

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Richland County

D. Craig Brown, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

JUN 24 2019

S.C. SUPREME COURT

WILLIE GUNTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002205

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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1 ~~STRAIGHT UP. HE DID END UP GETTING MORE THAN THE OFFER. HE~~  
 2 ~~HAD AN OFFER FOR 20. BUT I -- I DON'T THINK THERE IS~~  
 3 ~~ANYTHING ELSE I WOULD HAVE DONE.~~

4 CLEARLY BASED ON MY NOTES, I ADVISED HIM VERY  
 5 CLEARLY THAT I COULDN'T GUARANTEE OR PROMISE ANY SENTENCE,  
 6 AND I TOOK MORE NOTES THAN I USUALLY TAKE. I TOOK VERY  
 7 DETAILED NOTES OF WHAT TOOK PLACE, AND I JUST -- I CAN'T  
 8 THINK OF ANYTHING ELSE I COULD HAVE DONE. I DO THINK IT WAS  
 9 THE BEST FOR HIM.

10 Q. DID YOU EVER PROMISE HIM A PLEA OF EIGHT YEARS?

11 A. NEVER.

12 Q. WOULD YOU HAVE PROMISED HIM ANY PLEA?

13 A. NO, I COULD NOT HAVE PROMISED HIM. I ACTUALLY WROTE  
 14 IN MY NOTES THAT I ALSO TOLD HIM I COULDN'T GUARANTEE ANY  
 15 KIND OF SENTENCE. I MEAN, THAT'S JUST SOMETHING STANDARD  
 16 THAT YOU ALWAYS SAY TO A CLIENT.

17 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

18 CROSS-EXAMINATION

19 BY MS. SHURLING:

20 Q. ~~MS. PRINGLE, DID YOU SAY THAT IN THE COURSE OF THE~~  
 21 ~~HEARING WHEN HE WAS ASKING FOR YOU TO BE RELEVANT AS COUNSEL~~  
 22 ~~THAT YOU DISCUSSED THE GODWIN CASE WITH THE JUDGE OR HANDED A~~  
 23 ~~COPY UP TO THE JUDGE? IS THAT WHAT YOU'RE SAYING?~~

24 A. ~~I DON'T REMEMBER THAT, BUT MR. BROWN ASKED ME ABOUT~~  
 25 ~~THAT AND SEEMS TO -- HE SEEMS TO RECALL THAT I HANDED THOSE~~

1 ~~CASES UP AND I DON'T -- I DON'T KNOW WHY I DID THAT AT THAT~~  
 2 ~~POINT. IF I DID, THEN I DON'T REMEMBER IT. I HAVE NOTES OF~~  
 3 ~~DISCUSSING WITH MR. GUNTER THAT THAT WAS A CONCERN.~~

4 Q. MAY I INQUIRE AS TO WHAT PORTION OF THE RECORD THE  
 5 ATTORNEY GENERAL WAS REFERRING TO?

6 MR. BROWN: I'D CALL THE -- I'D CALL THE COURT'S  
 7 ATTENTION TO PAGE 19, LINE 6. ACTUALLY LINE 10 IS WHERE IT  
 8 SAYS, "AND I WOULD REFERENCE AND HAND UP TO THE COURT IN THE  
 9 MATTER OF GOODWIN, YOUR HONOR."  
 10 BY MS. SHURLING:

11 Q. OKAY. AT THAT POINT, PAGE 19 OF THE PLEA -- DO YOU  
 12 HAVE A COPY?

13 A. (THE WITNESS LOOKS AT THE TRANSCRIPT.) YES, I DO  
 14 THERE.

15 Q. OKAY. LOOKING AT LINES 6 THROUGH 14, LET'S DISCUSS  
 16 THAT FOR A MINUTE. AT THAT POINT HAD YOUR CLIENT LIED TO THE  
 17 COURT?

18 A. NO.

19 Q. BY CITING THE CASE OF JOY GOODWIN AND GASTON FAIREY  
 20 TO THE COURT DID YOU NOT KNOW THAT YOU WOULD NOT BE DIRECTLY  
 21 SIGNALING THE COURT OF YOUR CLIENT HAVING TOLD YOU IN  
 22 CONFIDENCE OF HIS INTENT TO LIE TO THE COURT?

23 A. I REALLY DON'T KNOW WHY I BROUGHT THAT UP. WHAT --  
 24 OBVIOUSLY THAT'S THE MEANING OF THOSE CASES, AND I DON'T KNOW  
 25 WHY UNLESS THIS -- IF ANY -- I DON'T KNOW WHERE THIS HAPPENS.

1 IN THE PLEA, IF THIS HAPPENED WHEN HE WAS TRYING TO RELIEVE  
2 ME OR LATER. PERHAPS IT WAS PART OF THE PERHAPS I THOUGHT  
3 THAT JUDGE COOPER WOULD RELIEVE ME KNOWING THAT THAT WAS AN  
4 ISSUE AND I FELT THAT WOULD HELP HIM. I DON'T RECALL. I  
5 REALLY DON'T KNOW WHY I WOULD HAVE DONE THAT AT THAT POINT.

6 Q. WELL, IF -- IF YOU READ THE SPECIFIC LANGUAGE FOUND  
7 FROM LINE 6 THROUGH 9, YOU INDICATE, I ALSO THINK THAT  
8 WITHOUT WAIVING ANY KIND OF ATTORNEY/CLIENT PRIVILEGE, I'M  
9 BOUND TO STATE FOR THE RECORD THAT I MAY BE UNABLE TO  
10 REPRESENT MR. GUNTER AS EFFECTIVELY OR COMPLETELY AS I MIGHT  
11 OTHERWISE BE. AND I WOULD -- GOING ON TO LINES 10 THROUGH  
12 12, I WOULD REFERENCE AND HAND UP TO THE COURT IN THE MATTER  
13 OF GOODWIN, YOUR HONOR, THE MATTER OF JOY GOODWIN AND CASTON  
14 FAIREY. DO YOU SEE THAT?

15 A. (WITNESS NODDED HEAD UP AND DOWN.)

16 Q. SO IT WAS DURING THE DISCUSSION ABOUT WHETHER OR NOT  
17 YOU SHOULD GO FORWARD AS HIS COUNSEL, CORRECT?

18 A. AND I GUESS THAT'S WHY I DID IT AT THAT POINT. I  
19 THOUGHT PERHAPS IT WOULD BE BETTER FOR HIM THAT THE COURT  
20 SHOULD KNOW THAT THERE WAS THAT CONFLICT AT THAT POINT.

21 Q. OKAY.

22 A. -- IN MAKING -- BECAUSE THE COURT HAD AT THAT POINT  
23 TO DECIDE WHETHER OR NOT TO RELIEVE ME.

24 Q. DID YOU, BASED ON HAVING DONE THIS, HAVE ANY  
25 MISGIVINGS ABOUT GOING FORWARD WITH THE PLEA IN FRONT OF THE

1 ~~SAME JUDGE THAT YOU HAD MADE THIS DISCLOSURE TO?~~

2 A. ~~I DON'T REMEMBER. I REALLY DON'T REMEMBER THAT~~  
3 ~~ENTERING INTO IT. I DON'T REMEMBER.~~

4 Q. ~~DID YOU CONSIDER THE FACT THAT MAKING THAT~~  
5 ~~DISCLOSURE ABOUT YOUR CONVERSATIONS WITH YOUR CLIENT DURING~~  
6 ~~THIS PROCEEDING MIGHT HAVE A NEGATIVE IMPACT ON THE SENTENCE~~  
7 ~~THAT HIS HONOR WOULD CHOOSE TO GIVE HIM IN THE SENTENCING AT~~  
8 ~~THE SUBSEQUENT PLEA?~~

9 A. ~~NO. NOT THAT I RECALL. I DID NOT THINK ABOUT IT.~~

10 Q. ~~IN RETROSPECT IS THAT SOMETHING THAT WOULD CAUSE~~  
11 ~~YOU CONCERN IF YOU'D THOUGHT ABOUT IT?~~

12 A. ~~I'M NOT SURE THAT I THINK IT MADE A DIFFERENCE. I'M~~  
13 ~~NOT SURE I CAN ANSWER THAT YES OR NO. I DON'T KNOW.~~

14 Q. ~~BUT THE REALITY IS YOU PROCEEDED TO TAKE YOUR CLIENT~~  
15 ~~TO PLEA IN FRONT OF G. THOMAS COOPER AFTER YOU HAD MOMENTS~~  
16 ~~EARLIER SIGNALLED HIM THAT THE CLIENT INTENDED TO BE DISHONEST~~  
17 ~~WITH THE TRIBUNAL, CORRECT?~~

18 A. ~~WELL, AT THAT POINT I DIDN'T HAVE A CHOICE BECAUSE~~  
19 ~~HE HAD REFUSED TO RELIEVE ME AND THE CLIENT DECIDED AT THAT~~  
20 ~~POINT TO PLEAD GUILTY. SO I DIDN'T. I DIDN'T HAVE A CHOICE~~  
21 ~~OF HOW TO PROCEED. WAS IT IDEAL? WAS THERE ANYTHING ABOUT~~  
22 ~~THE SITUATION IDEAL? NO. BUT I DIDN'T. THERE WAS~~  
23 ~~NOTHING. I DIDN'T HAVE AN ALTERNATE PATH I COULD HAVE TAKEN~~  
24 ~~AT THAT POINT.~~

25 Q. ~~WAS THE CASE SCHEDULED TO GO TO TRIAL THAT DAY?~~

1 A. YES. WE WERE SUPPOSED TO BE PICKING A JURY AT 2:00.

2 Q. AND WHO WAS THE TRIAL JUDGE THAT DAY?

3 A. IT WAS JUDGE COOPER WAS THE JUDGE FOR THE CASE.

4 Q. AND I ASSUME FROM YOUR EARLIER ANSWERS YOU DIDN'T

5 CONSIDER TELLING THE SOLICITOR'S OFFICE THAT YOUR CLIENT  
6 WOULD AGREE TO PLEAD BUT THAT YOU WANTED TO PLEAD IN FRONT OF  
7 A DIFFERENT JUDGE?

8 A. NO, I DIDN'T. PERHAPS I SHOULD HAVE... I DID NOT. I  
9 DID NOT REQUEST THAT.

10 MS. SHURLING: THANK YOU. I HAVE NO FURTHER  
11 QUESTIONS, YOUR HONOR.

12 REDIRECT EXAMINATION

13 BY MR. BROWN:

14 Q. MS. PRINGLE, JUST BRIEFLY. WERE THE SENTENCES THAT  
15 WERE HANDED DOWN BY JUDGE COOPER, WERE THEY WITHIN THE  
16 GUIDELINES FOR THE CRIME THAT OCCURRED?

17 A. YES.

18 Q. WERE THEY ILLEGAL?

19 A. NO.

20 Q. SO IT WAS IN THE JUDGE'S DISCRETION TO SENTENCE HIM  
21 FOR WHATEVER REASON SO LONG AS IT'S WITHIN THE SENTENCING  
22 GUIDELINES.

23 A. YES. YES.

24 Q. OKAY. BEG THE COURT'S INDULGENCE FOR JUST A SECOND.

25 MS. PRINGLE, WITHOUT GETTING TOO SPECIFIC, WHAT KIND OF

1 REPUTATION DOES JUDGE COOPER HAVE AS FAR AS A PLEA GOES?

2 A. I'M SORRY. IF YOU CAN BE MORE SPECIFIC.

3 Q. AS FAR AS---

4 THE COURT: WE'RE NOT GOING INTO THAT QUESTION.  
5 THIS IS NOT APPROPRIATE.

6 MR. BROWN: NOTHING FURTHER, YOUR HONOR.

7 MS. SHURLING: NOTHING FURTHER, YOUR HONOR.

8 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU MAY  
9 STEP DOWN.

