with the attempted armed robbery, and it was
18 very similar, it was another female, she -- it was for
19 attempted armed robbery and it's almost the exact same
20 statement. You know, the man says put the phones down, kick
21 it away. I said either this is not an armed robbery or
22 that's not an attempted armed robbery. Either way I mean
23 it's, it's -- it can't be the same thing in two different
24 charges.

25 So I started investigating a little bit, and then I

James Johnson - Direct examination
by Mr. Rucker

1 found out that, in South Carolina, you know, intent with
2 the -- it's, it's -- I think it was saying that, you know,
3 permanent depravation. You know, you got to show that the
4 person, by way of action or, or threat or whatever the case,
5 is showing that they were gonna take whatever and not get it
6 back. I believe that my actions of not taking the phone, in
7 actuality, they were there and they were never taken out of
8 the store. They -- you know, me and my codefendant, we
9 left. So if we were trying to take the phones, we would of
10 left with the phones.

11 I believe that that was not an armed robbery and for
12 Ms. Price to tell me that I'm absolutely guilty or, excuse
13 me, that I have absolutely no defense and have me plead
14 guilty to this, this crime, I could of brought this
15 information into a Court and, you know, let the, let the
16 jury decide. I felt like that was, that was erroneous
17 advice.

18 Q To your knowledge, did she try to negotiate the case
19 with the State of South Carolina to point out those errors?

20 A To my knowledge, no. I brought these things up before
21 I went to my guilty plea. I believe, on the record, you
22 guys just said I was sentenced December 17th. That's
23 incorrect. I was sentenced December 18th. The sentencing
24 sheet shows that I believe that I was scheduled to go in
25 December 17th, and me and Ms. Price, and along with the

James Johnson - Direct examination
by Mr. Rucker

1 solicitor, Ms. Poulos, and one of the investigators, we
2 were, we were trying to hash out some of this stuff and it
3 was not being, it was not being taken care of.

4 I kept saying I didn't want to plead because I didn't
5 do this. I mean I was using, of course, not legal language.
6 I was saying, you know, I don't want to plead to all this.
7 This is, this is bull or blah say blah and we were in the
8 back in the room you just brought me from, and she was just
9 pretty much saying Mr. Johnson, you're guilty. You know,
10 you're guilty. You know, they have you. You know, they're
11 going back and forth like this.

12 So when she's giving me the information and, and also
13 she gave me the -- there was a paper that showed me that I
14 was eligible for life without parole, you know, she's
15 telling me you're gonna get life, you're gonna get life,
16 this and this. And -- but the main reason why I pled was
17 because she told me I had no defense. I honestly -- I feel
18 like if I would of been able to present this, at least these
19 charges, you know what I'm saying, you know, I would not of
20 pled guilty. I mean it's just you see something in front of
21 you that says you didn't do it, you're not gonna go right
22 behind somebody and say okay, I did it. Like, it doesn't
23 make sense to me.

24 Q All right. Did you believe that would of helped you if
25 you had a trial on the underlying armed robbery of the

James Johnson - Direct examination
by Mr. Rucker

1 store?

2 A I believe, I believe -- no, what I believe is very
3 simple. That if Ms. Price would have done a simple
4 investigation when it came to the facts of the case, the,
5 the motion of discovery that she sent me, I believe I gave
6 you a paper over there -- the one that has, you know, that,
7 that the store, the store manager gave the phones, I would,
8 I would appreciate if you could make sure that that's in
9 evidence also because it clearly says I didn't take the
10 stuff. I mean I couldn't have taken it.

11 Q All right. Are you referring to the property and
12 evidence form, the forensics form?

13 A Yes, I think it's Page 9. It has -- it's highlighted
14 at the top. It specifically says the phones were found in
15 the store. I didn't take them. The manager gave the phones
16 back. If, if anybody read past Page 9 or Page 8, I think
17 it's Page 8 or 9, no one, no one thought to say well, let's
18 get these charges fixed.

19 Like how, how can you, how can you investigate that?

20 I don't understand.

21 I believe the one you just handed her is the one I was
22 referring to. I apologize.

23 MR. RUCKER: Your Honor, may I approach the court
24 reporter?

25 THE COURT: Uh-huh. (Affirmative).

James Johnson - Direct examination
by Mr. Rucker

1 (WHEREUPON, the summary was marked as Applicant's
2 Exhibit No. 2 for identification purposes only at this
3 time.)

4 Q Mr. Johnson, I'm showing you what's been marked as
5 Applicant's Exhibit No. 2.

6 Do you recognize that document?

7 A Yes, it is Page 9 of 123 of my motion of discovery.

8 Q Okay. And what is that -- was that paperwork you
9 received from Ms. Price's office?

10 A Yes, it is paperwork I got within my entire motion of
11 discovery.

12 Q Okay. What is the, what is the document actually
13 called?

14 What do you believe that to be?

15 A This is a supplemental report from the investigation.
16 I have the, the affidavit of discovery also on your desk.

17 Q Okay.

18 A It gives the breakdown of what was in the motion of
19 discovery, what was, what was reviewed. It says on the
20 paper specifically reviewed by Ms. Andrea Price and it has
21 her name on it.

22 MR. RUCKER: All right. I move Applicant's Exhibit No.
23 2 into evidence.

24 THE COURT: Any objection?

25 MS. WHITE: No, Your Honor.

James Johnson - Direct examination
by Mr. Rucker

1 THE COURT: Marked and admitted without objection.

2 (WHEREUPON, Applicant's Exhibit No. 2 was received into
3 evidence at this time.)

4 Q All right. What does Applicant's Exhibit No. 2 show --
5 indicate for the Court's---

6 A Well, Applicant's, or excuse me, the paperwork that I
7 have in front of me says that, on July 13th, 2012, at ten
8 o'clock, which is the next day after my crimes were
9 committed, it says that they received -- it says the police
10 received a phone call from April Kirby, which is the manager
11 of the Family Dollar Store. She advised that she had
12 located Mr. -- Ms. Smith and Ms. Hughes cell phones inside
13 of store.

14 So with that being said, I felt like I never took those
15 phones, and for, for the, for the armed robberies to be
16 given me, when I didn't take the information, I mean, excuse
17 me, the, the phones, I felt that should of been brought to
18 the Court's attention or at least I felt like she could of
19 said okay, well, Ms. Poulos, which was my solicitor, you
20 know, let's get this taken care of. Let's, let's, you know,
21 drop these charges or drop them down to what they should be
22 or dismiss them completely.

23 I feel that and, and also, like I say, with my, with my
24 research, I've read a few cases, that says that it's a
25 higher preponderance that taking less charges in front of a

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1 judge you're gonna get less time. I'm not saying that I
2 would of gotten less time. But, you know, you take four
3 armed robberies in front of, I think three or four, I can't
4 remember for sure, armed robberies in front of a judge, you
5 know, he may give you a higher sentence rather than just
6 taking one armed robbery in front of a judge.

7 Q Is it your belief that you, you would of gotten a
8 lesser sentence if those armed robberies would not of been
9 included?

10 A I definitely -- yes, I definitely believe that.

11 Q What would---

12 A I definitely believe that.

13 Q What was your -- what was your codefendant's sentence
14 in this case?

15 A He was sentenced to 20 years for the crimes that we
16 committed to -- that, that evening.

17 Q Okay. And I didn't understand the last part of what
18 you said.

19 So if you don't mind repeating that.

20 A The crimes that were committed that evening, not my
21 probation violation cause I have 30 years plus 15, we were
22 sentenced to 30 years for the crimes that were committed
23 that evening, and he was sentenced to 20 years for those
24 crime, the same exact crimes.

25 Q Okay.

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1 A And, like I say, my 15 years was tacked on the end for
2 a violation, but that's what I got versus what he got.

3 Q All right.

4 A He had less crimes when, you know, he, he was, was
5 sentenced to less things, you know what I'm saying, because
6 of his attorney I guess. I don't know.

7 Q All right. That's the question I'm asking you.

8 Did he plead guilty to those cell phones?

9 A Yeah, he pled guilty to cell phones. He -- but he
10 didn't plead guilty to all the charges. I did. I believe
11 it was eleven to six --

12 Q Okay.

13 A -- if I'm not mistaken.

14 Q All right. Is there any other information that you
15 want the judge to know about in your case as far as Ms.
16 Price's deficient performance?

17 A Yes, I want to make sure -- I'm trying to remember the
18 exhibits that I gave you.

19 Oh, it's basically that Ms., Ms. Price, I don't know
20 the reason why. I can't, I can't say what was going on in
21 her mind. But what I'm saying is that if she was doing her
22 job, in my opinion, to just simply get my charges dropped to
23 what they were suppose to be, if, if that was the crime,
24 then I should of been, you know, convicted or, or pled
25 guilty to the particular crimes that I did. Not things that

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1 I didn't do.

2 I felt like there was a, there was a shotgun effect.
3 There was just simply I was charged with everything under
4 the sun even though there was more -- there's even more
5 information I have. I have some copies of my, excuse me, my
6 transcript that says, you know, my codefendant, you know,
7 was doing kidnappings and things of that nature. But my
8 codefendant is not pleading guilty to this stuff, and I
9 understand -- Mr. Rucker has helped me to understand that,
10 with a guilty plea, you know, you waive a lot of rights.

11 But how does your lawyer go in Court and tell you the
12 entire time you're guilty, you have no defense, and then you
13 have a defense?

14 I felt like it was my right to go to trial if I wanted
15 to if my rights -- if -- I felt like hey, I wanted to take
16 my chances in trial, then I'll be able to preserve these
17 things for the record or, you know, appeal or different
18 things of that nature. I felt that, with her advice telling
19 me don't go to guilty plea the entire time, the five months
20 she's been with me, she never brought this into my
21 attention. She never explained the law and she may say she
22 did, but obviously she -- if she, if she told me the law,
23 and then goes back and tells me you're guilty and you're,
24 and you're -- you have no defense, that's contradictory.

25 I felt that if you tell me, okay, well, yeah, you

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1 didn't take these phones, but you're guilty, that doesn't
2 make sense. If she feels that, just because the solicitor
3 was angry that she was gonna let me plead guilty to a whole
4 bunch of stuff, they dropped attempted murder charges on me
5 because there was no evidence. There was completely
6 contradictory evidence.

7 I understand that there were crimes committed, and I
8 believe that, if I would went to trial, I would -- may have
9 been convicted, but that's still my decision to go to trial.
10 Not her decision to tell me I have no defense.

11 I believe that that defense situation, if she knew
12 about it and told me a lie, that's not right. I believe
13 that if she didn't know, because she didn't look or she
14 didn't research because she felt the case wasn't win-able,
15 then that's not your decision to do that.

16 I feel like it's my life. You don't have to do the
17 years. You don't have to, to do the time. So she, in my
18 opinion, she just -- she dropped the ball. I don't -- I'm
19 not calling her a bad person. Maybe she's great, you know,
20 on the street. But when it came down to telling me what I
21 needed to know as far as my case, I just don't believe she
22 did a good job. I just believe that, you know, she just
23 really just -- it wasn't, it wasn't the best that -- I ain't
24 gonna say it was the best.

25 It wasn't effective assistance of counsel.

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1 Q All right. Do you believe you've been able to
2 articulate your reasons to believe that your Sixth
3 Amendments rights were violated in this case?

4 A Yes.

5 Q Okay.

6 A If, if -- for -- and I apologize. I have a note. I'm
7 sorry. I didn't mean to hit something.

8 I wanted to, I wanted to make sure I say this is that
9 the whole situation, I believe, is that my guilty plea
10 wasn't voluntary because the Applicant -- not the Applicant.
11 Excuse me. I was denied ineffective -- the effective
12 assistance of counsel that is guaranteed by the Sixth and
13 the Fourteenth Amendment of the United States Constitution.

