

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Richland County

Honorable William P. Keesley, Circuit Court Judge

THE STATE,

v.

JIMMY ODEL KANIPE,

RECEIVED
RESPONDENT MAY 31 2018
SC Court of Appeals

APPELLANT.

APPELLATE CASE NO. 2017-001411

RECORD ON APPEAL

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1 State of South Carolina) Court of General Sessions
County of Lexington) Eleventh Judicial Circuit

2

3 State of South Carolina,) Transcript of Record

4 vs.)

2017-GS-32-01599

5)

2016-GS-40-02657

6 Jimmy Odel Kanipe,)

7)

8 Defendant.)

9

10

June 8, 2017

Lexington, South Carolina

11

12 B E F O R E:

13 The Honorable William P. Keesley, Judge

14

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

16

Melanie F. Graham, Assistant Solicitor Lexington County

17 Lamar J. Fyall, Assistant Solicitor Richland County

18 Hallie M. Willm, Eleventh Circuit Public Defender

19 Jessica E. Sturgill, Fifth Circuit Public Defender

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Stacy S. Johnson

Circuit Court Reporter

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I N D E X

PAGE

Certificate of Reporter

9

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (Whereupon, the following proceedings were held on
2 June 8, 2017, beginning at 11:36 AM.)

3 **THE CLERK:** Jimmy Kanipe.

4 **THE COURT:** All right. This is the defense's motion.

5 **MS. STURGILL:** Yes, Your Honor.

6 **THE COURT:** Go ahead.

7 **MS. STURGILL:** Thank you. Does Your Honor have a
8 copy of the motion?

9 **THE COURT:** Yes, ma'am. I've got three copies of it.

10 **MS. STURGILL:** Great, Your Honor. Thank you.

11 May it please the Court? Jessica Sturgill on behalf
12 of Mr. Kanipe from Richland County. Your Honor, if I can
13 just do a brief rehash of what happened here, on April 25,
14 2017, we did a joint plea here in Lexington County for a
15 Richland County charge and a Lexington County charge.
16 Mr. Kanipe was sentenced to three years on the Richland
17 County charge and five years on the Lexington County to
18 run concurrent.

19 At the heart of this motion, Your Honor, is that
20 during that plea colloquy there were certain statements
21 about the victim in the Richland County case's position
22 that I, as defense counsel for Mr. Kanipe, was unaware
23 were going to be made or that even existed or were true
24 and that affected my ability to advise Mr. Kanipe in
25 making a knowing and voluntary plea. Similarly, that

1 affected what I relayed to Ms. Willm about what was going
2 to be happening here in that plea and our decision to do
3 a joint plea together.

4 Specifically, Your Honor, my understanding of the
5 plea negotiations with Mr. Fyall from the Richland County
6 Solicitor's Office was that he would be reducing the
7 charge to use of motor vehicle without permission, that
8 he would ask for concurrent time and restitution, however,
9 would stay silent otherwise. Before -- we spoke several
10 times throughout the course of several months beforehand
11 and that was my understanding. I did know -- he did tell
12 me before the plea that day that he had spoken with the
13 victim and that she wanted a significant amount of time,
14 however, I was unaware that that was going to be conveyed
15 to the Court and specifically in the way that it was,
16 Your Honor, just couched along with some allegations that
17 Mr. Kanipe had previously stolen items from the victim on
18 several occasions, and I had no knowledge of that, Your
19 Honor. Had I known, I would have wanted to get an
20 investigator to look into those allegations, possibly
21 investigate their truthfulness and also potentially
22 prepare some mitigation for that, Your Honor, and I did
23 not -- I was not able to prepare Mr. Kanipe for that or
24 let him know in our decision to plead guilty.

25 Your Honor, this understanding that I had I think

1 greatly impacted his ability to decide. Had we known,
2 we would have gotten an investigator, we would have done
3 more mitigation, we may not have pleaded, and we certainly
4 wouldn't have pleaded together. Your Honor, I think
5 that's where Ms. Willm's portion of this motion comes into
6 play is the decision to do a joint plea from -- from what
7 our understanding was of that plea agreement and of the
8 victim's position and I will pass on to her for that
9 portion.

10 **THE COURT:** Yes, ma'am.