10 MR. BROWN: THE STATE CALLS LEE COGGIOLA.

11 LESLEY M. COGGIOLA, AFTER BEING DULY SWORN,  
12 TESTIFIED AS FOLLOWS:

13 THE COURT: HAVE A SEAT AND TELL US WHAT YOUR FULL  
14 NAME IS, PLEASE.

15 DIRECT EXAMINATION

16 BY MR. BROWN:

17 Q. GOOD MORNING, MS. COGGIOLA. HOW ARE YOU DOING?

18 A. FINE. THANK YOU.

19 Q. DO YOU RECALL---

20 THE COURT: WAIT A MINUTE. TELL US YOUR FULL NAME,  
21 MS. COGGIOLA.

22 THE WITNESS: LESLEY MCALLISTER COGGIOLA.

23 BY MR. BROWN:

24 Q. I APOLOGIZE... DO YOU RECALL YOUR REPRESENTATION OF  
25 THE APPLICANT?

1 A. YES, I DO.

2 Q. AND YOU REPRESENTED HIM FOR ABOUT 16 MONTHS?

3 A. YES. I BELIEVE THAT'S CORRECT.

4 Q. DO YOU RECALL THE EVENTS THAT TRANSPIRED WHEN MS.  
5 PRINGLE TOOK OVER REPRESENTATION FOR MR. GUNTER?

6 A. YES, I DO.

7 Q. WHAT WERE THOSE?

8 A. I LEFT THE PUBLIC DEFENDER'S OFFICE TO GO WORK AT  
9 THE COURT OF APPEALS.

10 Q. OKAY. SO THAT WAS NOTHING -- I GUESS TECHNICALLY IT  
11 WAS WITHIN YOUR CONTROL, BUT THERE WAS A VALID REASON FOR  
12 HANDING OFF... YOU WEREN'T JUST HANDING HIM OFF...

13 A. --NO. THAT'S RIGHT. I STARTED WITH THE COURT OF  
14 APPEALS ON OCTOBER 17TH, 2003, AND MY CASES WERE BEING TURNED  
15 OVER TO VARIOUS ATTORNEYS IN THE PUBLIC DEFENDER'S OFFICE.

16 Q. OKAY. AND DO YOU RECALL ABOUT HOW MANY TIMES YOU  
17 HAD THE OPPORTUNITY TO MEET WITH THE APPLICANT?

18 A. YES, I REVIEWED THE FILE SOME. WE MET -- WE MET  
19 FAIRLY FREQUENTLY. WE ACTUALLY WERE STARTING A TRIAL IN  
20 AUGUST OF 2003. WE WERE CALLED -- THE TRIAL WAS SCHEDULED  
21 FOR AUGUST 25TH, I BELIEVE, OF 2003, ACCORDING TO MY NOTES,  
22 AND WE CAME IN READY TO START TRIAL THAT MORNING, AND MS.  
23 CAMPBELL CAME AND THE FIRST THING THAT HAPPENED BEFORE THE  
24 JURY WAS BROUGHT UP, SHE STOOD UP AND SAID THAT THERE WAS  
25 SOME EVIDENCE THAT HAD COME TO LIGHT AND SHE THOUGHT SHE

1 SHOULD BRING IT TO THE ATTENTION OF THE COURT AND THAT WAS A  
2 PAIR OF MEN'S SHORTS THAT WERE FOUND IN THE CAR THAT HAD SOME  
3 POTENTIAL D.N.A. EVIDENCE ON THEM.

4 AT THAT POINT WE DIDN'T EVEN KNOW -- I KNEW NOTHING  
5 ABOUT IT. I HAD MET WITH HER FRIDAY TO REVIEW ALL THE  
6 EVIDENCE AND ACTUALLY HAD SEEN A PICTURE OF THOSE SHORTS IN A  
7 PHOTOGRAPH AND ASKED HER ABOUT THEM, AND SHE SAID TO HER  
8 KNOWLEDGE THERE WAS NOTHING TO IT. AND SO WE TOOK A BREAK,  
9 AND THE SHORTS HAD BEEN SENT OUT TO S.L.E.D. AND THEY CALLED  
10 BACK LATER THAT MORNING TO SAY, YES, IT LOOKED LIKE THEY HAD  
11 SOMETHING THAT THEY COULD -- THAT THEY COULD LOOK AT AND  
12 EVALUATE.. AND SO WE STOPPED AND THAT WAS AT THE END OF  
13 AUGUST.

14 WE DIDN'T GO FORWARD WITH THE TRIAL. YOU KNOW,  
15 OBVIOUSLY ON BEHALF OF MR. GUNTER I FELT THAT WE HAD -- HE  
16 HAD -- HE AND I DISCUSSED THAT WHETHER WE SHOULD, YOU KNOW,  
17 JUST LET IT GO OR GO FORWARD, AND WE DECIDED WE NEEDED TO  
18 FIND OUT WHAT WE WERE TALKING ABOUT. AND SO AFTER THAT I  
19 DON'T KNOW THAT I MET WITH HIM TOO MANY TIMES IN THE NEXT  
20 MONTH OR SO BEFORE I LEFT, AND I THINK WE WERE WAITING ON THE  
21 RESULTS FROM -- FROM S.L.E.D. AND WE -- WE DID GET THE  
22 RESULTS BEFORE I LEFT.

23 Q. AND THE D.N.A. WAS FOUND ON THE SHORTS THAT WERE  
24 ACTUALLY FOUND IN THE VICTIM'S CAR.

25 A. YES, THERE WERE SOME BOXER SHORTS IN THE VICTIM'S

1 CAR.

2 Q. AND THAT CAR WAS FOUND OUT -- OUTSIDE OF AN  
3 APARTMENT?

4 A. YES.

5 Q. IS THAT WHERE THE CAR WAS FOUND?

6 A. YES.

7 Q. WHO DID THAT APARTMENT BELONG TO?

8 A. HIS GIRLFRIEND.

9 Q. OKAY. AND SO---

10 A. I CAN'T RECALL HER NAME RIGHT NOW.

11 Q. MS. COGGIOLA, YOU HAD THE OPPORTUNITY TO GIVE HIM  
12 HIS DISCOVERY. DO YOU RECALL THAT?

13 A. YES, I DO. I NEVER LIKE TO GIVE INDIVIDUALS THAT  
14 WERE HOUSED DOWN AT THE DETENTION CENTER COPIES OF THEIR  
15 DISCOVERY. AS A -- AS A PRACTICE IN OUR OFFICE WE NEVER FELT  
16 THAT WAS A GOOD IDEA. WE ALWAYS OFFERED TO COME DOWN OR EVEN  
17 HAVE ANYBODY ELSE -- A PARALEGAL COME DOWN AND SIT DOWN WITH  
18 THEM AND GO OVER IT.

19 MR. GUNTER WAS FAIRLY INSISTENT, AND SO MY PRACTICE  
20 WAS TO -- I HAD A LETTER THAT I GAVE THEM SAYING THAT IT WAS  
21 AGAINST MY ADVICE AND THEY SIGNED A WAIVER SAYING THAT THEY  
22 UNDERSTOOD THAT AND THAT I HAD EXPLAINED THAT TO THEM BUT  
23 THEY WANTED IT REGARDLESS, AND HE SIGNED THAT AND I GAVE HIM  
24 A COPY OF HIS DISCOVERY.

25 MR. BROWN: MAY I APPROACH, YOUR HONOR?

1 THE COURT: YOU MAY.

2 BY MR. BROWN:

3 Q. I'M JUST GOING TO SHOW YOU THIS LETTER AND ASK IF  
4 YOU RECOGNIZE THIS.

5 A. YES. THAT'S THE LETTER FROM JUNE OF 2003 WHERE I  
6 GAVE HIM HIS ADVICE THAT I DIDN'T THINK IT WAS A GOOD IDEA  
7 BUT THAT I WOULD GIVE HIM HIS DISCOVERY.

8 MR. BROWN: I WOULD ASK THAT THIS BE MARKED  
9 RESPONDENT'S 1.

10 MS. SHURLING: WITHOUT OBJECTION, YOUR HONOR.

11 THE COURT: ALL RIGHT. SO ADMITTED.

12 BY MR. BROWN:

13 Q. NOW, THE DISCOVERY THAT YOU WOULD HAVE GIVEN HIM  
14 WITH THAT, WAS THAT THE COMPLETE DISCOVERY?

15 A. THAT WOULD NOT INCLUDE THE D.N.A. FROM THE SHORTS  
16 BECAUSE WE DID NOT KNOW ABOUT THAT UNTIL THE END OF AUGUST.

17 Q. TO THAT POINT NOW THAT WOULD -- YOU WOULD HAVE GIVEN  
18 HIM A COPY OF EVERYTHING THAT YOU HAD IN YOUR FILE.

19 A. EVERYTHING THAT I HAD, YES.

20 Q. DO YOU BELIEVE THAT IT WAS MISSING 23 PAGES OUT OF  
21 ANY DOCUMENTS OR ANYTHING THAT WAS MISSING WHEN YOU WOULD  
22 HAVE GIVEN IT TO HIM?

23 A. I -- I HAVE NO RECOLLECTION OF THAT. I -- I -- I

24 WOULD NOT HAVE KEPT THAT OUT MYSELF ONCE -- ONCE WE AGREED TO  
25 GIVE IT TO HIM, BUT I -- I DON'T RECALL WHETHER THAT WAS EVER

1 AN ISSUE OR SOMETHING HE RAISED OR...

2 Q. DID HE EVER BRING IT TO YOUR ATTENTION THAT ANYTHING  
3 WAS MISSING, TO HIS KNOWLEDGE?

4 A. NOT THAT I RECALL.

5 Q. OKAY. NOW, AS FAR AS THE DEFENSE, DID YOU -- YOU  
6 SAID YOU WERE PROCEEDING TO TRIAL. HAD YOU HAD A CHANCE TO  
7 PREPARE A DEFENSE AS WELL AS MS. PRINGLE DID?

8 A. YES.

9 Q. AND HAD THE APPLICANT CONFERRED WITH YOU ABOUT WHAT  
10 THE FACTS SURROUNDING THIS INCIDENT WERE?

11 A. YES. BASICALLY, YOU KNOW, HE HAD CONTINUED TO  
12 INSIST THAT THIS WAS A -- WHAT THEY CALLED A CRACK RENTAL  
13 WHICH WAS HIS GIRLFRIEND WANTED HIM TO DRIVE HIM (SIC) TO  
14 WORK AND HE WAS GOING TO EXCHANGE CRACK FOR THE USE OF A CAR  
15 AND WE SPENT A LOT OF TIME... HE INDICATED THAT THERE WERE  
16 WITNESSES AT A PARTICULAR LOCATION WHERE THIS TRANSACTION HAD  
17 TAKEN PLACE AND INDICATING THAT THIS YOUNG WOMAN HAD COME AND  
18 LET HIM HAVE THE CAR. AND WE WERE NOT VERY SUCCESSFUL WITH  
19 THOSE WITNESSES, BUT THAT WAS THE -- THAT WAS THE APPROACH WE  
20 WERE TAKING AT THAT TIME.

21 Q. WAS THERE EVER ANY INDICATION THAT THIS WAS A  
22 COCAINE-FOR-SEX TRANSACTION?

23 A. I DON'T RECALL MR. GUNTER EVER TELLING ME THAT.

24 MR. BROWN: BEG THE COURT'S INDULGENCE. I HAVE  
25 NOTHING FURTHER, YOUR HONOR.

~~CROSS EXAMINATION~~

1  
2 BY MS. SHURLING:

3 Q. GOOD MORNING, MS. COGGIOLA.

4 A. GOOD MORNING.

5 Q. DID I UNDERSTAND YOU CORRECTLY? ~~DID YOU SAY YOU~~  
6 ~~WERE REVIEWING PHOTOGRAPHS WITH LUCK CAMPBELL---~~

7 A. (WITNESS NODDED HEAD UP AND DOWN.)

8 Q. ~~--- WHEN YOU SPOTTED THE SHORTS IN THE PICTURE?~~

9 A. ~~THE FRIDAY AFTERNOON BEFORE WE WERE STARTING TRIAL~~  
10 ~~ON MONDAY I WAS IN HER OFFICE AND WE WERE LOOKING AT ANY~~  
11 ~~PHOTOGRAPHS THAT SHE HAD THAT I HAD NOT SEEN TO THAT POINT,~~  
12 ~~AND I HAD BEEN ASKING TO SEE THEM. AND SO I WENT UP AND WE~~  
13 ~~SAT DOWN AND WENT THROUGH THEM, AND I REMEMBER SEEING SOME,~~  
14 ~~YOU KNOW, SORT OF FABRIC OR SOMETHING. IT LOOKED LIKE AN~~  
15 ~~ITEM OF CLOTHING IN THE CAR, AND I SAID, "WHAT IS THAT?" AND~~  
16 ~~SHE SAID, "OH, I THINK THAT'S JUST SOME CLOTHING THAT WAS IN~~  
17 ~~THE CAR. YOU KNOW," AND THEN I DIDN'T GIVE IT A SECOND~~  
18 ~~THOUGHT. HAVING LOOKED AT A NUMBER OF CARS IN CASES, THERE~~  
19 ~~OFTEN IS CLOTHING, TRASH, ANY OTHER THINGS, AND SO SHE~~  
20 ~~DIDN'T INDICATE THERE WAS ANYTHING TO IT WHATSOEVER AND --~~  
21 ~~BUT I DO REMEMBER MENTIONING IT BECAUSE OBVIOUSLY IT CAME TO~~  
22 ~~LIGHT ON MONDAY MORNING WHEN WE WERE READY FOR TRIAL AND SHE~~  
23 ~~STOOD UP AND SAID THAT THEY HAD BEEN SENT OVER TO SLEED~~

