

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Perry M. Buckner, Circuit Court Judge

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S.C. Supreme Court

MORRIS STEWART,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213420

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF BEAUFORT

} COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 VS.

7 MORRIS FITZGERALD STEWART,

8 DEFENDANT.

) TRANSCRIPT

) OF

) RECORD

) 2009-GS-07-2611, 2614
) 2009-GS-07-2581 - 2586
) 2010-GS-07-676, 677

9
10 October 25th, 2010
11 Beaufort, South Carolina

12
13 B E F O R E:

14 THE HONORABLE CARMEN T. MULLEN, Judge.

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

17 JIM BANNON
18 ASSISTANT SOLICITOR
19 Attorney for the State

20 HELEN ROPER
21 ESQ.
22 Attorney for the Defendant

23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E SWITNESSESPAGE

(There were no exhibits marked during this hearing.)

Forgery valued less than \$5,000 in Indictment Number
2010-GS-07-00677.

1 Your Honor, I'm handing up the sentencing sheets as
2 well as the indictments, and, Your Honor, the State in this
3 case is gonna recommend to the Court 30 years in the
4 Department of Corrections, which is the maximum offense, the
5 maximum time allowed for this offense.

6 THE COURT: Okay.

7 SOLICITOR BANNON: But we ask that time be run
8 concurrent, Your Honor.

9 THE COURT: Okay.

10 All right. You're Mr. Stewart?

11 DEFENDANT: Yes, ma'am.

12 THE COURT: Mr. Stewart, will you raise your
13 right-hand?

14 (WHEREUPON, the Defendant was placed under oath at this
15 time.)

16 THE COURT: Mr. Stewart, how old are you, sir?

17 DEFENDANT: Twenty-seven.

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

19 DEFENDANT: Fourth grade.

20 THE COURT: Did you graduate?

21 DEFENDANT: No, ma'am.

22 THE COURT: Where did you go to the 12th grade?
23 Where did you go to school?

24 DEFENDANT: Shellingham High.

25 THE COURT: Where is that, sir?

1 DEFENDANT: Philadelphia. Philadelphia.

2 THE COURT: Okay. How long you been in the Beaufort
3 area?

4 DEFENDANT: About seven years.

5 THE COURT: What type of work do you do, sir?

6 DEFENDANT: Maintenance engineer for the Marriott.

7 THE COURT: Are you married?

8 DEFENDANT: No.

9 THE COURT: Do you have any children?

10 DEFENDANT: Yeah.

11 THE COURT: How many children do you have?

12 DEFENDANT: One.

13 THE COURT: How old is your child?

14 DEFENDANT: Four.

15 THE COURT: And who does that child live with?

16 DEFENDANT: His mother.

17 THE COURT: Do you pay child support for that child?

18 DEFENDANT: No, ma'am. Well, me and his mother was
19 living together.

20 THE COURT: Okay. So, you're currently living
21 together?

22 DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. And obviously you are incarcerated.
24 How long you been in jail?

25 DEFENDANT: Since November of 2009.

1 SOLICITOR BANNON: He was taken into custody on
2 November the 13th of 2009.

3 THE COURT: of 2009.

4 All right. Mrs. Roper, does your client understand the
5 charges against him and the possible punishment and his
6 constitutional rights?

7 MS. ROPER: Yes, Your Honor.

8 THE COURT: Mr. Stewart, do you wish to plead guilty
9 here today to ten counts, five for armed robbery, two for
10 forgery less than \$5,000, two for possession of a weapon
11 during commission of a violent offense and kidnapping?

12 DEFENDANT: Yes.

13 THE COURT: Is it your investigation, Ms. Roper, does
14 the State have adequate evidence to prove Mr. Stewart's
15 guilt on each of these charges beyond a reasonable doubt?

16 MS. ROPER: Yes, Your Honor.

17 THE COURT: Mr. Stewart, have you taken any medication
18 or drank any alcohol in the last 24 hours?

19 DEFENDANT: No.

20 THE COURT: Do you suffer from any mental or physical
21 infirmity that prevents you from understanding what we're
22 doing here today?

23 DEFENDANT: No.

24 THE COURT: Sir, I'm gonna go through each of the
25 indictments and read them to you.

1 All right, sir?

2 DEFENDANT: Yes, ma'am.

3 THE COURT: The first is Indictment Number 2009-2614.
4 It's for armed robbery. This indictment states that you
5 did, on or about September 24th, 2009, in Beaufort County,
6 at 95 Mathews Drive on Hilton Head, by use of force,
7 threats, or intimidation, and while armed with a deadly
8 weapon or representing a deadly weapon, did take and carry
9 away goods and/or monies from the person or immediate
10 presence of a Muhittin Bostanci with intent to permanently
11 deprive the victim of possession of either the goods or
12 money.

13 Sir, do you understand the charge contained in this
14 indictment?

15 DEFENDANT: Yes.

16 THE COURT: How do you wish to plead to it, sir, guilty
17 or not guilty?

18 DEFENDANT: Guilty.

19 THE COURT: And are you pleading guilty to this charge
20 because you are, in fact, guilty?

21 (No response.)

22 THE COURT: All right. Mr. Stewart, you seem to
23 hesitate and it's my understanding you're up for trial
24 today. So, as far as on one of your cases are concerned.
25 So, let's go ahead and pick a jury.

1 MS. ROPER: Your Honor, just beg the Court's indulgence
2 for one moment?

3 THE COURT: Ms. Roper, why don't we just go ahead and
4 call the next matter. You may need some more time to talk
5 to him.

6 SOLICITOR BANNON: Thank you, Your Honor.

7 (WHEREUPON, a short recess was taken in this case at
8 this time.)

9 SOLICITOR BANNON: The State will recall Morris
10 Stewart, Your Honor.

11 THE COURT: Okay. Before we do this, let me see the
12 attorneys for a second.

13 (Whereupon, a bench conference was held at this time.)

14 THE COURT: All right. We're back on the record in Mr.
15 Stewart's case.

16 Mr. Stewart, when we began I'd gotten to the point in
17 my plea that we were discussing the first armed robbery,
18 sir.

19 Sir, I'm gonna go through and read you this indictment
20 again. It's for armed robbery. It's Indictment Number
21 2009-2614. It states that on or about September 24th,
22 2009, in Beaufort County, South Carolina, that you did, at
23 95 Mathews Drive on Hilton Head Island, either by force,
24 threats, or intimidation, and while armed with a deadly
25 weapon or that you represented that you had a deadly weapon,

1 did take and carry away goods and monies of the person or
2 immediate presence of a Muhittin Bostanci with the intent to
3 permanently deprive the victim of possession thereof.

4 Sir, do you understand the charge contained in this
5 indictment?

6 DEFENDANT: Yes.

7 THE COURT: How do you wish to plead to it, guilty or
8 not guilty?

9 DEFENDANT: Guilty.

10 THE COURT: And are you pleading guilty because you
11 are, in fact, guilty?

12 DEFENDANT: Yes.

13 THE COURT: Sir, you understand that armed robbery
14 carries a mandatory minimum sentence of ten years and up to
15 30 years?

16 Do you understand that, sir?

17 DEFENDANT: Yes, ma'am.

18 THE COURT: And understanding that, sir, do you still
19 wish to plead guilty?

20 DEFENDANT: Yes.

21 THE COURT: Additionally, sir, you also understand that
22 it is categorized as both a violent and most serious
23 offense. Sir, the practical effect of that is that, as a
24 violent offense, you are going to do a minimum of 85 percent
25 of the sentence that I give you.

1 Do you understand that, sir?

2 DEFENDANT: Yes, ma'am.

3 THE COURT: As additionally, sir, it's a most serious
4 offense. You're going to be looking at strikes, and my
5 understanding, from a brief meeting with your attorney and
6 the solicitor before I took this plea this morning, before
7 we began, you were scheduled to be up to trial. I see that
8 you are dressed out for trial, and it's my understanding the
9 solicitor's office is going to try you on one of the armed
10 robberies, and then if they got a conviction on that armed
11 robbery, they were then going to go ahead and try you on
12 another one of the armed robberies and effectively they were
13 going to notice you with a life without parole sentence.