14 Also, Article 1, Section 3 and 14 of South Carolina's
15 Constitution. I believe that -- I know that it doesn't
16 guarantee perfect counsel, but I feel that she, she could --
17 there's no way that this person can be effective without
18 telling you the proper advice. If you're reliant on the
19 proper advice and you're getting erroneous advice, then the,
20 the guilty plea should be invalid. So---

21 Q All right.

22 A ---I mean --.

23 Q All right. Thank you, James. Answer any questions
24 that the State has.

25 THE COURT: You may proceed.

James Johnson - Cross-examination
by Ms. White

1 MS. WHITE: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 CROSS-EXAMINATION

4 BY MS. WHITE:

5 Q Mr. Johnson, you stated you were aware that, by
6 pleading guilty, you gave up some rights.

7 Is that right?

8 A Yes, ma'am.

9 Q And you recall the day that you pled guilty?

10 A It was December 18th.

11 Q Okay. And that's correct. I did say the 17th and I
12 apologize.

13 You do recall that there was conversation on the record
14 about the fact that, because of a prior conviction with
15 these charges, you were eligible for a life without parole.

16 Is that right?

17 A I believe I was the one brought it up, yes, ma'am.

18 Q Okay. So you had spoken with your attorney about that
19 and were, and were aware that that was an option if you went
20 to trial?

21 A Yes, Ms., Ms. Price, she actually -- I have, I have the
22 original paperwork from Ms. Poulos stating about the life
23 without parole eligibility. She gave it to me on the day it
24 expired, yes, ma'am.

25 Q Okay. So you were -- you were actually served with

James Johnson - Cross-examination
by Ms. White

1 notice to seek life without parole?

2 A I don't believe it was a notice, no.

3 Q Okay.

4 A This was in an email printout is what I got.

5 Q Okay.

6 A I got, you know, paper from Ms. Poulos' office
7 explaining what was going on as far as what she was willing
8 to do or not do, and she was giving, I guess, background of
9 my record and saying hey, you know, he has this other
10 charge, so he's life without parole eligible is what, what
11 the paperwork said. I have it if you need to see it I mean.

12 Q And I understand that on -- in fact, in the record, you
13 don't dispute then that Ms. Price told the Court that, in
14 consideration for the plea, Ms. Poulos had decided to not
15 seek life without parole, is that right?

16 A I believe, I believe that was some of the wording, you
17 know, give or take, yes.

18 Q Okay. And in regards to just kind of factual, you did
19 agree with the facts that the State presented at the guilty
20 plea, did you not, as they stated them?

21 A What -- I'm, I'm -- can you, can you specify on what
22 facts?

23 I'm not 100 percent sure what you're referring to.

24 Q Sure.

25 And if you have a copy of your transcript?

James Johnson - Cross-examination
by Ms. White

1 A I don't have it with me.

2 MS. WHITE: Okay. Your Honor, may I approach?

3 THE COURT: You may.

4 Q Okay. I'm looking at Page 22 and if you'll just look
5 with me as I read along.

6 A Uh-huh. (Affirmative).

7 Q It says one of the employees was forced to open the
8 store safe. They took cash and cell phones from people
9 inside the store and fled out of the back of the store as
10 police were arriving.

11 And then if you'll flip to Page 25. The Court asked
12 you, you've heard what the solicitor has told me about the
13 facts that relate to your case.

14 Do you agree or disagree and you said yes, sir, I
15 agree.

16 A That's correct. I see that, yes, ma'am.

17 Q Okay. So the statement was -- there was nothing ever
18 presented that the phones were taken and taken and sold
19 somewhere or anything like that?

20 The phones were taken from the people inside the store
21 while being held at gunpoint, is that right?

22 A I believe so, yes.

23 Q Okay. And in your conversations with Ms. Price, did
24 she discuss with you the fact that the taking and depriving
25 them of the cell phones, that did lead to an armed

James Johnson - Cross-examination
by Ms. White

1 robbery---

2 A No.

3 Q ---charge?

4 A No, ma'am, specifically, like I say again, she never
5 explained anything about the law. We never sat down and
6 looked at any indictments. It's even, it's even -- after my
7 preliminary hearing I was indicted after the fact on some of
8 my indictments. So there was no way we sat down and talked
9 about these before I was even put in a preliminary hearing.

10 We had no conversation about what the law is based on
11 the facts or, or the, the stipulation on permanent
12 depravation. My, my, my, my -- also when you said that I
13 agreed to what the, the Page 22 says, it specifically says
14 that those actions happened, and I don't believe I said that
15 I did them. I just believe they happened. I never said, I
16 never said oh, yes, I took this or this or this. I believe
17 the, either the, the solicitor or the judge was reading off
18 these indictments---

19 Q Okay.

20 A ---or he was reading off information and I was agreeing
21 to the situation.

22 Q Okay.

23 A So, never said that I took cell phones or anything of
24 nature. I never got up, even if I'm not mistaken, the
25 indictments says the store or a cell phone in the

James Johnson - Cross-examination
by Ms. White

1 indictment. So it was, it was kind of, you know, confusing.
2 But I mean when we were at the -- I'll be honest with you.
3 I mean 45 years or however many years I was looking at, you
4 know, half of the stuff, it sounds like Chinese to me to be
5 honest. But I do agree that, yes, I did -- everything I
6 said in that transcript report to my knowledge at the time I
7 agreed to..

8 Q Okay. And you do agree -- you did agree obviously
9 that, that both you and the codefendant were carrying a gun
10 at the time, each carrying a gun?

11 A Yes, we both individually, yes, we had guns.

12 Q Okay. And, and you did flee from the store and
13 essentially have a police chase at the end?

14 A Yes, there was a chase after the -- we left the store,
15 yes.

16 Q And did you give a statement to police?

17 A I believe, yes, I did.

18 Q Okay. And that was agreeing with or essentially
19 explaining your involvement with the crimes?

20 A Yes.

21 Q Okay. And did you talk with Ms. Price about that?

22 A About my --?

23 Q The statement.

24 A No.

25 Q Okay. So you said you met with her three times.

James Johnson - Cross-examination
by Ms. White

1 what did you talk with her about then during those
2 three times?

3 A well, the first, the first time I met her, she came in.
4 She, she pretty much, she was like, you know, my God, you
5 know, you have a lot of stuff going on. I mean that was
6 just the initial, you know, good afternoon, how you doing.

7 As we had some dialogue on, you know, my charges, what
8 I was charged with, you know, the warrants and things of
9 that nature, I really was more or less kind of talking to
10 her about, okay, what's the game plan. Like I don't know
11 the law. You know the law. You know, you tell me what we
12 need to go, what we need to do, what we can get dropped, or
13 things of that nature, and she was saying, you know, okay, I
14 have get, you know, some discovery materials. I have to
15 get, you know, some stuff so I can give you an understanding
16 of what's going on.

17 So, the first, the first meeting was not really a
18 in-depth, you know, fact finding or we weren't, we weren't
19 sitting there spread out, you know, all the paperwork,
20 anything of that nature. She just pretty much came to me
21 and said I'm your attorney. I think she had a broken arm at
22 the time. So, you know, I asked, you know, hey, what's
23 going on with your arm, are you okay, you know, that sort of
24 thing.

25 The second time I actually met with her was the time, I

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by Ms. White

1 believe, of course, I believe that she gave me the paper
2 stating about the life without parole. If I'm not mistaken
3 that was in, in November. It could of been October or
4 November, somewhere around that time. And she had
5 information already. She had given me my -- she had already
6 sent me my motion of discovery.

7 So there was some questions I had about the motion, and
8 she, she really was, in my, in my opinion of this, the
9 conversation, she was more or less like, you know, this is
10 overwhelming. This is, you know, a lot of stuff. It's
11 pointing against you.

12 We didn't go specifically in depth, but -- cause we
13 never spread any of this stuff out at the time, but she was
14 just saying, you know, you have a lot of stuff against you.
15 You know, we're definitely gonna look into a guilty plea,
16 and then I think she was also talking about there was
17 something else she was -- oh, excuse me.

18 I also mentioned about -- she, she was saying why, you
19 know, why did you do this, like what was going on, and I
20 mentioned to her, I said that I was going through some --
21 not -- I don't want to say mental cause it sounds bad when
22 you say mental, but I was going through a lot of stress. I
23 was seeing a psychiatrist privately. She was trying to help
24 me, you know, talk through some things with family matters
25 and things of that nature. So, you know, my head wasn't

James Johnson - Cross-examination
by Ms. White

1 completely, you know, screwed on straight at the time, and I
2 was telling her, I said I didn't know how what would affect,
3 you know, maybe my plea or if, you know, I went to trial
4 that would be able to assist me.

5 I gave her the woman's name. I believe she wrote it
6 down on her, her pad or the, the, the file, and, you know,
7 told her, like I say, maybe this, maybe this be able to help
8 our situation, and then, you know, she told me -- I think
9 she said something about pleaing before it hit the docket,
10 things of that nature, and then, you know, we, we back and
11 forth, like I say, before it was preliminary hearing and
12 stuff and different things when we saw each other, but I do
13 remember a time we sat down and we actually looked at my
14 motion of discovery together, and was explained my options,
15 explained, you know, hey, you're looking at this, you can go
16 to trial or, you know, you're looking at this. This is,
17 this is the situation.

18 We were never sitting down and having that
19 conversation. It was more or less like who, this is a lot,
20 you know, you need to plead, you need to plead guilty pretty
21 much.

22 Q Okay. And the evidence, in addition, you said you
23 received the discovery, there was a video of this incident
24 as well, wasn't there?

25 A I'm assuming so. I never, of course, in the county I

James Johnson - Cross-examination
by Ms. White

1 never saw the video.

2 Q Okay. But you were told that there was a video?

3 A I was, I was told there was some video, yes.

4 Q Okay. And when the Court asked you if you were
5 pleading freely and voluntarily, in agreement with
6 understanding the potential sentences you could receive and
7 what you were giving up, you did tell the Court you were?

8 A Yes. Yes, of course.

9 Q Okay.

10 A I, I believe that, at the time, I knew that she told me
11 about the life without parole. That was, that was
12 understanding that I was eligible for life without parole,
13 and when they asked me was I pleading guilty, yes, I said
14 yes, I'm pleading guilty, yes.

15 Q And so you ultimately pled guilty to -- in the hopes of
16 getting a reduced or lesser sentence than life without
17 parole?

18 A No, no, this is, this is the thing again is that, and I
19 think I actually said this specifically to Ms., Ms. Price,
20 is that the plea for one -- again, we hadn't had any deep
21 conversations, but she told me ten to thirty.

22 Okay. She told me well, Mr. Johnson, you're looking at
23 ten to thirty years. You know, the armed robbery carries a
24 minimum of ten. You're looking at ten to thirty. So she's
25 hitting me with the ten to thirty, and then I'm saying Ms.,

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by Ms. White

1 Ms. Price, I'm not even thirty years old, and I said Ms.
2 Price, this is a life sentence. I mean like if I get thirty
3 years or, you know, that's life to me.

4 So whether we go to a guilty plea or I get life without
5 parole, in my opinion, it's the same. So it's not like I'm
6 pleaing guilty to escape life because if I get 30 years I'm
7 getting life, and that was my, my, my statement to her.

8 In retrospect, I believe that, if you tell me something
9 and, and I knowingly go into it and I knowingly say okay,
10 I'm gonna make my decision and I lose, it's truly on me.
11 But if you tell me something that's incorrect and then I
12 make a decision based on that, and then I lose, I feel like
13 you have some -- you got some, some owning up to do, in my
14 opinion.