11 **MS. WILLM:** May it please the Court, Your Honor?
12 Ms. Willm for -- representing Mr. Kanipe on the Lexington
13 County case. Your Honor, essentially it's exactly what
14 Ms. Sturgill indicated, which was just that we were not
15 aware of -- of any of the companion stuff that might have
16 come along with the Richland County -- Richland County
17 plea discussion and so had we known we likely wouldn't
18 have advised Mr. Kanipe to plead jointly with Richland
19 and would have just left it separate, how it originally
20 had been charged. We do join in the motion for that
21 purpose, which would be to have kept it just here in
22 Lexington County on its own because we do think that all
23 that information together did impact the ultimate
24 resolution.

25 **THE COURT:** What the State's position?

1 **MS. GRAHAM:** Thank you, Your Honor. Just very
2 briefly from the Lexington solicitor's office, as
3 defense counsel has pointed out, this matter was heard
4 on the 25th. The motion was timely filed on the last day,
5 May 5th, to reconsider or to withdraw the plea. The --
6 Defense Counsel Willm is absolutely correct. We had
7 conversations about this plea in advance where I
8 communicated that this would be a straight up plea. We
9 did not ask for time and I also communicated that the
10 victim to my knowledge would not be present with regard
11 to our plea.

12 I can't necessarily speak to whether or not Richland
13 County is able to get a victim in the courtroom and even
14 if we're not able to necessarily coordinate things like
15 that Your Honor knows full and well that a victim has the
16 right to come into this courtroom and be heard on the
17 record. You gave five years on the Lexington County
18 charge. There was no victim present. We do understand
19 the argument that a victim speaking on the Richland charge
20 impacted that statement, however, we don't necessarily
21 agree with that, Your Honor, and would ask that the
22 sentencing stand as is.

23 **MR. FYALL:** Thank you, Your Honor. May it please
24 the Court? The victims from the Richland case are here.
25 Depending on which way Your Honor rules, they would like

1 to address the Court. The State's position as far as
2 Mr. Kanipe's plea is that we did not take a position on
3 sentencing except that the charges be run concurrent. I
4 am obviously obligated to put the victims' statements on
5 the record if they wish me to put them on the record
6 and that's what I did in that instance. I did tell
7 Ms. Sturgill that the victim would be asking for the
8 full three years in that case and I spoke with them the
9 morning before or at least the afternoon -- the day before
10 the plea to confirm that, and that's it. I'll answer any
11 other issues Your Honor may have.

12 **THE COURT:** Anything else from the defense?

13 **MS. STURGILL:** Your Honor, I'm not contesting that
14 the victim certainly has the right to be heard and it
15 was my understanding that she would not be present and
16 her statements, some of which as in the allegations of
17 other crimes, I was completely unaware of, it's my
18 understanding that is the issue, I think, Your Honor, not
19 that she had a right to be heard. That is absolutely
20 something that defense counsel agrees with, but it was
21 not my understanding that she would be heard from and the
22 way that she was heard from and also in addition to these
23 other allegations of other thefts that we were not aware
24 of and did not investigate. I think that's all I have to
25 add, Your Honor.

1 **THE COURT:** Do you have anything else, Ms. Willm?

2 **MS. WILLM:** No, sir, Your Honor. I just agree that
3 the victim -- we very much agree that they have a right
4 to be heard. I believe it was just some of that extra
5 information, you know, we were just completely unaware of
6 that and it affected our decision and what we would have
7 done in pleading -- entering a plea together.

8 **MS. STURGILL:** Your Honor, I had spoken with
9 Mr. Kanipe about the possibility of trial, however, that
10 was something that we were considering and so I think
11 that did greatly impact his ability to make a knowing
12 and voluntary plea that day..

13 **THE COURT:** I'll notify you of a decision in writing.
14 Thank you.

15 **MS. WILLM:** Thank you, Your Honor.

16 **MS. STURGILL:** Thank you, Your Honor.

17 **MR. FYALL:** Thank you, Your Honor.

18 (Whereupon, the proceedings were concluded at
19 11:47 AM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 8th day of June, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 25, 2017

ISI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

1 State of South Carolina

Court of General Sessions

2 County of Lexington

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4 State)

5)
6 v.)

Transcript of Record
17-GS-32-1599

7 Jimmy Odell Kanipe)

8 Defendant.)

9
10
11 State of South Carolina

Court of General Sessions.

12 County of Richland

13 State)

14)
15 v.)