24 Q. WELL, ISN'T IT TRUE THAT IT WAS SENT OVER TO  
25 SLEED FOR TESTING AFTER YOU POINTED IT OUT TO MS.

1 ~~CAMPBELL?~~

2 A. ~~MY RECOLLECTION IS THAT IT HAD ALREADY GONE OVER TO~~  
3 ~~S.L.E.D.~~

4 Q. ~~OH, OKAY.~~

5 A. ~~IS MY RECOLLECTION AND I DON'T HAVE THAT IN MY NOTES~~  
6 ~~AT THAT POINT? BUT -- WELL, I REMEMBER SAYING, "WE KNEW~~  
7 ~~THIS ON FRIDAY, RIGHT?" TO MS. CAMPBELL. MY INDICATE MY~~  
8 ~~RECOLLECTION WAS IT HAD ALREADY GONE OVER THERE, AND WHEN SHE~~  
9 ~~RAISED IT FIRST THING MONDAY MORNING THEY WERE TESTING IT.~~  
10 Q. ~~SO, HENCE, YOUR CONSTERNATION THAT WHEN YOU ASKED~~

11 ~~WHAT IS THIS AND SHE -- BASICALLY YOU WERE GIVEN AN ANSWER~~  
12 ~~THAT LED YOU TO BELIEVE THAT IT WASN'T SIGNIFICANT, AND YOU~~  
13 ~~SUBSEQUENTLY FOUND OUT THAT IT WAS VERY SIGNIFICANT. IT WAS~~  
14 ~~SOMETHING THAT HAD BEEN SENT TO S.L.E.D. FOR TESTING.~~

15 A. ~~THAT IS MY RECOLLECTION, AND I CERTAINLY DON'T WANT~~  
16 ~~TO -- IT IS POSSIBLE THAT AFTER THAT CONVERSATION SHE THEN~~  
17 ~~TOOK THEM OUT THERE THAT WEEKEND. I DON'T KNOW, BUT MY -- MY~~  
18 ~~RECOLLECTION IS THAT I THEN LEARNED THEY HAD GONE TO S.L.E.D.~~  
19 ~~PRIOR TO THAT CONVERSATION. I JUST CAN'T SWEAR TO THAT.~~

20 Q. ~~WHAT DATE WAS IT ORIGINALLY GOING TO TRIAL? DO YOU~~  
21 ~~KNOW?~~

22 A. ~~I THINK IT WAS AUGUST 25TH, FROM MY NOTES. I HAD~~  
23 ~~THE TRIAL DATE SET FOR AUGUST 25TH.~~

24 Q. ~~OF '03?~~

25 A. ~~OF 2003. I'M SORRY.~~

1 MS. SHURLING: THAT'S OKAY. I WAS JUST GETTING  
2 MY A MOMENT'S INDULGENCE, YOUR HONOR.

3 (DEFENDANT'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE.)

4 BY MS. SHURLING:

5 Q. DO YOU HAVE COPIES OF THE DISCOVERY MATERIALS WITH  
6 YOU, MS. COGGIOLA?

7 A. YES, I DO.

8 Q. PERHAPS THIS WOULD BE THE EASIER WAY TO DO IT. CAN  
9 YOU IDENTIFY THIS DOCUMENT FOR ME, PLEASE?

10 A. THIS WOULD BE THE S. L. E. D. LAB REPORT FROM DATED  
11 NOVEMBER 4TH FROM WHEN THE ANALYSIS WAS DONE, AND I DON'T  
12 BELIEVE THAT I WOULD HAVE SEEN THAT INASMUCH AS I LEFT IN  
13 OCTOBER.

14 Q. OKAY. THIS REPORT EVIDENCES CUTTINGS FROM SHORTS AS  
15 COMPARED TO BODY FLUID TESTS SUBMITTED FROM THE VICTIM,  
16 CORRECT?

17 A. YES.

18 Q. LET ME GET YOU TO LOOK AT THAT.

19 A. YES, YES, IT DOES.

20 Q. OKAY AND AGAIN, THE DATE ON THAT IS NOVEMBER 4TH,  
21 2003.

22 A. THAT'S CORRECT, ON THE LAB ANALYSIS.

23 MR. BROWN: WITHOUT OBJECTION.

24 MS. SHURLING: APPLICANT'S EXHIBIT 1, YOUR HONOR.

25 (PLAINTIFF'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE.)

1 BY MS. SHURLING:

2 Q. NOW IN YOUR EXPERIENCE WITH THESE REPORTS DO THEY  
3 USUALLY INDICATE A DATE THAT SAMPLES WERE RECEIVED?

4 A. WOW. I CAN'T. I CAN'T REMEMBER. I DON'T KNOW  
5 WHETHER IT'S USUALLY ON THE REPORT. I NEVER THINK OF IT AS  
6 BEING ON THE REPORT BUT POSSIBLY.

7 Q. BUT IN ANY EVENT, THIS WAS NOVEMBER 4TH AFTER YOUR  
8 DEPARTURE TO THE COURT OF APPEALS.

9 A. YES.

10 Q. AND IT WAS CERTAINLY WELL AFTER THE AUGUST DATE WHEN  
11 YOU ASKED MS. CAMPBELL ABOUT WHAT WAS IN THAT PHOTOGRAPH.

12 A. YES. OH, YES, BECAUSE WE STOPPED THE TRIAL. WE  
13 WERE WE WERE READY TO GO TO TRIAL THAT MORNING.

14 Q. ONE MOMENT, YOUR HONOR? I'M GOING TO SHOW YOU THE  
15 EVIDENCE WORKSHEETS THAT ACCOMPANIED THAT SAME LAB REPORT.

16 A. OKAY.

17 Q. AND WHAT'S THE DATE ON THOSE?

18 A. THE DATE ON THE EVIDENCE PROCESSING DEPARTMENT IS  
19 SEPTEMBER 9TH OF '03.

20 Q. OKAY. AND ON THE PREVIOUS. ON THE COVER SHEET?

21 A. I'M SORRY.

22 Q. I'M SORRY.

23 A. ON THE COVER SHEET. THIS ONE?

24 Q. YES.

25 A. JULY 10TH OF '03.

1 Q. AND ARE THE SAMPLES FROM THE BOXER SHORTS LISTED ON  
2 THAT INVENTORY LIST?

3 A. YES.

4 Q. SO WE HAVE EVIDENCE HERE THAT AT LEAST A MONTH  
5 BEFORE YOUR MEETING WITH GUCK CAMPBELL THE SHORTS HAD, IN  
6 FACT, BEEN TURNED OVER TO S.L.E.D. FOR ANALYSIS.

7 A. YES, IT APPEARS THAT WAY.

8 MR. BROWN: WITHOUT OBJECTION.

9 (PLAINTIFF'S EXHIBIT 2 WAS RECEIVED IN EVIDENCE.)

10 MS. SHURLING: NOTHING FURTHER, YOUR HONOR.

11 REDIRECT EXAMINATION

12 BY MR. BROWN:

13 Q. MS. COGGIOLA, JUST BRIEFLY. IS THERE ALWAYS D.N.A.  
14 IN A SEX CASE?

15 A. I BEG YOUR PARDON?

16 Q. IS THERE ALWAYS D.N.A. ON THE VICTIM IN A SEX CASE?

17 A. NO, THERE'S NOT.

18 Q. WOULD THE FACT THAT A VICTIM WAS GOING TO TESTIFY AT  
19 TRIAL OUTWEIGH THE FACT THAT THERE'S NO D.N.A.? HOW MUCH  
20 WEIGHT IS GENERALLY AFFORDED THAT? HOW MUCH WEIGHT IS  
21 GENERALLY AFFORDED THE LACK OF D.N.A. VERSUS A STELLAR VICTIM  
22 TESTIFYING?

23 A. YOU KNOW, YOU JUST HAVE TO LOOK AT THE FACTS OF THE  
24 CASE. OBVIOUSLY THE TESTIMONY OF THE VICTIM IS POWERFUL IN A  
25 TRIAL. YOU KNOW, THERE ARE OFTEN REASONS WHY THERE'S NO

1 D.N.A.

2 Q. IN THIS PARTICULAR SITUATION WOULD THE VICTIM'S  
3 TESTIMONY BE PRETTY POWERFUL GIVING HER, I GUESS, VERY GOOD  
4 CHARACTER ANALYSIS THAT HAD BEEN DONE AND THAT WOULD HAVE  
5 BEEN TOUGH TO OVERCOME REGARDLESS? IS THAT CORRECT?

6 A. YES, I WOULD AGREE WITH THAT.

7 MR. BROWN: NOTHING FURTHER, YOUR HONOR.

8 MS. SHURLING: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

10 MR. BROWN: THE STATE RESTS.

11 THE COURT: ALL RIGHT. ANYTHING IN REPLY?

12 MS. SHURLING: NOTHING IN REPLY, YOUR HONOR.

13 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. I'LL  
14 TAKE THE MATTER UNDER CONSIDERATION. ANYTHING Y'ALL WANTED  
15 TO TELL ME BEFORE...

16 MS. SHURLING: YOUR HONOR, I WOULD ASK IN LIGHT OF  
17 THE TESTIMONY PRESENTED HERE TODAY THAT WE ADD TO THE LIST OF  
18 REASONS WHY THE APPLICANT SUBMITS HIS COUNSEL WAS INEFFECTIVE  
19 THE FACT THAT COUNSEL DISCLOSED TO THE COURT THAT HER CLIENT  
20 POTENTIALLY INTENDED TO BE DISHONEST WITH THE TRIBUNAL IN A  
21 SETTING WHEN HE HAD NOT YET DONE SO NOR WAS THE CASE ACTUALLY  
22 AT TRIAL. IF SHE DEEMED IT NECESSARY AND APPROPRIATE TO MAKE  
23 THAT DISCLOSURE DURING THE MOTION TO BE RELIEVED AS COUNSEL,  
24 ~~THEN THE APPLICANT WOULD SUBMIT THAT IT WOULD HAVE BEEN~~  
25 ~~APPROPRIATE FOR HER TO ASK HIS SUBSEQUENT PLEA BE HEARD BY A~~

1 ~~DIFFERENT JUDGE.~~

2 MR. BROWN: ~~THE STATE WOULD SUBMIT THAT FIRST OF~~  
3 ~~ALL UNDER THE RULES OF PROFESSIONAL CONDUCT --~~

4 ~~THE COURT: LET ME -- A LITTLE CLARIFICATION. SO~~

5 ~~WHAT YOU'RE ASKING IS -- WHAT YOU'RE SAYING IS THAT GROUNDS~~

6 ~~IF GRANTED, THEN THE PLEA WOULD STILL BE EFFECTIVE. IT JUST~~

7 ~~SHOULD BE -- THE SENTENCE SHOULD BE WITH ANOTHER JUDGE.~~

8 ~~MS. SHURLING: YES, SIR, YOUR HONOR, THE REMEDY~~

9 ~~WOULD BE RESENTENCING.~~

10 MR. BROWN: THE STATE WOULD SUBMIT THAT THEY'VE  
11 SHOWN NO PREJUDICE BY THIS INFORMATION COMING OUT AND,  
12 FURTHER, UNDER THE RULES OF PROFESSIONAL CONDUCT OUTSIDE OF  
13 THIS CASE WHICH IS ACTUALLY NO LONGER GOOD LAW FOR THE METHOD  
14 OF REVEALING A CLIENT WHO PLANS TO PURGER HIMSELF, AN  
15 ATTORNEY HAS THE ABILITY TO BREAK THE ATTORNEY/CLIENT  
16 PRIVILEGE TO PREVENT A CRIME. PERJURY IS A CRIME. THERE'S  
17 NO VIOLATION. SHE FELT THAT THIS CRIME WAS GOING TO OCCUR--

