

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge

CHARLES BENJAMIN PROFFITT, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000598

APPENDIX

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STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	) 2013-GS-23-8859 (Barbee)
COUNTY OF GREENVILLE	) 2015-GS-23-4481 (Worley)
	) 2014-GS-23-9503 (Proffitt)
	) 2015-GS-23-9504 (Proffitt)
	) 2015-GS-23-11426 (Proffitt)
	) 2015-GS-23-11427 (Proffitt)
	) 2015-GS-23-11428 (Proffitt)
STATE OF SOUTH CAROLINA,	) 2015-GS-23-11429 (Proffitt)
PLAINTIFF,	) 2015-GS-23-11430 (Proffitt)
	) 2015-GS-23-11431 (Proffitt)
vs.	) 2015-GS-23-11432 (Proffitt)
	) 2015-GS-23-11433 (Proffitt)
BENJAMIN JAMES BARBEE,	)
AMANDA RENEE WORLEY and	)
CHARLES BENJAMIN PROFFITT,	)
DEFENDANTS.	) TRANSCRIPT OF RECORD
	)

January 14, 2016
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE

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

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CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings began at 12:37 p.m.)

THE CLERK: Your Honor, this is 2013-GS-23-8859, Benjamin Barbee, indicted for resisting arrest with assault, pleading to the same, and it is a true bill.

2015-GS-23-4481, Amanda Worley, indicted for armed robbery, pleading to strong-arm robbery, and it is a waiver.

2014-GS-23-9504, Charles Proffitt, indicted for shoplifting, pleading to the same, and it is a true bill; 2014-GS-23-9503, indicted for shoplifting, pleading to the same, and it is a true bill; 2014-GS-23-11426, indicted for failure to stop for a blue light, pleading to the same, and it is a true bill; 2014-GS-23-11427, indicted for armed robbery and possession of a weapon during the commission of a violent crime, pleading to robbery armed with a deadly weapon and possession of a weapon during a violent crime, and it is a true bill; 2014-GS-23-11428, indicted for kidnapping, pleading to the same, and it is a true bill; 2014-GS-23-11429, indicted for conspiracy, pleading to the same, and it is a true bill; 2014-GS-23-11431, indicted for carjacking, pleading to the same, and it is a true bill; 2014-GS-23-11432, indicted for kidnapping, pleading to the same, and it is a true bill; 2014-GS-23-11430, indicted for armed robbery and possession of a weapon during the

1 commission of a violent crime, pleading to armed robbery
2 with a deadly weapon, and it is a true bill;
3 2014-GS-23-11433, indicted for conspiracy, pleading to the
4 same, and it is a true bill.

5 (WHEREUPON, BENJAMIN JAMES BARBEE, AMANDA RENEE WORLEY and
6 CHARLES BENJAMIN PROFFITT were duly sworn.)

7 THE COURT: Jail days?

8 MS. SUSTAKOVITCH: On Barbee, it's 62; on Worley, 205.

9 MR. CULBREATH: And on Proffitt, 743.

10 THE COURT: All right. In the last 24 hours, have you
11 had any drugs, alcohol or medication? Barbee?

12 DEFENDANT BARBEE: No, sir.

13 THE COURT: Worley?

14 DEFENDANT WORLEY: No.

15 THE COURT: Proffitt?

16 DEFENDANT PROFFITT: No.

17 THE COURT: Ever been treated for substance abuse or
18 mental illness? Barbee?

19 DEFENDANT BARBEE: Yeah. I think so.

20 THE COURT: You think so? What did you get treated
21 for?

22 DEFENDANT BARBEE: I think drinking or something.

23 THE COURT: Oh, yeah. Well, you're sober today?

24 DEFENDANT BARBEE: Yes, sir.

25 THE COURT: You know what's going on?

1 DEFENDANT BARBEE: Yes, sir.

2 THE COURT: Worley, any treatment?

3 DEFENDANT WORLEY: No.

4 THE COURT: Proffitt?

5 DEFENDANT PROFFITT: No, sir.

6 THE COURT: All right. Barbee, your indictment
7 alleges you did, in Greenville County, July 31, 2013,
8 knowingly, willfully, unlawfully assault, beat or wound
9 Officer M.S. Metrisko [phonetic] with the Sheriff's Office.
10 Carries up to ten; do you understand?

11 DEFENDANT BARBEE: Yes, sir.

12 THE COURT: Worley, yours alleges you did, in
13 Greenville County, March 11, 2015, armed with a deadly
14 weapon, took by force or intimidation money from Jesus
15 Silas [phonetic], 15 -- pleading to a 15-year; do you
16 understand?

17 DEFENDANT WORLEY: Yes, sir.

18 THE COURT: Proffitt, first one alleges you did, in
19 Greenville County, Count 1, November 6, 2014, armed with a
20 deadly weapon, took by force or intimidation an '02 Hyundai
21 Santa Fe from Amanda Belk, 10 to 30 years, violent and most
22 serious. Get convictions for two or more most serious
23 offenses, you're eligible for life in prison without
24 parole; do you understand?

25 DEFENDANT PROFFITT: Yes, sir.

1 THE COURT: Okay. Violent impacts parole eligibility;
2 do you understand?

3 DEFENDANT PROFFITT: Yes, sir.

4 THE COURT: Next one alleges you did, in Greenville
5 County, November 6, 2014, combine, conspire with Kristie
6 Durham and/or Sophia Geary for the purpose of committing
7 armed robbery and kidnapping. That's five years; do you
8 understand?

9 DEFENDANT PROFFITT: Yes, sir.

10 THE COURT: The next one alleges you did, in
11 Greenville County, this would be Count 1, November 3, 2014,
12 armed with a deadly weapon, took by force or intimidation
13 money, wallet and cell phone from Lonnie Riddle, that's 10
14 to 30 years, violent and most serious; do you understand?

15 DEFENDANT PROFFITT: Yes, sir.

16 THE COURT: Count 2 alleges you did, in Greenville
17 County, November 3, 2014, display a handgun during that
18 armed robbery. And that's five; do you understand?

19 DEFENDANT PROFFITT: Yes, sir.

20 THE COURT: The next one alleges you did, in
21 Greenville County, November 3, 2014, unlawfully seize,
22 abduct, confine, inveigle or carry away Lonnie Riddle.
23 That carries up to 30 years. That's violent and most
24 serious; do you understand?

25 DEFENDANT PROFFITT: Yes, sir.

1 THE COURT: The next one alleges you did, in
2 Greenville County, November 3, 2014, combine, conspire with
3 Michael John Hannon, III [phonetic] for the purpose of
4 accomplishing armed robbery and/or kidnapping. Another
5 five; do you understand?

6 DEFENDANT PROFFITT: Yes, sir.

7 THE COURT: The next one alleges you did, in
8 Greenville County, November 6, 2014, steal a 2002 Hyundai
9 Santa Fe from Amanda Belk by force. Carjacking, up to 20
10 years. That is a violent and a most serious; do you
11 understand.

12 DEFENDANT PROFFITT: Yes, sir.

13 THE COURT: The next one alleges you did, in
14 Greenville County, November 6, 2014, unlawfully seize,
15 abduct, confine inveigle or carry away Amanda Belk, another
16 20 -- no. Excuse me. Another 30. And that's violent and
17 most serious; do you understand?

18 DEFENDANT PROFFITT: Yes, sir.

19 THE COURT: The next one alleges you did, in
20 Greenville County, November 7, 2014, fail to stop for a
21 police vehicle when signaled to do so. It's a second
22 offense. That's five years; do you understand?

23 DEFENDANT PROFFITT: Yes, sir.

24 THE COURT: The next one alleges you did, in
25 Greenville County, October 24, 2013, with two prior

1 property offense convictions, you shoplifted a guitar from
2 Eastside Guitar. And that's ten years; do you understand?

3 DEFENDANT PROFFITT: Yes, sir.

4 THE COURT: And the last one alleges you did, in
5 Greenville County, with two prior property offense
6 convictions, March 18, 2014, shoplift a guitar from
7 Eastside Guitars and Drums. That's another ten; do you
8 understand?

9 DEFENDANT PROFFITT: Yes, sir.

10 THE COURT: All right. To each of you, how do you
11 want to plead? Barbee?

12 MS. MANIGAULT: Your Honor, we're -- resisting arrest
13 and it's not with assault.

14 MS. SUSTAKOVITCH: It's a simple resisting arrest,
15 Judge. That carries up to a year. I believe ---

16 THE COURT: 16-09-320(B).

17 MS. SUSTAKOVITCH: Yes, sir. I believe that's simple
18 resisting. Double check. Is that with assault?

19 And, Judge, it must be. I apologize. It looks like
20 it's a scrivener's error. It should be (A). He's pleading
21 to the simple resisting which is up to a year, not the
22 resisting with assault that carries up to ten as Your Honor
23 stated.

24 THE COURT: Well, what's the CDR code on it?

25 MS. SUSTAKOVITCH: We're checking it.

1 THE COURT: I mean, he was willing to plead to the
2 ten-year.

3 MS. SUSTAKOVITCH: His eyebrows went up. He's not
4 good with that.

5 MS. MANIGAULT: He's shifting back and forth on his
6 feet.

7 MR. CULBREATH: 0326, Your Honor.

8 THE COURT: 0326. The other one is 0256.

9 MS. SUSTAKOVITCH: Yeah.

10 THE COURT: Are you sure?

11 MR. CULBREATH: Yes, sir.

12 THE COURT: Okay.

13 MS. SUSTAKOVITCH: I apologize, Your Honor.

14 THE COURT: Well, do you still want to go forward,
15 Barbee? It carries up to a year. How do you want to plead
16 to it?