14 Do you understand that?

15 DEFENDANT: Yes, ma'am.

16 THE COURT: And you understand the practical effect of
17 that is that if you had been convicted on the first armed
18 robbery, and you then were tried and convicted on a second
19 one, and they had given you notice of life without parole,
20 no judge would have any other choice but to give you the
21 actual life without parole sentence.

22 Do you understand that?

23 DEFENDANT: Yes, ma'am.

24 THE COURT: All right. I just want to make sure,
25 understanding all that, do you still wish to plead guilty to

1 this charge?

2 DEFENDANT: Yes, ma'am.

3 THE COURT: All right, sir. Sir, you're also charged
4 in Indictment Number 2009-2611 with kidnapping. This
5 indictment states that you did, in Beaufort County, South
6 Carolina, on or about September 24th of 2009, did
7 unlawfully seize, confine, inveigle, decoy, kidnap, and
8 detain in some way Mr. Muhittin Bostanci again without the
9 authority of law.

10 sir, do you understand the charge contained in this
11 indictment?

12 DEFENDANT: Yes, ma'am.

13 THE COURT: And how do you wish to plead to it, sir,
14 guilty or not guilty?

15 DEFENDANT: Guilty.

16 THE COURT: Are you pleading guilty because you are, in
17 fact, guilty?

18 DEFENDANT: Yes.

19 THE COURT: And you understand that kidnapping carries
20 from zero to thirty years in prison?

21 Do you understand that?

22 DEFENDANT: Yes, ma'am.

23 THE COURT: And understanding that, sir, do you still
24 wish to plead guilty?

25 DEFENDANT: Yes, ma'am.

1 THE COURT: All right, sir. And additionally, sir,
2 you, again, realize that this is a violent and most serious
3 offense?

4 DEFENDANT: Yes, ma'am.

5 THE COURT: All right. Sir, you're charged in
6 Indictment Number 2009-2584 again with armed robbery. Sir,
7 this indictment states that on or about November 7th of
8 2009, in Beaufort County, South Carolina, South Carolina,
9 that you, Morris Fitzgerald Stewart, Junior, at [REDACTED]
10 [REDACTED] on Hilton Head Island did, by use of force,
11 threats, or intimidation and while armed with a deadly
12 weapon, or alleging or representing that you had a deadly
13 weapon, did take and carry away goods and/or monies from the
14 person or immediate presence of a Rebecka Hanglum with the
15 intent to permanently deprive the victim of those goods or
16 money.

17 Sir, do you understand the charge contained in this
18 indictment?

19 DEFENDANT: Yes, ma'am.

20 THE COURT: And how do you wish to plead to it, sir,
21 guilty or not guilty?

22 DEFENDANT: Guilty.

23 THE COURT: And are you pleading guilty to this charge
24 because you are, in fact, guilty?

25 DEFENDANT: Yes, ma'am.

1 THE COURT: You understand, again, that armed robbery
2 carries a mandatory minimum of ten years and up to thirty
3 years in prison.

4 Do you understand that, sir?

5 DEFENDANT: Yes.

6 THE COURT: And understanding all that, do you still
7 wish to plead guilty?

8 DEFENDANT: Yes, ma'am.

9 THE COURT: Sir, you're charged in Indictment Number
10 2009-2586 with possession of a weapon during a violent
11 crime. Sir, this indictment states that you did, in
12 Beaufort County, on or about November 7th of 2009, did
13 possess a weapon or visibly display what appeared to be a
14 weapon during the commission or attempted commission of an
15 armed robbery, which is a violent crime.

16 Sir, do you understand the charge contained in this
17 indictment?

18 DEFENDANT: Yes.

19 THE COURT: And how do you wish to plead to it, sir,
20 guilty or not guilty?

21 DEFENDANT: Guilty.

22 THE COURT: Are you pleading guilty to this charge
23 because you are, in fact, guilty?

24 DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that this carries up to

1 five years in prison?

2 DEFENDANT: Yes.

3 THE COURT: And understanding that, sir, do you still
4 wish to plead guilty?

5 DEFENDANT: Yes.

6 THE COURT: You're charged in Indictment Number
7 2009-2583 again with possession of a weapon during a violent
8 crime. This indictment states that you did, in Beaufort
9 County, on or about October 12th of 2009, did possess a
10 weapon or visibly display what appeared to be a weapon
11 during the commission of an armed robbery. Again, a violent
12 crime.

13 Sir, do you understand the charge contained in this
14 indictment?

15 DEFENDANT: Yes.

16 THE COURT: How do you wish to plead to it, sir, guilty
17 or not guilty?

18 DEFENDANT: Guilty.

19 THE COURT: And are you pleading guilty because you
20 are, in fact, guilty?

21 DEFENDANT: Yes.

22 THE COURT: Again, sir, do you understand this carries
23 up to five years in prison?

24 DEFENDANT: Yes, ma'am.

25 THE COURT: Sir, you're charged in Indictment Number

1 2009-2582 with armed robbery. Sir, this indictment states
2 that you did, on or about October 12th of 2009, in
3 Beaufort County, at 119 Mathews Drive on Hilton Head Island
4 did, by use of force, threats, or intimidation, and while
5 armed with a deadly weapon, did take and carry away goods
6 and/or monies from the person or immediate presence of Jose
7 Torres with the intent to permanently deprive the victim of
8 that either goods or monies.

9 Sir, do you understand the charge contained in this
10 indictment?

11 DEFENDANT: Yes, ma'am.

12 THE COURT: How do you wish to plead to it, sir, guilty
13 or not guilty?

14 DEFENDANT: Guilty.

15 THE COURT: And are you pleading guilty because you
16 are, in fact, guilty?

17 DEFENDANT: Yes.

18 THE COURT: Again, you understand it carries a
19 mandatory minimum of ten years in prison and up to thirty
20 years, and, again, you understand it's a violent and most
21 serious offense, is that correct, sir?

22 DEFENDANT: Yes, ma'am.

23 THE COURT: Sir, you're charged in Indictment Number
24 2009-2585 with -- is this attempted armed robbery or armed
25 robbery?

1 SOLICITOR BANNON: Your Honor, I believe this is the,
2 the -- this is the situation where it's a -- I believe it's
3 an attempted armed robbery --

4 THE COURT: Okay.

5 SOLICITOR BANNON: -- because there's an individual
6 inside the store who they did hold up for money, but none
7 was actually carried away.

8 THE COURT: Okay. All right. Sir, you're charged in
9 this indictment will attempted, with attempted armed
10 robbery. This indictment states that you did, on or about
11 October 28th of 2009, in Beaufort County, at 20 Hatton
12 Place on Hilton Head Island, did, by use of force, threats,
13 or intimidate, and while armed with a deadly weapon or while
14 alleging, either by actions or words, that you had a deadly
15 weapon, did attempt to take and carry away goods or monies
16 from the person or immediate presence of a John Tinti with
17 the intent to permanently deprive him of his goods or money.

18 Sir, do you understand the charge contained in this
19 indictment?

20 DEFENDANT: Yes.

21 THE COURT: How do you wish to plead to it, sir, guilty
22 or not guilty?

23 DEFENDANT: Guilty.

24 THE COURT: And are you pleading guilty because you
25 are, in fact, guilty?

1 DEFENDANT: Yes.

2 THE COURT: Sir, again, you understand I could sentence
3 you up to 30 years in prison on this charge?

4 DEFENDANT: Yes.

5 THE COURT: And understanding that, do you still wish
6 to plead guilty?

7 DEFENDANT: Yes, ma'am.

8 THE COURT: Sir, you're also charged in Indictment
9 Number 2009-2581 with armed robbery. This indictment states
10 that on or about October 28th of 2009, in Beaufort County,
11 that you did, at 20 Hatton Place, by use of force, threats,
12 or intimidation, and while armed with a deadly weapon, did
13 take and carry away the goods and/or monies from the person
14 or immediate presence of a Brittany Hopkinson with the
15 intent to permanently deprive the victim of those goods or
16 money.