15 So I feel that the situation with me being, you know,
16 guilty of any crime or anything of that nature, I felt like
17 that's for 12 people in that box to tell me if I'm guilty.
18 Not my lawyer. Not, not my lawyer. I felt that she told me
19 I was guilty. She didn't investigate because she -- if she
20 didn't want to or whatever, but she didn't do her job, and I
21 feel that if I would of went to trial and I got life, then
22 that was my decision. It's my Constitutional right to do
23 that. If you don't tell me something, and then I lose all
24 this stuff, I can't bring evidence into the courtroom. I
25 can't cross-examine witnesses. I can't do all that stuff,

James Johnson - Cross-examination
by Ms. White

1 then I get the short end of the stick and now we're in PCR
2 because of it, in my opinion.

3 Q Okay. But you were advised on the record that you did
4 have the right to a trial and you did have the right to
5 confront your witnesses and, and present a defense?

6 A Yes, ma'am, I was definitely told that, and, like I say
7 again, I'm basing this off of the information that was given
8 to me. You know, she says it -- if it means that you're --
9 speaking about the transcript, she says, on Page 22 I
10 believe it's Line 19 if I'm not mistaken, I don't know for
11 sure, I think I had Mr. Rucker's highlighted, Mr. Johnson,
12 this is -- he has absolutely no defense to these charges,
13 which I've told him the entire time I've been representing
14 him.

15 I mean at no time you told me well, Mr. Johnson, that's
16 not armed robbery, let's get it dropped or Mr. Johnson, you
17 didn't have a kidnapping. You didn't, you didn't commit a
18 kidnapping or, Mr. Johnson, you know, these indictments,
19 you're, you're being charged two times for the same armed
20 robbery store and pleading guilty twice to it. I mean like
21 none of that's brought up.

22 Q Okay.

23 A She also -- she says -- specifies on the next page,
24 again, you know, I believe that it's in his, it's in his
25 best interest to plead today, but she, she constantly is

James Johnson - Cross-examination
by Ms. White

1 turning on the fact that I have no defense. If she says
2 well, I told him about the defense and he wants to go
3 forward, that's different. I just, I just believe that.

4 Q Okay. Thank you very much, Mr. Johnson.

5 A Can I---

6 THE COURT: That's all I have, Your Honor.

7 A Can I ask a question or to my lawyer please?

8 Is that a problem?

9 I don't know how to do that.

10 THE COURT: Do you have any redirect for the witness?

11 MR. RUCKER: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. RUCKER:

14 Q Was there something you wanted to add to that last
15 comment?

16 A Yeah, I mean cause there was a few pieces, pieces of
17 paper that I think I sent you that I definitely wanted to
18 get on the record I guess to be reviewed. There was -- hold
19 on. Let me get my notes. I apologize.

20 (Pause.)

21 A I had I think my claim about or I spoke, spoke to you
22 about the indictments being charged as saying if the same
23 store times in the, the armed robbery indictment. We didn't
24 really speak about that. We just spoke about cell phones.

25 Q Well, elaborate on that, on that portion.

James Johnson - Redirect examination
by Mr. Rucker

1 A Okay. There was one store that was robbed or allegedly
2 robbed or whatever, however you want to say it, I pled
3 guilty to armed robbery of that same store two times. I
4 believe that if Ms. Price, again, would have done some
5 research, if she would of just done a simple fact finding,
6 she could of seen Mr. Johnson is pleading guilty to the
7 armed robbery for the same store twice.

8 I can't plead guilty to half of an indictment even if I
9 did take the phones. I can't plead guilty to the phones and
10 not the store or vice versa. It's a, it's a one count
11 indictment.

12 So the fact that, you know, she's allowing me to go
13 through these, these, these things that are just simply -- I
14 mean it doesn't make any sense to me. I feel like there was
15 just a dropping of the ball here. I felt like, you know,
16 you just offered me up if you will.

17 Those, those indictments were both for 30 years. So I
18 feel like if you, if you sentencing me two times for 30
19 years for the same store, and then, on this same indictment,
20 you're sentencing me for phones I didn't take, you know,
21 what else, what else are you sentencing me for that's
22 incorrect, and that's that, that's the indictments that I
23 have that I'm sentenced under.

24 Q Do you---

25 A I---

James Johnson - Redirect examination
by Mr. Rucker

1 Q Do you recall which indictments specifically said---

2 A Yes.

3 Q No, let me, let me finish.

4 A Oh, excuse me.

5 Q Said that you were, that the armed robbery, one of the
6 victims was the store two times.

7 A Yes, it's the same indictment with Ms. Smith and
8 Ms. Hughes. I don't know the, the indictment number. But I
9 only have three armed robbery indictments. I'm trying to
10 think if I can remember the number. Let me see if I have it
11 in my notes.

12 (Pause.)

13 A No, I think I, I sent it to you, Mr. Rucker. It's -- I
14 have three indictments. One is in September. One is in the
15 October. One is in November. The last two are September,
16 September and October are the ones I'm referring to. They
17 both are reading about the Family Dollar store that was
18 robbed and also a cell phone from one of the victims and
19 then I have the second indictment, excuse me, that we're
20 talking about the Family Dollar that was also robbed again.
21 It's only one store and I'm pleading guilty to that twice.

22 MR. RUCKER: Your Honor, may I approach the court
23 reporter?

24 THE COURT: All the indictments are already in the
25 record.

James Johnson - Redirect examination
by Mr. Rucker

1 MR. RUCKER: Yes, ma'am, I was just gonna work him
2 through the -- I understand.

3 THE COURT: You can use it demonstratively if you'd
4 like.

5 MR. RUCKER: Okay.

6 THE COURT: But it doesn't need to be marked as an
7 exhibit.

8 MR. RUCKER: Thank you, Your Honor.

9 THE COURT: Uh-huh. (Affirmative).

10 THE WITNESS: Thank you.

11 Q Is this one of the indictments that I'm handing to you
12 that you're referring to.

13 A Yes, this is one of them, yes.

14 Q Okay. And specifically can you read out the number of
15 that indictment.

16 A Hold on. Let me turn it over.

17 The number on the top says 12-GS-42-4475.

18 Q All right. And specifically what does that, that
19 indictment allege that you did?

20 A Well, the indictment says one count, armed robbery. It
21 says that James Johnson, Junior did, in Spartanburg County,
22 on or about July 12th, 2012, while armed with a deadly
23 weapon or while alleged, either by action or words, he was
24 armed while using a representation of a deadly weapon or any
25 object which a person present during the commission of a

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by Mr. Rucker

1 robbery reasonably believed to be a deadly weapon
2 feloniously take the property and/or currency from the
3 person or presence of Christina Hughes, an employee at
4 Family Dollar. Then it also has to wit, a cell phone and/or
5 money belonging to Family Dollar by means of force,
6 violence, or intimidation with intent to permanently deprive
7 her of such property in violation of, and then it has the
8 Section, 16-11-330(A), and that's, that's the end of the
9 Count One.

10 Q All right. And then the other indictment?

11 A The second one is exactly the same except for the name
12 is different. The name, the name is Annette Smith. The
13 indictment is exactly the same. Of course, it's a different
14 indictment. But it has the exact same body, words. Nothing
15 is changed at all.

16 Q All right. And you understand that -- those
17 indictments are in front of the judge?

18 So the other one---

19 A Okay. I apologize.

20 Q ---should be there.

21 A Yeah, so it's the same thing. My, my argument is that,
22 you know, you're allowing me to plead guilty to the same,
23 the same armed robbery twice and then you're also, on the
24 same indictment, allowing me to plead guilty to the phones I
25 didn't take. So it's just -- it's a lot of problems, in my

James Johnson - Redirect examination
by Mr. Rucker

1 opinion, that could of been alleviated.

2 She should have been able to, you know, fix these
3 indictments. I think it's 17-19-90. You know, you're
4 suppose to be able to take care of all this stuff before
5 your guilty plea, before trial.

6 If I decided to go in trial, you know, what am I
7 answering to?

8 Am I answering to robbing the store two times?

9 You know, that's, that's the question. It's, it's so
10 confusing and it's, it's, it's -- I didn't even have this in
11 front of me at the time of my plea. I got this afterward.

12 Q Right.

13 A So I mean that, that makes me feel, like I said, again
14 is that the investigation, the research was not done. The
15 simple facts, the simple -- I mean this is not a clerical
16 error. Thirty years of my life is not clerical. I felt
17 like this could of been taken care of a long time ago.

18 MR. RUCKER: All right. No further questions, Your
19 Honor.

20 MS. WHITE: Nothing further, Your Honor.

21 THE COURT: Okay. We're gonna take a brief recess.

22 MR. RUCKER: Thank you.

23 THE COURT: Brief restroom break.

24 Sir, you may step down.

25 THE WITNESS: Thank you.

Andrea Price - Direct examination
by Ms. White

1 MS. WHITE: Thank you, Your Honor.

2 (WHEREUPON, a short recess was taken at this time.)

3 THE COURT: Is the State ready to proceed in Mr.
4 Johnson's case?

5 MS. WHITE: Yes, ma'am, we are.

6 THE COURT: Is the Applicant ready to proceed?

7 MR. RUCKER: Yes, ma'am.

8 THE COURT: Do you have any further witnesses?

9 MR. RUCKER: No, ma'am, we do not.

10 THE COURT: Okay. State may proceed.

11 MS. WHITE: Thank you.

12 The State would call Andrea Price.

13 ANDREA PRICE, being first duly
14 sworn, testified as follows:

15 THE COURT: Could you state your full name for the
16 record spelling your last name for the court reporter?

17 THE WITNESS: Andrea Price. P-R-I-C-E.

18 THE COURT: Thank you.

19 You may proceed.

20 MS. WHITE: Thank you, Your Honor.

21 THE COURT: You welcome.

22 DIRECT EXAMINATION

23 BY MS. WHITE:

24 Q Ms. Price, do you recall representing Mr. Johnson on
25 these charges?

Andrea Price - Direct examination
by Ms. White

1 A I do.

2 Q And when he says that you met with him approximately,
3 in a five month period he was in jail, three times, is that
4 accurate?

5 A I have four times in my notes.

6 Q Okay. And can you tell me what you recall speaking
7 with him about in these meetings?

8 A The first time I met Mr. Johnson was shortly after he
9 was arrested. I picked up his case and talked to him about
10 a -- possibly going to a bond hearing. With the allegations
11 I did not think that was, that was a good idea. So we did
12 speak briefly. I didn't have complete discovery at that
13 time.

14 The second time I met with him was in September. That
15 was at his preliminary hearing. I did have information at
16 that time. We did go over it. I explained to him the
17 process of having a preliminary hearing, that it's the
18 State's showing. We wouldn't be able to present any
19 evidence or any witnesses and he opted to waive it at that
20 time.

21 Q And in, in these meetings, had you had a chance to
22 discuss with him -- at that point, did you have his arrest
23 warrants or any documents discussing the charges?

24 A I did at the time of his preliminary hearing.

25 Q And did you have a chance to discuss with him what he

Andrea Price - Direct examination
by Ms. White

1 was being charged with and what the discovery from the State
2 was?

3 A I did.

4 Q And explain to me a little bit about what the evidence
5 was that y'all had that the State was gonna use?

6 A Well, the evidence was is that he and his codefendant
7 had -- were accused of the armed robbery of Family Dollar.
8 There were several people there at the time. After they --
9 after the robbery was over, they fled the scene, were chased
10 by the police, and ended up wrecking the car, and, at that
11 point, the codefendant was actually injured. He had a
12 broken arm. He was transported to the hospital, and then my
13 client, Mr. Johnson, was apprehended by the police.

14 Q And you heard him talk about -- a little bit about his
15 understanding of the, of the armed robbery and the fact that
16 it was the one store, but he was not sure, I guess, about
17 the fact that he was indicted for several armed robberies.

18 Can you explain why that might of occurred?

19 A Sure. The armed robbery did occur in the -- in one
20 single store, but there were multiple people there at the
21 time. There were multiple -- I believe there were two
22 actual employees there at the time, and so that's why he's
23 charged with the robbery of the one -- the one, excuse me,
24 Family Dollar Store, but the two employees.