17 DEFENDANT BARBEE: Yes, sir.

18 THE COURT: Yes, sir?

19 DEFENDANT BARBEE: Yes, sir.

20 THE COURT: Yes, what?

21 DEFENDANT BARBEE: Guilty. I plead guilty.

22 THE COURT: You want to plead guilty?

23 DEFENDANT BARBEE: (Nods head affirmatively.)

24 THE COURT: All right.

25 Worley, how about you?

1 DEFENDANT WORLEY: Guilty.

2 THE COURT: Proffitt?

3 DEFENDANT PROFFITT: Guilty.

4 THE COURT: Is that your free and voluntary decision?
5 Barbee?

6 DEFENDANT BARBEE: Yes.

7 THE COURT: Are you sure? Because that lawyer can be
8 -- she can -- is that your free choice?

9 DEFENDANT BARBEE: Yes, sir.

10 THE COURT: Worley, how about you?

11 DEFENDANT WORLEY: Yes, sir.

12 THE COURT: Proffitt?

13 DEFENDANT PROFFITT: Yes, sir.

14 THE COURT: All right. Do you understand you have an
15 absolute right to a trial by jury where you'd be presumed
16 innocent unless and until the State could prove you guilty
17 beyond any reasonable doubt of each and every element of
18 each offense that you're charged with, and you'd have a
19 right to confront, cross-examine the witnesses and the
20 evidence put up against you by the State, you'd have a
21 right to compel in court all relevant and competent
22 evidence in your own defense or you can remain silent, your
23 silence can't be held against you and you can never be
24 compelled to incriminate yourself? Do you understand all
25 those rights? Barbee?

1 DEFENDANT BARBEE: Yes, sir. Yes, sir.

2 THE COURT: Okay. Worley?

3 DEFENDANT WORLEY: Yes, sir.

4 THE COURT: Proffitt?

5 DEFENDANT PROFFITT: Yes, sir.

6 THE COURT: You want to give all those rights up to
7 enter this plea? Barbee?

8 DEFENDANT BARBEE: Yes, sir.

9 THE COURT: Worley?

10 DEFENDANT WORLEY: Yes, sir.

11 THE COURT: Proffitt?

12 DEFENDANT PROFFITT: Yes, sir.

13 THE COURT: Are you guilty? Barbee?

14 DEFENDANT BARBEE: Yes, sir.

15 THE COURT: Worley?

16 DEFENDANT WORLEY: Yes, sir.

17 THE COURT: Proffitt?

18 DEFENDANT PROFFITT: Yes, sir.

19 THE COURT: Are you totally and completely satisfied
20 with the representation of your attorney? Barbee?

21 DEFENDANT BARBEE: Yes, sir.

22 THE COURT: Worley?

23 DEFENDANT WORLEY: Yes, sir.

24 THE COURT: Proffitt?

25 DEFENDANT PROFFITT: Yes, sir.

1 THE COURT: Do you have any complaints that you'd like
2 to make about the way you've been treated in your case?
3 Barbee?

4 DEFENDANT BARBEE: No, sir.

5 THE COURT: Worley?

6 DEFENDANT WORLEY: No, sir.

7 THE COURT: Proffitt?

8 DEFENDANT PROFFITT: No, sir.

9 THE COURT: And do you understand or know what the
10 evidence is that the State has against you? Barbee?

11 DEFENDANT BARBEE: Yes, sir.

12 THE COURT: Worley?

13 DEFENDANT WORLEY: Yes, sir.

14 THE COURT: Proffitt?

15 DEFENDANT PROFFITT: Yes, sir.

16 THE COURT: All right. Tell me about them.

17 MS. SUSTAKOVITCH: Yes, sir. As to Mr. Barbee, on
18 July 13, 2013, the defendant -- or the officer was
19 attempting to make a lawful arrest at which time this
20 defendant did swing towards him with a coffee cup and he
21 attempted to pull away from the officer. This occurred in
22 Greenville County.

23 THE COURT: True? Kind of?

24 DEFENDANT BARBEE: Kind of.

25 THE COURT: Do you remember? Were you drunk or

1 something?

2 DEFENDANT BARBEE: No. There was a deaf -- I've got
3 some problems, you know.

4 THE COURT: Yeah. I see that.

5 DEFENDANT BARBEE: I'm deaf on the left side. I was
6 on the other side of him. I just didn't hear him. I guess
7 I kind of didn't hear him, misunderstood him a little bit
8 or something. I don't know. But yeah. I reckon, yeah.

9 THE COURT: All right. Well. Time served. good luck
10 to you.

11 MS. MANIGAULT: Thank you, Your Honor.

12 DEFENDANT BARBEE: Thank you, sir.

13 MS. SUSTAKOVITCH: Thank you, Judge.

14 And as to Ms. Worley, on March 23, 2015, the defendant
15 and some codefendants entered the home of Jesus Silas
16 located at [REDACTED] Grandview Drive in Simpsonville within
17 Greenville County under the pretense of providing
18 prostitution services. The codefendants attacked the
19 victim and demanded money. They stole \$30 in cash.

20 THE COURT: True?

21 DEFENDANT WORLEY: Yes, sir.

22 THE COURT: Okay. What? Anything? Anything you want
23 to tell me?

24 MS. MANIGAULT: Your Honor, this is a time served. We
25 pled last week to four of the charges.

1 THE COURT: Oh, that's the recommendation. I thought
2 that was her last name, Ms. Manigault. All right.

3 MS. MANIGAULT: And she was sentenced by Judge Verdin.
4 We did not sign this plea sheet, and we're trying to get it
5 cleaned up. That's why it's time served.

6 THE COURT: All right. Time served. Good luck to
7 you.

8 MS. MANIGAULT: Thank you, Your Honor.

9 MS. SUSTAKOVITCH: Thank you, Your Honor.

10 THE COURT: All right. Tell me about Proffitt.

11 MR. CULBREATH: Your Honor, may it please the Court.

12 THE COURT: It's a negotiated sentence. I can't
13 change it. Do you understand that?

14 DEFENDANT PROFFITT: Yes, sir.

15 PROBATION AGENT: He has a probation matter also.

16 THE COURT: Okay. Well, we'll deal with that if we
17 get through this.

18 All right. Go ahead.

19 MR. CULBREATH: Thank you, Your Honor. On
20 October 24, 2013, the defendant did steal a guitar valued
21 at \$530 from Eastside Guitar and Drums on Woodruff Road in
22 Greenville County. Monitoring from the store showed the
23 defendant taking the guitar while employees were either
24 working with other customers or not in the showroom. He
25 did subsequently sell the guitar to a third party who was

1 able to identify the defendant.

2 Then on March 18, 2014, the defendant returned to
3 Eastside Guitars in Greenville County and stole another
4 guitar valued at \$725. This merchandise was ultimately
5 recovered and returned to the store. And the defendant has
6 been convicted of two prior property offenses.

7 On November 3, 2014, at about 11:45 p.m., the victim,
8 Lonnie Riddle, arranged to meet with a Michael Hannon, who
9 is a person who was known to the victim, at the Handy Mart
10 convenience store on Highway 25 in Greenville County so
11 Mr. Hannon could look at a Masonic ring that the victim was
12 trying to sell. The victim recognized the defendant who
13 was with Mike Hannon at the time, at which point the
14 defendant pulled out a handgun at the victim -- pointed it
15 at the victim and ordered him to get into Mr. Hannon's
16 vehicle where they began driving. Mr. Hannon drove into a
17 nearby subdivision where the defendant robbed the victim at
18 gunpoint of \$90 cash, his wallet and a cell phone valued at
19 \$50. The defendant and codefendant then drove the victim
20 to the victim's home where he was warned not to call the
21 police.

22 Then on November 6, 2014, the defendant and two
23 codefendants arranged to meet with the victim, Amanda Belk,
24 at the Tobacco World on Blue Ridge Drive in Greenville
25 County to sell the victim some prescription pills. The

1 victim was planning to meet the defendant's girlfriend,
2 Kristie Durham, and when she arrived, she saw who she
3 recognized from Ms. Durham's photographs as the defendant,
4 Charles Proffitt, and another man and woman whom she did
5 not know.

6 As the victim pulled into the parking lot and over to
7 where the defendant was standing, the female that she did
8 not know got into the front seat of the victim's vehicle,
9 and the defendant and another male got into the backseat.
10 They told the victim to drive into the Wild Rose Place
11 subdivision near Blue Ridge Drive in Greenville County.
12 They ultimately had the victim drive into a cul-de-sac area
13 of the neighborhood where the defendant pulled out a gun,
14 pressed it to the victim's neck, and the codefendants took
15 the victim's cell phone and threw her dog out the window of
16 the vehicle.

17 The victim was pulled into the backseat by the
18 defendant and a male codefendant began to drive her vehicle
19 around. The defendant actually told the victim that he
20 knew that she had been robbed before, and that this was a
21 robbery, and that she would be harmed if she told anyone
22 about it.

23 They drove into the Travelers Rest area and ultimately
24 put the victim out of her car on Roe Ford Road in
25 Greenville where she was able to flag down a passing

1 motorist. However, the defendant did take her 2002 Hyundai
2 Santa Fe. She was able to identify the defendant, reported
3 it to the Sheriff's Office, and warrants were issued.

4 The next day on November 7, 2014, the Greenville
5 County Sheriff's Office received a tip from a confidential
6 source about the current location of the defendant who was
7 being sought for the November 3rd and 6th robberies.
8 Based on this tip, deputies with the Direct Patrol Unit
9 arrived at the Riverside Cafe on Cedar Lane Road in
10 Greenville County in unmarked vehicles where they
11 identified the defendant in the driver's seat of a car in
12 the parking lot. As the deputies positioned their vehicles
13 to try to block him in in the front and back, the defendant
14 recognized what was occurring, put his car in drive and
15 rammed into one deputy's unmarked vehicle in the front and
16 put it in reverse and rammed the one behind him making
17 enough room to leave the parking lot.