Transcript of Record
16-GS-40-2657

16 Jimmy Odell Kanipe)

17 Defendant.)

18
19
20 April 25, 2017

Lexington, South Carolina

21
22
23
24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

1 B E F O R E:

2 The Honorable William P. Keesley, Judge.

3

4

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

6 Melanie Graham, Assist. Solicitor

7 Lamar J. Fyall, Assist. Solicitor

8 Attorneys for the State

9 Hallie M. Willm, Assist. Public Defender

10 Jessica E. Sturgill, Assist. Public Defender

11 Attorneys for the Defendant

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I N D E X

WITNESSPAGE

(There were no witnesses.)

E X H I B I T S

NO.DESCRIPTIONID.EVD.

C-1

Waiver of Venue

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1 (The following proceedings were held on
2 April 25, 2017.)

3 **THE CLERK:** 2016-GS-40-2657, State versus Jimmy
4 Odell Kanipe, indicted for grand larceny between 2-
5 and \$10,000. He is pleading to use of vehicle
6 without permission with intent to deprive. He is
7 waiving presentment to the grand jury and
8 represented by Ms. Sturgill.

9 2017-GS-32-1599, State versus Jimmy Odell
10 Kanipe, indicted for possession of a stolen vehicle
11 between 2- and \$10,000. He is pleading as charged.
12 He is waiving presentment to the grand jury and
13 represented by Ms. Willm.

14 JIMMY ODELL KANIPE,
15 having been duly sworn, testified as follows:

16 **THE COURT:** Bear with me a second. I've got to
17 get jurisdiction in Richland County.

18 (Pause.)

19 **THE COURT:** Are you Jimmy Odell Kanipe?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** Did I pronounce your name
22 correctly?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** I have an indictment from Lexington
25 County that alleges that on or about November 30th,

1 2016, you received or possessed a stolen vehicle
2 that you knew or had reason to believe had been
3 stolen, the value of it being more than \$2,000, but
4 less than \$10,000.

5 Upon your arraignment on that charge, it
6 appears that you wish to waive presentment to the
7 grand jury and plead guilty; is that right?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** And I have an indictment from
10 Richland County that alleges that on or about
11 September the 22nd, 2015, you took and carried away
12 personal goods of Vivian Frye valued at more than
13 2,000, but less than \$10,000, described as a black
14 2008 Nissan Maxima, with the intent to deprive the
15 owner permanently of it and convert the goods to
16 your own use.

17 Upon your arraignment on that charge, it
18 appears that you wish to waive presentment to the
19 grand jury, waive your rights related to
20 jurisdiction, venue and attestation in Richland
21 County and enter a plea of guilty to use of vehicle
22 without permission with the intent to deprive; is
23 that correct?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Ms. Willm, you represent him on the

1 Lexington charge?

2 **MS. WILLM:** Yes, Your Honor.

3 **THE COURT:** Ms. Sturgill, do you represent him
4 on the Richland case?

5 **MS. STURGILL:** Yes, Your Honor.

6 **THE COURT:** Have you fully explained to your
7 client the nature and elements of the offense, the
8 possible punishment and his constitutional rights,
9 including trial by jury? Ms. Willm?

10 **MS. WILLM:** Yes, Your Honor.

11 **THE COURT:** Ms. Sturgill?

12 **MS. STURGILL:** Yes, Your Honor.

13 **THE COURT:** Are you satisfied there's a factual
14 basis for the plea? Ms. Willm?

15 **MS. WILLM:** Yes, sir.

16 **THE COURT:** Ms. Sturgill?

17 **MS. STURGILL:** Yes, sir.

18 **THE COURT:** Do you agree with your client's
19 decision to plead guilty? Ms. Willm?

20 **MS. WILLM:** Yes, sir.

21 **THE COURT:** Ms. Sturgill?

22 **MS. STURGILL:** Yes, Your Honor.

23 **THE COURT:** Mr. Kanipe, today are you under the
24 influence of any medicine, alcohol, drug or anything
25 affecting your thinking?

1 **DEFENDANT:** No, sir.

2 **THE COURT:** Do you suffer from physical or
3 mental problems that affect your thinking?

4 **DEFENDANT:** No, I don't.

5 **THE COURT:** You're clearheaded? You know what
6 you're doing?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** When you plead guilty, you give up
9 important rights, including your right to remain
10 silent and your right to a jury trial. Do you
11 understand?

12 **DEFENDANT:** Yes, sir, I do.