17 Sir, do you understand the charge contained in this
18 indictment?

19 DEFENDANT: Yes, ma'am.

20 THE COURT: And how do you wish to plead to it,
21 Mr. Stewart, guilty or not guilty?

22 DEFENDANT: Guilty.

23 THE COURT: And are you pleading guilty, sir, because
24 you are, in fact, guilty?

25 DEFENDANT: Yes.

1 THE COURT: Again, you understand it carries up to
2 thirty years in prison?

3 DEFENDANT: Yes, ma'am.

4 THE COURT: Sir, you're also charged in Indictment
5 Number 2010-676 with forgery value less than \$5,000. This
6 indictment states that you did, in Beaufort County, on or
7 about July 22nd of 2009, did, with the intent to defraud,
8 did present Check Number 2693 to Wachovia Bank at 75 Mathews
9 Drive drawn on the Wachovia account of a John Myers of a
10 check in the amount of \$750.

11 Sir, do you understand the charge contained in this
12 indictment?

13 DEFENDANT: Yes, ma'am.

14 THE COURT: And how do you wish to plead to it,
15 Mr. Stewart, guilty or not guilty?

16 DEFENDANT: Guilty.

17 THE COURT: And are you pleading guilty because you
18 are, in fact, guilty?

19 DEFENDANT: Yes, ma'am.

20 THE COURT: And, finally, Mr. Stewart, you're charged
21 in Indictment Number 2010-677, again, with forgery value
22 less than \$5,000. This indictment states that you did, in
23 Beaufort County, on or about July 27th of 2009, with the
24 intent to defraud, did present Check Number 2570 to Wachovia
25 Bank at 75 Mathews Drive drawn on the Wachovia account of

1 Gary Volet, a check in the amount of \$600.

2 Sir, do you understand the charge contained in this
3 indictment?

4 DEFENDANT: Yes, ma'am.

5 THE COURT: And how do you wish to plead to it, sir,
6 guilty or not guilty?

7 DEFENDANT: Guilty.

8 THE COURT: And are you pleading guilty because you
9 are, in fact, guilty?

10 DEFENDANT: Yes, ma'am.

11 THE COURT: Mr. Stewart, I want to make sure you
12 understand and appreciate it.

13 While the Solicitor's Office has recommended a sentence
14 of thirty years concurrent on each of these, I want to make
15 sure you understand and appreciate that, by adding up and
16 running all of these sentences consecutively, you are
17 looking at 200 years in prison.

18 Do you understand that?

19 DEFENDANT: Yes, ma'am.

20 THE COURT: Additionally, sir, as we told you before,
21 your case was ready or one of your cases is ready to be
22 tried this week, and had you been convicted of that, and the
23 Solicitor's Office then chose to seek life without parole on
24 yet another one of the armed robberies, you would of looked,
25 been looking at effectively a life sentence without the

1 possibility of parole.

2 Do you understand that?

3 DEFENDANT: Yes, ma'am.

4 THE COURT: And understanding all that, sir, do you
5 still wish to plead guilty?

6 DEFENDANT: Yes, ma'am.

7 THE COURT: All right, sir. I also understand that at
8 one time the solicitor had given you a plea offer to 15
9 years for all of this to run concurrent, is that correct,
10 sir?

11 DEFENDANT: Yes, ma'am.

12 THE COURT: And I want to make sure you understand and
13 appreciate they have withdrawn that plea offer. I'm
14 assuming because it was of a deadline, and it's no longer
15 out there anymore. But I want to make sure you understand
16 that their recommendation is thirty years today.

17 Do you understand that?

18 DEFENDANT: Yes, ma'am.

19 THE COURT: And, again, you understand that I could
20 sentence you up to 200 years.

21 Do you understand that?

22 DEFENDANT: Yes, ma'am.

23 THE COURT: And understanding all of that, sir, do you
24 still wish to plead guilty?

25 DEFENDANT: Yes, ma'am.

1 THE COURT: All right, sir. Sir, do you understand
2 that if you plead guilty you are giving up your
3 Constitutional right to a jury trial?

4 DEFENDANT: Yes, ma'am.

5 THE COURT: Sir, at a jury trial you have a right to
6 testify or not testify on your own behalf, and if you chose
7 not to testify, I'd tell the jury they couldn't hold it
8 against you. However, sir, when you plead guilty, you are
9 waiving that right and you're coming forward to the Court
10 and you're telling me that you are, in fact, guilty of these
11 charges.

12 Do you understand that?

13 DEFENDANT: Yeah.

14 THE COURT: Additionally, sir, if you were to go to a
15 jury trial, your attorney, Ms. Roper, would have the
16 opportunity to cross-examine the State's witnesses as well
17 as present witnesses in your defense. She would also have
18 the ability to attempt to suppress certain forms of evidence
19 in the case. Again, I just want to make sure you understand
20 and appreciate that, by pleading guilty, you are waiving all
21 those rights, and you understand that you're gonna be
22 sentenced just as if a jury of 12 people convicted you on
23 all of these ten indictments.

24 Do you understand that, sir?

25 DEFENDANT: Yes, ma'am.

1 THE COURT: All right, sir. Sir, are you completely
2 satisfied with how Ms. Roper has represented you?

3 DEFENDANT: Yes, ma'am.

4 THE COURT: Has she done everything you've asked her to
5 do?

6 DEFENDANT: Yes, ma'am.

7 THE COURT: Have you understood all your conversations
8 with her?

9 DEFENDANT: Yes.

10 THE COURT: Do you have any complaints against her
11 whatsoever?

12 DEFENDANT: No.

13 THE COURT: Sir, is anyone promised you anything or
14 held out any hope of reward to get you to plead guilty here
15 today?

16 DEFENDANT: No.

17 THE COURT: Has anyone pressured you or threatened you
18 or told you you had to plead guilty?

19 DEFENDANT: No.

20 THE COURT: Is anyone from law enforcement or the
21 solicitor's Office mistreated you in any way regarding these
22 ten charges?

23 DEFENDANT: No.

24 THE COURT: And, Ms. Roper, just so I'm clear, this is
25 everything out there against Mr. Stewart, and I presume it's

1 in Beaufort County, but do we know of anywhere else?

2 SOLICITOR BANNON: I'm not aware of any other charges
3 anywhere else, Your Honor.

4 THE COURT: Okay. But as far as this takes care of
5 everything in Beaufort County?

6 MS. ROPER: Your Honor, this does take care of
7 everything to my knowledge and I do not believe there's any
8 pending warrants or anything else outstanding. This
9 resolves everything here.

10 THE COURT: All right. Thank you.

11 All right. Have you understood all my questions,
12 Mr. Stewart?

13 DEFENDANT: Yes, ma'am.

14 THE COURT: Have you been truthful in your responses to
15 the Court?

16 DEFENDANT: Yes.

17 THE COURT: You have the right to appeal this guilty
18 plea and the sentence of this Court, but you must do so
19 within ten days of today's date. If you can't afford an
20 attorney for an appeal one will be appointed for you at no
21 cost to you if you request it.

22 Do you understand that?

23 DEFENDANT: Yes.

24 THE COURT: All right. Solicitor.

25 SOLICITOR BANNON: Your Honor, I'll begin I suppose in

1 chronological order beginning with the two forgeries. Your
2 Honor, these occurred at the Marriott Bearing Club on Hilton
3 Head Island. The first one, Mr. Bellew, realized on
4 July the 30th that a check was missing. He was a guest at
5 that hotel at that time. It was discovered that the check
6 was cashed by, by Mr. Morris Stewart. It was made out to
7 him. He signed it. It was for \$600 in cash. The victim
8 says that he didn't, never gave this check to Mr. Stewart,
9 does not know Mr. Stewart even though the check was cashed
10 by Mr. Stewart.

11 The next check, Your Honor, the Myers were also staying
12 at the Bearing Beach Club on Hilton Head Island. Their stay
13 was in late July as well. They believe that the check was
14 taken during that time. It was, it cashed on the 22nd just
15 after they had checked out. This check was made out for
16 \$750 to Mr. Morris Stewart and that was cashed also.