18 So the defendant drove away out of the parking lot and
19 was pursued by law enforcement. He did stop at one point
20 in a mobile home park and there was a brief standoff that
21 involved a female that was in the vehicle. Law enforcement
22 backed down and he drove back away again, and they again
23 pursued him in both marked and unmarked cars with lights
24 and sirens. They pursued him through Pete Hollis
25 Boulevard, Stone and Earle Streets and ultimately onto

1 Cross Street where the defendant lost control of his
2 vehicle and flipped it onto its roof. He was removed from
3 the vehicle with the help of a canine unit and placed under
4 arrest at that time.

5 THE COURT: Okay.

6 MR. CULBREATH: Those are the facts. It is a
7 negotiated sentence. He does have a relative criminal
8 record.

9 THE COURT: Well, what's his record?

10 MR. CULBREATH: 1998 burglary second, nonviolent and
11 shoplifting times two; 1999 petit larceny; 2000 petit
12 larceny times two, resisting arrest, loitering, grand
13 larceny; 2001 burglary second, nonviolent; 2002 burglary
14 third times two, burglary second, violent and attempted
15 burglary; 2007 escape, failure to stop, ABHAN, and third or
16 subsequent offense shoplifting times two.

17 THE COURT: Wait a minute. Shoplifting times two?

18 MR. CULBREATH: Yes, sir.

19 THE COURT: I missed -- what was before the ABHAN?

20 MR. CULBREATH: Failure to stop, first offense.

21 THE COURT: Okay.

22 MR. CULBREATH: 2010 shoplifting times three, burglary
23 second, violent, times two, grand larceny and assault on a
24 police officer while resisting; and 2013 burglary second,
25 violent.

1 And as part of the negotiated plea, Your Honor, we are
2 dismissing all remaining charges in Greenville County. He
3 does have pending charges in Pickens County, however.

4 THE COURT: Okay. And what's the negotiation?

5 MR. CULBREATH: 25-year active sentence.

6 THE COURT: Okay. All that true?

7 DEFENDANT PROFFITT: Yes, sir.

8 THE COURT: Okay.

9 PROBATION AGENT: He has -- Judge Welmaker sentenced
10 him on 6/10/10 for burglary second, violent. He got 15
11 years suspended on six years and then five years probation.
12 He also had another burglary second, violent, and he got
13 15 years consecutive, suspended during probation.

14 THE COURT: Okay. Do you need to serve him?

15 PROBATION AGENT: He's already been served on a
16 warrant back in November of 2013, and it's still pending.
17 I think the note said he's been up four times with pending
18 charges. They've rescheduled it.

19 THE COURT: Okay. How do I know you?

20 DEFENDANT PROFFITT: Drug court years ago.

21 THE COURT: Well, I didn't do drug court.

22 DEFENDANT PROFFITT: I think. No. That was Simmons.

23 THE COURT: Yeah. You and I have -- I've seen you
24 before, though, haven't I?

25 DEFENDANT PROFFITT: I think so.

1 THE COURT: I mean, plenty opportunity in here.

2 DEFENDANT PROFFITT: Yes, sir.

3 THE COURT: What's going on with you?

4 DEFENDANT PROFFITT: Drugs. Methamphetamines.

5 THE COURT: That stuff ---

6 DEFENDANT PROFFITT: Kill you.

7 THE COURT: Yeah. I might have had you over in
8 Pickens on something. Could that be right?

9 DEFENDANT PROFFITT: Maybe. I was over there one
10 time.

11 THE COURT: Well, that would be Welmaker, I guess.

12 DEFENDANT PROFFITT: I got to messing -- I got out of
13 prison in 2013 and I got to messing with methamphetamines.
14 I ain't never done them before, and I got to actually, you
15 know, shooting -- shooting the dope. And from that forward
16 time, I mean, it's just a real bunch of crazy stuff, birds,
17 and I stayed up for weeks at a time. And I know that I did
18 a lot of wrong. And, you know, I wish I could change
19 everything, but, you know . . .

20 THE COURT: No. You can't change it in the past, but
21 you can change it in the future.

22 DEFENDANT PROFFITT: Yes, sir.

23 THE COURT: I mean, that -- you know, that's hard.

24 DEFENDANT PROFFITT: I've got two kids, you know.

25 THE COURT: Yeah.

1 DEFENDANT PROFFITT: Yeah.

2 THE COURT: Well, I'll accept it and I'll go along
3 with it. You've got a real good lawyer working for you.
4 I'll tell you that.

5 DEFENDANT PROFFITT: Yes, sir.

6 MR. CULBREATH: Your Honor, with regard to the two
7 kidnappings, they were not sexually related.

8 THE COURT: Okay. Anything else?

9 MS. HORLBECK: Judge, just on the probation, I did
10 speak with his agent last week.

11 THE COURT: Yeah.

12 MS. HORLBECK: I don't think that they were trying to
13 do anything that would exceed the negotiations.

14 THE COURT: I'm not -- that's all right. He's got --
15 this is -- this is plenty.

16 When you get out, now, you'll be a little longer in
17 the tooth. Maybe you won't be quite so wild ---

18 DEFENDANT PROFFITT: Yes, sir.

19 THE COURT: --- I hope. I'm sure -- you know.

20 All right. Let's see here. Okay. 25 on the armed
21 robbery, and you get credit for -- giving you credit for
22 743 days on each and every case. Five years on conspiracy,
23 25 on the armed robbery, 25 on the kidnapping. It's not
24 sexually related, and I've noted that. Conspiracy, five;
25 carjacking, 20; kidnapping, 25, not sexually related; five

1 on the failure to stop; and ten on each of the
2 shopliftings. And they're all concurrent.

3 We will -- what's easier? Revoke or terminate?

4 PROBATION AGENT: He has restitution. I was going to
5 ask you if you wanted to time satisfies or civil judgment.

6 THE COURT: Just revoke, time satisfies.

7 PROBATION AGENT: Okay.

8 THE COURT: Okay. You know, it's going to be a long
9 hard row.

10 DEFENDANT PROFFITT: Yes, sir.

11 THE COURT: Just look for the good. See if you can't
12 find things to better yourself and your spiritual life, you
13 know.

14 DEFENDANT PROFFITT: Yes, sir.

15 THE COURT: I mean, that will be important where
16 you're going.

17 All right. Good luck to you, man.

18 DEFENDANT PROFFITT: Thank you.

19 (WHEREUPON, proceedings ended at 1:02 p.m.)
20
21
22
23
24
25

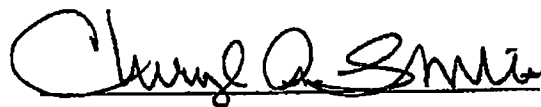
1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF GREENVILLE)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate
10 and complete Transcript of Record of the proceedings had
11 and evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of General Sessions for
13 Greenville County, South Carolina, on the 14th day of
14 January, 2016.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 February 8, 2017
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23 Cheryl A. Smith, CVR-M

24 Court Reporter
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FORM 5

STATE OF SOUTH CAROLINA

County of GreenvilleCharles Benjamin Proffitt
260785

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016-CP-23-07617

APPLICATION FOR

POST-CONVICTION RELIEF

2016-CP-23-

FILED IN COURT
GREENVILLE CO. S.C.
PAUL N. WICKENSIMER
2016 OCT 28 PM 3 19INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Corr. Inst PO Box 205
Ridgeville SC 29472
2. Name and location of Court which imposed sentence General Sessions
Greenville SC 29699
3. Name(s) of co-defendant(s) (if any) Sofia Geary, Chris Crowder
Michael Hanna
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014A2330210210, 2014A2330210188, 2014A2330210211
 - (b) 2014A2330210212, 2014A2330210186, 2014A2330210187

- (c) 2014A2330210188, 2014A2330210222
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 1-20-15 Guilty Plea negotiated 25 year plea Bargain
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO - was not told I could Appeal the Guilty plea
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. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NO
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel did not file a Notice of Appeal
- (b) My Counsel didn't tell me I had 10 days to change My plea;

- 11
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel Trial
 (b) Newly Discovered Evidence
 (c) _____

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

(a) My lawyer DID not Bring up issues that pertain to the case
 (b) My lawyer pushed me to plead Guilty on 3 charges I was not Guilty
 (c) _____

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

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

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. Post conviction Relief
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. General Session Greenville County
 ii. 1
 iii. _____
 iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

- i. _____
- ii. _____ *N/A*
- 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?

_____ *N/D*

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. _____
- ii. _____ *N/A*
- 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) Ineffective Assistance of Counsel
 (b) Court Appointed Counsel failed to raise ISSUES
 (c) Newly Discovered Evidence

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

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

N/O

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. Caroline Holbeck esq.
 ii. _____
 iii. _____

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

- i. Plea and Sentencing
 ii. Mental Health Evaluation hearing
 iii. _____

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

Vacate Petitioner's sentence and overturn All rulings
And have New Trial and or have sentence Reduced

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

Charges pending in Spartanburg, Anderson
And Easley SC

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Charles Benjamin Proffitt 260785, 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.

Charles Proffitt

SWORN to and subscribed before me this 17th
 day of November, 2016.

Lucian Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

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

I, Charles Proffitt #260785, 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.