18 THE COURT: ALL RIGHT.

19 MR. BROWN: ---AND SO HE WAS SHOWN NO PREJUDICE

20 MS. SHURLING: ACTUALLY, FOR THE RECORD, MR. BROWN  
21 IS ONE STEP BEHIND OUR SUPREME COURT ON THAT. THERE WAS A  
22 TIME WHEN THE COURT HELD INTO QUESTION THE GODWIN PROCEDURE  
23 AS BEING THE APPROPRIATE REMEDY IN SUCH A SITUATION IN A  
24 CASE. I'M SORRY; IT DOESN'T COME TO MIND... BUT WITHIN THE  
25 LAST YEAR THE COURT HAS REAFFIRMED ITS ADHERENCE TO THE

## COLLOQUY

1 RECOMMENDED PROCEDURE IN THE GODWIN CASE.

2 THE COURT: I THINK IT'S REALLY GOODWIN.

3 MS. SHURLING: YES, SIR, GOODWIN. EXCUSE ME.

4 MR. BROWN: IT IS, YOUR HONOR.

5 MS. SHURLING: THANK YOU.

6 THE COURT: ALL RIGHT. THANK Y'ALL.

7 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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I, THE UNDERSIGNED DAPHNE D. HELMS, 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 EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 13TH DAY OF FEBRUARY, 2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

JUNE 14, 2006

  
DAPHNE D. HELMS, COURT REPORTER

# Exhibit E

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

## FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD  
*Governor*



ROBERT M. STEWART  
*Chief*

INV GERTRUDE BURNS  
COLUMBIA POLICE DEPARTMENT  
1 JUSTICE SQUARE  
COLUMBIA, SC 29201

Department of Forensic  
DNA Analysis  
November 4, 2003  
SLED Lab No.: L02-13208  
Your Case No.: 02-23894  
Incident Date: 7/25/02  
(V) [REDACTED] R.R.  
(S) Willie Gunter

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief  
South Carolina Law Enforcement Division

### SEROLOGY ANALYSIS

ITEMS SUBMITTED:

RESULTS OF EXAMINATIONS:

1	Sexual Assault Evidence Collection Kit from [REDACTED] R.R.		
1.4	Blood standard	1.4	See DNA results
1.5	Saliva standard	1.5	No analysis performed.
1.6	Smears - Vaginal & Oral	1.6	No spermatozoa identified.
1.7	Vaginal swabs	1.7	No semen identified. See DNA results
1.8	Oral swabs	1.8	No semen identified. See DNA results.
1.11	Fingernail scrapings	1.11	No analysis performed.



Page 2 of 4  
 SLED LAB NO.: L02-13208  
 November 4, 2003

ITEMS SUBMITTED:

RESULTS OF EXAMINATIONS:

2	Multi colored shorts		
2.1	Cutting from shorts	2.1	See DNA results.
2.2	Cutting from shorts	2.2	See DNA results
2.3	Cutting from shorts	2.3	See DNA results.
5	Blood standard from Willie Gunter	5	See DNA results.

DNA ANALYSIS

ITEMS ANALYZED:

1.4	Blood standard from	R.R.
5	Blood standard from	Willie Gunter
1.7	Vaginal swabs	
1.8	Oral swabs	
2.1	Cutting from shorts	
2.2	Cutting from shorts	
2.3	Cutting from shorts	

EXAMINATIONS

DNA profiles were developed from all items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1 and Table 2.

RESULTS


No DNA profile unlike the victim was developed from items 1.7 and 1.8.

The DNA profile developed from items 2.1, 2.2, and 2.3 are mixtures. Willie Gunter (item 5) is the major contributor to the mixture found on item 2.1. The probability of randomly selecting an individual having a DNA profile matching the major contributor to item 2.1 is approximately 1 in 20 quadrillion.



Page 4 of 4  
SLED LAB NO.: L02-13208  
November 4, 2003

These examinations were conducted by S/A Lilly S. Gallman, Forensic Analyst, South Carolina Law Enforcement Division

  
Lilly S. Gallman  
Senior Agent

11/5/03  
Date

jmj

cc: Richland County Solicitor's Office

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2014-CP-40-07848
	)	
	)	
	)	
WILLIE GUNTER,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
DEFENDANT.	)	
_____	)	

July 12, 2016  
Columbia, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, JUDGE.

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

KRISTY GOLDBERG, ESQ.  
Attorney for the Plaintiff

JESSICA KINARD, ESQ.  
Attorney for the Defendant

KAREN AMBROZIAK  
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness  
 (DW) - Denotes Defense Witness

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<u>(PW) WILLIE GUNTER:</u>	
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Redirect Examination by Ms. Goldberg.....	19
<u>(PW) FIELDING PRINGLE:</u>	
Direct Examination by Ms. Goldberg.....	20
Cross-Examination by Ms. Kinard.....	26

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

1 THE COURT: All right. The State ready to proceed?

2 MS. GOLDBERG: Yes, Your Honor.

3 THE COURT: Defense counsel?

4 MS. KINARD: Yes, Your Honor.

5 THE COURT: All right. Call the case, please.

6 MS. KINARD: Thank you, Your Honor. May it please  
7 the Court. This is the matter of Willie Gunter versus the  
8 State of South Carolina. It's case number  
9 2014-CP-40-7848. This was brought initially before the  
10 court on a PCR application filed December 16th, 2014. The  
11 State filed a return motion to dismiss on November 17th,  
12 2015. The allegations presented in this PCR application  
13 for newly discovered evidence, involuntary guilty plea and  
14 due process violation, the State's return was based on the  
15 grounds of successive application outside of the statute  
16 of limitations, laches and no prima facie showing of  
17 newly discovered evidence. The response was filed by the  
18 Applicant by and through his counsel, Ms. Goldberg, on  
19 December 18th, 2015. January 12th, 2016, counsel for the  
20 State as well as Ms. Goldberg received an e-mail from  
21 Judge Lee in her administrative capacity requesting this  
22 be set for a hearing. The State would note this is  
23 Mr. Gunter's fourth PCR application, that's reflected in  
24 your packet. You should also have the entirety of  
25

1 Ms. Goldberg's response to State's motion to dismiss that  
2 includes both the original guilty plea as well as the  
3 testimony from his prior PCR that did go to an evidentiary  
4 hearing.

5 The State is ready to proceed on this motion.  
6 Ms. Goldberg is present, as well as the Applicant.

7 THE COURT: Ms. Goldberg.

8 MS. GOLDBERG: Thank you, Your Honor. May it please  
9 the Court. Just a little bit of additional general  
10 background procedure so that you're familiar. The guilty  
11 plea in this case occurred January 12th, 2004. That was  
12 for kidnapping, carjacking, and criminal sexual conduct  
13 first degree. He received a 25-year sentence for  
14 everything concurrent to the other charges in front of G.  
15 Thomas Cooper.

16 After that time, he filed an appeal, but it was  
17 dismissed. I think it may have been withdrawn. There  
18 were several PCRs filed. I believe this is the fifth.  
19 The first PCR he had did have an evidentiary hearing. The  
20 other ones were summarily dismissed for various reasons.  
21 He has brought this new one. He filed it pro se  
22 December 16th, 2014, based on new information he had  
23 obtained, so the newly discovered evidence and an  
24 involuntary guilty plea.

25 The State did file a motion to dismiss. Even in the

1 State's motion to dismiss, they state that the Applicant  
2 bears the burden of showing that the allegations could not  
3 have been raised previously. That's why we're here today  
4 for a hearing. We did submit an affidavit from my client  
5 with that, a very short affidavit, but that's what he's  
6 here today to testify, just so the Court can look further  
7 into why he does believe he could not have brought this  
8 issue previously and why it has to be brought forth now at  
9 this later time.

10 THE COURT: All right.

11 MS. GOLDBERG: Technically, procedurally speaking,  
12 this is a motion hearing, a motion to dismiss, but the  
13 purpose -- the facts that will be testified to regarding  
14 that motion are essentially one in the same as his PCR  
15 allegations themselves. So the testimony should not be  
16 extensively long here. It should be pretty short, but  
17 it's all the same information.

18 I believe at the end of the day, Your Honor will be  
19 left with three decisions, basically, or possible  
20 decisions. The first would be just to grant the State's  
21 motion to dismiss. Then the second two would be if Your  
22 Honor denies the State's motion to dismiss, then you would  
23 be ruling on the PCR, which could either be granted or  
24 denied. But all of the information necessary should be  
25 brought out in this hearing today rather than having to

1 schedule a second hearing.

2 THE COURT: All right. Let's hear it.

3 MR. GOLDBERG: All right. Your Honor, at this time,  
4 I would call Willie Gunter to the stand.

5 WILLIE GUNTER, after being duly  
6 sworn, testified as follows:

7 THE COURT: All right. If you'll be seated in that  
8 witness chair. State your full name for the record,  
9 spelling your last, please.

10 THE WITNESS: Willie Gunter, G-U-N-T-E-R.

11 THE COURT: Ms. Goldberg, you may proceed.

12 MS. GOLDBERG: Thank you, Your Honor. One more  
13 housekeeping thing before I begin. Your Honor, does have  
14 the Applicant's response to the State's motion to dismiss,  
15 which has exhibits attached to it. As the State's  
16 attorney stated, there are two transcripts in that. One  
17 of the transcript of the guilty plea. One is the  
18 transcript of the PCR hearing.

19 I believe there may be two pages missing from the  
20 transcript of the PCR hearing, which is exhibit D. I've  
21 already provided those to the State. I've just got a copy  
22 of those two pages for, Your Honor. If you just want to  
23 mark on it that they would go in exhibit D. They  
24 obviously would be just in chronological order there.

25 Your Honor, ready?

DIRECT EXAMINATION

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BY MS. GOLDBERG:

Q Sir, where are you incarcerated?

A Allendale Correctional Institution.

Q For what sentence?

A CSC, car jacking and kidnapping.

Q Did you have a trial or did you plead?

A Plead.

Q On what day?

A January 12th, 2004.

Q Who was your attorney?

A I had two. I had Lesley Coggiola first and Fielding Pringle.

Q Who was your attorney during your guilty plea?

A Fielding Pringle.

Q When did Ms. Pringle start representing you relative to when you pled guilty?

A October 2003.

Q And you have filed for Post Conviction Relief before?

A Yes, ma'am.

Q How many times do you believe?

A I think like four or five, I think. Four, maybe five, might be the fifth one.

Q Did you have the benefit of an evidentiary hearing and an appeal on, at least, one of those?

1 A On the first one, yes, ma'am.

2 Q Are there any issues that you want to raise now that  
3 you were unable to raise in any of those prior  
4 applications?

5 A Yes, ma'am.

6 Q What is that?

7 A Newly discovered evidence pursuant to 17-27-45(c) and  
8 involuntary guilty plea and due process violation.

9 Q Those are just generally what your allegations are  
10 now, correct?

11 A Yes, ma'am.

12 Q What are they based on?

13 A They're based on involuntary guilty plea and newly  
14 discovered evidence.

15 Q Based on what?

16 A The evidence that I received that I have never seen  
17 before.

18 Q You received evidence that you have never seen  
19 before?

20 A Yes, ma'am.

21 Q When?

22 A September 22nd, 2014.

23 Q How did you receive that information?

24 A I got transferred from McCormick Institution to Broad  
25 River Institution and they lost my legal property, my

1 whole legal box. So I had to write -- I was filing an  
2 appeal, so I had to write all these different agencies to  
3 acquire my complete discovery. I wrote the public  
4 defenders, solicitor's office. I mean, I wrote everybody  
5 that was capable of giving me my complete file.

6 Q And what response did you get?

7 A Some -- clerk of court just sent me warrants and  
8 indictments, so I kept writing. I wrote someone at the  
9 public defender's office and she sent me two packets. And  
10 those are the packets that I received and it was  
11 information that I never seen before.

12 Q To be clear, in the packets of information you  
13 received from the public defender's office, had you seen  
14 some of that information?

15 A Yes, some of it I had seen. Some of it, I had seen.

16 Q Generally, what kind of stuff was that?

17 A Basically, like the basic stuff, like warrants,  
18 indictments and stuff like that.

19 Q Police reports?

20 A Yes, the basic stuff like that.

21 Q Discovery?

22 A Yes.

23 Q In the packets you received on September 22nd, 2014,  
24 what did you receive that you had never seen before?

25 A Oh, they had detailed DNA documents and it was a memo

1 from a Dr. Estrowski, a memo from him. I never seen none  
2 of that stuff before. They had some extra DNA evidence  
3 that I'd never seen before either.