17 THE COURT: This is something where only one check was
18 taken or a few of each of these or were entire checkbooks
19 taken?

20 SOLICITOR BANNON: I believe it was just one check.

21 THE COURT: Okay.

22 SOLICITOR BANNON: And, so, that takes care of the two
23 forgeries, Your Honor.

24 Beginning with Reilley's, Reilley's North End Pub, this
25 occurred on September 24th, 2009. The defendant and

1 codefendant entered the bar shortly after 12:00 p.m. One of
2 them produced a gun. I believe it was the codefendant. At
3 that point the money from the register was taken and handed
4 over to the defendant here. The two of them then tie up the
5 bartender and flee. The bartender ID's the codefendant.
6 The codefendant, when they speak with him, he says -- he
7 admits his involvement and says the second person was with
8 him was Mr. Stewart.

9 THE COURT: What sentence did the codefendant get?
10 I'm curious.

11 SOLICITOR BANNON: Those charges are still pending,
12 Your Honor.

13 THE COURT: All right.

14 SOLICITOR BANNON: With regards to the incident on
15 October the 12th of 2009 that happened on at the Latinos
16 Store on Hilton Head Island. The victim states that two
17 black males entered the store and robbed him at gunpoint.
18 He said that he did not know their names, but that he got a
19 good enough look at them that he could identify them in a
20 photo lineup. \$700 in cash was taken from the store.

21 The victim does identify both of the defendants with
22 separate photo lineups, and, again, the codefendant is, is
23 interviewed by the police and he admits his involvement and
24 says that he committed this armed robbery with Mr. Stewart.

25 On October the 28th of 2009, this occurred at the

1 Outback Restaurant on Hilton Head Island, Your Honor.
2 Essentially what happened was that apparently the defendant
3 and codefendant called in a to go order, went into that side
4 of the building, and the victim, the victim's a waitress who
5 way working at the to go stand. She says the two back males
6 came in, and they were there to pick up an order of wings.
7 She gave them the wings, but instead of paying, they
8 laughed, produced a weapon, and they got all the money in
9 the register. There was another individual, Mr. Tinti, who
10 was standing at the scene. He was also accosted for money,
11 but nother was gotten from him. Approximately \$400 was
12 taken from the tills that day.

13 When the victim was shown photo lineups she picked out
14 both the defendant and the codefendants. When, when
15 interviewed about this incident, Mr. Stewart stated that he
16 did go with the codefendant, but that he didn't know what
17 was going to happen and that he simply took off running.

18 With regard to the November 7th of 2009 robbery, Your
19 Honor, this happened at the Subway on Hilton Head Island.
20 In this incident it was just Mr. Stewart who was involved.
21 He went to that location. He went in, again, initially
22 posed as a customer. I believe that this was in order to
23 sort of scout the location. The restaurant was completely
24 empty. There was only one female clerk who was working. He
25 ordered a veggie patty wrap, asked for it to be heated up.

1 At that time he asked to go to the bathroom, and when he
2 came back out of the bathroom, he came behind the counter,
3 took out a handgun from his pocket, and told Ms. Hanglum,
4 who was the, the only clerk who was working that night, to
5 empty all the money from the register and empty all the
6 money from the safe and he told her he would hurt her if he
7 had to. He made her get down on her knees. When he left
8 the scene he made off with approximately \$1,192. When he
9 was later contacted by law enforcement he admitted to
10 robbing the restaurant.

11 And, Your Honor, I wanted to let you know that Ms.
12 Hanglum from the Subway is present and she said she would
13 like to address the Court at the appropriate time.

14 THE COURT: All right. Mr. Stewart, you heard the
15 facts as stated by the Solicitor, is that correct?

16 DEFENDANT: Yes, ma'am.

17 THE COURT: I find a substantial factual basis for this
18 plea, that your decision to plead guilty has been made
19 freely, voluntarily, and knowingly, and intelligently.
20 You're represented by competent counsel with whom you tell
21 me you're satisfied and I am gonna accept your plea.

22 Ms. Hanglum, would you like to speak, ma'am?

23 MS. HANGLUM: Yes. Your Honor, this is been a life
24 changing experience for me. I moved from Colorado a year
25 ago, came from a very small town. You didn't lock your

1 cars. You didn't lock your doors. He could of taken my
2 life, Your Honor.

3 I mean he didn't have remorse. He didn't -- he just
4 looked me in the face like I was nothing. He said that it
5 didn't matter to him, and he -- I don't know what he was
6 thinking, but he has changed my life. I don't go out at
7 night by myself without turning and looking everywhere
8 thinking that something's gonna happen to me.

9 He needs to realize what he's done has changed our
10 lives. Well, Your Honor, I'm just somebody that he took
11 money from. I live with this every day. Not just the day
12 that it happened. I mean just -- this is, this is the
13 hardest thing I've ever had go through. I don't want ever,
14 ever want anyone else to go through it again. It was
15 horrible.

16 I hope that he understands and, honestly, I, I can -- I
17 do forgive him. I mean for some reason this gentleman did
18 this. I don't know if it was drugs. I don't know what was
19 the case, but honestly he needs help, and I think our, our
20 prison system can help him. He needs, he needs something.

21 He has a boy that he needs to come home to in the
22 future. I just really hope that you will make sure that he
23 gets the help that he needs and get a, a just sentence.

24 Thank you.

25 THE COURT: Thank you, ma'am.

1 All right. What is his current record?

2 SOLICITOR BANNON: Your Honor, he doesn't have anything
3 other than a magistrate level offenses. I believe that
4 there's one criminal domestic violence conviction as well as
5 one false information to the police officer. That's the
6 extent of his record.

7 THE COURT: He's 27 years old?

8 SOLICITOR BANNON: Yes, ma'am, I believe he's 26 when
9 the offenses started. He was, he's 27 years old.

10 THE COURT: Ms. Roper, you need to shed some light on
11 this for me.

12 MS. ROPER: Yes, Your Honor, with pleasure.

13 Mr. Stewart is 27 years old. I've represented
14 Mr. Stewart since about the day of his incarceration of
15 November the 14th of 2009, which would of been about seven
16 days after the event at Subway. Mr. Stewart and I have met
17 many times over the course of this year. We have had many
18 conversations.

19 In addition to talking with Mr. Stewart I've gotten to
20 know his mother, Tracy McGrier, who's present in the
21 courtroom. Also his grandmother, Mrs. Mary Amonitti, and at
22 the appropriate time I would love for them to address the
23 Court.

24 I can assure you that Morris Stewart has family who
25 loves him. They have been in frequent contact with me, and

1 I have no doubt in my mind that this is not Morris' true
2 personality, and I know this because I've talked with his
3 family. I've talked with Morris and he's -- he has a pretty
4 calm and cold demeanor, but I know that inside he is
5 terrified of being here today, Your Honor.

6 Morris' son, his name is Jeremiah, he's four years old.
7 Morris is in a serious, basically in a serious relationship
8 with Jeremiah's mother. I believe she's working and can not
9 be here today.

10 But Morris has three brothers and three sisters. He
11 says he's close with his oldest sister and one of his
12 brothers. That most of the other siblings are younger. I
13 know Ms. McGrier also has a young child, three or four years
14 old, who she takes care of, her own child.

15 Like the solicitor said, there is no significant prior
16 record. Mr. Stewart has obtained his GED. He has a
17 certificate in auto body repair that he received from a tech
18 school that he attended in Pennsylvania.

19 Now, to comment on the facts of the cases, Mr. Stewart,
20 as you noticed, hesitated when it came down to the time to
21 plead to his charges, especially the Reilley's. The
22 solicitor has recited the facts, and but for the situation
23 where Mr. Stewart would be eligible for life without parole,
24 we might have actually tried some of these cases. But
25 today, Your Honor, Morris is accepted the guilty plea and he

1 is here today.