13 **THE COURT:** If you want a jury trial, you're
14 presumed to be innocent. The State has to prove you
15 guilty beyond a reasonable doubt to convict you.
16 You get to see, hear and have your lawyer
17 cross-examine all of the witnesses against you. Do
18 you understand that?

19 **DEFENDANT:** Yes, sir, I do.

20 **THE COURT:** By pleading guilty, you give up all
21 of those rights. You give up defenses and
22 challenges to evidence. You admit the charges are
23 true. Do you know that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Do you want a jury trial on either

1 of these cases?

2 **DEFENDANT:** No, sir, I don't.

3 **THE COURT:** All right. One of these cases is
4 not in Lexington County. It's a Richland County
5 case. You have an absolute right to have a judge
6 assigned to Richland County preside over that case.
7 You have a right to have a Richland County Jury hear
8 your case. You have a right to have the Richland
9 County Clerk of Court witness or attest your
10 signature on any documents that require that. Do
11 you understand?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** The only way we can go forward
14 today on that charge anywhere other than Richland is
15 if you tell us you want to do it here in Lexington
16 today. You understand?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** What do you want to do?

19 **DEFENDANT:** I want to do it here, sir, please.

20 **THE COURT:** Is that your own decision, made of
21 your own free will?

22 **DEFENDANT:** Yes, it is.

23 **THE COURT:** Did you sign this written document
24 waiving venue and...

25 **DEFENDANT:** I did.

1 **THE COURT:** You understand you're also waiving
2 those other things that I talked to you about?

3 **DEFENDANT:** Yes, sir, I understand.

4 **THE COURT:** All right. I've requested of Court
5 Administration, which is a routine matter, that they
6 give me concurrent jurisdiction over Richland County
7 General Sessions for the remainder of the week.

8 Okay. Mr. Kanipe, I need for you to listen to
9 the solicitors' offices, please.

10 **MS. GRAHAM:** Thank you, Your Honor. May it
11 please the Court.

12 On November 30th, 2016, law enforcement pulled
13 over a Hyundai sedan near the 100 block of Wood
14 Trail Drive here in Lexington County for having an
15 altered paper dealer tag. Defendant initially
16 presented a false ID, but later admitted that his
17 license was suspended and produced his South
18 Carolina ID card.

19 Upon running the VIN on that vehicle, it did
20 return stolen out of North Carolina, Your Honor.
21 The defendant was taken into custody. He was
22 originally charged with possession of a stolen
23 vehicle over \$10,000. We are reducing that charge
24 to possession of a stolen vehicle 2,000 to 10,000,
25 Your Honor, in exchange for the plea here today.

1 I'm prepared to read his priors at the
2 appropriate time.

3 **THE COURT:** Go ahead.

4 **MS. GRAHAM:** He's got a 1999, North Carolina,
5 breaking and entering; 2001, North Carolina,
6 misdemeanor larceny; 2002 simple possession --

7 **THE COURT:** Slow down. Go ahead.

8 **MS. GRAHAM:** 2003, North Carolina, misdemeanor
9 larceny; 2003, North Carolina, felony larceny; 2003,
10 North Carolina, larceny of a firearm; 2004 failure
11 to stop for blue lights, 2004 possession of a stolen
12 vehicle more than a thousand, but less than 5,000;
13 2004 simple possession of marijuana; 2004 reckless
14 driving --

15 **THE COURT:** You really need to slow down.

16 **MS. GRAHAM:** I apologize, Your Honor.

17 **THE COURT:** I mean, I can't write it down. I
18 don't know what the court reporter's doing, but you
19 need to slow down, please. Go ahead.

20 **MS. GRAHAM:** 2007 DUI, and 2015 CDV under the
21 old law it looks like.

22 **THE COURT:** What about the Richland case?

23 **MR. FYALL:** Thank you, Your Honor. Lamar
24 Fyall.

25 The Richland case happened September 22nd,

1 2015. The defendant and his girlfriend were given
2 permission by the victim to drive her car to the
3 hospital because she was feeling bad. The defendant
4 did not have a driver's license at the time. They
5 spent the night at the hospital. According to his
6 girlfriend at the time, he said that he was going to
7 go downstairs and use the car to pick up something
8 and he was going to be back. He never returned.