Charles Proffitt
Applicant

SWORN or affirmed to and subscribed before me this
17th day of November, 2016.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Charles Benjamin Proffitt, Jr., #260785,	)	2016-CP-23-7617
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on December 28, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In October 2014, the Greenville County Grand Jury indicted Applicant for two counts of shoplifting (2014-GS-23-9503, -9504). Applicant was subsequently indicted in January 2016 for failure to stop for a blue light, second offense (2014-GS-23-11426), two counts of armed robbery and possession of a weapon during the commission of a violent crime (2014-GS-23-11427, -11430), two counts of kidnapping (2014-GS-23-11428, -11432), two counts of conspiracy (2014-GS-23-11429, -11433), and one count of carjacking (2014-GS-23-11431). Caroline M. Horlbeck, Esquire represented Applicant. Solicitors Christine Sustakovitch, Esquire, and Andrew Culbreath, Esquire prosecuted the case. On January 14, 2016, Applicant pleaded guilty as indicted to both counts of shoplifting, both counts of armed robbery, both counts of kidnapping, both counts of conspiracy, one count of failure to stop for a blue light, one count of carjacking, and one count of possession of a weapon during the commission of a violent crime before the Honorable Edward W. Miller. Pursuant to a negotiated sentence, Judge

Miller sentenced Applicant to imprisonment for concurrent terms of twenty-five years each for both counts of armed robbery, twenty-five years each for both counts of kidnapping, twenty years for carjacking, ten each years for both counts of shoplifting, five years each for both counts of conspiracy, five years for failure to stop for a blue light, and five years for possession of a deadly weapon during the commission of a violent crime with credit for time served. Applicant did not appeal his conviction or sentence.

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

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel," in that:
 - a. Counsel "did not bring up issues that pertained to the case;"
 - b. Counsel "pushed" Applicant "to plead guilty on 3 charges" Applicant was not guilty of; and
2. "Newly Discovered Evidence."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having

produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither 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, 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].

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Applicant further claims newly discovered evidence entitles him to post-conviction relief. Applicant must make a prima facie showing that he is in actual possession of new evidence and that the new evidence likely would have changed the outcome at trial. While under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained, Applicant has failed to set forth with any specificity how it would have affected the outcome if used at trial or why such alleged evidence was not readily discoverable at the time of trial or his previous PCR action. Before the Court will hold an evidentiary hearing, the Applicant must make a prima facie showing that he is entitled to relief. 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).

Respondent submits that Applicant cannot make a prima facie showing he is in actual possession of new evidence that would likely have changed the outcome of his conviction. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. Pro se filings will not be considered at the

PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VI.

Respondent also hereby moves for a more definite statement regarding Applicant's allegations of ineffective assistance of counsel and newly discovered evidence. Applicant has failed to sufficiently set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VII.

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

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and newly discovered evidence.

[Signature block on following page]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: D. J. M.
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 22, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2016-CP-23-7617

CHARLES BENJAMIN PROFFITT, JR., 260785)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

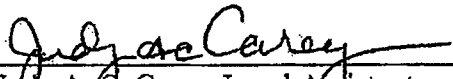
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Rodney W. Richey, Esquire
 Post Office Box 10916
 Greenville SC 29603

DATED this 22nd day of June, 2017.


 Judy A. C. Carey, Legal Assistant
 For Respondent

INTEGRATED

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2016-CP-23-7617
)
) ORIGINAL
)
CHARLES BENJAMIN PROFFITT)
APPLICANT) TRANSCRIPT OF RECORD
vs.)
THE STATE OF SOUTH CAROLINE)
RESPONDENT)

December 12, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

RODNEY RICHEY, ESQ.
Attorney for the Applicant

DESHAWN MITCHELL, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

1 THE COURT: Yes, sir.

2 MR. MITCHELL: May it please the Court, Your
3 Honor. This is 2016-CP-23-7617, Charles Ben Proffitt
4 vs. The State of South Carolina. The Applicant is
5 the presently confined in the South Carolina
6 Department of Corrections pursuant to Orders of
7 Commitment by the Greenville County Clerk of Court.
8 On October 2014, the Greenville County Grand Jury
9 indicted The Applicant for two counts of shoplifting.
10 He was subsequently indicted on January 2016 for
11 failure to stop for a blue light, second offense, two
12 counts of armed robbery and possession of a weapon
13 during the commission of a violent crime. Two counts
14 of kidnapping, two counts of conspiracy and one count
15 of carjacking. Ms. Caroline Horlbeck represented The
16 Applicant.

17 On January 14th, 2016, Applicant pled guilty as
18 indicted to both counts of shoplifting and the
19 remaining chargings as well. Before The Honorable
20 Edward W. Miller. Pursuant to a negotiated sentence,
21 Judge Miller sentenced Applicant to -- pardon me,
22 Your Honor, twenty-five years for armed robbery, five
23 years for conspiracy, 25 years for kidnapping, 20
24 years for carjacking and five years failure to stop
25 for a blue light and 10 years for shoplifting. He's

1 present in the courtroom today represented by
2 Mr. Richey.

3 THE COURT: Okay, Mr. Richey.

4 MR. RICHEY: Thank you, your Honor, may it
5 please the Court. Your Honor, my client has
6 requested I ask for a continuance on this case. I
7 will tell the Court, just brief background. This
8 case has been continued two other times. I will say
9 one time it was asked from us and one time
10 Ms. Horlbeck had some issues in her family.

11 My client is in protective custody at SCDC now.
12 Apparently, there was some big fight down there
13 between some gangs and he got injured, he filed a
14 case against the Department of Corrections. He's
15 telling me during this altercation, he had had all
16 this application, all this stuff for his case, it was
17 somehow taken by them, he got moved to a different
18 facility and during the move he lost all of his
19 entire file, his discovery, everything. So, he is
20 asking me to ask the Court to continue the case. And
21 also, Your Honor, he claims that pursuant to this
22 lawsuit, that one of the other individuals in the
23 lawsuit has actually settled with SCDC.

24 And it's his position that if the case is
25 continued, he'd go out and retain an attorney. He's

1 talking about retaining me but I told him I couldn't
2 because I got assigned on it. But that's his
3 position. And he just doesn't have any of his stuff
4 and that's what he's indicating to me.

5 THE COURT: Okay. Well, Mr. Richey, do you have
6 a corresponding copy of all those discovery
7 materials?

8 MR. RICHEY: No, I don't have a copy of those
9 discovery materials. Your Honor, I basically have
10 the transcript, the information that was provided to
11 me. I will say that -- I will say that that's the
12 information that I have.

13 THE COURT: So, they weren't discovery
14 materials, they were just records that he maintained?

15 MR. RICHEY: They were records that -- he
16 claimed that he had some statements in there from
17 individuals that would exonerate him. I haven't seen
18 those statements but he indicates that to me that's
19 what he had along with all the other information.
20 And I will tell the Court, for the past couple of
21 weeks he hasn't been showing up on the SCDC website.
22 I mean, he's almost been invisible. So, we finally
23 figured out what happened.

24 THE COURT: What are the allegations,
25 ineffective assistance of counsel?

1 MR. RICHEY: Yes, sir.

2 THE COURT: Okay.

3 MR. RICHEY: He's just saying that his lawyer
4 was ineffective. That she -- that he told her that
5 he was not guilty of the two armed robberies. He
6 claimed that in his information he had statements
7 from people saying he was actually, in fact, innocent
8 of the charges. I'm not aware if Ms. Horlbeck has
9 any of those statements that someone saying that he
10 was innocent of the case. I'm not. . .

11 THE COURT: Okay. Well, here's what I'm going
12 to do. I want to go ahead and proceed with the
13 hearing. I deny the request for a continuance.
14 However, what I'll do is after I hear the application
15 and hear the introduction of evidence and after I
16 review the transcript of record, if I feel that it's
17 appropriate and necessary to leave the record opened
18 for the submission of additional documents, then I'll
19 do that. But let's see at a threshold whether any of
20 that is necessary or appropriate. Okay?

21 MR. RICHEY: Okay. Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 MR. RICHEY: Okay, we call Mr. Proffitt.

24 THE CLERK: Mr. Proffitt, please step over to
25 the witness stand and place your left hand on the

CHARLES PROFFITT-DIRECT BY MR. RICHEY

1 Bible, raise your right hand.

2 CHARLES PROFFITT, after being duly

3 sworn{,} testified as follows:{F}.

4 THE CLERK: Thank you, you may be seated. State
5 your name for the record.

6 THE WITNESS: Charles Benjamin Proffitt.

7 DIRECT EXAMINATION

8 BY MR. RICHEY:

9 Q Mr. Proffitt, are you currently in the
10 Department of Corrections?

11 A Yes, sir, I am.

12 Q And what are you in there for?

13 A I'm in there for two counts of armed robbery,
14 two counts of criminal conspiracy, carjacking, two counts
15 of shoplifting and possession of a weapon during a violent
16 crime.

17 Q Did you have a trial on any of those cases?

18 A No, sir, I didn't.

19 Q Did you plead guilty?

20 A Yes, sir, I did.

21 Q Who represented you on those cases?

22 A Ms. Caroline Horlbeck.

23 Q Is that the lady sitting in the courtroom today?

24 A Yes, sir.

25 Q Okay. And you filed a case for post-conviction

CHARLES PROFFITT-DIRECT BY MR. RICHEY

1 relief, correct?

2 A Yes, I did.

3 Q And it's your position that you believe that
4 Ms. Horlbeck did not effectively represent you; is that
5 correct?

6 A Yes, sir.

7 Q And in this case, there was a 25 year plea
8 offer, negotiated sentence; is that correct?

9 A Yes, sir, it was.

10 Q And you pled to that negotiation, correct?

11 A Yes, sir, I did.

12 Q Can you -- do you feel like you were forced or
13 anything to plead guilty at all?

14 A At the time I was on medication from the county
15 jail. I was placed on the highest dosage of medicine that
16 they gave me since being sent to SCDC. They took me off
17 that medication. I wasn't on it but the whole time I was
18 in the county. The whole proceedings was a haze to me,
19 mostly. And I would have never pled guilty if I wouldn't
20 have been on that medication.