25 Q Okay. And from the, the incident report, each of the

Andrea Price - Direct examination
by Ms. White

1 people that he was charged with robbing had something taken
2 from them at the time.

3 A Yes.

4 Q Is that right?

5 A Yes.

6 Q Do you recall any additional meetings with him where
7 you discussed the possibility or any possible defense?

8 A I did meet with him again in November of 2012. Ms.
9 Poulos had informed me, at that time, that if -- Mr. Johnson
10 could enter a guilty plea, but if he did not, that he, that
11 he was eligible for a life without parole based on his
12 earlier -- I'm sorry. I'm getting over a cold. His other
13 previous offense. So he was eligible for life without
14 parole at this point if he were to go to trial and lose or
15 if he were to enter a guilty plea. They put that on the
16 table.

17 Q Did you talk with him about the potential sentences
18 that he could receive if he pled straight up instead of
19 going to trial?

20 A I did.

21 Q And what was your impression when you spoke with
22 Mr. Johnson about the choices and the options he had?

23 A Well, Mr. Johnson, as you know, is, is a very young
24 man. I talked -- I explained to him what we would expect
25 the State to show. What -- I, I did not believe he had any

Andrea Price - Direct examination
by Ms. White

1 defenses really. He also gave a full statement to the
2 police in this matter. I thought it was in his best
3 interest to go ahead and accept the State's offer to plead
4 without the -- being served notice of life without and he
5 agreed to that.

6 Q And, at the time, you said he gave a statement.
7 Was -- did that statement inculcate him or -- it
8 doesn't sound right.

9 A Yes.

10 Q But yes.

11 A Yes.

12 Q Implicated him in the crime.

13 A Yes, it did.

14 Q Okay. And did he seem to agree with you about the
15 defenses at the time?

16 A He did.

17 Q Okay. You've heard him talk today about possible
18 defenses having to do with whether or not the cell phones
19 were actually removed from the store.

20 Is that something that you would have been able to
21 present as a viable legal defense?

22 A I did not think so and I still do not think so.

23 Q Okay. So you were aware, with that report, that the
24 phones had been found, two of them, in the back of the
25 store?

Andrea Price - Direct examination
by Ms. White

1 A Right, in a trash can.

2 Q Okay. And you did mention there was a video.

3 Did you have a chance to review the video?

4 A Yes, I actually watched it with Mr. Hall, who is his
5 codefendant's attorney.

6 Q And did that also further implicate---

7 A It was not a good video --

8 Q Okay.

9 A -- for, for, for our purposes, no.

10 Q Okay. You were also aware of the statement of
11 Ms. Williams where she stated that the phone was kicked away
12 at one point.

13 A Yes.

14 Q Okay. And, again, did you feel like that was a viable
15 legal defense to an armed robbery?

16 A No.

17 Q Did you feel -- did you -- to your understanding, did
18 you believe he was pleading guilty freely and voluntarily
19 based on the knowledge of what he could potentially face had
20 he proceeded to trial?

21 A Yes.

22 Q Okay. Thank you.

23 That's all I have, Your Honor.

24 THE COURT: Any questions for the witness?

25 MR. RUCKER: Yes, ma'am.

Andrea Price - Cross-examination
by Ms. White

1 THE COURT: You may proceed.

2 MR. RUCKER: Thank you.

3 CROSS-EXAMINATION

4 BY MS. WHITE:

5 Q I'm interested to know why you believe that kicking
6 away the phones is insufficient, is sufficient evidence for
7 an armed robbery.

8 A It's not the kicking away of the phone. It's, it's
9 being armed with a weapon and saying put your phone on the
10 ground.

11 Q Okay. And do you have case law that supports that
12 premise?

13 A Not in front of me.

14 Q I'm just asking did you rely on case law for that, that
15 defense---

16 A No.

17 Q ---or that inability -- in-availability of defense?

18 A No.

19 Q All right. So, to be clear, you don't see specifically
20 how South Carolina treats that issue, whether you're kicking
21 away the phone or whether they take the phone away from the
22 person?

23 A Not right off.

24 Q Okay. Well, I'm simply asking is there case law, to
25 your knowledge, at the time you were advising my client,

Andrea Price - Cross-examination
by Ms. White

1 that said that, that addressed this legal issue?

2 A I'm not aware of anything on point, no.

3 Q Okay. Did they find the -- those cell phones were
4 actually found inside the -- to make it clear, were found
5 inside the store, is that right?

6 A That's correct.

7 Q And you -- there's no evidence that my client or his
8 codefendant actually took those cell phones and placed them
9 in the trash, is there?

10 A Is it on video -- are you asking---

11 Q I'm asking is there any evidence showing that they
12 transported -- they picked the phones up and put them in the
13 trash?

14 A Not that I'm aware of.

15 Q Okay. And I'm just getting to the point that -- are
16 you arguing that since they're -- you believe there was
17 evidence that showed them picking the phones up, having
18 possession of them, and then placing them in the trash or
19 no?

20 A Yes, I believe that that's what would be testified to
21 at trial.

22 Q Okay. And what evidence did you have in discovery for
23 that?

24 That's what I'm asking.

25 (Pause.)

Andrea Price - Cross-examination
by Ms. White

1 A Ms. Hughes gave a statement to the police in which she
2 stated that they took everybody's cell phone and hers was a
3 pink Samsung slide.

4 Q Okay. And was that from a narrative or was that from
5 an actual statement?

6 A That is from the narrative.

7 Q Okay. And, to your knowledge, there's no statement
8 saying the phone was taken and placed in that trash can?

9 A I'm looking through my, my file. I don't see one.

10 MS. WHITE: Your Honor, may I approach with some water?

11 THE COURT: Yes.

12 THE WITNESS: Thank you.

13 Q All right. So you don't know of a actual, an actual
14 statement by the victim saying her cell phone was removed
15 and placed in the trash can?

16 A No, not right off.

17 Q Okay. And, to your knowledge, you don't, you don't
18 know if it was picked up after the forensics team came
19 through the first time and placed it in a trash can later --

20 A By whom?

21 Q -- by someone else?

22 That's the question.

23 By whom?

24 A No.

25 Q Okay. The, the -- her cell phone was not found in

Andrea Price - Cross-examination
by Ms. White

1 possession of my client, was it?

2 A No, it wasn't.

3 Q All right. And it was not found in the possession of
4 his codefendant either, was it?

5 A No, it wasn't.

6 Q All right. Was one of the attempted armed robberies,
7 and I won't read off the indictment number cause I doubt
8 that will mean anything to you, but was one of the alleged
9 victims Madison Dawkins of an attempted armed robbery?

10 A What is the indictment number?

11 Q I'm sorry.

12 12-GS-42-4484.

13 A Yes.

14 Q All right. And do you know who Madison Dawkins is or
15 was at the time?

16 I don't want you to have to go through it.

17 Do you agree with me that Madison Dawkins was the 11
18 year old child of one of the alleged victims?

19 A Okay.

20 Q Do you---

21 A There was several people there. I don't remember all
22 their names. Okay.

23 Q You don't -- okay. Did you ever see a cell phone that
24 was taken into custody that belonged to Madison Dawkins
25 where there was a statement that that was her cell phone?

Andrea Price - Cross-examination
by Ms. White

1 A Say that again. I'm sorry.

2 Q Okay. Fair enough.

3 You agree that Madison Dawkins was one of the alleged
4 victims in this case?

5 A Okay.

6 Q Do you or do you not?

7 A Yes.

8 Q Okay. And do you agree that Madison Dawkins was listed
9 as a victim and the armed robbery was because an alleged
10 cell phone was taken off of her?

11 A I don't remember right off. I'll have to go back
12 through, through my discovery.

13 Q Well, I understand.

14 But you were subpoenaed to come here today and
15 obviously you knew this was gonna be part of the case,
16 didn't you?

17 A Yes, I did. I also missed two days of week -- of work
18 last week due to illness. I also had trial court last week.

19 Q I'm not---

20 A I'm sorry if I don't have all hundred and some odd
21 pages---

22 Q Well, I understand.

23 A ---in my memory.

24 Q But if, if you were given time, would you be able to
25 find out who the victims were in the indictments, and then

Andrea Price - Cross-examination
by Ms. White

1 by looking at that, recall who they were?

2 A Okay.

3 Q Would -- yeah, I'm sorry.

4 Yes or no.

5 A Okay. Let me -- may I have about five minutes please?

6 MR. RUCKER: I have no objection if, if---

7 THE COURT: Why don't you just ask her the question and
8 see if she can answer it?

9 Q Okay. Do you know, from your review of your discovery,
10 if a cell phone belonging to Madison Dawkins was ever found?

11 A I don't recall that.

12 Q Okay. Do you know if you -- if she was simply -- my
13 client was simply charged with the theft from that child
14 because she was merely present?

15 A That is one of the -- that is the allegation, yes.

16 Q Okay. But you don't know -- and the forensics report
17 is pretty clear -- I mean the itemized inventory is pretty
18 clear, isn't it?

19 A Yes.

20 Q But the State could not actually point to a cell phone
21 that was stolen off this 11 year old, could they?

22 A They never found one, no.

23 Q Okay. But he pled guilty to an attempted armed robbery
24 of Madison Dawkins and specifically in the indictment says
25 that he attempted to take a cell phone?

Andrea Price - Cross-examination
by Ms. White

1 A No, actually that's not what it says.

2 Q Okay. What does it say?

3 A It says he feloniously attempted to take property and
4 or currency from the person or presence of Madison Dawkins.
5 To wit, a cell phone. Excuse me. You're right.

6 Q Okay.

7 A Sorry. It's on the very edge.

8 Q So is it fair to say that you, you bundled all the
9 cases together for a guilty plea so he would avoid life
10 without parole?

11 Is that right?

12 A It was, I believed, in his best interest to go ahead
13 and to plead to all of this based on the evidence that we
14 had at the time, yes.

15 Q Okay. How often -- how many times did you go over the
16 discovery in the case?

17 A One. Two. Twice.

18 Q All right. And I'm talking about individually by
19 yourself reviewing the case, the file.

20 A Oh, several times.

21 Q All right. Did you see this discrepancy with Madison
22 Dawkins and the indictment for Madison Dawkins and her
23 actual -- what was actually happening in the case, in the
24 case?

25 A No, because -- just because they don't recover a cell

Andrea Price - Cross-examination
by Ms. White

1 phone doesn't mean that the armed robbery was not attempted.

2 Q well, did her mother say in her statement that they
3 took a cell phone off of my child?

4 A what's her mother's name?

5 Q Ms. -- I believe it's Ms. Hughes.

6 I apologize. Tomeka Young.

7 A Okay.

8 Q All right. So do you recall seeing a statement from
9 Tomeka Young saying that Madison Dawkins had her cell phone
10 stolen from her?

11 A I don't seem to be able to locate mine at this moment.
12 Do you have a copy of that?

13 Q well, I, I don't and that's why I'm asking you if you
14 ever saw -- if you can recall seeing a statement cause I
15 haven't seen one.

16 A Okay. No.

17 Q All right. As far as the multiple count indictments,
18 and I'm still a little fuzzy on, on -- let's, let's be clear
19 about this.

20 How many times is Family Dollar, the alleged -- the
21 corporation, the company, the business alleged to be a
22 victim of my client based on the -- your review of the
23 indictments?

24 A Twice I believe.

25 Q Okay. And what theory supports them being a victim

Andrea Price - Cross-examination
by Ms. White

1 twice in this case?

2 A well, they actually would be the victim twice because
3 they were two employees that were robbed.

4 Q Okay. So the employees were victims. I'm sorry.
5 Do you need more water?

6 A Excuse me.

7 Q And I understand. We're almost done.

8 But the -- I'm, I'm simply looking at -- are you simply
9 saying because two employees of the store were robbed,
10 therefore the business itself was robbed twice?