2 Mr. Stewart never admitted any involvement with the
3 Reilley's nor the robbery or with the Latinos Store. He
4 did, like the solicitor say, admit that he was present at
5 the Outback when the codefendant presented a weapon and
6 allegedly armed robbed this store. Mr. Stewart fled from
7 the scene thinking what in the world is my friend doing, I'm
8 out of here, and that's what his version of the story is.
9 Would it be enough, would there be enough evidence for a
10 jury to find him guilty, we think that, that all these
11 considered there would be.

12 To comment on the Subway, the facts with which I am
13 most familiar with being ready to try, try this today, I can
14 tell you and there is -- there aren't words to console Ms.
15 Hanglum, and there's no way I can imagine what she has been
16 through, and I don't think that Mr. Stewart had any
17 intention whatsoever of ever hurting Ms. Hanglum.

18 He did confess to this armed robbery. He did say in
19 his confession that the gun that was held was inoperable.
20 There -- it was simply a device perhaps to intimidate. He,
21 I don't believe, ever pointed the gun specifically at her.
22 It was hanging there at his side. Not that that necessarily
23 mitigates anything, but the intention behind this he was to
24 score some cash.

25 If we look chronologically at these charges, it starts

1 off with forgery and he gets \$700 or so off of these
2 forgeries in the summer of 2009. Well, we, however -- none
3 of us are strangers to the facts of the economy. We know
4 that all of us have suffered in one way, shape, or form
5 from, from this, this economy, and I believe that Morris
6 Stewart is, is like we all are, is a victim of the economy
7 and has chosen to go about correcting his financial
8 situation in the wrong way.

9 In Mr. Stewart's confession, he lays forth a scenario
10 which is not uncommon. He says that he was living with his
11 girlfriend, the mother of Jeremiah, that he was, he was
12 fired from the Marriott. I guess I believe was in relation
13 to these forgery charges. But he was fired from the
14 Marriott, and during this time he was working at a temp
15 agent making menial dollars working one or two days a week.
16 And during this time I believe his, his wife is trying to
17 make ends meet or his girlfriend is trying to make ends meet
18 as well, pay utilities, clothe the kids, do the best they
19 can.

20 Mr. Stewart said that Jeremiah's toe was popping out
21 the end of his shoe. They were facing eviction on
22 November 24th from their apartment. I think that the
23 intention was to please let me do something to keep the
24 lights on, to keep us in a home, to give us shelter for a
25 few more months with the winter months approaching.

1 I think that Mr. Stewart also said in his confession he
2 came into the Subway as a customer and asked where the
3 bathroom was, and during this time in the confession he
4 tells the police that he was so nervous that he could of
5 thrown up.

6 Your Honor, this is certainly no justification for what
7 is happened, but I want you to know that Morris Stewart is
8 not a violent person despite the, the categorization of
9 these crimes is violent by our Legislature. Nobody who is
10 injured. Nobody was hurt. And yes, there are mental scars
11 which will remain for the victims in these cases. I hope
12 that in time those will heal. But Mr. Stewart is paying a
13 really heavy price for doing something which is ill advised,
14 for something that was against his own best interest, and at
15 the time he thought was actually in the interest of himself
16 and his family.

17 Your Honor, I believe that a sentence of 15 years
18 concurrent on all charges is sufficient to put any and all
19 victims' minds at ease. Mr. Stewart's gonna be doing, doing
20 some time. Fifteen years from now Mr. Stewart will be 42
21 years old, and, of course, he can't presume that he's going
22 to get any good credits. So, we'll talk about 15 years. I
23 want to present to you a scenario if Your Honor will indulge
24 me.

25 In about 15 years Jeremiah will be 19 years old. Maybe

1 if Mr. Stewart receives his credits or that maxes out 85,
2 receives parole at 85 percent, he'll be able to see Jeremiah
3 graduate from high school. This is the hope, Your Honor,
4 that Morris Stewart's life is not thrown away. He has a
5 future. He has a family and I know that he can make
6 something of himself.

7 with a rap sheet that's gonna look like this, it will
8 be difficult, and I want to state for the record it is my
9 understanding that even though he is pled guilty to at least
10 six most serious offenses, they count as one strike today.
11 If Mr. Stewart were to get back in the community, and this
12 is simply hypothetical because I am sure this will never
13 happen, if he were to commit another offense of this
14 stature, stature, at that point in time he would be eligible
15 for life without parole if the solicitor wants to do that or
16 proceed that sentence.

17 Your Honor, at this time I would like, if they are
18 willing and able, Ms. Mary Amonitti and Ms. Tracy McGrier to
19 address the Court.

20 MS. AMONITTI: My name is Mary Amonitti. I am Morris'
21 grandmother, and I just can not tell you how sorry I am.
22 You know, when people come into a courtroom, they never know
23 the background, what some people are going through.

24 My grandson lived with my family, elderly mother from
25 the time they were born until my mother passed away, and he

1 was about four or five years old. Her whole life was
2 surrounded by these children, and on her dying day, on March
3 the 19th in 1992, I asked her mom, what is the last thing
4 that you want me to do and she said whatever you do take
5 care of Morris. That was about twelve o'clock at night. I
6 got to her home, and she passed away the next morning at
7 seven o'clock, and I've lived with those last dying words of
8 my mother.

9 My mother was 16 years old when she married my dad who
10 had 14 children from a previous wife who died in child birth
11 and she took on 14 children. I was her (inaudible) and
12 she's always loved children. When she retired, when she was
13 taking care of Mia and Morris. that's what she's around her
14 whole life. Their father never (inaudible). I worked. My
15 daughter was in the military at the time, and I did
16 everything I could to provide for these children.

17 After she passed away, that we live with what I'm --
18 they lived right behind me and Morris always felt that he be
19 outside of the things. He had two other children, two boys,
20 and his sister became their little girl, and he was so
21 unhappy that I decided to bring him and Mia to live with me,
22 and God knows I had worked in the schools and in the
23 community. And when Morris entered junior high school, this
24 beautiful suburban school outside of Philadelphia, he'd come
25 home angry because he says the teachers didn't like him

1 because he was a tall skinny black kid.

2 Like I said, no one knows what a child goes through in
3 life and what they will turn out to be. You can do all that
4 you can and they still make bad decisions. But in my heart,
5 as I drove over here, I said I know Morris is not a violent
6 person until he's desperate, and he made a foolish decision.
7 One I use to tell him who you hang out with, when you have a
8 child, no matter what, pray and believe that you can do
9 better.

10 I know he's sorry. I've been over here practically
11 every week since he was arrested last November, and we
12 talked about this thing and I brought his son to see him. I
13 have been assaulted before by someone and I know what this
14 young lady is dealing with when she says that you live every
15 day looking behind your back.

16 I don't know what decision's to be made by Your Honor
17 today, but I told my grandson whatever it is, just keep
18 believing and know that he'll be, stay the course and that
19 everything will work out that you just can't give up, and
20 I'm not gonna give up on him.

21 THE COURT: Thank you, ma'am.

22 Ms. McGrier, would you like to speak?

23 MS. MCGRIER: (Inaudible) I apologize to the court. I
24 know Morris.

25 COURT REPORTER: I can't hear her, judge.

1 MS. MCGRIER: I know Morris is not a very violent
2 person. He's always a person who that he would never be
3 involved. In growing up in the streets of Philadelphia,
4 after I got out of the military, and go back together, he
5 would, he would not hang out with anybody. He wasn't
6 hanging out.

7 He did take, after our grandmother died, he was very
8 close to his son, Jeremiah, and he's very close to my
9 youngest daughter and she's four. She's also grew up
10 together. I have another son who's in college and I have a
11 nine year old niece and he's very close to her, and we doing
12 very well, and we would like to (inaudible) cause if we
13 weren't told he's -- he can come out and make a difference,
14 and be there for the little kids and I do believe that he
15 changed and I believe he really needs some help and he's
16 gotten back and thank you for all that she has done for us
17 and also to Mr. Bannon for being nice enough to talk to me
18 whenever I had some questions.