4 Q Who is Dr. Estrowski?

5 A From reading it, it was -- he had to be some type of  
6 expert or something dealing with DNA, some type of DNA  
7 expert.

8 Q Now, prior -- when were you moved -- you said you  
9 were moved from McCormick to Allendale?

10 A Yes, ma'am.

11 Q And that's when you started writing this information?

12 A Yes, ma'am.

13 Q When was that move about?

14 A That was April 30th, 2014.

15 Q Prior to then, prior to 2014, had you requested your  
16 discovery from counsel?

17 A No -- oh, before?

18 Q Yeah.

19 A Over the years, yes, I have been requesting.

20 Q Let's start -- kind of go all the way back. Prior to  
21 your guilty plea, did you request a copy of your discovery  
22 from counsel?

23 A Yes.

24 Q Did you receive a copy of your discovery from  
25 counsel?

1 A Ms. Coggiola gave me one. And that was, I think,  
2 June of 2003.

3 Q So June of 2003, you had a copy of discovery?

4 A Yes, ma'am.

5 Q And you had that with you up until the time of your  
6 guilty plea?

7 A Yes, ma'am.

8 Q Did you ever receive copies of your discovery after  
9 that?

10 A No, ma'am.

11 Q Okay. So that's what you had for a long period of  
12 time?

13 A Yes, ma'am.

14 Q Were you ever aware that there were any additional --  
15 that there was any additional information that your  
16 attorney may have had that you didn't have?

17 A Yes, it seemed like there was always something  
18 missing. Because when I used to read through it, it might  
19 say 23 pages and it might be missing pages. It wouldn't  
20 be the correct number of pages, so I knew something had to  
21 be missing.

22 Q When did you know that?

23 A I even mentioned it one time to Ms. Coggiola. And  
24 then afterwards, I kept asking Ms. Pringle for materials  
25 because it just seemed like everything -- nothing was

1 always there.

2 Q Did you get additional information at that time?

3 A No, I didn't get nothing. I haven't had nothing.

4 Q At the time of your guilty plea, did you know that  
5 there was DNA evidence that had something to do with your  
6 case?

7 A Yes, ma'am.

8 Q How did you know that? Who told you that?

9 A Ms. Coggiola, she had got -- she had subpoenaed the  
10 hospital and she had got the rape kit, she had got that.  
11 And that's how I had seen that.

12 Q What else did you know about DNA?

13 A That's basically it, because she just -- I didn't  
14 really know too much about it, but she tell me that it  
15 didn't really seem like nothing happened.

16 Q At the time of your guilty plea, did you know that  
17 there was DNA evidence that could be used against you?

18 A Yes, ma'am, that's what I was told.

19 Q What did you understand that that might be or that  
20 that was?

21 A From what I was told, they had DNA from some boxer  
22 shorts.

23 Q There was DNA on boxer shorts?

24 A Yes, ma'am.

25 Q Who told you that?

1 A Ms. Pringle told me that.

2 Q Did you ever see a report talking about that?

3 A No.

4 Q What were you told -- as specifically as you can  
5 possibly remember, what were you told about that DNA?

6 A It was just some DNA on the boxer shorts. That's all  
7 that she pretty much mentioned, that it was some DNA -- my  
8 DNA on some boxer shorts.

9 Q That it was your DNA?

10 A Yes, ma'am.

11 Q Were you told any additional information about that?

12 A No, that's it.

13 Q Any more details about the DNA?

14 A No, ma'am.

15 Q And you never saw the report?

16 A No.

17 Q At the time of your guilty plea, what was said in  
18 court about the DNA?

19 A When I went to my guilty plea, she did not submit not  
20 one piece of -- no type of document or nothing. I  
21 remember standing there and I asked her is she going to  
22 show the jury something. And nothing was never submitted.  
23 We checked the record. Nothing was submitted on my behalf  
24 to show anything dealing with the DNA to my guilty plea.  
25 It was just words spoken, nothing.

1 Q What words were said?

2 A She was just -- I can't really remember. I don't  
3 really remember her saying nothing in my behalf.

4 Q What did the State say?

5 A The State said that it was DNA on my boxer shorts.  
6 That's what the State said.

7 Q The solicitor said during the guilty plea --

8 A That's what the solicitor said.

9 Q -- your DNA was on boxer shorts?

10 A That's what the solicitor said.

11 Q Is that what you understood the evidence to be?

12 A Yes, ma'am.

13 Q Did Ms. Pringle correct that in any way?

14 A No, I didn't remember her saying nothing.

15 Q Did she tell you that that was inaccurate or  
16 qualified in any way?

17 A No.

18 Q Were you ever told at any time by your attorney that  
19 it was actually a mixture of DNA that was found?

20 A No.

21 Q Were you ever told by your attorney what possible  
22 significance there could be that it was actually a mixture  
23 of DNA?

24 A No, ma'am.

25 Q Did your lawyer ever tell you that she hired or

1 consulted with an expert in this case?

2 A No, ma'am.

3 Q If you had received -- let me back up. You have now  
4 received reports that you're stating you did not have at  
5 the time of your guilty plea, correct?

6 A Yes, ma'am.

7 Q If you had this information that's in these reports  
8 back before your guilty plea, how would that have changed  
9 your decision to proceed?

10 A I mean, with that information, I would not have pled  
11 guilty because, I mean, the boxer shorts had a mixed  
12 sample from what I read in the papers. If I had known it  
13 had mixed samples and that she had consulted with a DNA  
14 expert to attack the DNA evidence, I would have waived my  
15 right to a jury trial and I would not have pled guilty.

16 Q You would have actually gone to a jury trial?

17 A Yes, ma'am.

18 Q You've read the memorandum from the DNA expert?

19 A Yes, ma'am.

20 Q And what was your take-away from that? What  
21 information did you gain from that?

22 A I got that, basically, it was a waiver -- it was,  
23 basically, saying there was no evidence of DNA, no  
24 evidence of sexual assault, nothing. Basically, saying  
25 that nothing happened. And that's -- I didn't know none

1 of that. She never showed any of that. She never  
2 discussed any of that with me.

3 MS. KINARD: Your Honor, I would object to his  
4 characterization just as he is a lay witness. I  
5 understand that's his perception of what was presented. I  
6 just want to make that clear for the record, please.

7 THE COURT: All right. So noted.

8 BY MS. GOLDBERG:

9 Q If you had received this information prior to your  
10 first PCR, would you have included these allegations in  
11 that application?

12 A Yes, ma'am. I would have submitted it in there  
13 because it would have showed that whatever happened didn't  
14 actually take place.

15 Q Prior to receiving this information, did you know if  
16 there was any way to question the DNA at all in this case?

17 A No, ma'am.

18 Q No lawyer had ever explained to you that the DNA  
19 could be challenged?

20 A No, ma'am.

21 MS. GOLDBERG: Nothing further, Your Honor.

22 MS. KINARD: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. KINARD:

25 Q Good afternoon, Mr. Gunter.

1 A Yes, ma'am. Good morning.

2 Q So just to make sure I understand, you had a copy of  
3 your discovery prior to your guilty plea?

4 A Yes, back in June.

5 Q And you lost that and you had received again an  
6 entire packet of your discovery?

7 A Yes, I got everything to be honest with you. It was  
8 two full packets and I never had that much my whole 14  
9 years down.

10 Q Did you discuss this DNA issue with Ms. Pringle?

11 A We discussed it, but I never known this. This stuff  
12 that I got back in 2014, I never saw them before. I  
13 didn't even know it existed.

14 Q When you say you never knew, you never knew what  
15 exactly?

16 A The DNA stuff that came in the package that I  
17 received when I went to the mail room, I never seen none  
18 of that stuff the whole time. No memo from no doctor. I  
19 never knew that she even consulted with a DNA expert. I  
20 never saw none of that.

21 Q To be specific, the findings that you are alleging  
22 here today is that it was a mixed sample?

23 A Yes, ma'am.

24 Q Regardless of it being a mixed sample, doesn't that  
25 still indicate that your DNA was present in the sample?

1 A Yes, but if that was mixed a sample, then that means  
2 more than one other person. They stipulated at court that  
3 was my DNA and that's the understanding what I was told  
4 from my lawyer and that's what the prosecutor said. They  
5 said my DNA. But I read -- when I got that paperwork, it  
6 had multiple DNA, so that means it was more than one  
7 person. So that showed that that was a lie that she put  
8 on the record when she said only one DNA, my DNA. It was  
9 a mixed sample.

10 Q But that multiple did include yours?

11 A Yes, but it was more than one, though. She said my  
12 DNA at court. That's what she told the judge, so he was  
13 of the understanding it was just my DNA in my shorts. The  
14 information that I received, it showed that it was  
15 different. It said a mixed sample, meaning more than one  
16 person.

17 Q Thank you. Do you recall at your plea the judge  
18 going over a lot of the rights that you were giving up?

19 A Yes, ma'am.

20 Q As you were entering the plea?

21 A Yes, ma'am.

22 Q Do you remember agreeing with all of those and do you  
23 remember understanding those?

24 A Yes, ma'am.

25 Q So you understood you gave up the right to a trial?

1 A Yes, ma'am.

2 Q And the right to confront your accusers and the right  
3 to question any evidence presented against you; is that  
4 correct?

5 A Yes, ma'am.

6 MS. KINARD: Those are all the questions I have.  
7 Thank you.

8 MS. GOLDBERG: Briefly, Your Honor, just for record  
9 clarification really. May I approach, Your Honor?

10 THE COURT: Yes.

11 REDIRECT EXAMINATION

12 BY MS. GOLDBERG:

13 Q Mr. Gunter, you submitted an affidavit in this case  
14 to go with our response to the motion to dismiss?

15 A Yes, ma'am.

16 Q Okay. I'm just going to show you Exhibit B, which is  
17 already part of the Court's record. Are these the  
18 documents you're saying that you received in 2014?

19 A Yes, ma'am.

20 Q And these are the documents you've never seen before?

21 A Never saw before.

22 Q All right. Okay. Nothing further?

23 THE COURT: Ms. Kinard, anything else?

24 MS. KINARD: No, sir.

25 THE COURT: Sir, you may step down. Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: Anything further?

3 MS. GOLDBERG: One second, Your Honor.

4 (Pause.)

5 MS. GOLDBERG: Your Honor, I believe I'm going to  
6 call Fielding Pringle as the next witness.

7 THE COURT: Ms. Pringle, if you'll come forward and  
8 be sworn, please.

9 FIELDING PRINGLE, after being  
10 duly sworn, testified as follows:

11 THE COURT: Thank you, ma'am. You may be seated.  
12 State your name for the record. Spell your last, please.

13 THE WITNESS: Elizabeth Fielding Pringle,  
14 P-R-I-N-G-L-E.

15 THE COURT: Ms. Goldberg, you may proceed.

16 MS. GOLDBERG: Thank you, Your Honor. May it please  
17 the Court.

18 DIRECT EXAMINATION

19 BY MS. GOLDBERG:

20 Q Ms. Pringle, you were Mr. Gunter's attorney?

21 A I was.

22 Q And you represented him at his guilty plea for the  
23 convictions we're here for today; is that fair?

24 A Yes.

25 Q Did you review your file in preparation for today's

1 hearing?

2 A I did.

3 Q In that file, did you -- were you able to locate  
4 documentation regarding DNA evidence in this case?

5 A Yes.

6 Q Do you recall generally what the DNA evidence was in  
7 this case?

8 A There were stains on the back of underwear that were  
9 located in the victim's car when the car was recovered,  
10 and the results came back with a match to Mr. Gunter and  
11 the presence of -- I don't remember if it was two or three  
12 other people, but there was other DNA that was on the  
13 shorts in addition to Mr. Gunter's.

14 Q It was a mixture of DNA that was found?

15 A Yes. But Mr. Gunter's was on there.

16 Q I am going to hand you -- have you reviewed the  
17 transcript from the guilty plea?

18 A Yes.

19 MS. GOLDBERG: The guilty plea transcript, Your  
20 Honor, is Exhibit C to the Applicant's response to the  
21 State's motion to dismiss.

22 BY MS. GOLDBERG:

23 Q Ms. Pringle, I'm going to hand you this. I'm going  
24 to go ahead and help you out. If you will read the bottom  
25 of Page 29 and the top of Page 30.