9 He was -- law enforcement was called. The
10 defendant was located December 4th, 2015, by
11 Charlotte-Mecklenburg Police Department. During
12 that time, he would text the victim in this case and
13 his girlfriend saying that he would do the right
14 thing and return the vehicle.

15 The reason for the reduction, Your Honor, his
16 girlfriend at the time was in pretty bad health and
17 she did pass away. She would have been the primary
18 witness as to the actual larceny. That's the reason
19 for the reduction. And the only recommendation from
20 the State is concurrent time with the Lexington
21 charge.

22 I did talk to the victim in this case. She
23 wanted to be present today, she could not, but I
24 talked to her several times. She was crying both --
25 every time I talked to her. She said the defendant

1 and his girlfriend were living with her. She said
2 that he stole other items from her that she didn't
3 go to law enforcement about because her friend, his
4 girlfriend at the time, told him not to. She
5 believed that the defendant should get the full
6 three years in this case.

7 **THE COURT:** Any damage to either one of these
8 vehicles?

9 **MR. FYALL:** Yes, Your Honor. The -- this
10 vehicle was totaled. The victim was reimbursed by
11 her insurance company. I did receive a letter from
12 the insurance company requesting restitution in the
13 amount of \$11,000. I've called them and let them
14 know that it was unlikely that they would receive
15 that given the likelihood the defendant would be put
16 in prison and/or his ability to pay, but I told
17 them, per the statute, I think I am obligated to put
18 that on the record and request that on their behalf.

19 **THE COURT:** What insurance company?

20 **MR. FYALL:** It's State Farm.

21 **THE COURT:** All right. So, Mr. Kanipe, do you
22 admit you're guilty of these two charges?

23 **DEFENDANT:** Yes, sir, I am.

24 **THE COURT:** Has anybody forced you, threatened
25 you, coerced you in any way to get you to plead

1 against your will?

2 **DEFENDANT:** No, they have not.

3 **THE COURT:** Any plea bargains the State's made
4 with you, they have to tell me about on the record
5 or you lose whatever they haven't told me. You
6 understand?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** So, Ms. Willm, are all of the plea
9 agreements on the record as far as your case?

10 **MS. WILLM:** Yes, sir. It was reduced. Our
11 only agreement was that it would be reduced.

12 **THE COURT:** Okay. And what about the Richland
13 case?

14 **MS. STURGILL:** Yes, Your Honor. I believe
15 Mr. Fyall put on the record his recommendation for
16 concurrent time.

17 **THE COURT:** So other than what's on the record,
18 Mr. Kanipe, has anyone promised you anything or
19 offered you any hope of reward to get you to plead?

20 **DEFENDANT:** No, they haven't.

21 **THE COURT:** Are you fully satisfied with your
22 attorneys?

23 **DEFENDANT:** Yes, I am.

24 **THE COURT:** Is there anything else you want
25 either of them to do that they have not done on your

1 cases other than speak for you?

2 **DEFENDANT:** No, sir.

3 **THE COURT:** Do you have any complaint of any
4 kind against your attorney, law enforcement
5 officials or anybody who's dealt with your cases?

6 **DEFENDANT:** No.

7 **THE COURT:** All right. Now, both of these
8 cases, you're waiving presentment to the grand jury
9 according to these papers. You have an absolute
10 right to have the respective grand jury in the
11 appropriate county consider your case. If you want
12 that done, at least 12 of the 18 grand jurors in
13 that county would have to agree that you're probably
14 guilty of that particular charge or the case would
15 stop there and never come into court. You
16 understand all that?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** The papers indicate you're giving
19 up that right. Is that your own decision, made of
20 your own free will?

21 **DEFENDANT:** Yes, it is, sir.

22 **THE COURT:** All right. Now, the Richland
23 charge is a felony that carries up to five years in
24 prison -- I'm sorry -- that's the Lexington charge.
25 The Lexington charge is a felony that carries up to

1 five years in prison and a fine. Do you understand
2 that?

3 **DEFENDANT:** Yes, sir, I do.

4 **THE COURT:** And the Richland case carries up to
5 three years in prison. Do you understand that?

6 **DEFENDANT:** I do, sir.

7 **THE COURT:** Property offenses are graduated.
8 If you violate property laws again, you face higher
9 punishment. Do you know that?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Mr. Kanipe's made a free, knowing,
12 voluntary and intelligent decision to waive
13 presentment to the grand jury and enter his pleas of
14 guilty. He's also freely, knowingly, voluntarily
15 and intelligently waived jurisdiction, venue and
16 attestation in Richland County. And so his pleas of
17 guilty here in Richland -- excuse me -- in Lexington
18 County today are free, knowing, voluntary and
19 intelligently made upon the advice of counsel with
20 whom he's fully satisfied. There's a factual basis
21 for each plea.