19 Thank you and I am very sorry.

20 Thank you.

21 THE COURT: Thank you.

22 MS. ROPER: Your Honor, just one more thing to mention,
23 as you heard from the previous plea of Mr. Stewart, that
24 was -- the \$4,000 that was taken was \$4,000 from his, Ms.
25 Chisolm's plea, the \$4,000 came from Mr. Stewart's tax

1 return. So, he also was a victim and I know that -- I don't
2 know if he could scrape up that money or if he could of
3 actually bonded out at one point in time, but he would of
4 loved to have seen his son. So, I think there is a little
5 bitterness there too in having been himself a victim of, of
6 that scheme as well, and certainly I don't -- I'm not saying
7 anything to add to the fire for Ms Chisolm because, of
8 course, she is sorry for her, but I just wanted to bring
9 that to the Court's attention as well.

10 Your Honor, I don't know if there's anything else that
11 I can say except to, to plead for the Court's mercy. I
12 think 15 years will be sufficient for Mr. Stewart.
13 Certainly any less time would be wonderful, but, Your Honor,
14 given the nature of these crimes, I would like to ask for a
15 15 year sentence to run concurrent on all charges.

16 THE COURT: Mr. Stewart, what would you like to tell
17 me?

18 DEFENDANT: I'm sorry. It was nothing personal to, of
19 course, any of the victims, and then I made a, made some bad
20 choices. I don't blame anybody else for them. Just ask for
21 a chance to make it all new and be with my son.

22 THE COURT: Mr. Stewart, what happened?

23 DEFENDANT: Things just got a little rough. Bills had
24 to be paid. My son didn't have any shoes.

25 MS. ROPER: Your Honor, I think it's also a sore point

1 with Mr. Stewart as well that the day that he arrested, he
2 was, was arrested at Island Rec Center on Hilton Head
3 Island. When the officer came into the classroom, he was in
4 a classroom, to arrest him, he was holding his son in his
5 lap at his son's day care. So, Mr. Stewart was actively
6 involved in his son's life, and, if anything, I could stress
7 and not---

8 THE COURT: All right. Well, before I sentence him I'm
9 gonna go ahead and just take about a five minute break.

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

11 THE COURT: All right. Come on up.

12 MS. ROPER: Your Honor, if I may?

13 THE COURT: Yes, ma'am.

14 MS. ROPER: Before you announce your sentence, I think
15 your intermission was a bit of a blessing. Morris' sister,
16 Mia, is here in Court and I just wanted to let you know.

17 THE COURT: Thank you.

18 Ma'am, is there anything you would like to say or no
19 okay?

20 Well, I appreciate you being here as well.

21 Mr. Stewart, obviously you have a number of very
22 serious charges. Clearly you're gonna do a lot of time in
23 prison regardless. You know you're gonna do 85 percent of
24 these sentences. You're 27 years old. You could either let
25 it ruin you or you could keep in mind the end, which is to

1 get out one day and see your son. Okay. And certainly, to
2 help raise him so he doesn't end up in the same place.

3 Okay. And I am doing the best I can for you
4 understanding, sir, that, again, these are very serious
5 charges, and certainly you've changed peoples' lives by what
6 you did. And not only your own, your own family's, all your
7 victims. And, again, I just hope that this is it. It is
8 the end.

9 Indictment Number 2009-2614, it's for armed robbery,
10 sentence in this Court is to be committed to the Department
11 of Corrections for a period of 15 years.

12 On Indictment Number 2009-2611, sentence of this Court
13 is you be committed to the Department of Corrections for a
14 period of 15 years.

15 On Indictment Number 2009-2584, sentence of this Court
16 is you are to be committed to the Department of Corrections
17 for a period of 15 years.

18 On Indictment Number 2009-2586, for possession of a
19 weapon during a violent crime, sentence of the Court is you
20 be committed to the Department of Corrections for a period
21 of five years.

22 On Indictment Number 2009-2583, sentence of this Court
23 is you be committed to the Department of Corrections for a
24 period of five years.

25 On Indictment Number 2009-2582, sentence of the Court

1 is you be committed to the Department of Corrections for a
2 period of 15 years.

3 On Indictment Number 2009-2585, Sentence of this Court
4 is you be committed to the Department of Corrections for a
5 period of 15 years.

6 Indictment Number 2009-2581, the Sentence of this Court
7 is you be committed to the Department of Corrections for a
8 period of 15 years.

9 Indictment Number 2010-676, Sentence of this Court is
10 you be committed to the Department of Corrections for a
11 period of five years.

12 On Indictment Number 2010-677, for forgery, Sentence of
13 this Court is you be committed to the Department of
14 Corrections for a period of five years.

15 Those are all to run concurrent with each other, and I
16 am giving you credit for the time you've served so far.

17 Good luck to you, sir.

18 Ma'am, good luck to you.

19 MS. ROPER: Thank you, judge.

20 SOLICITOR BANNON: Thank you, Your Honor.

21

22 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

23

24

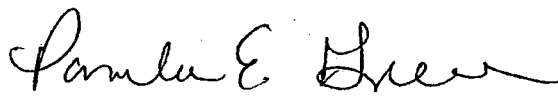
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 25th day of October, 2010, as reported by Brenda Cooley and transcribed by myself to the best of my ability.

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

February 10th, 2012



PAMELA E. GREEN, Court Reporter

FORM 5

2011-07-07-4558

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

Morris F. Stewart 343460

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

 11 OCT 27 PM 3:27
 JEROME A. SENEAL
 CLERK OF COURT
 BEAUFORT COUNTY, S.C.
INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Beaufort County General Sessions
3. Name(s) of co-defendant(s) (if any) Caltrane, D'Sean Miller
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009GS0702581, 2009GS0702582, 2009GS0702583
 - (b) 2009GS0702584, 2009GS0702585, 2009GS0702586
 - (c) 2009GS0702611, 2009GS0702614, 2010GS0700677, 2010GS0700676
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 25th 2010 - 15 years + 5 years - run Concurrent
 - (b) October 25th 2010 - 15 years + 5 years - run Concurrent

Revised 3/2003

- (c) October 25th 2010 - 15 years + 5 years - run concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The appeal was dismissed on Jan. 20, 2011 and
- ii. remitted to the clerk of court for Beaufort
- iii. County on February 7, 2011.
- (c) the date of each such result:
- i. January 20th, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. After Careful review, we find appellant failed to show
- ii. How many issues was preserved for our review. Therefore, due
- iii. to appellant's failure to establish any Preserved issues for appellate
review, The appeal is dismissed. JOHN CANNON Few, CJ
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Refer to additional page
- (b) Refer to additional page
- (c) Refer to additional page
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Refer to additional page
- (b) Refer to additional page
- (c) Refer to additional page
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) N/A

(c) N/A

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

- (a) the name and address of each attorney who represented you:
 - i. Helen R. Roper - 1905 Duke Street, Beaufort, SC 29901
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea
 - ii. _____
 - iii. _____

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

Refer to additional page for answer.

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

NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

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

Minni Stewart

SWORN to and subscribed before me this 24th
day of October, 2011

Sybil Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Morris Stewart
Applicant

SWORN or affirmed to and subscribed before me this
24th day of October, 2011.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

10. State Concisely the grounds on which you base your allegations that you are being held in custody unlawfully?

(A) Ineffective assistance of Counsel. Failure to present a defense "Doyle Violations".

(B) The State failed to produce the proof needed for a plea or Conviction.

(C) "Involuntary Guilty Plea". Pleaded under "Duress" Coercion, Compel force, by threat.

11. State Concisely and in the Same order the facts which Support each of the grounds set out in (10).

(A) Plea Counsel's representation fell below an objective Standard of reasonableness, for Counsel failure to present a defense in my Case. I did not receive my rule five (5) Disclosure until February 25th 2011. After I was Sentence on October 25th 2010. I would have not pled guilty if i had the true facts before me. This action by my Counsel was both error and showed erroneous prejudice to my Plea and Case.

(B) The State failed to produce any evidence that is Needed to make a Case. The State had No immediate Physical evidence, No fingerprints, No fibers, No hairs or epithelials to make a Case, But relied Solely

ON, Stereotype, an biased investigation, Persuaded Statement and fabricated Statements. A statement is insufficient to constitute guilt. The state and my Counsel acted out of Bad faith.