1 A Starting at Ms. Campbell?

2 Q Yeah. You don't have to read it -- well, you might  
3 as well read it out loud. That's fine.

4 A If I could, Your Honor, I would mention, too, that  
5 when they did find the car, they found some shorts,  
6 actually his underwear that he had left in the front seat  
7 of the car from where he had taken them off when he was  
8 assaulting the victim in this case. Those were later sent  
9 to SLED. Once they got to SLED, we were able to do a DNA  
10 analysis, which did come back that they were his shorts  
11 from the DNA analysis.

12 The Court: His shorts, his DNA, her car?

13 Ms. Campbell: Yes, sir.

14 The Court: Is that correct?

15 Ms. Campbell: Yes, sir. In addition to her  
16 identifying him.

17 Q That's good. Thank you. The State put on the record  
18 during the guilty plea that Mr. Gunter's DNA was found on  
19 the shorts, correct?

20 A Yes.

21 Q They did not state that it was a mixture or qualified  
22 in any way; is that fair?

23 A That's correct.

24 Q In your recollection of reading the transcript from  
25 back when -- from the portion where you had several

1 occasions to talk to the Court, did you correct that?

2 A No.

3 Q Do you have any recollection as to why you did not  
4 correct that information?

5 A I don't think that it is incorrect. I don't know --  
6 that statement was not inaccurate. I guess to the extent  
7 that she said they were his shorts, you know, I can't  
8 recall specifically all of the things that he and I talked  
9 about. I do have extensive notes about that. I'm not  
10 sure that I even had been told by him that they weren't  
11 his, so I -- that information would not have been  
12 accurate. That was in the context of the guilty plea.

13 So I guess referring to them as his shorts would be  
14 the only thing that I suppose I could have corrected, but  
15 I'm not sure what that would have accomplished.

16 Q Do you have a specific recollection of speaking with  
17 Mr. Gunter about the fact that the DNA was, in fact, a  
18 mixture?

19 A I do not have an independent recollection. I have  
20 notes from a meeting with him and that -- that indicate we  
21 discussed many, many things to include possibly that, but  
22 I don't have an independent recollection outside of my  
23 notes.

24 Q Do you recall ever giving him a copy of the DNA  
25 report after it was finalized and created in November

1 of -- after you became counsel in this case?

2 A I don't remember doing that. It would absolutely be  
3 my practice to have told him. Looks like from my notes, I  
4 told him. I don't recall giving him a report, no.

5 Q Are you aware if you consulted with a DNA expert in  
6 this case?

7 A I did.

8 Q All right. Is that who Dr. Estrowski is?

9 A Yes.

10 Q And you've seen in your file that there is a  
11 memorandum from that consultation?

12 A What he provided for me is -- he will oftentimes help  
13 us draft cross questions. And he had drafted a few pages  
14 of cross questions that were specific to this case. I  
15 think also from looking at my notes, it looks like I had  
16 prepared an outline to put him up as a witness in our case  
17 because I had questions that I typically -- it looks like  
18 the direct that I was going to do. So I think I had  
19 consulted him both in prepping my cross, but also I was  
20 going to put him up.

21 Q Do you recall if you ever told Mr. Gunter that you  
22 consulted with an expert in this case?

23 A I don't recall. I think it would be bizarre not to  
24 have. It would not be my practice to not mention that to  
25 him. That was the morning of trial, but I do not

1 remember. I cannot tell you I have a recollection  
2 specifically of saying that to him.

3 Q After -- based on your memory, did Mr. Gunter already  
4 have a copy of his discovery prior to your coming onboard  
5 as his attorney?

6 A I don't remember. I know that they had actually  
7 started the trial, I believe. The State had called the  
8 case when it was Ms. Coggiola's case. And then  
9 Ms. Campbell discovered there was additional DNA she  
10 wanted to have tested and they pulled it. So I would -- I  
11 can only assume, but I don't know.

12 Q Do you recall what you gave him or what you didn't  
13 give him regarding discovery in reports?

14 A No.

15 Q Since that -- the time of the guilty plea, are you  
16 aware that Mr. Gunter has written the public defender's  
17 office asking for copies of documents, copies of his file?

18 A I'm aware of that now because of these pleadings. I  
19 don't think any of those came to me or that I saw those  
20 when they came in. If they were given to me, I don't  
21 remember.

22 Q You wouldn't have been personally involved in making  
23 copies or deciding what was and wasn't sent to him at any  
24 time?

25 A I was not in this instance that I'm aware of.

1 Q Okay.

2 MS. GOLDBERG: No further questions.

3 THE COURT: Ms. Kinard.

4 MS. KINARD: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. KINARD:

7 Q Very briefly, Ms. Pringle, regardless of whether he  
8 had a copy of discovery that you had given him, did you  
9 have the opportunity to review discovery with him?

10 A I am certain that I did that. I cannot tell you that  
11 I know the date and specifically the documents that we  
12 reviewed, but that would certainly be my practice.

13 Q And just to reiterate, you also have notes in your  
14 file reflecting the fact that though you have no  
15 independent recollection, you most likely discussed these  
16 issues that we've been talking about with Mr. Gunter?

17 A Just to be very clear, I have notes from January 9th  
18 of 2004, which would have been the Sunday before -- or the  
19 Friday before trial that are extensive. I have probably  
20 12 pages of notes from a meeting with him. And in my  
21 notes, I have many notes about the underwear being central  
22 to the case, and I have a reference to the specific issue  
23 of mixture that I've written out. I can't tell you that  
24 -- you know, I have that in about three pages of notes,  
25 but I can't specifically tell you what I said to him or he

1 said to me at that time.

2 Q In your role as his defense attorney, would it have  
3 made a difference to you or did it make a difference to  
4 you whether this sample was a mixture of different DNAs?

5 A When you say would it make a difference, sure.  
6 Throughout my notes, throughout my preparation, there are  
7 -- you do good facts and bad facts. That was certainly  
8 something to work with and evidence that we could work  
9 with. So if you -- I don't know what you mean by make a  
10 difference.

11 Q I'll rephrase. Would it have made a difference in  
12 your recommendation to him to take this plea offer?

13 A No. I don't think so. It was -- I mean, that was  
14 a -- one minor good fact in the context of a number of  
15 very difficult facts.

16 MS. KINARD: Thank you. No further questions.

17 THE COURT: Ms. Goldberg.

18 MS. GOLDBERG: Nothing further, Your Honor.

19 THE COURT: Ms. Pringle, you may step down.

20 THE WITNESS: Thank you, sir.

21 THE COURT: All right. Anything further  
22 Ms. Goldberg?

23 MS. GOLDBERG: No further witnesses, just a brief  
24 argument when allowed.

25 THE COURT: All right. Go ahead.

1 I'm sorry, Ms. Kinard.

2 MS. KINARD: We have no witnesses, Your Honor. Thank  
3 you.

4 THE COURT: I assumed so, but I apologize for that.

5 All right. Ms. Goldberg.

6 MS. GOLDBERG: Thank you, Your Honor. This case is  
7 relatively simple. Mr. Gunter testified that while he had  
8 received the initial discovery in his case from  
9 Ms. Coggiola, the DNA report was not created until  
10 Ms. Pringle became his attorney. He testified that he  
11 never received a copy of that.

12 What we have here is Mr. Gunter testified that at all  
13 times up until his guilty plea up through his first PCR  
14 and subsequent PCRs, all he had was this initial  
15 discovery. He never had any additional information. Then  
16 in September of 2014, he received this information that is  
17 attached to -- as Exhibit B to the applicant's response to  
18 the State's motion to dismiss. What that is is, as  
19 Ms. Pringle testified, a memorandum from a consulted  
20 expert explaining how the DNA could be attacked.

21 Mr. Gunter testified that at all times, he had been  
22 told by his lawyers, it had been explained to him that his  
23 DNA was on the boxer shorts found in the victim's car,  
24 period. That's all he knew. That's all that was said on  
25 the transcript at the time of the guilty plea, as well,

1 that's consistent his testimony.

2 Now, suddenly in 2014, he realizes that evidence is  
3 not as bullet proof as he once thought. It can be  
4 challenged. There could be reasonable doubt to be argued.  
5 He then promptly filed this Post Conviction Relief hearing  
6 and that's why we're here today. He testified he didn't  
7 know that this DNA evidence could be challenged. He  
8 testified that if he had known that, he would have had a  
9 jury trial.

10 Your Honor, for Your Honor's convenience, I believe  
11 that the case that provides the relevant standard here is  
12 Jamison v. State. That's 410 SC 456, 2014. That's a case  
13 with a later PCR where a witness comes forward later.  
14 Basically, the holding is that when a PCR applicant seeks  
15 relief on the basis of newly discovered evidence following  
16 a guilty plea specifically, relief is appropriate only  
17 when the Applicant can show one, the newly discovered  
18 evidence was discovered after entry of the plea and in the  
19 exercise of reasonable diligence and could not have been  
20 discovered prior to the entry of the guilty plea. And  
21 two, the newly discovered evidence is of such a weight and  
22 quality that under the facts and circumstances of this  
23 case, the interest of justice requires the Applicant's  
24 guilty plea to be vacated.

25 He is simply arguing that he requested his discovery.

1 He thought he had everything. His lawyers never explained  
2 to him that the DNA could be challenged. He's just now  
3 finding this out. And he has testified that if he had  
4 known that previously, he would have had a jury trial. He  
5 would have never pled to guilty. Therefore, we argue that  
6 in the interest of justice, we ask that his convictions be  
7 vacated.

8 THE COURT: Ms. Kinard?

9 MS. KINARD: Thank you, Your Honor. Though Jamison  
10 is relevant to this case, there are also the standards as  
11 is found in Hayden v. State, which is an older case, and  
12 it's covered generally under after-discovered evidence as  
13 considered in PCR. That has five factors, which have also  
14 been applied to issues of reviewing a guilty plea based on  
15 newly evidence challenges. Some of those issues include  
16 whether this alleged new material is relative -- excuse  
17 me, is material to the issue of guilt or innocence. In  
18 this case, we would allege it certainly is not.

19 His DNA was still present on the scene. And as  
20 Ms. Fielding -- excuse me, as Ms. Pringle testified, he  
21 never said those weren't my boxers. She, as his defense  
22 attorney, never had any reason to doubt the fact that he  
23 was involved, never had any reason to question that.  
24 Mr. Gunter himself also testified that he had had several  
25 packets of his discovery. Whether they were complete or

1 not, we can't know.

2       Regardless, Ms. Pringle did have this DNA evidence at  
3 the time of trial and in her legal opinion and expertise,  
4 she did not see that it made any difference. The fact  
5 that Mr. Gunter has seen it now and believes it does  
6 should not change whether he went forward with this plea  
7 or not. She provided him sound advice. This evidence was  
8 available at the time and he -- we would argue received a  
9 benefit from following Ms. Pringle's advice in taking this  
10 plea. It could have been discovered before the trial by  
11 exercise of due diligence and, in fact, it was. Of  
12 course, in this case, it was plea, not a trial. And just  
13 because Mr. Gunter has come across it now does not change  
14 its character, nature or availability at the time of the  
15 plead. Therefore, the State submits that Mr. Gunter has  
16 not met his burden in satisfying the relevance and  
17 availability of after-discovered evidence and we believe  
18 our motion to dismiss should be granted. Thank you.

19       THE COURT: All right. I'll let you know.

20       MS. GOLDBERG: Thank you, Your Honor.

21       MS. KINARD: Thank you, Your Honor.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA        )  
COUNTY OF AIKEN                )

I, PENNY M. JOHNSON, Official Court Reporter for the Second 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 the evidence introduced in the hearing of the captioned case, relative to appeal, in Court of Common Pleas for Richland County, South Carolina, on the 12th day of July, 2016.

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

January 29, 2018

Penny M. Johnson  
Penny M. Johnson  
Official Court Reporter

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Willie Gunter, #299126, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2014-CP-40-7848

**ORDER OF DISMISSAL**

2018 OCT 17 PM 3:13  
 JEANETTE W. McBRIDE  
 C.C.P. & G.S.  
 RICHLAND COUNTY  
 FILED

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed December 16, 2014. The State made its Return and Motion to Dismiss on November 17, 2015, asserting that this Court should dismiss the application because: (1) it was successive to Applicant's prior PCR action, (2) it was filed after the statute of limitations had expired, (3) it did not present a valid case for newly discovered evidence, and (4) it was barred by the doctrine of laches. Applicant filed a Response to the State's Motion to Dismiss on or about December 16, 2015. A hearing into the matter was subsequently convened at the Richland County Courthouse on July 12, 2016. Applicant was present and represented by Kristy Goldberg, Esquire. The State was represented by Jessica Kinard of the South Carolina Office of the Attorney General.