21 Q Now, you -- right now you are in protective
22 custody, correct?

23 A Yes, sir, I am.

24 Q And that's because of an altercation down there,
25 correct?

CHARLES PROFFITT-DIRECT BY MR. RICHEY

1 A Yes, sir.

2 Q And so you filed a lawsuit against the
3 Department of Corrections?

4 A Yes, sir, I did.

5 Q And that was for a fight that somebody jumped
6 you, correct?

7 A Yes, sir.

8 Q All right. And you told Ms. Horlbeck that you
9 were innocent, correct?

10 A Yes, sir, I did. I even had two witnesses, two
11 statements in my motion discovery. She did contact one of
12 the witnesses and spoke with them.

13 Q Okay. And after speaking with them she didn't
14 want to call them as a witness in the trial?

15 A She told me that -- that if I pled guilty -- or
16 if I, excuse me, if I didn't plead guilty to the other
17 armed robbery, that they were going to find me guilty any
18 way of the other one. So, I mine as well plead guilty to
19 both of them. Because if not, I would receive a natural
20 life sentence without the possibility of parole.

21 Q Were you ever served a notice to seek life in
22 the case?

23 A Yes, sir, I was.

24 Q And so, when you got that notice, Ms. Horlbeck
25 told you to plead, basically get off and underneath that

CHARLES PROFFITT-DIRECT BY MR. RICHEY

1 notice; is that correct?

2 A Basically, yes, sir.

3 Q That's basically what it was?

4 A Yes, sir, it was.

5 Q Okay. And it is your position you didn't -- why
6 didn't you still go to trial?

7 A Like I was saying, I got placed on this
8 medication at the time. And I was wanting to try to get
9 it worked down as much as possible. Because a few of the
10 charges I was guilty on. And I was hoping that we could
11 work some kind of deal out with that. But at the time
12 when it came so fast and she came to me with the solicitor
13 and, you know, they wanted to work this deal out. So, I
14 just -- I felt -- I tried to take her in front of the
15 disciplinary board. I tried to get a different lawyer
16 assigned to my case. They refused to take her off my case
17 and put her -- another lawyer on my case. So, I felt that
18 there was no way I was going to be able to get her off my
19 case without pleading guilty any way. So, coming back on
20 a PCR. So, that would be the only way I could get her off
21 my case.

22 Q So -- so, the cases you had, the two shoplifting
23 cases, you're saying you were guilty of those?

24 A Yes, sir, I was.

25 Q And the failure to stop?

CHARLES PROFFITT-DIRECT BY MR. RICHEY

1 A Yes, sir.

2 Q But the two robberies you're not guilty on,
3 correct?

4 A No, sir.

5 Q And one of the robberies where they said that
6 you all took the car from the lady and all of that, you're
7 saying you're not guilty of that charge?

8 A Yes, sir.

9 Q And your basis for that was what?

10 A That I told her that it was -- it was a drug
11 situation at the time. And that the female came to
12 purchase some drugs from me. You know, there was never
13 any point that I took her anywhere. We got into our
14 argument. I told her -- I made her get out of the car and
15 I left in her vehicle. That's all it was. It was never a
16 robbery. That what I was trying to explain to
17 Ms. Horlbeck. But she was -- had a study saying that I
18 had fired a weapon at a Greenville County Police deputies.
19 And that was what her and the solicitor's main objective
20 was was saying that if I didn't plead guilty, that they
21 were going to give me a natural life sentence without the
22 possibility of parole, due to me firing my weapon at the
23 deputies. My whole thing was I never was charge with
24 firing any weapon at any deputies at any point in time.
25 And she kept pushing the issue about that. And I was

CHARLES PROFFITT-CROSS BY MR. MITCHELL

1 never charged with any crime for that.

2 Q So, you want this Court to grant you a new
3 trial?

4 A Basically, yes, sir.

5 Q Okay. And you understand that at a new trial,
6 you could conceivably be exposed to a life sentence?

7 A Yes, sir.

8 Q But it is your position that you are not guilty
9 and you want a new trial; correct?

10 A Yes, sir, it is.

11 Q Okay. And do you believe that if Ms. Horlbeck
12 had effectively represented you, then the outcome of your
13 case would have been different?

14 A Yes, sir, I do.

15 Q Do you believe that you would have not be found
16 guilty on the robberies but guilty of the other stuff?

17 A Yes, sir.

18 MR. RICHEY: Okay, thank you. Answer any
19 questions that the Attorney General has.

20 MR. MITCHELL: May it please the Court, Your
21 Honor.

22 CROSS-EXAMINATION

23 BY MR. MITCHELL:

24 Q Good morning, Mr. Proffitt, how are you?

25 A I'm all right.

CHARLES PROFFITT-CROSS BY MR. MITCHELL

1 Q Do you remember your guilty plea?

2 A Vaguely.

3 Q Vaguely?

4 A Yes, sir.

5 Q Okay. Do you remember the Judge asking you if
6 you had taken prescription medication in the past 24
7 hours?

8 A No, sir.

9 Q You don't remember that? So, would it surprise
10 you if you answered that question, No?

11 A No, it wouldn't surprise me at all.

12 Q Because you don't remember?

13 A Right.

14 Q Okay. How many times did you meet with
15 Ms. Horlbeck prior to pleading guilty?

16 A I want to say about four times.

17 Q Okay. And did she go over the discovery in the
18 case with you, the evidence against you?

19 A We -- every time she came we kind of had more or
20 less of a heated discussion. She never lasted more than
21 five minutes there. I felt that -- that was the whole
22 reason I was trying to get her off my case because we
23 couldn't agree on anything at the time.

24 Q So, the question I asked was, So, she didn't go
25 over the discovery with you?

CHARLES PROFFITT-CROSS BY MR. MITCHELL

1 A She sent her paralegal to go over the discovery
2 with me.

3 Q Okay. Did you guys ever talk about any possible
4 defenses to your case?

5 A Yes, sir. I spoke with her about the witnesses.
6 I also gave her the phone number and showed her the
7 statements that the witnesses wrote saying that I wasn't
8 guilty. That they actually brought the victim to meet us.
9 And they were willing to testify and say that, you know,
10 that that wasn't what happened. You know, she decided to
11 send me for a mental health evaluation. I went down there
12 and took an evaluation and came back. That was basically
13 it.

14 Q So, you took the evaluation, what were the
15 results of the evaluation, they find that you were
16 competent?

17 A Yes, sir.

18 Q Okay. So, you said you don't remember the Judge
19 asking you if you were under the influence of any
20 medication at all, do you remember the Judge telling you
21 the charges that you were pleading to and the sentences
22 for them?

23 A Well, at the time, they brought three of us in
24 to sentence us at one time. And I remember that. It
25 wasn't just me, it was two other inmates. But during that

CHARLES PROFFITT-CROSS BY MR. MITCHELL

1 time everything was happening so fast. Like I said, I was
2 on the highest milligrams of these mental health
3 medications that the county had put me on. And, you know,
4 I did remember saying something to Ms. Horlbeck about
5 that. And she told me if I said anything as far as
6 medication or anything like that, I remember her telling
7 me not to say that or the Judge might not take my plea. I
8 do remember that.

9 Q So, it is your contention that you don't
10 remember any of the questions that the Judge asked you
11 that day?

12 A I don't remember too much. I was so comatosed.
13 I'd say, on these meds. I should have never been on them
14 anyway.

15 Q Are you still on those meds?

16 A No, sir, I'm not.

17 Q So, you were on them then but you're not on them
18 now?

19 A I got put on 30 days before I bonded out of
20 jail. And when they brought me back to the county jail,
21 they placed me back on these meds. As soon as I left the
22 county and I went to SCDC, they took me off of them. The
23 doctor said that I wasn't supposed to be on any meds like
24 that and they took me off of them.

25 Q And then prior to going to court or being in

CAROLINE HORLBECK-DIRECT BY MR. RICHEY

1 county, had you been on medication before?

2 A No, sir.

3 MR. MITCHELL: Thank you, Judge, that's all the
4 questions I have for him.

5 MR. RICHEY: No other questions.

6 We call Ms. Horlbeck.

7 THE COURT: All right, thank you, Mr. Proffitt
8 you may step down.

9 MR. PROFFITT: Thank you.

10 THE CLERK: Mrs. Horlbeck, place your left hand
11 on the Bible and raise your right.

12 Caroline Horlbeck{,}after being duly
13 sworn{,}testified as follows:{F}

14 THE CLERK: Thank you, please state your full
15 name for the record.

16 THE WITNESS: Caroline Horlbeck.

17 DIRECT EXAMINATION

18 BY MR. RICHEY:

19 Q Ms. Horlbeck, do you remember representing
20 Mr. Proffitt in this case?

21 A I do.

22 Q And you were in the courtroom during his
23 testimony; is that correct?

24 A Yes.

25 Q Okay. And this was a 25 year negotiated plea,
correct?

CAROLINE HORLBECK-DIRECT BY MR. RICHEY

1 A That's correct.

2 Q And you heard him say that there were statements
3 that you had to show that he was not guilty of this case?

4 A That's correct.

5 Q And do you have those statements?

6 A I do.

7 Q And who are they from?

8 A During one of my conferences with Mr. Proffitt,
9 he had asked that I contact a couple of his witnesses.
10 And he gave me the names. One of the witnesses we had
11 trouble contacting but we were eventually able to contact
12 her. My notes I -- I don't remember exactly -- exactly
13 when he gave me these names but my notes show that he gave
14 me new contact information for Brook Bagwell. And also
15 contact information for Shane Hudson. He gave me this
16 information on December the 18th, 2015. And I -- we --
17 let's see. I have that my paralegal tried to call
18 Ms. Bagwell on December the 17th and just got a message
19 that she was not accepting -- or her phone number was not
20 accepting phone calls at that time. There was no option
21 to leave a voice mail. But we were able -- we contacted
22 her again on the 18th of December and the phone still
23 wasn't accepting any messages. We were able to get in
24 touch with Ms. Bagwell on the 21st of December 2015. And
25 she -- my paralegal's notes on the conversation and also

CAROLINE HORLBECK-DIRECT BY MR: RICHEY

1 Ms. Bagwell came in -- we have what I believe is a written
2 statement from her. And we have a statement from
3 Mr. Hudson, Shane Hudson. And that was dated August the
4 6th of 2015.