11 A No, that's not what it, it says.

12 Q Okay. Well, that's what I'm asking.

13 A Okay. Here's those indictments.

14 Q Okay. And I'm, I'm simply trying to clarify.

15 I believe I understood your previous testimony to be
16 that Family Dollar was considered the victim twice because
17 two employees were robbed?

18 A That's correct.

19 Q And are you aware of any legal precedent that comes to
20 that same conclusion in South Carolina?

21 A No.

22 Q Okay. Did you base your decision on speaking with my
23 client and consulting with him about pleading guilty because
24 it was your view that Family Dollar could be a victim twice?

25 A That's correct.

Andrea Price - Cross-examination
by Ms. White

1 Q Ms. Price, was -- did you discuss the hand of one is
2 the hand of all theory under South Carolina law with my
3 client?

4 A Absolutely.

5 Q All right. Did you discuss with -- first of all, was
6 there any evidence that my client actually ordered any
7 people within the Family Dollar to do anything?

8 A No.

9 Q Okay. Was that simply because of what Mr. Miller did?

10 A That's correct.

11 Q All right. And the indictment -- was there any
12 conspiracy charge in this case?

13 A No.

14 Q All right.

15 All right. No further questions, Your Honor.

16 THE COURT: Any redirect?

17 MS. WHITE: Just briefly, Your Honor.

18 THE COURT: You may proceed.

19 REDIRECT EXAMINATION

20 BY MS. WHITE:

21 Q In addition to the cell phones we've talked a lot
22 about, the defendant and codefendant took money from the
23 store and the employees from two different locations, the
24 safe and from where they were counting, is that right?

25 A That's right.

Andrea Price - Redirect examination
by Ms. White

1 Q Okay. And, in fact, they were charged with multiple
2 counts of kidnapping because they locked the doors and held
3 them at gunpoint while they---

4 A That's correct.

5 MS. WHITE: Okay. That's all I have, Your Honor.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you.

8 THE COURT: You're welcome.

9 Anything further from the State?

10 MS. WHITE: Nothing further from the State, Your Honor.

11 THE COURT: Any rebuttal testimony from the Applicant?

12 MR. RUCKER: No, ma'am.

13 THE COURT: Anything further from the Applicant or the
14 State?

15 MS. WHITE: Nothing further, Your Honor.

16 MR. RUCKER: Nothing further, Your Honor.

17 THE COURT: In this case the Applicant has the burden
18 of proof. He must establish, by preponderance of the
19 evidence pursuant to Strickland versus Washington, that his
20 counsel's performance fell below an objective standard and
21 that he was prejudiced as a result.

22 In the guilty plea context he must prove, again, under
23 Strickland, that her performance was deficient, that it fell
24 below the reasonableness under professional norms, and that,
25 because of that deficient performance, there's a reasonable

1 probability that, but for his lawyer's errors, he would have
2 insisted on going to trial instead of pleading guilty.

3 He must also prove that his plea, once we're dealing in
4 a guilty plea context, that his plea was not freely and
5 voluntarily given, that it was the subject of some level of
6 coercion or duress, and, therefore, that his plea was
7 involuntary.

8 He's is also been -- also alleged that he is been
9 denied due process. The Court can discern absolutely no
10 evidence of that in the record, and, therefore, any relief
11 on that ground is denied.

12 I further find that the Applicant is failed to meet his
13 burden of proof. There's been a lot of discussion about a
14 lot of things that really, in the grand scheme of things,
15 make no appreciable difference in the outcome of what
16 happened to him. He was faced, as what we would call,
17 between the rock, proverbial rock, and hard place. He could
18 of either gone to trial where the State could of tried each
19 one of these armed robberies individually, succeeded on one,
20 and he would of received life without the possibility of
21 parole due to his previous conviction for attempted armed
22 robbery, which is classified as most serious and violent.

23 So the State would only have had to have prevailed on
24 one of these armed robberies for him to face life without
25 the possibility of parole.

1 Now, taking his allegations in the order that he has
2 asserted them, I -- it is, it is really unfortunate because
3 I perceive that Mr. Johnson is quite intelligent, but, for
4 whatever reason, made a hard left in his life and made some
5 very very -- we all make mistakes, but his mistake was one
6 of those that is very hard to rebound from, and I, however,
7 believe that his judgment of these -- of this situation is
8 with the benefit of hindsight and has some disjoint from
9 reality.

10 I find the transcript of the proceeding most persuasive
11 as it is a contemporaneous record of what actually took
12 place at the time of the plea, and Judge Cole was quite
13 thorough in his questioning of both the defendant and the
14 codefendant on December 18th of 2012 when he qualified
15 their pleas.

16 In addition to that, there was testimony of victims who
17 were present discussing how this event had adversely
18 impacted their lives since it had occurred. It is, again,
19 unfortunate, because of his youth, and his -- and I believe
20 he probably does perceive that a 30 year sentence is a life
21 sentence for him. However, it does have the possibility of
22 parole. An LWOP in South Carolina has no -- absolutely no
23 possibility of parole. He would never have left the
24 Department of Corrections. So there is a difference between
25 those two sentences.

1 Pleading guilty did enure greatly to his benefit
2 because, again, the State could of tried each of the -- they
3 only really needed to succeed on one to achieve the goal of
4 life without the possibility of parole.

5 I find the testimony of his lawyer convincing and
6 compelling. I've not heard any testimony regarding any
7 potential defenses in this case, that it would have been
8 viable, or that, in good faith, as an officer of the Court,
9 could have been asserted. I think she was honest with him
10 regarding the likelihood of him prevailing at trial.

11 What was most damaging in this instance was there was a
12 contemporaneous video of the events. That's hard to get
13 around. Nobody has to explain that. A video is
14 self-authenticating. It speaks for itself and it showed
15 exactly what they did on the premises on that day and he
16 would have been subject to accomplice liability.

17 He doesn't have to be charged with a conspiracy. In
18 fact, an uncharged co-conspirator can testify against a
19 co -- against another co -- another conspirator to prove a
20 crime and they don't have to be charged as a codefendant.
21 But, in that case, you had very clearly, what could of been
22 established or which would of been established by virtue of
23 the video, direct evidence of their intention to commit a
24 crime together.

25 The State would not have had to have proved that, at

1 some previous time, they sat together and decided to commit
2 the robbery. They entered the store with masks on, armed,
3 and committed a robbery on video. So the State has more
4 than adequate evidence, beyond a reasonable doubt, to have
5 established not only that he was involved in the robbery,
6 but to establish a hand of one is the hand of all, which is
7 accomplice liability.

8 Now, there's been much made about these indictments and
9 I've read them and indictments are merely notice documents.
10 They're only to put you on notice as to what you're being
11 charged with and what you need to defend.

12 what has been characterized as Family Dollar being a
13 victim twice really, I don't read the indictments that way.
14 You have several theories that could of been applied.

15 First, you have two individuals who are employed at
16 Family Dollar. They're agents of -- you know, a store is
17 not the victim. It can only be robbed through the
18 individuals who work for them, and, in this instance, you
19 have two individuals who worked for the store. That being
20 Christine Hughes and Annette Smith, both of whom were robbed
21 of property that belonged to the store, that being a cell
22 phone -- well, it says from the person or presence of
23 Annette Smith, an employee of Family Dollar. To wit, a cell
24 phone and/or money belonging to Family Dollar.

25 So money would have been stolen from the store and

1 their individual cell phones. So it's really almost a
2 conglomeration of facts because they are two individual
3 victims. You can not separate the incidents. They are part
4 of a continuum and so the indictments are sufficient on
5 their face because it charges two separate armed robberies
6 of two individuals of their cell phones.

7 There's also been a great discussion regarding
8 asportation. That being the taking and carrying away of the
9 property, and our case law is very clear. I was not able to
10 find any cases on point regarding kicking away a cell phone
11 or otherwise. But there appears to be some substantial
12 circumstantial evidence that the phones were removed, that
13 they were placed in a garbage can in the back of the store,
14 and, since the defendants were there with guns, it is -- it
15 would be very unusual that the victims, at gun point, would
16 put their own phones in a garbage can.

17 It is also equally unlikely that crime scene would of
18 put those phones in a garbage can. A jury could very easily
19 have inferred that the defendants put those in the garbage
20 can, and whether the victim in this case made a direct
21 statement or not, the officers would have been, been able to
22 testify regarding what was reported to them under several
23 exceptions. One to the hearsay rule depending on the
24 timeframe of which the statement was given, and the other
25 with case law that allows an investigator to testify as to

1 hearsay as to the underlying basis of an investigation.

2 But irregardless of that, whether she made a written
3 statement or not, it is clear that she would of come to
4 Court and testified regarding the asportation of the goods.
5 Otherwise the State would not have had a case, and our case
6 law is equally clear that you don't have to have a complete
7 possession of the property. The slightest removal of
8 property is sufficient to show a taking and carrying away of
9 the property. So I do not find any merit in that argument
10 as well.

11 There's also been an argument by the Applicant that he
12 feels there was a quote unquote, my term, not his, "a piling
13 on" so to speak which caused him to receive a more stiff
14 sentence than his codefendant. He is not equally situated
15 with his codefendant. His codefendant only had one DUS. He
16 had one brush with law enforcement.

17 Mr. -- the Applicant in this case, Mr. Johnson, was on
18 probation for an attempted armed robbery. I don't know that
19 it would of made any appreciable difference to the Court
20 whether it was one, two, or three, and, frankly, the fact
21 that it took place at one store, probably in the Court's
22 mind, it was a continuum of events and not separate
23 incidents although the law allows the solicitor to charge in
24 that way.

25 So he is not equally or similarly situated to his

1 codefendant, who had no record, as compared to him with a
2 record. So he can't compare himself, in terms of
3 sentencing, with his codefendant, and, of course, I'm not in
4 Judge Cole's mind. I don't know why he did what he did.
5 But it is within the realm of what I think probably
6 three-quarter of my colleagues would of done under the same
7 factual circumstances.

8 when you are faced with a situation where someone goes
9 into a store, where they're not only employees, but also
10 what are best characterized as innocent patrons, armed with
11 a deadly weapon, and you're already under supervision for
12 the same or similar type offense, you can expect that you're
13 going to get a stiff penalty. However, most people plead
14 guilty straight up hoping for the best, and that's not an
15 unreasonable expectation.

16 when you throw yourself on the mercy of the Court, you
17 may receive some deference for admitting responsibility,
18 and, under these circumstances, again I can't speak for
19 Judge Cole, but it appears that he did give some deference
20 for him accepting his culpability in these incidents, but
21 still having to weigh the egregious nature of what happened.
22 There was an eleven year old in that store where deadly
23 force was being used and I think we all know and have
24 experience where a gun goes off and somebody dies.

25 It was a particularly egregious set of facts, and I

1 agree with counsel and find her testimony credible that
2 there were no viable defenses for, for the Applicant in this
3 case, and that he was between the proverbial rock and hard
4 place. And if he had gone to trial, I just have not heard
5 anything, at this point, that is indicated that if he had
6 insisted on going to trial that he would of prevailed.

7 If anything, the result could have been far worse.
8 That being him being convicted of one of the armed robberies
9 and then facing life without the possibility of parole,
10 which would of been completely outside of the discretion of
11 the Court, and mandatorily imposed as a matter of statute.

12 Based on what is been presented to the Court, I find
13 that the Applicant is failed to meet his burden of proof.
14 The application is denied.

15 The -- I'm directing that the Attorney -- the Assistant
16 Attorney General provide the Court with a proposed order
17 within 20 days of today, that that order be provided to
18 djeffersonsc@sccourts in word format, and that Mr. Rucker be
19 copied on that proposed order.

20 I never sign things the way they're submitted to me.
21 It will be completely rewritten. I'm just telling you in
22 advance cause I have a way that I like things done, but I
23 use that as my template.

24 So once it is presented, of course, provide that to
25 counsel as well, and then it would be my goal to get it out

1 within at least five days of receipt of that proposed order,
2 and I'm giving her leave to make any findings of fact and
3 conclusions of law that are supported by the record.