This Court heard testimony from Applicant and his plea counsel, Fielding Pringle. This Court had before it the pleadings of both parties, the transcripts of Applicant's preliminary hearing and guilty plea hearing, the Clerk of Court's records regarding the subject convictions, and the Applicant's records from the Department of Corrections. This Court hereby denies Respondent's motion to dismiss and also denies Applicant's application on the merits.

### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In August 2002, the Richland County Grand Jury indicted Applicant for kidnapping (2002-GS-40-6905), carjacking (2002-GS-40-6906), and criminal sexual conduct, first degree (2002-GS-40-6907). Fielding Pringle, Esquire ("Counsel") represented Applicant. On January 12, 2004, Applicant pled guilty as indicted before the Honorable G. Thomas Cooper. Judge Cooper sentenced Applicant to imprisonment for concurrent terms of twenty-five years for kidnapping, twenty years for carjacking, and twenty-five years for criminal sexual conduct, first degree. Applicant filed a notice of direct appeal, but it was not perfected and was dismissed by the South Carolina Court of Appeals on April 19, 2004. The Remittitur was issued on April 19, 2004.

#### First PCR Application (2004-CP-40-2947)

Applicant filed his first application for PCR on June 18, 2004, in which he alleged that he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. Failure to investigate potential witnesses
  - b. Coercion of guilty plea by telling Applicant he would receive 80 years
  - c. Counsel promised Applicant that he would only receive approximately 3 or 4 years total and that the charge of criminal sexual conduct and kidnapping would be dismissed and that carjacking would be dropped to breach of trust; and
  - d. Counsel failed to advise the court of his plea bargain that had been entered prior to the guilty plea
2. Involuntarily Entered Guilty Plea

Respondent filed its Return on September 21, 2004. An evidentiary hearing into the matter was convened at the Richland County Courthouse on February 13, 2006 before the Honorable James R. Barber, III. Applicant was present at the hearing and represented by Tara

Shurling, Esquire. Judge Barber denied and dismissed Applicant's post-conviction relief action by written Order dated March 3, 2006 and filed March 7, 2006.

A timely notice of appeal was filed on Applicant's behalf, and a Johnson<sup>1</sup> petition for writ of certiorari was submitted by Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense on September 14, 2006. The State filed its return on December 14, 2007. On January 23, 2008, the South Carolina Supreme Court denied Applicant's Petition. The Remittitur was issued on February 8, 2008.

Second PCR Application (2008-CP-9097)

Applicant filed his second application for PCR on or about December 29, 2008, in which he alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Prior post-conviction relief judge failed to hear and rule on each issue presented in his application

The State made its return and motion to dismiss on or about October 15, 2009, requesting the Court summarily dismiss the application. A conditional order of dismissal was issued by the Honorable James R. Barber, III as Chief Administrative Judge for the Court of Common Pleas for the Fifth Circuit on October 19, 2009. Applicant did not object to the conditional order of dismissal, and Judge Barber signed a final order of dismissal on December 9, 2009, which was filed on December 10, 2009. In the meantime, on December 8, 2009, Applicant filed a response to the conditional order of dismissal. Because the documents passed each other in the mail, a hearing was set so that Applicant could argue his reasoning. The Honorable Alison Renee Lee issued a Form 4 Order on June 24, 2010 allowing a continuance because Applicant had not been

transported from SCDC. The parties ultimately appeared before the Honorable J. Ernest Kinard, Jr. on September 10, 2010, whereupon the Court ruled Applicant had not timely objected to the conditional order of dismissal, and there was no reason for the case to proceed. While Applicant's second application was being processed, Applicant subsequently filed a third application on January 2, 2009 (2009-CP-40-0272)<sup>2</sup>. In the third application, Applicant alleged the "trial court was without jurisdiction to impose sentence." Respondent moved to have both applications merged and on December 14, 2010, Judge Kinard consolidated and merged the cases under the 2008 case number, and then denied and dismissed both applications with prejudice.

A letter was received by the Supreme Court of South Carolina that alleged Applicant had filed a Rule 59(e) motion to alter or amend the judgment of the Court. This correspondence was forwarded to the State on January 24, 2011. No further action was taken on this letter or alleged motion, and Applicant did not appeal the 2010 dismissal.

Third PCR Application (2013-CP-40-2062)

Applicant filed his third application for PCR on or about April 5, 2013, in which he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel at Initial Collateral Post-Conviction Review pursuant to Ryan v. Martinez
2. "Applicant was denied effective assistance of trial counsel as guaranteed me pursuant to the Sixth Amendment of the United States Constitution."
  - a. Failure to advise of the full range of possible consequences of entering a guilty plea.

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<sup>1</sup> Johnson v. State, 294, S.C. 310, 364 S.E.2d 201 (1998).

<sup>2</sup> The application filed is the only document that bears this number, which is not associated with Applicant in the public index. Every other reference bears the case number 2009-CP-0512.

- b. "Failed to advise me that I would be required to register as a sexual offender in pleading guilty to kidnapping and failed to move for a judicial finding of such applicability."
  - c. "Failed to object to the carjacking indictment and "plea as indicted," which alleged serious bodily harm in jury, and the state conceded, no serious bodily harm, or injury resulted as supported by medical test result (DNA)."
  - d. "Failed to object to factual overlapping contained in the carjacking and kidnapping indictments requiring the same acts in violation of the double jeopardy clause."
  - e. "Failed object that the sentence structure was invalid where the trial judge imposed first a smaller sentence, and later several larger sentences, and pronounced them all to run concurrently."
  - f. "Trial counsel and victim were both attendants of University of South Carolina where victim was a teacher, thus counsel actively represented a conflict of interest."
  - g. "Failed to object to acceptance of the plea where the State presented no evidence or testimony on the penetration element of criminal sexual conduct 1<sup>st</sup> degree thus no factual basis existed."
  - h. "Failed to move to be allowed to withdraw the plea when applicant conditioned his plea upon understanding that he did not intend to commit the offense."
  - i. "Failed to object to or otherwise challenge the carjacking statute, which was void-for-vagueness."
3. "Applicant was denied effective assistance of appellate counsel as guaranteed to me pursuant to the Sixth Amendment of the United States Constitution."
- a. "Failed to raise on appeal the circuit court's lack of subject-matter jurisdiction"
  - b. "Failed to raise on appeal violation of double jeopardy clause."
4. Due process violations because of unconstitutionally vague carjacking statute.
- a. "The indictments for the offenses and carjacking state the same facts to prove each of the crimes and are thus duplicitous or multiplicitous." (sic)
  - b. "The carjacking statute is void-for-vagueness, and each requisite act of the corpus delicti mirrors those for kidnapping"
5. Guilty plea was not knowingly, voluntarily, and intelligently entered.
- a. "Based upon all the proceeding matters, the collective effect is that Applicant would not have pleaded guilty to [any] of the charges had he been fully aware of the consequences of his pleas and had he known his rights were violated or that the court lacked jurisdiction as to any

one of the alleged indicted offenses. (New facts not previously presented).”

6. Violation of the double jeopardy clause
7. Circuit court lacked subject matter jurisdiction.
  - a. “The circuit court had no jurisdiction to accept the plea to carjacking “as indicted” where the indictment alleged a statutory provision requiring proof of serious bodily injury/harm and the state conceded that no serious bodily injury or harm resulted.”
  - b. “The circuit court had no factual basis to accept the guilty pleas where the state presented no evidence of battery and penetration. Necessary elements to support the criminal sexual conduct first degree guilty plea.”

Applicant further alleged agents of the State, specifically correctional officers with SCDC, took legal documents belonging to him that were in another’s inmate’s possession, and he was entitled to their return. Similarly, he moved for a tolling of the statute of limitations or for leave to refile the application upon return of these documents. The State made its return and motion to dismiss on September 17, 2013. A conditional order of dismissal was signed by the Honorable L. Casey Manning on September 19, 2013. Applicant made no objection to the conditional order, and a final order of dismissal was signed by Judge Manning on March 27, 2014.

## IL ALLEGATIONS

In his fourth and current PCR application, filed December 16, 2014, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. “Newly discovered evidence pursuant to 17-27-45(c)”
2. “Involuntary guilty plea”
3. “Due process violation”

At the call of the case, because all necessary witnesses were present and the testimony to be taken on the motion to dismiss also related directly to the merits of Applicant’s allegations,

the court instructed the parties to proceed with the evidentiary hearing. Applicant seemed to merge his involuntary guilty plea and newly discovered evidence allegations, and only presented evidence as to those claims.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe the witnesses who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

#### **Involuntary Guilty Plea Due to Newly Discovered Evidence**

At the hearing on the State's Return and Motion to Dismiss, Applicant testified that, at the time of his plea he knew that his DNA was found on boxer shorts in the victim's car. Applicant alleged, however, that Trial Counsel failed to inform him the sample actually contained a mixture of DNA, or to explain the significance of that information. Applicant averred he did not discover the DNA sample was positive for a mixture of individuals, including him, until he later wrote the Public Defender's Office and received packets of information from his case file. Applicant contended that, had he known the DNA match was a mixture, he would not have pled guilty and would have proceeded to trial. Applicant stated his take away from the DNA report was that, "it was, basically saying there was no evidence of DNA, no evidence of sexual assault, nothing. Basically saying that nothing happened. . . [Counsel] never discussed any of that with me." During cross-examination by the State, Applicant acknowledged Trial Counsel discussed the issue with him; however, he alleged he never received the actual results of the

DNA test and did not know Trial Counsel had consulted with a DNA expert.

During the hearing, Trial Counsel explained there were stains on a pair of underwear that were located in the back of the victim's car that came back with a match to Applicant, and the sample indicated the presence of DNA in addition to Applicant's. Trial Counsel testified that, while she did not have an independent recollection of speaking with Applicant and telling him the DNA results indicated a mixture was present, her notes indicated speaking to Applicant about many things, possibly including the specifics of the DNA results. Trial Counsel also testified that, although she did not specifically remember giving Applicant a copy of the DNA report, it would be her practice to have told him the results. Trial Counsel testified it would have been "bizarre" for her not to have mentioned to Applicant that she consulted a DNA expert in the case. Trial Counsel stated that she took twelve pages of notes during her meeting with Applicant, and that a specific reference to the DNA mixture was present in her notes; however, she could not specifically say what they discussed. Critically, Trial Counsel noted the fact the DNA sample was a mixture would not have changed her recommendation to Applicant that he take the State's plea offer. Trial Counsel stated the fact Applicant's DNA match also reflected a mixture of individuals was, "one minor good fact in the context of a number of very difficult facts."

In Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014), the South Carolina Supreme Court elucidated the correct standard in PCR cases involving an allegation of newly discovered evidence, ruling:

Guided by the language of section 17-27-20(A)(4) of the PCR act, we hold that, when a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence that (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. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt.

410 S.C. at 471, 765 S.E.2d at 130.

This Court finds Applicant has failed to prove both prongs of the test enumerated in Jamison. First, the DNA evidence at issue is not "newly discovered." Trial Counsel consulted with an expert and was aware the DNA evidence against Applicant was a mixture. While Trial Counsel did not have an independent recollection of discussing this particular fact with Applicant, she testified the notes of her meeting with Applicant contained a specific reference to the DNA mixture, it would be her standard practice to discuss the DNA results, and it would have been "bizarre" for her not to inform Applicant she consulted with a DNA expert. The Court finds Trial Counsel's testimony on this matter credible and finds all evidence about the particular nature and strength of the DNA evidence was known at the time of the guilty plea.

Second, the fact that the DNA evidence contained a mixture of individuals was not of such a weight and quality that the "interest of justice" requires Applicant's guilty plea to be vacated. In addition to the fact that the victim identified Applicant as the perpetrator, Applicant was unable to offer any plausible explanation as to why boxer shorts bearing his DNA were present in the victim's car. The fact the DNA sample was a mixture would not have substantially affected the probative value of this very significant evidence against Applicant. As was noted by

Trial Counsel, the DNA sample containing a mixture was "one minor good fact in the context of a number of very difficult facts." This Court finds Trial Counsel's testimony that she still would have advised Applicant to plead guilty regardless of whether the DNA sample was a mixture because of the strength of the State's case to be credible. The Court notes Applicant's testimony on this matter was not credible, as, at the PCR hearing, Applicant seemed to misconstrue the DNA evidence as exonerative. This Court does not believe Applicant's claim that a better explanation of the DNA evidence would have resulted in his choosing not to plead guilty and going to trial.