22 Court Administration has sent me an e-mail
23 indicating they have granted me jurisdiction for the
24 Richland County case, for any Richland County cases
25 for the remainder of the week.

1 Okay. Do y'all have a preference as to who
2 speaks first?

3 **MS. WILLIM:** May it please the Court, Your
4 Honor.

5 Jimmy is 39 years old. He has one son who's 17
6 named Devin. He is from the Charlotte area.

7 As the solicitor from Richland indicated
8 earlier, he was dating a girl, Linda Hopkins, a
9 woman. She passed away in April of 2016.

10 I do just want to -- before I forget, Your
11 Honor, Jimmy has been incarcerated continuously, not
12 just in Lexington County, but he has been
13 continuously incarcerated since May of 2016, so
14 shortly after -- after she passed away. He has
15 spent 147 days in Lexington County so far.

16 Your Honor, he does have his GED which he
17 obtained in 2004. He went straight into the Job
18 Corps. He does have a journeyman's card, which is a
19 license that he can do his own plumbing work for
20 jobs up to \$3,000 worth of work. So he does have a
21 way to make a living.

22 Prior to being incarcerated, he had been
23 working at Owens Steel for approximately five years,
24 which is where you see sort of that gap in that --
25 in his history when his -- I believe when his -- my

1 understanding is when his girlfriend got sick and
2 things got worse, that he had been using alcohol and
3 had sort of -- it all sort of sprung out of that
4 situation.

5 Your Honor, he does have a hold in Charlotte
6 for the theft of the car at issue here in Lexington
7 County. So we would ask Your Honor to consider a
8 time-served sentence given the amount of time he's
9 already been incarcerated and -- and his hold, like
10 I said, in Charlotte for a companion -- sort of an
11 extended companion case related to the one from
12 Lexington. And I'm not sure if Ms. Sturgill would
13 like to add anything further.

14 **THE COURT:** Yes, ma'am.

15 **MS. STURGILL:** Yes, Your Honor. May it please
16 the Court.

17 Regarding this charge in Richland County, he
18 was picked up in Mecklenburg County, spent about 15
19 days there before being transferred to Alvin S.
20 Glenn Detention Center in Richland County for
21 another 18 days and, as Ms. Willm said, basically
22 incarcerated continuously since then. If Your Honor
23 wants more details, I can give them.

24 However, he is from Charlotte, the Charlotte
25 area. His mom is still up there, his aunts and

1 uncles, his son in the Rock Hill and Charlotte area.
2 He -- since incarcerated at LCDC at least, he has
3 been active in running a Bible group every night for
4 about 5 to 20 of his fellow inmates there. It's
5 something that he hopes to pursue beyond the walls
6 of the jail, Your Honor. When he gets out, when
7 he's resolved all of his legal issues, he hopes to
8 become a pastor.

9 Regarding restitution for the Richland County
10 case, Your Honor, I believe it's about \$11,000 that
11 State Farm is asking for. Looking to the
12 restitution statute, ability to pay is certainly one
13 of the factors to be concerned with. And while it
14 is a loss that State Farm sustained, they are in the
15 business of sustaining losses and risks, Your Honor.
16 And they are a company rather than Mr. Kanipe who is
17 -- got his GED, working hard, blue collar worker,
18 Your Honor, who's been incarcerated and unable to
19 make money for largely the past year. And he still
20 has to deal with this -- this other charge in
21 Charlotte. For that reason, Your Honor, we ask that
22 restitution not be ordered to State Farm, and we ask
23 for time served as well.

24 Mr. Kanipe has definitely been in a slump, in a
25 mental, emotional, physical downward spiral since

1 his girlfriend, longtime girlfriend, passed. She
2 actually passed away in his arms and it's something
3 that he's still recovering from. And we ask Your
4 Honor to consider time served.

5 **THE COURT:** Do you want to say anything, sir?

6 **DEFENDANT:** No, sir. I'm guilty as charged. I
7 just hit a slum in my life, just a hard time, but
8 I'm definitely guilty. I do have charges in
9 Charlotte and Gaston County, North Carolina, that I
10 have to deal with. That's pretty much it.