4 MS. WHITE: Thank you.

5 THE COURT: Thank you so very much.

6 MR. RUCKER: Thank you, Your Honor.

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9 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 12th day of January, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 11th, 2015

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

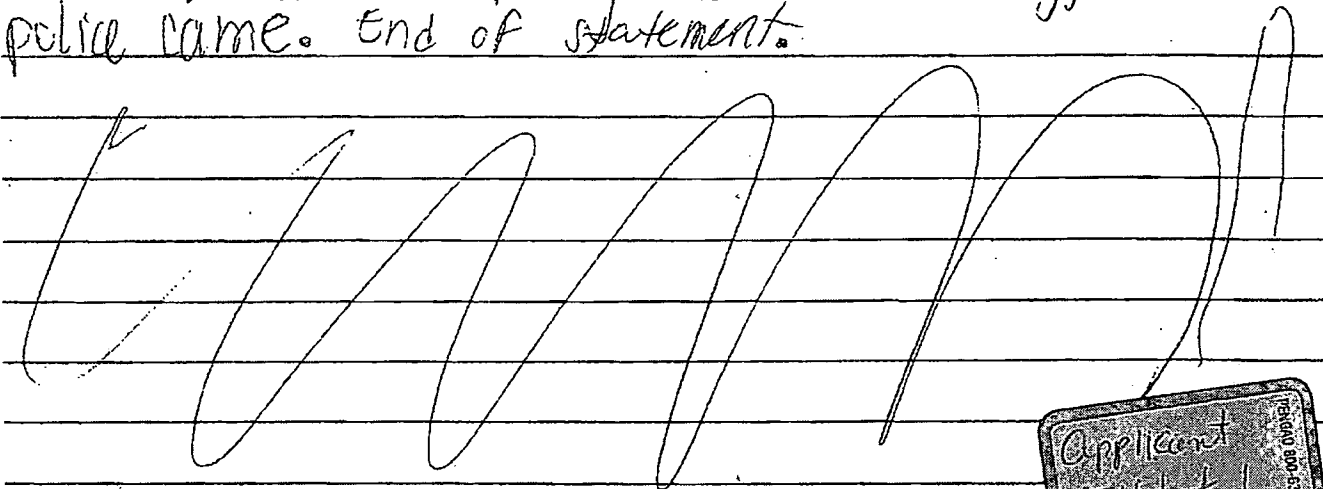
PAMELA E. GREEN, Court Reporter

VOLUNTARY STATEMENTPAGE 2 OF 2NAME: Alice Lucille Williams b/f d.o.b 03/16-61

CASE NUMBER
07-0357-12

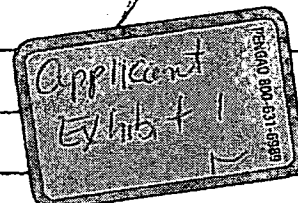
register with a long gun, and he said "Get down on the floor I'm not gonna hurt you. Give me your cell phone" I put my green t-mobile cell phone on the ground and the male at the register kicked the phone away. I saw two female customers on the ground.

I closed my eyes and started praying. When my eyes opened I wouldn't look at the male in front with gun. I heard the male suspect from the backroom with the cashier yell and hollered something. The male with the gun in front then left out the back of the store. One of the store ladies said that she had called police and they were on their way. When we realized they (two males with guns) were gone we all got up from the ground and hugged and cried together. I called my daughter from the store phone. All of us called our family and cried and hugged until police came. End of statement.



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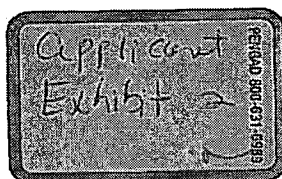


Alice Williams
Signature of person giving voluntary statement

On 07-13-2012 at approximately 1000 hours I received a phone call from April Kirby the manager of Family Dollar and she advised that they located Ms. Smith and Ms. Hughes cell phones in a plastic bin inside the store. The phones were found in a blue bin on the back isle of the store near the back door. The manager advised that she gave the phones back to Ms. Hughes and Ms. Smith. I photographed the isle where the phones were located. The manager made another copy of the video from the store and provided us with a copy.

On 07-13-2012 at approximately 1130 hours SPO Morrow, Inv. Stokes and I went to the county jail for the bond hearing for Mr. Miller and Mr. Johnson. Inv. Stokes spoke on the city's behalf and bond was denied for both subjects.

On 07-16-2012 at approximately 0915 hours April Kirby (Store Manager) responded to City Hall to retrieve the money that was taken from the store. I took Ms. Kirby to evidence and she received the sealed evidence envelopes containing the money. One envelope contained \$3386.00 and the other contained \$30.00 for a total of \$3416.00.



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Edward Johnson Jr, #353643,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2352

ORDER OF DISMISSAL

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SC Court of Appeals

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
J. Brandt Rucker, Esquire
Suzanne H. White, Esquire
Andrea L. Price, Esquire
January 12, 2015
Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR), filed April 29, 2013. The Respondent made its Return on or about June 27, 2014. An evidentiary hearing into the matter was convened on January 12, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Andrea L. Price, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the August 2010 term of the Spartanburg County Grand Jury for four (4) counts of Kidnapping¹ (2012-GS-42-4476, -4477, -4481, -4482), three (3) counts of Armed Robbery² (2012-GS-42-4474A, -4475, -5167), two (2) counts of Attempted Armed Robbery³ (2012-GS-42-4483, -4484), one (1) count of Failure to Stop for a Blue Light Without Injury or Death, First Offense⁴ (2012-GS-42-4478), and one (1) count of Unlawful Possession of a Stolen Pistol⁵ (2012-GS-42-4485).

The Applicant was also before the plea court for a hearing on his probation violation stemming from warrant number W-42-120311 (Tr. 28: 1-29:14). The Applicant was placed on probation on January 11, 2008 before Judge Hayes for the offense of Attempted Armed Robbery (2007-GS-42-4434) and was sentenced to fifteen (15) years' imprisonment suspended to time served and five (5) years' probation. The Applicant was also under special probation conditions, including restitution, fines, fees, and other obligations, random alcohol and drug testing, no possession of a firearm, and no contact with the victim. At the hearing, the plea court revoked the

¹ Kidnapping is a violent, most serious felony punishable by thirty (30) years' imprisonment. See S.C. CODE ANN. § 16-3-910 (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

² Armed Robbery is a violent, most serious felony punishable by imprisonment for a "mandatory minimum term of not less than ten [(10)] years or more than thirty [(30)] years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven [(7)] years of the sentence." See S.C. CODE ANN. § 16-11-330 (A) (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

³ Attempted Armed Robbery is a violent, most serious felony punishable by twenty (20) years' imprisonment. See S.C. CODE ANN. § 16-11-330(B) (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

⁴ An offender who commits Failure to Stop for a Blue Light, "for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars [(\$500.00)] or imprisoned for not less than ninety [(90)] days nor more than three [(3)] years. The Department of Motor Vehicles must suspend the person's driver's license for at least thirty [(30)] days." S.C. CODE ANN. § 56-5-750(B)(1) (2012).

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Applicant's probation in full and imposed the Applicant's active sentence of fifteen (15) years' imprisonment. (Tr. 36:16-25).

The Applicant was represented by Andrea Leah Price, Esquire. On December 18, 2010, the Applicant pled guilty as indicted to all charges. The Honorable J. Derham Cole sentenced the Applicant as follows: four (4) counts of Kidnapping (2012-GS-42-4476, -4477, -4481, -4482) to twenty (20) years each concurrent, three (3) counts of Armed Robbery (2012-GS-42-4474A, -4475, -5167) to thirty (30) years each concurrent, two (2) counts of Attempted Armed Robbery (2012-GS-42-4483, -4484) to twenty (20) years each concurrent, one (1) count of Failure to Stop for a Blue Light Without Injury or Death, First Offense (2012-GS-42-4478) to three (3) years concurrent, and one (1) count of Unlawful Possession of a Stolen Pistol (2012-GS-42-4485) to five (5) years concurrent. The Applicant's thirty (30) year sentence on indictment number 2012-GS-42-4474 one (1) count of Armed Robbery was consecutive to the Applicant's probation violation revocation on indictment number 2007-GS-42-4434. The Applicant's co-defendant Jalek Jonques Miller likewise pled guilty and was sentenced during the Applicant's hearing. The Applicant did not appeal his plea, sentences, or probation revocation.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - i. Counsel's inadequate investigation or research leading to plea,
2. Involuntary guilty plea, in that;
 - i. Erroneous legal advice led to the plea,
3. Due process violation, in that;
 - i. The due process right to trial was denied

⁵ Unlawful Possession of a Stolen Pistol is a "felony and, upon conviction, [an offender] must be fined not more than two thousand dollars [(\$2,000.00)] or imprisoned not more than five [(5)] years, or both. S.C. CODE ANN. § 16-23-50(A)(1) (2012).

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based on erroneous legal advice and inadequate research.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This 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 (2012).

Summary of Testimony and Proceeding

The Applicant testified that he was sentenced to forty-five (45) years' imprisonment. The Applicant testified he met with Counsel approximately three (3) times while he was in the Spartanburg County Detention Center including once at the preliminary hearing, where Counsel waived the Applicant's preliminary hearing and the Applicant ultimately pled guilty. The Applicant testified his guilty plea was involuntary, Counsel was ineffective, Counsel gave him erroneous advice, and Counsel failed to investigate or research his case. He testified that he admitted his guilt, but that Counsel advised him that a guilty plea was in his best interest and not to seek a trial because he was facing the potential sentence of imprisonment for life without the possibility of parole.

The Applicant testified that during their first meeting, he and Counsel discussed the charges and warrants and Counsel told him that he had no defense. However, the Applicant testified that Counsel never explained the law or reviewed the indictments with him, although he acknowledged receiving copies of the indictments, sentencing sheets, and motions from Counsel. The Applicant testified that during the second meeting, Counsel showed him a copy of an email regarding the possibility the State would seek the sentence of life in prison without parole and

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reviewed with him some of the discovery materials Counsel had forwarded earlier. The Applicant testified that Counsel advised him that the evidence against him was overwhelming and discussed the possibility of a plea. The Applicant testified that he had no knowledge if Counsel attempted to negotiate any plea offer on his behalf. The Applicant acknowledged that the attempted murder charge he faced was dropped. The Applicant testified that he believes that he might have still been convicted if he went to trial, but it should have been his choice. However, the Applicant testified that he was not able to make the decision properly and ultimately decided to plead guilty because Counsel advised him that he had no defense.

The Applicant acknowledged that he committed the crimes he pled guilty to, but testified he received improper advice from Counsel. However, the Applicant also testified that he did not believe that he was guilty of one Armed Robbery, one Attempted Armed Robbery, or one Kidnapping because he "didn't take what [they] said he took," took cell phones from only Christina Hughes and Annette Smith, and he committed a crime, but not an Armed Robbery. The Applicant alleged that he did not have the indictments when he was sentenced. The Applicant testified that the statement of victim Alice Williams (Applicant's Exhibit #1), which was included in the discovery indicates the armed intruders kicked her phone away. The Applicant states that page nine (9) of a supplemental investigative report (Applicant's Exhibit #2), which was likewise included in the discovery indicated that the store manager found all the phones in a trash bin near the back exit of the store and returned them to the victims, so the Applicant did not believe he could be guilty of an armed robbery of the phones when they were left in the store. The Applicant testified he did not "take" the phones and that he believes the victim's statements are exculpatory because they tend to show that there was a long gun by the register and that when the victim was ordered to lie down and turn over her phone, the Applicant kicked away her

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phone and did not "take" her phone. The Applicant alleged that he was charged with two counts of Attempted Armed Robbery and Armed Robbery for the "same things" and one store, but for another victim. Further, the Applicant testified that he believes the indictments should have been challenged because there were multiple indictments for the same store robbery and indictments -- 4474 and --4475 have the exact same language, but different victim names. The Applicant testified that Counsel should have raised this issue prior to the plea and that his attorney should have told him that he had a defense. The Applicant testified about the "shotgun effect" and opined that the more counts of armed robberies that are before the judge, the less incarceration he would receive. The Applicant also testified that his co-defendant received twenty (20) years' imprisonment on six (6) charges, while he had eleven (11) charges.