5 Q Are those statements, do you recall, favorable
6 to Mr. Proffitt?

7 A Yes.

8 Q Okay. And with those favorable statements,
9 could you tell me why he decided to plead guilty?

10 A I don't -- there were a couple of armed
11 robberies and I don't have any record that he asked me to
12 contact any witnesses on the -- there were two armed
13 robbery charges. There was--

14 Q The witnessed you referred to --

15 A The witnesses that I'm referring to have to do
16 with the Lonnie Riddle armed robbery. And I believe that
17 that one happened --

18 Q That's not the lady's case that --

19 A No, I don't have any witnesses from -- there
20 were two armed robberies. One involved Lonnie Riddle and
21 the other one involved a lady who claimed that she had
22 been kidnapped, her dog was put out the window and they
23 took her car.

24 Q Right.

25 A I don't have any statements on the young lady's

CAROLINE HORLBECK-DIRECT BY MR. RICHEY

1 case and was not given any witnesses to contact on that.
2 But I did have the witnesses to contact on the Lonnie
3 Riddle case. Mr. -- from my recollection, Mr. Proffitt,
4 when I met with him after -- and he had a couple of groups
5 of charges. He was originally arrested in 2013. Was
6 charged with an attempted murder, possession of a weapon
7 and two probation violation cases. While he was in the
8 jail he was charged with indecent exposure. He bonded
9 out, he got two shopliftings and another charge.

10 And we had worked out a 10 year sentence on
11 all those charges. And he bonded out and that's when he
12 got the two kidnappings, the two armed robberies,
13 possession of a weapon, drug charge and a failure to stop.
14 When I first met with him he asked me to work out a 25
15 year sentence. Initially, I was not able to do that. The
16 only sentence they would offer -- or the only negotiations
17 they would offer was 30 years. Then the solicitor's
18 office started threatening life without parole. And sent
19 me a letter to that effect. Which I shared with
20 Mr. Proffitt.

21 Then it went to 40 years. We finally got
22 them down to 25. And I think that Mr. Proffitt just, I
23 don't know exactly but I think he just weighed everything,
24 we got it down to 25, which is what he had originally
25 asked me to work out and he decided to plead.

CAROLINE HORLBECK-DIRECT BY MR. RICHEY

1 Q You have those two statements?

2 A I do.

3 Q And this is Shane Hudson?

4 A Yeah, there you go.

5 Q So, you don't have any statements on the second
6 robbery, correct?

7 A Not from witnesses that he -- I don't have any
8 notes that he had any witnesses for me to contact on that
9 robbery involving the young lady. So no, I don't have any
10 of those.

11 MR. RICHEY: Judge, the Court -- we would like
12 copy of the statements and make them a part of the
13 record if we could? Those witnesses.

14 THE COURT: Any objection to that, sir?

15 MR. MITCHELL: No objection, Your Honor.

16 THE COURT: Okay. All right. So, we'll -- you
17 want a copy of them and make the copy exhibits?

18 MR. RICHEY: Yes, sir, if we could.

19 THE COURT: All right.

20 THE CLERK: Can I do it right now?

21 THE COURT: Yeah, you can do it right now.

22 (WHEREUPON, Applicant's Exhibit No. 1 was marked
23 for identification and received into evidence.)

24 BY MR. RICHEY:

25 Q Ma'am, based on your experience and practicing

CAROLINE HORLBECK-CROSS BY MR. MITCHELL

1 law, do you believe that the statement -- the case that he
2 has statements on, that he would have an opportunity to
3 win that case at trial?

4 A It's possible. I mean, I don't know for sure.
5 That's the thing. And he knew that. But we reviewed
6 these statements, I would have gone over those statements
7 with him. I think from what you're telling me, he had a
8 copy of them in his materials that SCDC snagged from him.
9 But yeah, if the jury found their testimony persuasive,
10 yeah, it's certainly possible he could have won on that
11 charge.

12 Q But y'all did kind of go -- all as one because
13 that was the main thing, right?

14 A That was -- that was the goal from the
15 beginning. But Mr. Proffitt did, when The State would not
16 negotiate and offer him negotiations that he was happy
17 with, then we started calling, you know, calling his
18 witnesses and the posture changed from working out a plea.
19 Then when they came down from 25 years, I think that's
20 when Mr. Proffitt made his decision to plead.

21 MR. RICHEY: All right, thank you. Answer any
22 questions the attorney general has.

23 MR. MITCHELL: Very briefly, Your Honor.

24 CROSS-EXAMINATION

25

CAROLINE HORLBECK-CROSS BY MR. MITCHELL

1 BY MR. MITCHELL:

2 Q Ms. Horlbeck, you were appointed this case,
3 correct?

4 A I was.

5 Q Okay. Do you recall how many times you met with
6 Mr. Proffitt?

7 A I had to -- I wrote it down because I had to
8 respond to in a letter to Columbia. So, I do have all
9 these dates written down. I have on or about November the
10 27th, 2013, January the 9th, 2014, January the 10th, 2014,
11 April 18th, 2014, May 6th 2014, June the 12th, 2014, July
12 the 21st, 2014, October the 10th, 2014, October the 30th,
13 2014, November 13th, 2014, November the 14th, 2014,
14 January 9th, 2015, February 12th, 2015, April the 24th,
15 2015, June the 29th, 2015, July the 10th, 2015, July the
16 13th, 2015 and August the 14th, 2015.

17 Q Okay. I'm not good at math but that's about 19
18 to 20 times.

19 A And that may include some court. That probably
20 includes some court appearances.

21 Q Okay, fair enough. During your conversations
22 with Mr. Proffitt, were there ever any issues of
23 competency or he didn't seem to understand you?

24 A No, I didn't believe there were any. Obviously,
25 I'm not a medical doctor. So -- and some of the things

CAROLINE HORLBECK-CROSS BY MR. MITCHELL

1 that Mr. Proffitt had said about medication and drug usage
2 and things like that, did make me wonder if that was a
3 substantial issue. So, we had a hearing in front of Judge
4 Miller on July the 10th of 2015 and Judge Miller ordered
5 that Mr. Proffitt be evaluated. And we -- sorry, I'm
6 flipping around but we got--

7 Q That's okay. But if you could just tell me--

8 A He was found competent and also had -- and it
9 was also found that he had the capacity to conform his
10 conduct to the letter of the law. And I think we got
11 that -- we got that letter back, I think, towards the end
12 of 2015. And that was a big issue for Mr. Proffitt. He
13 really did not believe that he was competent. And he did
14 not believe that he had capacity to stand trial. So, when
15 the -- when the doctors evaluated him and gave us that
16 letter saying that he was competent and he did have
17 capacity, I think that may have persuaded him to plead.

18 Q Let me ask you this, during your several times
19 that you met with him, is it fair to say that you went
20 over the evidence in the case and the charges that he was
21 facing and the sentences?

22 A Yes, sir. And the paper evidence is easy to go
23 over. There are a number of videos that I sent my
24 paralegal down to the jail to review with Mr. Proffitt.
25 And her notes indicate that he said that he did not want

CAROLINE HORLBECK-CROSS BY MR. MITCHELL

1 to review those with her.

2 Q Okay. And did you guys ever discuss any
3 possible defenses in the case at all?

4 A We talked about the witnesses in the Lonnie
5 Riddle case. The statement from Shane Hudson and also the
6 statement from Hannah Bagwell. Those were the -- we
7 talked -- and the competency defense as well. Yes, we
8 discussed all of that.

9 Q Okay, let me ask you this. Was it The State --
10 did The State want to package these crimes together into a
11 deal or how did the plea negotiations, I guess, start to
12 work out?

13 A They started out with a -- an offer from
14 Mr. Proffitt to The State to wrap everything up into a 25
15 year deal. Which I guess passed along to The State. I
16 have a letter, a plea offer letter, dated May the 28th,
17 2015. Offering a negotiated sentence of 30 years if he
18 pled to the robberies, the kidnappings, carjacking,
19 possession of a weapon, conspiracy and a shoplifting.

20 Q And you conveyed that offer to him, correct?

21 A Yes. And he wasn't happy with that offer. And
22 then I have a letter dated July the 20th 2015, indicating
23 their intent to seek life without parole on the charges of
24 armed robbery, carjacking and kidnapping. Based on some
25 of his prior convictions. I don't have that this

CAROLINE HORLBECK-CROSS BY MR. MITCHELL

1 letter -- the letter that I have, though, is not signed.
2 I don't know if that was given to Mr. Proffitt as part of
3 his discovery package that we mailed out to him when we
4 mailed it to him in December of 2016, after he was
5 incarcerated. I don't know if they actually ever filed
6 that or they just threatened to.

7 Q Okay.

8 A Then I have notes from January the 9th, 2015
9 with some kind of verbal offer from The State for 40
10 negotiated or straight-up, no negotiations. And then
11 finally, we got them down to 25.

12 Q Which is what he requested in the beginning?

13 A Initially, yes.

14 Q Okay. And he decided to take that?

15 A Yes, sir.

16 Q Okay. And let me just lastly ask you, the date
17 of the guilty plea, did you have any concerns about
18 whether he seemed out of it or anything like that?

19 A No, he didn't seem -- not that I recall. He
20 seemed as if he understood everything that I said to him,
21 he understood everything that The Court said to him. I
22 didn't have any concerns, especially after he had been
23 evaluated and found competent to stand trial. And also,
24 found to have capacity.