11 (Pause.)

12 **THE COURT:** If there's nothing further, the
13 Court accepts the pleas.

14 The sentence on the Lexington case is that you
15 be committed to the South Carolina Department of
16 Corrections for a period of five years plus costs
17 and assessments. Richland case, three years plus
18 costs and assessments. The sentences run
19 concurrently. You're given credit for jail time
20 under section 24-13-40 to be calculated and applied
21 by the department of corrections.

22 The issue of restitution on the Richland case
23 is held in abeyance. If the insurance company or
24 the victim demands a restitution hearing, one may be
25 held.

1 Pay your court costs on each case within five
2 years. Restitution is deferred on the Lexington
3 charge. You understand all that?

4 You've got a five-year active sentence with
5 credit for time served. You've got a three-year
6 active sentence. They run concurrently. Do you
7 understand?

8 **DEFENDANT:** I believe so, yeah.

9 **THE COURT:** Got to quit taking people's
10 property.

11 **MS. WILLM:** Thank you, Your Honor.

12 **MS. GRAHAM:** Thank you, Your Honor.

13 **MS. STURGILL:** Thank you, Your Honor.

14 (Court's Exhibit Number 1, waiver of venue,
15 marked for identification.)

16

17 END OF PROCEEDINGS

18

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 25th of April, 2017.

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

September 8, 2017

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS

Indictment Numbers: 16-GS-40-02657;
 17-GS-32-01599

The State of South Carolina,)

vs.)

MOTION TO WITHDRAW
 PLEA, OR, IN THE ALTERNATIVE,
 RECONSIDER SENTENCE

Jimmy Odel Kanipe,)

Defendant.)

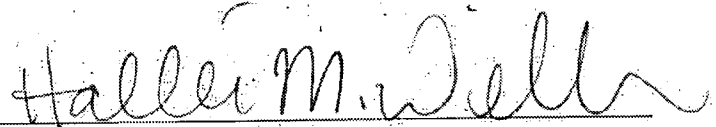
TO: THE HONORABLE WILLIAM P. KEESLEY, PRESIDING JUDGE; LAMAR FYALL,
 ASSISTANT SOLICITOR FOR THE FIFTH CIRCUIT; MELANIE GRAHAM,
 ASSISTANT SOLICITOR FOR THE ELEVENTH CIRCUIT

PLEASE TAKE NOTICE that the undersigned counsel move before this Court on behalf of the Defendant, Jimmy Odel Kanipe, requesting his plea be withdrawn, or, in the alternative, his sentence be reconsidered. A plea hearing was held in front of the Honorable William P. Keesley in Lexington County on April 25, 2017. Eleventh Circuit Assistant Solicitor Melanie Graham and Fifth Circuit Assistant Solicitor Lamar Fyall were present on behalf of the State. Ms. Hallie Willm of the Eleventh Circuit Public Defender's Office and Ms. Jessica Sturgill of the Fifth Circuit Public Defender's Office were present on behalf of the defendant, Mr. Kanipe. At that hearing, Mr. Kanipe entered a guilty plea on both indictments 16-GS-40-02657, use of a vehicle without permission, (the "Richland charge") and 17-GS-32-01599, grand larceny of property valued between two thousand and ten thousand dollars (the "Lexington charge"). The Court accepted Mr. Kanipe's pleas. Mr. Kanipe was ultimately sentenced to five years on his Lexington charge and three years on his Richland charge, to run concurrently. The Court further ordered that the issue of restitution related to his Richland charge would be held in abeyance.

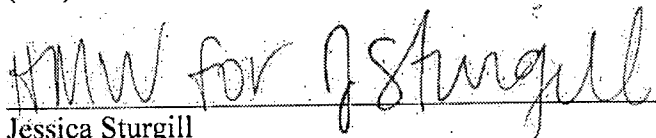
During the hearing, the State presented statements, allegations, and requests on behalf of the victim in the Richland case to the Court. These statements are the basis of this motion. The State

and defense counsel were in regular communication about resolving these cases. Despite this extensive effort to coordinate a joint resolution, immediately following the plea it became apparent that there had been a miscommunication or misunderstanding between the parties. This misunderstanding specifically related to the extent and scope of the disclosure to defense counsel about the statements provided by the victim in the Richland case. This miscommunication ultimately impacted defense counsel's ability to adequately advise Mr. Kanipe, which limited his ability to enter into a voluntary and knowing plea.