The Applicant admitted that the plea court advised him of his constitutional rights and that he was aware he gave up his rights during his plea hearing. The Applicant testified that Counsel did not investigate his case because Counsel felt the Applicant was guilty. He further testified that this deprived him of his right to go to trial. He further testified that he felt it was his "decision" to get "life." The Applicant testified he received an "email print out" containing his LWOP notice, but he was not served with the notice. On cross examination however, he conceded that he was served with LWOP notice by email. The Applicant denied Counsel explained or discussed the elements of the charged offenses, looked at the indictments, discussed the police statement with him, reviewed the discovery, or enumerated his options. He likewise denied seeing the video while he was in the county detention center and denied pleading guilty in order to receive a lesser sentence. The Applicant admitted he had guns, participated in the police chase, and made a statement and confession to the police. He testified Counsel advised him that the evidence of his guilt was overwhelming, including a video, that he had a "lot of stuff against

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[him],” and that he should “look into” a guilty plea, but never explained the evidence or discovery in depth. The Applicant testified that he committed the crimes because his head was not on “straight” and was seeing a psychiatrist because of stress and family matters, whose name he provided to his attorney.

Counsel testified that she met with the Applicant four (4) times. First, she met with the Applicant shortly after his arrest to discuss his bond hearing, which considering the allegations against the Applicant, Counsel did not think was a good idea. Second, Counsel met with the Applicant at his scheduled preliminary hearing in September 2012. At the Applicant’s preliminary hearing, which the Applicant ultimately waived, Counsel explained the process, reviewed the warrants and charges as well as the evidence against the Applicant and discovery. Counsel and the Applicant discussed the fact that although the Applicant and his co-defendant robbed one store, multiple victims—two patrons and two employees—could serve as eyewitnesses. They discussed how the Applicant and his co-defendant robbed the Family Dollar then fled the scene and were chased by the police. The perpetrators eventually were apprehended when they wrecked their getaway car; the Applicant’s co-defendant broke his arm and was hospitalized. Counsel advised the Applicant that his armed robbery of the store patron and the two (2) employees gave rise to three (3) victims, each deprived of property, three (3) incident reports, and ultimately, three (3) counts of Armed Robbery.

Counsel testified she next met with the Applicant in November 2012 to discuss a possible guilty plea and the Solicitor’s intention to seek a potential life without parole sentence if the Applicant was found guilty at trial. Counsel discussed the State’s burden of proof, the offenses, penalty ranges, the potential sentences the Applicant was facing, and the Applicant’s choices and options, especially considering his youth. Counsel testified she and the Applicant agreed that he

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had no defenses, especially since the Applicant made a post-Miranda confession and full, inculpatory statement to the police. Counsel opined that the Applicant's best interest was to plead guilty and avoid life imprisonment without possibility of parole. Counsel testified that the fact that the phones were still in the store and two were removed and found in a garbage can at the back of the store created no viable defense. Further, Counsel testified that the "kicking away" of a phone versus the taking of a phone was not a viable defense. Counsel testified she reviewed the video with the Applicant's co-defendant's attorney, Robert B. Hall, and determined the video was "not a good video" from the defense's standpoint.

Counsel explained that in her statement to law enforcement, one of the victims, Hughes, said the defendants took all the cell phones from everyone. One of the victims of an Attempted Armed Robbery charge was Mattison Dawkins, an eleven-year-old child. The Attempted Armed Robbery victim, a mother, Tameeka Young made a statement. Together, three (3) victims were deprived of their cell phones, which constituted the three (3) Attempted Armed Robbery charges. Counsel testified that she reviewed the discovery several times with the Applicant and considering the evidence against him, felt it was in the Applicant's best interest to plead guilty. Counsel testified that the fourth time she met with the Applicant was prior to his guilty plea. Finally, Counsel testified that she discussed the theory of hand of one, hand of all with the Applicant.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court finds Counsel's testimony more credible and compelling than the Applicant's testimony and the allegations raised in the application and at the hearing. Although the Court perceives the Applicant to be very intelligent.

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In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

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

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). 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." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 2015 MAR 31 AM 10:24

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325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, range of penalty, the Applicant's constitutional rights, the Applicant's version of the facts, and his possible defenses or lack thereof. The record reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Insufficient Indictments

The Applicant summarily argues that Counsel was ineffective for failing to challenge the sufficiency of the indictments. This Court finds that an indictment is purely a notice document:

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Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

S.C. CODE ANN. § 17-19-20 (2012). "The primary purpose of an indictment is to put the defendant on notice of what he is called upon to answer, by apprising him of the elements of the offense, and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted." State v. Smalls, 364

S.C. 343, 346-47, 613 S.E.2d 754, 756 (2005). The court

should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.

State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005) (citing State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717 (2003)). "In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances." Id. (citing State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981)). "[W]hether the indictment could be more definite or certain is irrelevant." Id. (citing State v. Knuckles, 354 S.C. 626, 583 S.E.2d 51 (2003)). See also State v. Tumbleston, 376 S.C. 90, 97-98, 654 S.E.2d 849, 853 (2007) (citing Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005)) (noting that all of the surrounding circumstances must be weighed to make an accurate determination of whether the defendant was prejudiced by a lack of notice and an insufficient indictment). Moreover,

a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and

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signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors indicate that the Defendant had notice of the charges to which he chose to plead guilty.

Smalls, 364 S.C. at 347, 613 S.E.2d at 756.

The Applicant was fully aware of the charges he was facing. Based on the Applicant and Counsel's factual synopsis, this Court finds that the indictments sufficiently describe the offenses in order to provide the Applicant notice of the charged offenses. Therefore, this Court finds that the indictments are sufficient on their face. Accordingly, this Court finds that Counsel was not ineffective for failing to challenge the indictments. The Applicant's assignment of error is without merit.

This Court finds that the Applicant faced the potential sentence of life without parole even if the State had prevailed on only one Armed Robbery charge at trial because of his prior record. The Applicant was on probation at the time of the armed robbery for the charge of Attempted Armed Robbery. Further, the evidence of the case contained a contemporaneous video of the events, which would be the most damaging evidence and would support a charge of accomplice liability even without a charge of conspiracy. This Court finds that the Applicant failed to present any evidence or testimony to support a claim that he had any viable defenses for trial. Substantial circumstantial evidence indicates that the Applicant had control over the victims' phones; the victims' testimony at trial would reflect and the jury could easily infer that the Applicant and his co-defendant removed and placed the victims' phones in the trash bin. There does not have to be a complete taking for the "asportation" element of the crime to occur.

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This Court finds that the Applicant has failed to meet his burden of proof as to this claim and it is denied and dismissed.

Involuntary Guilty Plea

In PCR cases, a defendant asserting 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). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d 419; Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with a full

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PARANETRG COUNTY
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understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). "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). "In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). "Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat." Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 411, 412 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

This Court finds that the Applicant failed to meet his burden of proof as to this claim.

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SPARTANBURG COUNTY
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M. HOPE BLANKLEY

This Court finds the transcript of the guilty plea to be most compelling. The plea court thoroughly questioned the Applicant in order to ensure that he was pleading guilty with full knowledge of the charges, potential sentences, and constitutional rights he waived.

The Solicitor and the plea court published the indictments for the record and noted that the Applicant was pleading to the charges "straight up" (Tr. 3:4-16; 5:5-9:15). The Applicant affirmed he understood the potential penalties associated with each charge, the fact that they were classified as violent, most serious, and no-parole offenses (Tr. 13:11-14:7, 14:19-23; 17:3-18), and the fact that the plea court was bound to impose a mandatory minimum sentence and could impose the maximum penalty based on the Applicant's plea to the charges "straight up." (Tr. 6:1-8, 20-22; 7:13-15, 23-25; 8:8-10, 20-21; 8:22-9:2). The plea court determined that the Applicant entered his guilty plea freely and voluntarily (Tr. 18:4-8), understood and had ample opportunity to discuss with his attorney the charges and potential penalties he was facing (Tr. 12:13-16), understood and had ample opportunity to discuss with his attorney the consequences of entering a guilty plea (Tr. 12:4-8), and that the Applicant understood he was waiving his right to assert any defenses to the charges (Tr. 4:15-24). Further, the Applicant affirmed that he was able to explain and understand the facts and circumstances of the offense and any possible defenses with his lawyer (Tr. 12:18-13:8). The Applicant affirmed that he understood he was waiving his constitutional rights (Tr. 14:24-15:17). The Applicant told the plea court that he was not promised anything in order to plead guilty and had not been threatened or forced into entering his plea (Tr. 15:19-18:8). Additionally, the Applicant told the plea court that he had not been treated for, nor did he suffer from any addiction, mental illness, or emotional condition that prevented him from fully understanding the guilty plea proceeding (Tr. 19:20-20:23).

Finally, the Applicant allocuted to the facts of the incident as summarized by

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SPARTANBURG COUNTY
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Solicitor, police officer, and victim (Tr. 25:24–26:2), his criminal record, which consists of a 2008 conviction for Attempted Armed Robbery, and told the plea court that he still intended to plead guilty (Tr. 26:9–16). Additionally, the plea court and Solicitor clarified that the Armed Robbery indictments concerned the robbery of Annette Smith, an employee of the Family Dollar Store, Christina Hughes, an employee of the Family Dollar Store, and Alice Williams, a customer of the Family Dollar Store (Tr. 5:13–7:7) and the Attempted Armed Robbery indictments concerned the attempted robbery of Tameka Young and Mattison Dawkins (Tr. 7:18–22). Ultimately, the Defendant stated he knew the consequences of his actions and his guilty plea and was satisfied with his attorney's services: "I know that I told Ms. Andrea Price that I would be at the mercy of the Court. I know what my crimes carry. I know what I did was wrong. . . . I want to thank Ms. Price for doing everything she could for me and I want to thank the Solicitor also for helping me as much as they have" (Tr. 30:22–24; 31:5–7).

Not only did the Applicant fail to establish that Counsel was deficient in her representation of Applicant in any manner, but the Applicant has failed to establish that he would have proceeded to trial but for these alleged deficiencies of Counsel. Further, the record is clear that the Applicant informed the court that he agreed with the facts as articulated by the Solicitor and wanted to plead (Tr. 26:9–16) and that the Applicant was aware of the strength of the State's case, particularly the video evidence (Tr. 26:21–27:2). The Applicant informed the court "they said if I plead today that I wouldn't go through trial. So that's what I want to do. I don't want to go to trial" (Tr. 18:1–3). The testimony and record support the findings that the Applicant pled guilty freely and voluntarily. Therefore, the Applicant's claim is denied and dismissed.

Due Process Violations

This Court finds that although the Applicant raised this allegation in his application,

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failed to proceed with presenting any evidence or testimony in support of his claim of violations of the Applicant's due process rights. Therefore, Court finds that the Applicant voluntarily abandoned this allegation.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by counsel's representation. See id. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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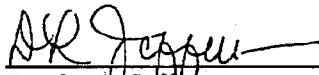
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

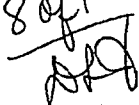
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26th day of March, 2015.


Deadra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

18 18 of 18


WITNESSES

Spartanburg Public Safety Department

ARRESTED

ARRESTED

ARRESTED

ARRESTED

ARRESTED

ARRESTED

ARRESTED

ARREST WARRANT NUMBER

ARREST WARRANT NUMBER

Count One - N245081

Count Two - N245079

ACTION OF GRAND JURY

[Signature]

AUG 23 2012

Foreperson of Grand Jury

Date:

VERDICT

[Signature]

Foreperson of Petit Jury

Date:

DOCKET NO. -

12-GS-42-4474A

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 23 2012

TERM

THE STATE

vs.