(C) After the erroneous threat and advice from my Plea Counsel telling me "If I did not plea Today", "the state was looking to give me life without Parole". And the harboring exculpatory information involving my rule(s) five disclosure, is prejudicial to my Case, this was intentionally to gain a tactical advantage over this Case. This was "Duress" - Compel force by threat, and rises to a Cognisable violation under federal and State law. My Plea Counsel was more Concerned about the plea than putting up a defense. This presented a Significant obstacle for me preparing an adequate defense or receiving a fair plea or fair trial. Counsel erred in allowing me to plea guilty rather than stand trial where there were numerous witnesses who would have provided a cogent defense on my behalf at a trial. That there is an reasonable likelihood exists, I would have opted not to plea guilty and exercised my right to a trial by a Jury.

19. State clearly the relief you seek in Filing this application: I do find it somewhat ironic that I was completely denied my rule (5) five Disclosure, so we could properly prepare a defense in my case, against the allegations arising from the warrants. In all good conscience, based on the foregoing arguments, violations, prejudicial and errors. I would ask that this Court would not just blink at the clear violations and errors and it be significant to vacate the sentence, or reverse the convictions so I could have the opportunity to present and rebuttal the allegations. I respectfully submit.

Morris F. Stewart #343460
Lieber Correctional Inst. Wando D 184
P.O. Box 205
Ridgeville, SC 29472

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Morris Stewart, #343460

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-07-4558

RETURN

2012 AUG -6 PM 1:15
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Respondent, making its Return to the application for post-conviction relief (PCR) filed October 27, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the December 2009 term of the Beaufort County Grand Jury for five (5) counts of armed robbery (2009-GS-07-2581, -2582, -2584, -2585, -2614), two (2) counts of possession of a weapon during a violent crime (2009-GS-07-2583, -2586), and one count of kidnapping (2009-GS-07-2611). He was subsequently indicted for two (2) counts of forgery less than \$5000 (2010-GS-07-0676, -0677). Applicant was represented by Helen R. Roper, Esquire.

On October 25, 2010, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Carmen T. Mullen to confinement for a period of fifteen (15) years for each armed robbery charge, five (5) years for each weapons charge, fifteen (15) years for kidnapping, and five (5) years for each forgery. The sentences are to be served concurrently.

Certified - A True Copy

Jeri Ann Roseneau - Clerk of Court
Beaufort County, SC - Melissa Kilby

The Applicant appealed his convictions or sentences. The Court of Appeals dismissed the Applicant's appeal. The Remittitur was sent on February 7, 2011.

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

II.

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

1. Ineffective assistance of counsel
 - a. Failure to present a defense "Doyle Violations"
2. The State failed to produce the proof needed for a plea or conviction.
3. Involuntary guilty plea
 - a. Pled under "Duress", coercion, compel force, by threat

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability

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

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

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By: ALR:WR
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Aug. 7, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MORRIS STEWART, #343460

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-07-4558

AFFIDAVIT OF SERVICE BY MAIL

2012 AUG -9 PM 1:14
CLERK OF COURT
COUNTY S.C.

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

Bernard McIntyre, Esquire

PO Box 248

Beaufort, SC 29901

DATED this 7th day of August, 2012



Anne R. Henley, Legal Assistant

For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BEAUFORT) CASE NO.: 2011-CP-07-4558

MORRIS STEWART,)
)
 APPLICANT,)
)
 v.) TRANSCRIPT OF RECORD
)
 THE STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
)

SEPTEMBER 5TH, 2012
 BEAUFORT, SOUTH CAROLINA
 BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

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 Attorney for the Applicant

Rebecca H. Hill
 Official Court Reporter

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EXHIBITS

NONE.

1 THE COURT: All right. Madame Assistant Attorney
2 General, please call your next case.

3 ASST. ATTY. GEN. WILSON: Yes, Your Honor. May it
4 please the Court? The State calls Morris Stewart v. the
5 State of South Carolina, docket number 2011-CP-07-4558. Mr.
6 Stewart pled guilty on October 25th, 2010, to one charge of
7 attempted armed robbery, four armed robbery charges,
8 possession of a weapon during the commission of a violent
9 crime, two of those, Your Honor. Two counts of forgery,
10 less than \$5,000, and a kidnapping charge, Your Honor.

11 On the armed robbery and the attempted armed robbery,
12 he received 15 year sentences. On the possession of a
13 weapon during the commission of a violent crime, on both of
14 those, he received five year sentences. On both of the
15 forgeries, he received a five year sentencing and on the
16 kidnapping, he received a 15 year sentence.

17 He pled before Judge Mullen who sentenced him to all
18 this time concurrently. At the time, he was represented by
19 Helen Roper-Dovell. Today, he is represented by Bernard
20 McIntyre. And Your Honor, I would like to turn it over to
21 Mr. McIntyre, and just request that he put forth the
22 allegations that he will proceed on today on the record.
23 Thank you.

24 THE COURT: Very well. Mr. McIntyre, I realize that
25 you were probably not appointed when the original

1 Application for Post-Conviction Relief was filed. I will
2 remind you -- I know you've had the opportunity to review it
3 and talk with your client this morning. If there are any
4 changes as to that, I would appreciate you telling me now
5 before we begin, so we all understand what page we're on as
6 we start this hearing.

7 MR. MCINTYRE: Your Honor, if it will please the Court,
8 there are some changes. First thing, on behalf of my
9 client, he has asked me to move before the Court for a
10 continuance.

11 THE COURT: On what grounds, Mr. McIntyre?

12 MR. MCINTYRE: Well, there are two grounds, Your Honor.
13 One is that he didn't believe that the transcript that we
14 received from the A.G.'s office is complete. Apparently,
15 Ms. Cooley, and you can probably look at it on page 42, Your
16 Honor, in the back of the document ---

17 THE COURT: Let me get there. All right. Now, page 42
18 on mine is a certificate.

19 MR. MCINTYRE: That's right, Your Honor. I'm just
20 referencing that for names. Apparently, Brenda Cooley was,
21 at one time during the guilty plea hearing, one of the court
22 reporters, and then according to Mr. Stewart there
23 ultimately ended up being somebody else as well.

24 But this person, Pam Green, who ended up transcribing
25 the record of the proceedings on that particular day,

1 according to Mr. Stewart, is incomplete, because he does
2 remember, among other things, that his counsel, Helen Roper,
3 had actually recorded about the possibility of him entering
4 an Alford plea and that's not contained anywhere in the
5 transcript of the record.

6 So he doesn't believe that Pamela Green, who actually
7 transcribed the record was not present, I assume that she
8 did it based on some tapes that had been provided to her.

9 THE COURT: She's certified the record, which is what
10 you pointed out to me. She says she certifies that this is
11 a true, accurate, and complete transcript of the record of
12 the proceedings, and I understand it was reported by Brenda
13 Cooley and transcribed by Pamela E. Green, and she signed
14 that certification on February 10th, 2012. And you are
15 correct, Mr. McIntyre, the transcript consists, including
16 the certification, of 42 pages.

17 MR. MCINTYRE: Yes, sir. And because of that absence
18 about the lack of any reference by his -- that is Mr.
19 Stewart's counsel, by Helen Roper, at the guilty plea
20 hearing and there was no mention of it here in this
21 transcript, and of course, she is here and can testify
22 whether or not she referenced the possibility of him
23 entering an Alford plea, which is not contained in here.

24 And he states, secondly, on page 6 that when Judge
25 Mullen, who was the presiding judge for the guilty plea,

1 that whenever she noticed that he was hesitating, the record
2 states that she was reading an indictment to an armed
3 robbery charge and according to Mr. Stewart, who ---

4 THE COURT: Are you referring to the transcript?

5 MR. MCINTYRE: Yes, sir. I'm sorry, Your Honor.

6 THE COURT: I don't see any record of anybody
7 hesitating on page 6 of the transcript. Page 6 on my
8 transcript ---.

9 MR. MCINTYRE: It goes on to page 7, Your Honor. I'm
10 sorry, it's at the bottom.

11 THE COURT: I see what you're referring to at the
12 bottom of 7. You're referring to the Court asking Mr.
13 Stewart whether he wanted a jury trial or to go forward as
14 to a plea?