Because Applicant failed to satisfy the evidentiary standard for newly discovered evidence, this Court finds Applicant's guilty plea was entered freely, knowingly, and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States 519 F.2d 347 (4th Cir.1975). As discussed *infra*, Applicant has failed to present valid reasons why he should be allowed to depart from the truth of his statements at the plea. The record

reflects Applicant fully admitted his guilt to the plea court. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntarily, and intelligently made.

#### **IV. CONCLUSION**

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

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

{This space intentionally left blank.}

**IT IS THEREFORE ORDERED THAT:**

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 9 day of Oct., 2018.



D. CRAIG BROWN  
Presiding Judge  
Fifth Judicial Circuit

Flower, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

)  
)

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Willie Gunter, #299126,  
Applicant,

)  
)

Case No. 2014-CP-40-7848

v.

)  
)

**MOTION TO ALTER/AMEND  
JUDGMENT**

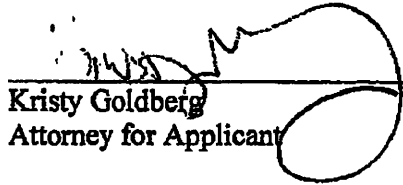
State of South Carolina,  
Respondent.

)  
)

Counsel for the Applicant has received the Order of the Court dismissing Applicant's claims for Post-Conviction Relief. Pursuant to South Carolina Rule of Civil Procedure Rule 59(e), the Applicant hereby requests this Court consider to Alter or Amend the current Judgment based upon the following argument:

1. The Applicant contends his due process was violated when trial counsel failed to provide the Applicant with complete documentation regarding her consultation with an expert witness and a full explanation of the DNA results.
2. The Applicant contends that he entered an involuntary and unintelligent plea when he entered a guilty plea without full knowledge regarding the DNA results and the expert opinion.

In summation, the Applicant hereby reasserts and reaffirms all evidence and argument previously presented in this Post-Conviction Relief matter in the Application, the response to the State's motion to dismiss, and during the evidentiary hearing.

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Applicant

**Kristy Goldberg**  
**Law Office of Kristy Goldberg, LLC.**  
1720 Main Street, Suite 303  
Columbia, SC 29201  
803-667-6633  
803-799-4059 (fax)  
kristy@kristygoldberglaw.com

**Columbia, South Carolina**

**This \_\_\_\_\_th day of October, 2018**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Willie Gunter, #299126,

APPLICANT,

vs.

State of South Carolina,

RESPONDENT.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-7848

ORDER DENYING MOTION TO  
ALTER/AMEND JUDGMENT

RICHLAND COUNTY  
FILED  
2018 DEC -3 PM 4:36  
JEANETTE #100806  
C.C.P. & P.S.

This matter came before the court by way of application for post-conviction relief filed December 16, 2014. It is of importance to note that this was Applicant's fourth PCR action.

A hearing into the matter was subsequently convened at the Richland County Courthouse on July 12, 2016. Applicant was present and represented by Kristy Goldberg, Esquire. The State was represented by Jessica Kinard of the South Carolina Office of the Attorney General.

Applicant alleged in his fourth PCR application that he was being held in custody unlawfully for the following reasons:

1. "Newly discovered evidence pursuant to 17-25-45(c)
2. "Involuntary guilty plea"
3. "Due process violation"

After hearing testimony from Applicant and his plea counsel, Fielding Pringle, this Court denied Applicant's Application for Post-Conviction Relief in an Order signed October 9, 2018 and filed October 17, 2018. Applicant timely filed a Motion to Alter/Amend Judgment pursuant to Rule 59(e), South Carolina Rules of Civil Procedure, on October 23, 2018. Applicant, by and through counsel, filed such Motion based upon the following argument:

1. "The Applicant contends his due process was violated when trial counsel failed to provide the Applicant with complete documentation regarding her consolation (sic) with an expert witness and a full explanation of the DNA results."


2. "The Applicant contends that he entered an involuntary and unintelligent plea when he entered a guilty plea without full knowledge regarding the DNA results and the expert opinion.

Pursuant to this Court's review of Applicant's Motion to Alter/Amend Judgment and its prior Order denying Applicant's Application for Post-Conviction Relief, this Court hereby DENIES Applicant's Motion to Alter/Amend Judgment. Each of Applicant's arguments in his Motion to Alter/Amend Judgment were considered and ruled upon in this Court's Order signed October 9, 2018, and filed October 17, 2018.

THEREFORE, IT IS, SO ORDERED THAT:

Applicant's Motion to Alter/Amend Judgment is DENIED.

This the 8 day of November, 2018  
Florence, South Carolina

  
The Honorable D. Craig Brown  
Twelfth Judicial Circuit

WITNESSES

Inv. Gertrude Burns, CPD / ASOL

*Inv. W. W. W. W. W.*

ARREST WARRANT NO. H258637

ACTION OF GRAND JURY

**TRUE BILL**

*Wil. J. S. C.*

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 02-65-40-6905

**The State of South Carolina,**

RICHLAND

County of \_\_\_\_\_

COURT OF GENERAL SESSIONS

#42 AUGUST TERM 2002

THE STATE

vs.

WILLIE GUNTER

**Indictment for**

KIDNAPPING

S. C. Code Section 16-3-910 Class A-Felony  
0095

*I wish to plead  
guilty as charged.*

*X Willie Gunter*

ATTEST  
A TRUE COPY

*Barbara C. Scott*  
S. C. C. P. A. G. B.



STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 STATE VS. )  
WILLIE GUNTER )  
 AKA: )  
 Race: B Sex: M Age: )  
 DOB: [REDACTED] SS#: [REDACTED] )  
 Address: )  
 City, State, Zip COLUMBIA, SC 29204 )  
 DL# [REDACTED] SID# [REDACTED] )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 02 -GS- 40 - 6905  
 A/W#: H258037  
 Date of Offense: JULY 25, 2002  
 S.C. Code §: 16-3-910  
 CDR Code #: 0101915  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: KIDNAPPING  
 in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0,0,9,5  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser included Offense,  Defendant Waives Presentment to Grand Jury  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
 ATTEST:  
[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 25 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED \_\_\_\_\_  
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol Testing \_\_\_\_\_  
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender F  
 Other: \_\_\_\_\_

Recipient: \_\_\_\_\_  
 \*Fine: \$ \_\_\_\_\_

§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Surcharge)	\$
§14-1-211(A)(2) (Surcharge)	\$
§56-5-2995 (DUI Assessment)	\$
§73.3, 1B TP (Law Enforce. Funding)	\$
§33.7, 1B TP (Drug Court Surcharge)	\$
§50-21-114(BU) Breath Test Fee)	\$
§56-5-2942(J) (Vehicle Assessment)	\$
3% to County (if paid in installments)	\$
TOTAL	\$

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during proce...

Court Reporter: Barbara A. Scott Clerk of Court/ Deputy Clerk  
J. Williams  
 PRESIDING JUDGE [Signature]  
 Judge Code: 0111211  
 Sentence Date: 1-12-04  
Barbara P. Scott

WITNESSES

Investigator Gertrude Burns, CPD /ASOL

*Qu. & W. Wilson*

DOCKET NO. 02-65-40-6406

**The State of South Carolina,**

RICHLAND

County of \_\_\_\_\_

COURT OF GENERAL SESSIONS

#42 AUGUST TERM 2002

THE STATE

vs.

WILLIE GUNTER

ARREST WARRANT NO. H258636

ACTION OF GRAND JURY

**TRUE BILL**

*Wil Sat*  
Foreman of Grand Jury

VERDICT

**Indictment for**

CARJACKING

S. C. Code Section 16-3-1075(B)(2) Class A-Felony  
2600

Foreman

ury

Date:

ATTEST  
A TRUE COPY

*Barbara C. Scott*  
S. C. C. P. & O. B.



STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 STATE WILLIE VS. GUNTER )  
 AKA: \_\_\_\_\_ )  
 Race: B Sex: M Age: \_\_\_\_\_ )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
 Address: \_\_\_\_\_ )  
 City, State, Zip COLUMBIA, SC 29204 )  
 DL# \_\_\_\_\_ SID# \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSION

02 INDICTMENT/CASE#: 6906  
 -GS- 40  
 A/W#: H258636  
 Date of Offense: JULY 25, 2002  
 S.C. Code §: 16-3-1075(B)(2)  
 CDR Code #: 2161010  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: CARJACKING

In violation of § 16-3-1075(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2161010  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ Year and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED \_\_\_\_\_  
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol Testing \_\_\_\_\_  
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender  
 Other: \_\_\_\_\_

Recipient: \_\_\_\_\_  
 \*Fine: \$ \_\_\_\_\_

§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Surcharge)	\$
§14-1-211(A)(2) (Surcharge)	\$
§56-5-2995 (DUI Assessment)	\$
§73.3, 1B TP (Law Enforce. Funding)	\$
§33.7, 1B TP (Drug Court Surcharge)	\$
§50-21-114(BUI Breath Test Fee)	\$
§56-5-2942(J) (Vehicle Assessment)	\$
3% to County (if paid in installments)	\$
TOTAL	\$

Appointed PD or appointed other counsel, §25-12-10 Requires \$500 be paid to Clerk during pre-trial

Barbara A. Scott  
 Clerk of Court/ Deputy Clerk

PRESIDING JUDGE [Signature]  
 Judge Code: 011215  
 Sentence Date: 1-12-04

Court Reporter: J. Williams  
 A TRUE COPY  
 White - Clerk Green - Corrections Canary - Probation

WITNESSES

Inv. Gertrude Burns, CPD /ASDL

*D. W. W. Wilson*

DOCKET NO. 102-0570-0101

**The State of South Carolina,**

County of RICHLAND

COURT OF GENERAL SESSIONS

#42 AUGUST TERM 2002

THE STATE

vs.

WILLIE GUNTER

ARREST WARRANT NO. H258638

ACTION OF GRAND JURY

**TRUE BILL**

*Wilfcat*  
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

**Indictment for Criminal  
Sexual Conduct First Degree**

S. C. Code Section 16-3-652 Class A-Felony  
0160

*I wish to plead  
guilty as charged*  
*x Willie Gunter*  
A T T E S T  
A TRUE COPY  
*Richard F. X. [Signature]*  
S. C. C. P. & G. S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

INDICTMENT FOR CRIMINAL  
SEXUAL CONDUCT FIRST DEGREE

At a Court of General Sessions, convened on August 14, 2002,  
the Grand Jurors of RICHLAND County present upon their oath:

**COUNT ONE — CRIMINAL SEXUAL CONDUCT  
FIRST DEGREE**

That WILLIE GUNTER did in  
Richland County on or about July 25, 2002, engage  
in sexual battery, to wit: sexual intercourse and/or oral sex

upon and with the body of R.R. without  
his/her consent. Such sexual battery was accomplished by the use of force of a high and aggravated  
nature, to wit: the use of a deadly weapon and/or the victim was also the victim  
of a robbery, kidnapping or other similar offense

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

Warren B. Gese  
SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 STATE WILLE vs. GUNTER )  
 AKA: \_\_\_\_\_ )  
 Race: B Sex: M Age: 25 )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
 Address: \_\_\_\_\_ )  
 City, State, Zip COLUMBIA, SC 29204 )  
 DL# \_\_\_\_\_ SID# \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

02 INDICTMENT/CASE#: 6907  
 -GS- 40  
 A/W#: H258638  
 Date of Offense: JULY 25, 2002  
 S.C. Code §: 16-3-652  
 CDR Code #: 0 1 1 6 1 0  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: CSC1  
 in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0, 1, 6, 0  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:  
[Signature] Solicitor X [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 25 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED \_\_\_\_\_  
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol Testing \_\_\_\_\_  
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

Recipient:	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
TOTAL	\$ _____

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Barbara A. Scott  
 Clerk of Court/ Deputy Clerk  
 Court Reporter: J. Williams  
 ATTEST  
 A TRUE COPY

PRESIDING JUDGE [Signature]  
 Judge Code: 0 1 1 2 1 6  
 Sentence Date: 1-12-04

Barbara A. Scott