25 MR. MITCHELL: Thank you, Ms. Horlbeck.

CAROLINE HORLBECK-REDIRECT BY MR. RICHEY

REDIRECT EXAMINATION

1

2 BY MR. RICHEY:

3 Q Ms. Horlbeck, did Mr. Proffitt file a motion to
4 have you relieved?

5 A Yes, sir.

6 Q And are you aware that his co-defendant had his
7 cases dismissed against him?

8 A No, I was not aware.

9 MR. RICHEY: Thank you.

10 A Do you know -- well, I'm not supposed to ask
11 questions, nevermind.

12 THE COURT: Okay.

13 MR. MITCHELL: No further questions, Judge.

14 THE COURT: Thank you, Ms. Horlbeck, I
15 appreciate it.

16 Anything further from The Applicant?

17 MR. RICHEY: No, Your Honor.

18 THE COURT: Anything from The State?

19 MR. MITCHELL: Nothing from The State, Your
20 Honor.

21 THE COURT: Anything y'all need to put on the
22 record before we conclude?

23 MR. MITCHELL: I don't think so, Judge.

24 THE COURT: Mr. Richey, anything?

25 MR. RICHEY: No, Your Honor.

1 THE COURT: Okay. All right, I'm going to
2 respectfully deny the motion for the application for
3 post-conviction relief. The position of --

4 Mr. Proffitt, your position is inconsistent with
5 the guilty plea transcript. As I read the guilty
6 plea transcript, there was a very thorough colloquy
7 that took place. That is, there were questions that
8 were asked that specifically addressed the issues
9 that you have brought to the court. That is any
10 usage of drugs, any mental incapacity. Also,
11 additional questions bearing upon whether you
12 acknowledged guilt or not. Now, at the time you were
13 under oath and you answered those questions very
14 clearly without equivocation. Indicated to The Judge
15 that, in fact, you were guilty and you weren't
16 raising any defenses.

17 Now, I see that there may have been statements
18 in one of the cases which you could have taken to a
19 jury and you could have presented as evidence in the
20 case. Could have called those witnesses to the
21 stand. And you specifically waived your right to do
22 that. And it's very clear from the record that you
23 waived your right to do that after having been
24 explained that, of course, it was your right to go
25 before the court. You can't have your cake and eat

1 it too. I mean, if you come into the court and you
2 raise your right hand and you take an oath to tell
3 the truth, and the Court goes through all of those
4 questions and you answer them clearly without
5 equivocation, you can't come back now and say I
6 didn't mean it, okay.

7 It seems to me on the whole, given your position
8 today, and given my review of the record in this
9 case, that you made an intelligent decision at the
10 time. An informed decision at the time based on all
11 of the factors outstanding. I don't blame you for
12 second guessing it, I don't blame you for bringing
13 this PCR. If I were in your shoes, I'd do the same
14 thing. I mean, why not? You got nothing to lose.
15 But you do have a little bit to lose. And that is if
16 I granted it, you'd go back to court and you'd have
17 to -- it wouldn't be I grant only on one charge, it
18 would be everything. And you would be, again, facing
19 the -- all of the time that -- that you were facing
20 initially. So, you actually, do have something to
21 lose if I were to grant it.

22 But I find that you haven't proved that
23 counsel's representation was deficient or that it
24 prejudiced you in any way. As a matter of fact, the
25 very clear, obvious, reading of the transcript in

1 this case, is that you made an informed and
2 intelligent decision at the time. And I will tell
3 you sitting here reading it, it was probably the
4 right decision. I wasn't there, I didn't review all
5 the evidence but it probably was the right decision
6 that you made at the time. It's a lot of time, I got
7 it. The Judge acknowledged that was a lot of time.
8 But based on what you had before you and the nature
9 of the charges and the amount of time that they
10 carried and the potential of life without the
11 possibility of parole, it was probably the smart
12 move. Okay.

13 MR. PROFFITT: Yes, sir.

14 THE COURT: Okay. Good luck to you, sir.

15 (WHEREUPON, the proceedings were concluded.)
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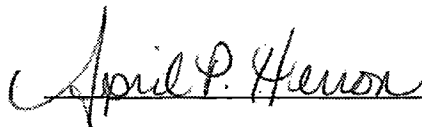
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
12th day of December, 2017.

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

June 11, 2018



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Charles Benjamin Proffitt, Jr., #260785,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-7617

ORDER OF DISMISSAL

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This matter comes before the Court by way of an application for post-conviction relief filed on December 28, 2016 by Charles Benjamin Proffitt, Jr (Applicant). Respondent made its Return on or about June 22, 2017. An evidentiary hearing into the matter was convened on December 12, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Plea Counsel Caroline M. Horlbeck, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records from the Department of Correction. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In October 2014, the

1/23/19

Greenville County Grand Jury indicted Applicant for two counts of shoplifting (2014-GS-23-9503, -9504). Applicant was subsequently indicted in January 2016 for failure to stop for a blue light, second offense (2014-GS-23-11426), two counts of armed robbery and possession of a weapon during the commission of a violent crime (2014-GS-23-11427, -11430), two counts of kidnapping (2014-GS-23-11428, -11432), two counts of conspiracy (2014-GS-23-11429, -11433), and one count of carjacking (2014-GS-23-11431). Caroline M. Horlbeck, Esquire represented Applicant. Solicitors Christine Sustakovitch, Esquire, and Andrew Culbreath, Esquire prosecuted the case. On January 14, 2016, Applicant pled guilty as indicted to both counts of shoplifting, both counts of armed robbery, both counts of kidnapping, both counts of conspiracy, one count of failure to stop for a blue light, one count of carjacking, and one count of possession of a weapon during the commission of a violent crime before the Honorable Edward W. Miller. Pursuant to a negotiated sentence, Judge Miller sentenced Applicant to imprisonment for concurrent terms of twenty-five years each for both counts of armed robbery, twenty-five years each for both counts of kidnapping, twenty years for carjacking, ten each years for both counts of shoplifting, five years each for both counts of conspiracy, five years for failure to stop for a blue light, and five years for possession of a deadly weapon during the commission of a violent crime with credit for time served. Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. "Ineffective Assistance of Trial Counsel," in that:
 - a. Counsel "did not bring up issues that pertained to the case;"
 - b. Counsel "pushed" Applicant "to plead guilty on 3 charges" Applicant was not guilty of; and
2. "Newly Discovered Evidence."

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the

applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). 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 the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty

plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Prior to testimony being taken, Applicant moved for continuance alleging he needed more time to produce documents. This Court denied that motion.

Applicant testified he met with Plea Counsel four times during her representation. He testified he was presented with a twenty-five year plea offer which he ended up taking. He testified he told his Plea Counsel he was innocent and wanted her to contact witnesses for him who could testify to his whereabouts during the crime. Applicant testified Plea Counsel did contact one witness for him. He testified he was under the influence of medication during his guilty plea and it influenced his decision making when he pled guilty. Applicant testified he did not remember the questions the plea judge asked him during his guilty plea. Applicant testified he was served with a notice of life without parole prior to pleading guilty. He testified he tried to have Plea Counsel removed from his case but was unsuccessful. Applicant later testified he was guilty of some of the charges but not the armed robbery.

Plea Counsel testified she was appointed to represent Applicant. She testified she met with him some nineteen or twenty times during her representation. Plea Counsel testified she had Applicant evaluated in 2015 and he was found to be competent. She testified during her meetings with Applicant she went over the discovery in the case, his charges and potential sentences. Additionally, Plea Counsel testified they discussed possible defenses. Plea Counsel testified the State served Applicant with a notice with its intent to seek life without parole on his charges. She testified she entered plea negotiations with the State on behalf of Applicant. Plea Counsel testified the State would only offer large sentences and she was finally able to get them down to twenty-five years. She testified she presented the plea offer to Applicant and he decided to take it. Plea Counsel also testified that she tried to contact two witnesses for Applicant. She testified she got in contact with both and was able to get a statement from one of the witnesses. Plea Counsel testified possibly using the statement at trial could have been helpful but Applicant ultimately decided to plead guilty.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel or any other constitutional deprivations entitling him to post-conviction relief. Applicant also failed to prove he was prejudiced by the alleged deficiencies.

This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. Additionally, Counsel conveyed the State's negotiated plea offer to Applicant which he ultimately took. This

6
R39

Court finds credible Counsel's testimony regarding Applicant evaluation and how he was found to be competent.

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and did not challenge the facts presented by the State at the plea. Applicant told the plea judge that he was satisfied with his attorney, that Counsel had done everything Applicant had asked of him, and he did not need any more time to discuss this matter with Counsel. Additionally, Applicant told the plea judge he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and

7/17/17

defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements."). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

Newly Discovered Evidence

Applicant alleged in his application that he had newly discovered evidence. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material facts not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C). A defendant requesting a new trial based on after-discovered evidence after a guilty plea must show:

- (1) The newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea to be vacated.

Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014). This Court finds there has been no showing of newly discovered evidence. Therefore, this allegation is dismissed and denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Reffer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21st day of March, 2018.


 ROBIN B. STILWELL
 Presiding Judge
 Thirteenth Judicial Circuit

Greenville South Carolina

009503

WITNESSES

Ramon Rivera

Greenville County Sheriffs Office

4/16/2014

DOCKET NO. 2014-GS-23-

ASC

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October TERM 2014

THE STATE

vs.