James Edward Johnson, Jr.

Indictment for

ARMED ROBBERY; POSSESSION OF A
WEAPON DURING COMMISSION OF A
VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490

CDR Code: 139; 549

Class: FEL/A; FEL/F

Count 2
Notle pressed
Defendant pled
guilty to other
charges
12/18/12
Term Paul
ASST
Solicitor

FILED
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2012 AUG 30 PM 3:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

APR 23 2012

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

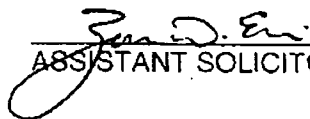
COUNT ONE – ARMED ROBBERY

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 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 any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of Annette Smith, an employee of Family Dollar, to wit: a cell phone and/or money belonging to Family Dollar, by means of force, violence, and/or intimidation with the intent to deprive her permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO – POSSESSION OF A WEAPON DURING
 COMMISSION OF A VIOLENT CRIME**

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 possess or visibly display a firearm during the commission of a violent crime, to-wit: ARMED ROBBERY, in violation of Code §16-23-490, *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.


 ASSISTANT SOLICITOR

WITNESSES

Spartanburg Public Safety Department

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[Stamp]

[Handwritten signature]

ARREST WARRANT NUMBER

Count One - N245082
Count Two - Direct Indictment

ACTION OF GRAND JURY

[Handwritten signature]

OCT 2 2012

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **12-GS-42-4475**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 11 2012

TERM

THE STATE
vs.

James Edward Johnson, Jr.

Indictment for

ARMED ROBBERY; POSSESSION OF A
WEAPON DURING COMMISSION OF A
VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490
CDR Code: 139; 549
Class: FEL/A; FEL/F

Count 2 ✓
Wife passed -
Defendant pled guilty
to other charges
12/18/12
Tami
Paulos
Asst. Solicitor

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

SEP 28 2012

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

COUNT ONE – ARMED ROBBERY

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 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 any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of Christine Hughes, an employee of Family Dollar, to wit: a cell phone and/or money belonging to Family Dollar, by means of force, violence, and/or intimidation with the intent to deprive her permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO – POSSESSION OF A WEAPON DURING
 COMMISSION OF A VIOLENT CRIME**

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 possess or visibly display a firearm during the commission of a violent crime, to-wit: ARMED ROBBERY, in violation of Code §16-23-490, *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.


 ASSISTANT SOLICITOR

SEP 28 2012

WITNESSES

Spartanburg Public Safety Department

ARREST WARRANT NUMBER

N245089

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

12-GS-42-4474

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 21 2012

TERM

THE STATE
vs.

James Edward Johnson, Jr.

Indictment for

KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class FEL-A

FILED
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2012 AUG 30 PM 3:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

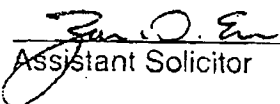
AUG 28 2012

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

KIDNAPPING

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away Annette Smith without authority of law, all in violation of Section 16-03-910, *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.


Assistant Solicitor

WITNESSES

Spartanburg Public Safety Department

Joe C. [Signature]

CHIEF OF POLICE

CLERK OF COURT

ARREST WARRANT NUMBER

ARREST VIOLATION

N245090

ACTION OF GRAND JURY

Alan Dell

AUG 2 3 2012

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-4477

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 2 2012

TERM

THE STATE

vs.

James Edward Johnson, Jr.

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

FILED
CLERK OF COURT
2012 AUG 30 PM 3:30
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 23 2012 the
Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away Christine Hughes without authority of law, all in violation of Section 16-03-910, *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.


Assistant Solicitor

WITNESSES

Spartanburg Public Safety Department

CLERK OF COURT

CLERK OF COURT

CLERK OF COURT

CHECKED WARRANTS

CHECKED SIGNATURE

ARRESTED AND

ARREST WARRANT NUMBER

N245103

VIOLATION

ACTION OF GRAND JURY

Dear Bill

THIS IS

AUG 2 3 2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET

12-GS-42-4478

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 2 2012

TERM

THE STATE

v.

James Edward Johnson, Jr.

Indictment for

FAILURE TO STOP MOTOR VEHICLE
WHEN SIGNALLED BY OFFICER

SC Code: 56-5-750

CDR Code: 0065

Class MIS/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 AUG 30 PM 3:30
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 23 2012

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

**FAILURE TO STOP MOTOR VEHICLE WHEN
SIGNALLED BY A LAW ENFORCEMENT VEHICLE**

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 willfully refuse and fail to stop the motor vehicle which he was driving on a road, street, or highway of the State of South Carolina when he was signaled by a law enforcement vehicle by means of a siren or flashing light, in violation of §56-5-750, *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.



ASSISTANT SOLICITOR

WITNESSES

Spartanburg Public Safety Department

As C [Signature]
compute

[Signature]

ARREST WARRANT NUMBER

Nx

N245094

ACTION OF GRAND JURY

Dean Dill

True copy AUG 2 3 2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. -

12-GS-42-4481

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 21 2012

TERM

THE STATE

vs.

James Edward Johnson, Jr.

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

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COURT OF COURTS
SOUTH CAROLINA

2012 AUG 30 PM 3:30

M. HOPE BLACKLEY

[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on Aug 22 2012 the
Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Madison Dawkins, without authority of law, all in violation of Section 16-03-910, *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.


Assistant Solicitor

WITNESSES

Spartanburg Public Safety Department

PLAIN PAPER

AND FULLER

NOTED

CHECKED WARRANTS

CHECKED SIGNATURE

APPROVED AND

FIVE CARD MADE

ARREST WARRANT NUMBER

N245097

ACTION OF GRAND JURY

Dear Will

True Bill

AUG 2 3 2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-4482

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 2 2012

TERM

THE STATE

vs.

James Edward Johnson, Jr.

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG, S.C.

2012 AUG 30 PM 3:30

M. HOPE BLACKLEY

CSH 11

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

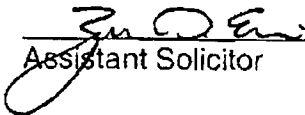
INDICTMENT

At a Court of General Sessions, convened on AUG 23 2012 the
Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Alice Williams, without authority of law, all in violation of Section 16-03-910, *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.


Assistant Solicitor

WITNESSES

Spartanburg Public Safety Department

WITNESSES

STATE

WITNESSES

WITNESSES

WITNESSES

WITNESSES

ARREST WARRANT NUMBER

N245098

ACTION OF GRAND JURY

Handwritten signature

TUE AUG 23 2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. -

12-GS-42-4483

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2012

TERM

THE STATE

vs.

James Edward Johnson, Jr.

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 0026

Class: FEL/C

FILED
CLERK OF COURT
2012 AUG 30 PM 3:30
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 23 2012, the Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 while armed with a firearm, unlawfully and feloniously attempt to take property and/or currency from the person or presence of Tamika Young, to wit: a cell phone, by means of force, violence, and/or intimidation with the intent to deprive her permanently of such property, in violation of §16-11-330 (A), *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.

~~ASSISTANT SOLICITOR~~

WITNESSES

Spartanburg Public Safety Department

[Signature]

[Signature]

ARREST WARRANT NUMBER

N245101

ACTION OF GRAND JURY

[Signature]

[Signature]

AUG 2 3 2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-4484

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 2 3 2012

TERM

THE STATE

vs.

James Edward Johnson, Jr.

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 0026

Class: FEL/C

FILED
CLERK OF COURT

2012 AUG 30 PM 3:30

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

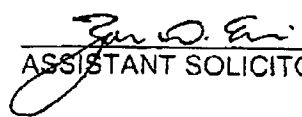
INDICTMENT

At a Court of General Sessions, convened on AUG 23 2012 the Grand
Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 while armed with a firearm, unlawfully and feloniously attempt to take property and/or currency from the person or presence of Madison Dawkins, to wit: a cell phone, by means of force, violence, and/or intimidation with the intent to deprive her permanently of such property, in violation of §16-11-330 (A), *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.


ASSISTANT SOLICITOR

WITNESSES

Spartanburg Public Safety Department

ARREST WARRANT NUMBER

N245405

ACTION OF GRAND JURY

True Bill
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

12-GS-42-4485

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2012

TERM

THE STATE
vs.

James Edward Johnson, Jr.

Indictment for

UNLAWFUL POSSESSION OF
STOLEN PISTOL

SC Code: 16-23-30, 0050 (A) (1)

CDR Code: 2364

Class FEL-F

FILED
CLERK OF COURT
2012 AUG 30 PM 3:30
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 23 2012

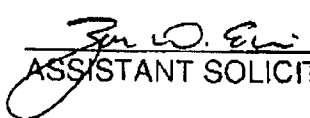
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

UNLAWFUL POSSESSION OF PISTOL BY A PERSON
CONVICTED OF A CRIME OF VIOLENCE

That James Edward Johnson, Jr. did in Spartanburg County on or about July 12, 2012 willfully, knowingly and unlawfully buy, sell, transport, pawn, receive, or possess a stolen handgun, in violation of §16-23-30, 50 (A) (1), *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.


ASSISTANT SOLICITOR

WITNESSES

City of

AND RETURNED

VERIFIED

LOCAL WARRANT

STATE SIGNATURE

NOTICE AND

RETURNED

RETURNED

ARREST WARRANT NUMBER

N245085 (Count One)

Direct Indictment (Count Two)

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

OCT 18 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-5167

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 17 2012

TERM

THE STATE

VS.

James Edward Johnson Jr

Indictment for

ARMED ROBBERY AND
POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490

CDR CODE: 139; 0549

CLASS: FEL/A; FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2012 OCT 23 AM 8:54

M. HOPE BLACKLEY

Count 2 ✓
Notre passed -
Defendant pled
guilty to other
charges
12/18/12
Tina Paulson
Asst. Solicitor

1657

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

July 12, 2012

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

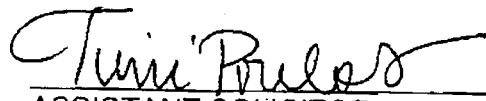
COUNT ONE-ARMED ROBBERY

That the Defendant, James Edward Johnson Jr, did in Spartanburg County on or about July 12, 2012, while armed with a deadly weapon, being a handgun, did feloniously take from the person or presence of Alice Williams, by means of force, violence, and/or intimidation, goods or monies, such goods or monies being described as follows: a cell phone, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

**COUNT TWO-POSSESSION OF FIREARM DURING
 COMMISSION OF A VIOLENT CRIME**

That James Edward Johnson Jr did in Spartanburg County on or about July 12, 2012, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ARMED ROBBERY, in violation of Code §16-23-490. 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.


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
MAR 10 2016
SC SUPREME COURT

Certiorari to Spartanburg County
Deadra L. Jefferson, Circuit Court Judge

JAMES EDWARD JOHNSON, JR.

PETITIONER,

V.

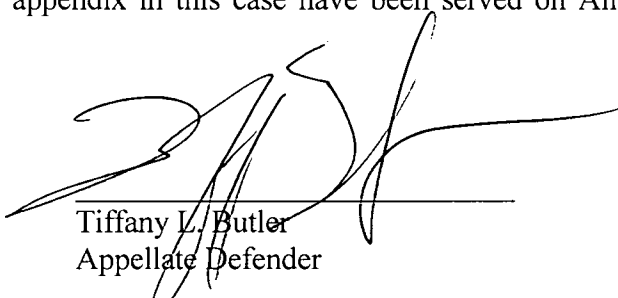
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE # 2015-001062

CERTIFICATE OF SERVICE

I certify that a true copy of the pro se appendix in this case have been served on Alicia Olive, Esquire this 10th day of March, 2016.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day
of March, 2016.

Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026.