WHEREFORE, it is respectfully requested that counsel be afforded the opportunity to be heard by the Court further on these motions.



Hallie Willm
ATTORNEY FOR DEFENDANT
Lexington County Public Defender's Office
407 West Main Street
Lexington, South Carolina 29072
(803) 785-8873



Jessica Sturgill
ATTORNEY FOR DEFENDANT
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Lexington, South Carolina

May 5, 2017

John Connor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON and) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF RICHLAND) 2017 JUN -8 PM 4: 03

The State of South Carolina,)

-vs-)

Jimmy Odel Kanipe,)

Defendant.)

ORDER DENYING MOTION TO
 WITHDRAW PLEA OR RECONSIDER

Case Numbers:

2017-GS-32-01599 (Lexington)

2016-GS-40-02657 (Richland)

A hearing on the defendant's motion to withdraw his guilty pleas or, in the alternative, to reconsider the sentence was held today. The motion is denied.

Defense counsel argue that they did not understand the extent to which victim impact evidence would be presented to the court at the guilty plea. Therefore, they assert that they do not believe that the defendant was able to make a knowing and intelligent decision about whether to plead guilty. Specifically, the attorney on the Richland County case asserts that she was not aware that the victim would assert other crimes committed by the defendant and the attorney on the Lexington County case maintains that she was not able to appropriately advise her client about the impact of that information on the decision to proceed with a joint plea involving charges from both counties. The court finds that there is insufficient reason to allow the defendant to withdraw his plea or to reconsider the sentences imposed.

AND IT IS SO ORDERED.

June 8, 2017

William P. Keesley
 William P. Keesley
 Judge

WITNESSES

(S) Jacqueline R. McCoy
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021602754

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury
Date:

JUN 17 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-02657

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2016

102

**THE STATE
vs.**

Jimmy Odel Kanipe

**Indictment for
GRAND LARCENY - MORE THAN \$2000
BUT LESS THAN \$10,000**

**SC Code: 16-13-0030(B)
CDR Code: 3420**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 15, 2016, the
Grand Jurors of Richland County present upon their oath:

GRAND LARCENY- MORE THAN \$2,000 BUT LESS THAN \$10,000

That Jimmy Odel Kanipe did in Richland County on or about
September 22, 2015, take and carry away the personal goods of Vivian
Frye, valued at more than Two Thousand (\$2,000.00) Dollars, but less
than Ten Thousand (\$10,000.00) Dollars, described as follows: a black
2008 Nissan Maxima, with the intent to deprive the owner permanently of
such property and to convert the goods to his/her own use, in violation of
Section 16-13-0030(B)(1), S.C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

Gaston Police Department

Stephen A Watkins

Law Enforcement Case #: 16-000412

MFG

ARREST WARRANT NUMBER

2016A3221200119

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3201599

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2017

THE STATE

vs.

Jimmy Odell Kanipe

CDR #: 3467

Indictment for

Possession of a stolen vehicle, value more
than \$2,000 but less than \$10,000

§ 16-21-080

S.R. Hubbard III, SOLICITOR

RECEIVED

JUN 20 2017

SC Court of Appeals

**I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT**

[Signature]
DEFENDANT

4/25/17

DATE

[Signature]
WITNESS

TRUE COPY

Lex. Co. C.C.P., G.B. & F.O.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession of a stolen vehicle, value more than
COUNTY OF LEXINGTON	)	\$2,000 but less than \$10,000
	)	

§ 16-21-80

At a Court of General Sessions, convened on May 2017 the Grand Jurors of Lexington County present upon their oath:

That Jimmy Odell Kanipe did in Lexington County, South Carolina, on or about 11/30/2016, receive or possess a stolen vehicle, and the Defendant knew or had reason to believe such vehicle was stolen, with the value of such vehicle being more than \$2,000 but less than \$10,000, all in violation of Section 16-21-80 of the Code of Laws of South Carolina (1976, as amended)

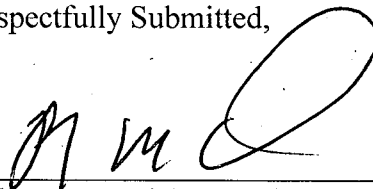
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 31st day of May, 2018.

RECEIVED
MAY 31 2018
SC Court of Appeals