CHARLES BENJAMIN PROFFITT

ARREST WARRANT NUMBER
2014A2330202696

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

2877

SHOPLIFTING
(SENTENCING PURSUANT TO § 16-01-0057)

VIOLATION § 16-13-0110

ENTERED
ACCT.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR

SHOPLIFTING

(SENTENCING PURSUANT TO § 16-01-0057)

At a Court of General Sessions, convened on

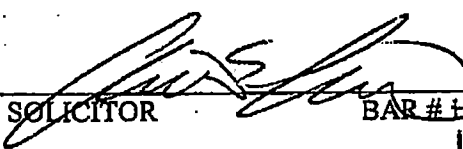
OCT 21 2014

the Grand Jurors of Greenville

County present upon their oath:

That CHARLES BENJAMIN PROFFITT did in Greenville County, on or about the 24th day of October, 2013, willfully and unlawfully take possession of, carry away, transfer to another person or from one area of a store to another area; alter, transfer, or remove the label or price tag or any other marking which aids in determining value affixed to any merchandise; transfer from its container to another container; and or willfully conceal certain merchandise to wit: a guitar valued at less than Two Thousand Dollars displayed, held, stored, or offered for sale by EASTSIDE GUITARS AND DRUMS, with the intent of depriving said merchant of the possession, use, or benefit of such merchandise without paying the full retail value. This is in violation of §16-13-0110 and §16-01-0057 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 101073

14107

009504

WITNESSES

Ramon Rivera

Greenville County Sheriffs Office

4/16/2014

DOCKET NO. 2014-GS-23-

ASC

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October

TERM 2014

THE STATE

vs.

CHARLES BENJAMIN PROFFITT

ARREST WARRANT NUMBER
2014A2310200089

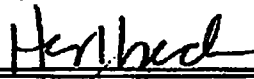
ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:



Indictment for

2877

SHOPLIFTING
(SENTENCING PURSUANT TO § 16-01-0057)

VIOLATION § 16-13-0110

ENTERED
ACCT.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 SHOPLIFTING
 (SENTENCING PURSUANT TO § 16-01-0057)

OCT 2 2014

At a Court of General Sessions, convened on
 County present upon their oath:

the Grand Jurors of Greenville

That CHARLES BENJAMIN PROFFITT did in Greenville County, on or about the 18th day of March, 2014, willfully and unlawfully take possession of, carry away, transfer to another person or from one area of a store to another area; alter, transfer, or remove the label or price tag or any other marking which aids in determining value affixed to any merchandise; transfer from its container to another container; and or willfully conceal certain merchandise to wit: a guitar valued at less than Two Thousand Dollars displayed, held, stored, or offered for sale by EASTSIDE GUITARS AND DRUMS, with the intent of depriving said merchant of the possession, use, or benefit of such merchandise without paying the full retail value. This is in violation of §16-13-0110 and §16-01-0057 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

BAR # 101073

14107

011426

DOCKET NO. 2014-GS-23-
ASC

The State of South Carolina

County of Greenville

[Signature]

COURT OF GENERAL SESSIONS

January

TERM 2014

2016

THE STATE

vs.

CHARLES BENJAMIN PROFFITT, JR.

WITNESSES

Darrell S Kicklighter

[Signature]

Greenville County Sheriffs Office

11/7/2014

ARREST WARRANT NUMBER
2014A2330210222

ACTION OF GRAND JURY

TRUE BILL

[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

2396

FAILURE TO STOP FOR A BLUE LIGHT

VIOLATION § 56-05-0750

ENTERED
ACCT.

FILED

DEC 22 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FAILURE TO STOP FOR A BLUE LIGHT

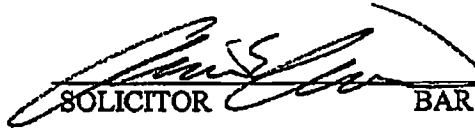
At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

JAN 05 2016

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 7th day of November 2014, willfully, knowingly, and unlawfully commit the offense of failure to stop for a law enforcement vehicle in that the said defendant while driving on a road, street or highway of the State did intentionally fail to stop when signaled to do so by a law enforcement vehicle using blue lights and/or siren. This is in violation of §56-5-750 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 14107

WITNESSES

Matthew Owens *My*

Greenville County Sheriffs Office

11/7/2014

ARREST WARRANT NUMBER

2014A2330210185, 2014A2330210188

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pate
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-
ASC

011127

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

January

TERM 2014

THE STATE

vs.

CHARLES BENJAMIN PROFFITT, JR.

Indictment for

0139, 0549

ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A

- VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

FILED

DEC 22 2014

Clerk of Court
Greenville County

ENTERED
ACCT. *JP*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on

JAN 05 2016

the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE

ARMED ROBBERY

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 3rd day of November, 2014, 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 would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: money, wallet, and cell phone from the person or presence of Lonnie Riddle. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 3rd day of November, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR

BAR # 14107

WITNESSES

Matthew Owens *MM*

Greenville County Sheriffs Office

11/7/2014

ARREST WARRANT NUMBER
2014A2330210186

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pate
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-
ASC

011428

The State of South Carolina

Jul
County of Greenville

COURT OF GENERAL SESSIONS

January TERM *2016*
2014

THE STATE

vs.

CHARLES BENJAMIN PROFFITT, JR.

/
Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

ENTERED
ACCT. *JCP*

FILED

DEC 22 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

JAN 05 2016

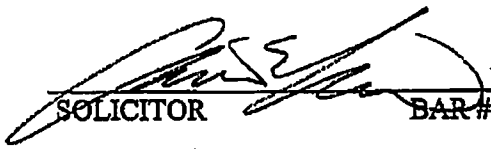
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 3rd day of November, 2014, unlawfully seize, abduct, confine, inveigle, decoy or carry away LONNIE RIDDLE, without the authority of law. This is in violation of §16-03-0910 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 14107

WITNESSES

Matthew Owens

Greenville County Sheriff's Office

11/7/2014

ARREST WARRANT NUMBER

2014A2330210187

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-
ASC

011429

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

January

TERM 2014

THE STATE

vs.

CHARLES BENJAMIN PROFFITT, JR.

Indictment for

CONSPIRACY

VIOLATION § 16-17-0410

FILED

DEC 22 2014

Clerk of Court
Greenville County

ENTERED
ACCT.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on **JAN 05 2016** the Grand Jurors of Greenville
County present upon their oath:

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 3rd day of November
2014, willfully and unlawfully combine with Michael John Hannan, III for the purpose of accomplishing an
unlawful object or a lawful object by unlawful means, to wit: Armed Robbery and/or Kidnapping. This is in
violation of §16-17-0410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 14107

011030

WITNESSES

Matthew Owens

Greenville County Sheriffs Office

11/7/2014

ARREST WARRANT NUMBER

✓ 2014A2330210210, 2014A2330210214

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Proch
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

ASC

The State of South Carolina

J. Proch
County of Greenville

COURT OF GENERAL SESSIONS

January

2014
TERM 2014

THE STATE

vs.

CHARLES BENJAMIN PROFFITT, JR.

✓ **Indictment for**

0139, 0549

**ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME**

VIOLATION § 16-11-0330 and § 16-23-0490

**ENTERED
ACCT. *JAP***

FILED

DEC 22 2014

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) INDICTMENT FOR
 ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **JAN 05 2016** the Grand Jurors of Greenville
County present upon their oath:

COUNT ONE

ARMED ROBBERY

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 6th day of November, 2014, 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 would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: 2002 Hyundai Sante Fe from the person or presence of Amanda Belk. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 6th day of November, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR BAR # 14107

WITNESSES

Matthew Owens *[Signature]*

Greenville County Sheriffs Office

11/7/2014

ARREST WARRANT NUMBER
2014A2330210211

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Red
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-

ASC

011431

The State of South Carolina

[Signature]
County of Greenville

COURT OF GENERAL SESSIONS

January TERM 2014 *2014*

THE STATE

vs.

CHARLES BENJAMIN PROFFITT, JR.

[Checkmark]
Indictment for

2599

CARJACKING

VIOLATION § 16-03-1075

ENTERED
ACCT. *[Signature]*

FILED

DEC 22 2014

Clerk of Court
Greenville County

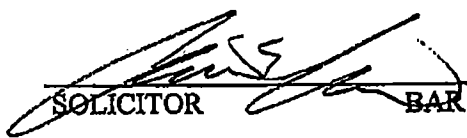
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CARJACKING

At a Court of General Sessions, convened on **JAN 05 2016** the Grand Jurors of Greenville
County present upon their oath:

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 6th day of November, 2014, take or attempt to take a motor vehicle, to wit: a 2002 Hyundai Sante Fe from AMANDA BELK by force, and violence or by intimidation while AMANDA BELK, was operating and/or was in the said vehicle. This is in violation of §16-03-1075 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 14107

WITNESSES

Matthew Owens *MM*

Greenville County Sheriffs Office

11/7/2014

ARREST WARRANT NUMBER
2014A2330210212

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Padgett
FOREMAN GRAND JURY
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-

ASC

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

January

TERM 2014

THE STATE

VS.

CHARLES BENJAMIN PROFFITT, JR.

Indictment for

KIDNAPPING

VIOLATION § 16-03-0910

ENTERED

ACCT. *AC*

011432

FILED

DEC 22 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

JAN 05 2016

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 6th day of November, 2014, unlawfully seize, abduct, confine, inveigle, decoy or carry away AMANDA BELK, without the authority of law. This is in violation of §16-03-0910 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 14107

WITNESSES

Matthew Owens *[Signature]*

Greenville County Sheriffs Office

11/7/2014

ARREST WARRANT NUMBER
2014A2330210213

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-
ASC

011433

The State of South Carolina

[Signature] County of Greenville

COURT OF GENERAL SESSIONS *2014*

January TERM, 2014

THE STATE

vs.

CHARLES BENJAMIN PROFFITT, JR.

[Signature]
Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

ENTERED
ACCT. *[Signature]*

FILED

DEC 22 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on

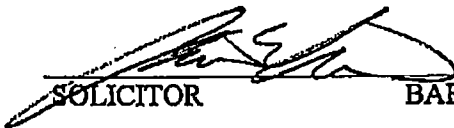
JAN 05 2016

the Grand Jurors of Greenville

County present upon their oath:

That CHARLES BENJAMIN PROFFITT, JR. did in Greenville County, on or about the 6th day of November 2014, willfully and unlawfully combine with Kristie Durham and/or Sophia Geary for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery, Kidnapping, and Carjacking. This is in violation of §16-17-0410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 14107