15 MR. MCINTYRE: That's right, Your Honor. And according
16 to him, he thinks that there's a mistranscription there,
17 because he states that the Judge was not reading from the
18 charge of an armed robbery indictment. He said he
19 specifically recalled her reading from a kidnapping charge.
20 So I point those two things out.

21 THE COURT: As for the reasons for your grounds of
22 continuance. One, he believes the transcript is incomplete
23 because of an Alford plea, and two, because of the fact that
24 the transcript reflects at the bottom of page 7 he was
25 hesitating in his decision.

1 MR. MCINTYRE: He was hesitating in his decision, but
2 it was in regards to the Judge reading from the indictment
3 for kidnapping, and not an armed robbery as reported in this
4 transcription.

5 THE COURT: Very well. Ms. Wilson?

6 ASST. ATTY. GEN. WILSON: Your Honor, the State would
7 strongly object to this continuance. Mr. Morris filed his
8 Application in October of 2011. We're here today. We're
9 ready to proceed. These differences, or discrepancies, that
10 the Applicant puts forth on his grounds for a continuance
11 are really distractions about differences.

12 From what I understand from speaking to them about this
13 conversation that the Applicant is saying it happened on the
14 record and that it's not included in the transcript. It was
15 off the record and that's why it had not been transcribed.
16 So it's just the State's position that we proceed today as
17 scheduled.

18 THE COURT: Very well. Mr. McIntyre, I understand
19 completely your zealousness to protect the interest of your
20 client. Your motion for continuance is respectfully denied.
21 I'll be glad for you to make an opening statement and then
22 proceed to call your first witness in support of the
23 Applicant's Application.

24 MR. MCINTYRE: Your Honor, may it please the Court.
25 Mr. Stewart has filed an Application for Post-Conviction

1 Relief, primarily, Your Honor, based on Strickland vs.
2 Washington, and even more consistent with Cherry v. State,
3 that he believes that his guilty plea counsel was
4 ineffective. His guilty plea counsel was Helen Roper, and
5 of course, that's a two prong test under Cherry v. State
6 that we have to prove that his counsel was ---

7 THE COURT: Was deficient?

8 MR. MCINTYRE: Yes, sir.

9 THE COURT: And it came from the United States Supreme
10 Court case of Strickland v. Washington. The Court is very
11 familiar with the test, Counsel.

12 MR. MCINTYRE: But I thought, Your Honor, I would just
13 share that with the Court.

14 THE COURT: Yes, sir.

15 ASST. ATTY. GEN. WILSON: And it's Mr. Stewart's
16 contention that their performance was deficient in several
17 ways, Your Honor. One, that counsel did not seek, or secure,
18 criminal Rule 5(b) discovery, and if she did prior to the
19 guilty plea, she didn't share it with him until after the
20 guilty plea had been entered and he had been sentenced. And
21 Number two, she did not conduct any independent
22 investigation of the charges -- doesn't say that she
23 interviewed any witness or viewed any of the videotapes, et
24 cetera.

25 And Number three, that his plea was not informed and

1 voluntary, as noted by the Court on page 7 of the transcript
2 and his hesitancy in pleading guilty. And fourth, and
3 lastly, that she did not assist him with the filing of an
4 appeal; in the effort to file an appeal, she didn't pursue
5 it.

6 THE COURT: Now, Mr. Stewart attached an addendum to
7 his Application, in which he listed -- unfortunately, he
8 repeated the letters in the addendum, so I can't just tell
9 you A, B, C. He alleged ineffective assistance of counsel,
10 and then he started over again with A, B, and C in his
11 addendum.

12 And I'm not sure whether or not he was answering more
13 or -- he first asked for an addendum in referring to
14 question 10 of the Application, subsections A, B and C,
15 which obviously ask him to state concisely, Mr. McIntyre,
16 the ground on which he bases his allegations that he's being
17 held in custody unlawfully. I assume by your naming to me
18 the discovery issue of whether or not the plea was
19 intelligent and voluntary, and the ineffective assistance by
20 trial counsel with the appeal you're covering all grounds
21 that were alleged in the original Application for Post-
22 Conviction Relief; is that correct?

23 MR. MCINTYRE: That's correct, Your Honor.

24 THE COURT: Very well. Call your first witness.

25 MR. MCINTYRE: Your Honor, I would call Ms. Roper.

1 THE COURT: Very well. Ms. Roper, please come around
2 and be sworn.

3 (Whereupon, Ms. Helen Roper-Dovell is duly sworn.)

4 THE COURT: Bernard, you and Ashley approach.

5 (Whereupon, a bench conference is held off the record.)

6 THE COURT: All right. Of course, I used your first
7 name, because I certainly know you; is it Dovell?

8 MS. ROPER-DOVELL: Dovell.

9 THE COURT: Mrs. Dovell, obviously, I'm having some
10 microphone trouble in the courtroom. That microphone is not
11 working; I've advised counsel. I need you to speak up for
12 my court reporter and for the people in the courtroom.
13 Please give me a verbal answer. You know what to do, but
14 speak up so they can hear you because I cannot amplify your
15 voice. Would you begin by stating your full name and
16 spelling your last name for the court reporter?

17 MS. ROPER-DOVELL: Yes, sir. My name is Helen Rose
18 Roper-Dovell. Dovell is D-O-V-E-L-L.

19 THE COURT: Very well. Thank you. All right, Mr.
20 McIntyre, your witness. Direct examination.

21 MR. MCINTYRE: Thank you, Your Honor. May it please
22 the Court?

23 DIRECT EXAMINATION

24 BY MR. MCINTYRE:

25 Q Mrs. Dovell -- you've just recently became Mrs. Dovell,

1 is that right?

2 A Yes, sir. I was married in March of 2011 and changed
3 my name in May of 2011.

4 Q Okay. And at the time, do you remember representing a
5 gentleman by the name of Morris Stewart?

6 A I do.

7 Q And at the time that you represented him, your name was
8 Helen Roper; is that right?

9 A Yes, sir.

10 Q Okay. Do you recall when you started -- you practice
11 law in South Carolina?

12 A Yes, sir.

13 Q How long have you been licensed to practice?

14 A For close to eight years.

15 Q Okay. At the time that you represented Morris Stewart,
16 were you retained as a private kind or were you with the
17 Public Defender's Office?

18 A The Public Defender's Office was appointed and I was
19 assigned to represent Mr. Stewart.

20 Q And you were an Assistant Public Defender?

21 A Yes, sir, and I still am.

22 Q Okay. And how long had you worked with the Public
23 Defender's Office at that time?

24 A I began working with the Public Defender's Office in
25 September of 2008. I believe I received Mr. Stewart's file

1 in November or December in 2009.

2 Q You were working in the Public Defender's Office, was
3 that the first criminal law experience that you had?

4 A No, sir.

5 Q Okay. Where did you work prior to that?

6 A I worked for a year prior with a private attorney here
7 in Beaufort, Mr. James A. Brown, Jr.

8 Q All right. Okay. And when you got Mr. Stewart's file,
9 was he out on bond or was he incarcerated?

10 A He was incarcerated.

11 Q Okay. And when you got his file, I understand that it
12 was, kind of for the sake of expediency here, there was five
13 robbery charges, two weapon charges, two forgery charges,
14 and I believe one kidnapping charge; is that right?

15 A Did you say four or five armed robbery charges?

16 Q Well, there was four robbery and one attempted.

17 A Okay.

18 Q Is that right?

19 A I believe so.

20 Q I'm just kind of lumping it together for the sake of
21 conciseness and kind of five robbery charges, but we know
22 that only four of them were armed robbery charges; is that
23 right?

24 A Yes, sir. I believe that's correct.

25 Q Okay. And the weapons charges were charges that were

1 allegedly associated with the armed robbery charges?

2 A Yes, sir.

3 Q Okay. After you got his file, did you have any contact
4 with him?

5 A Yes, sir.

6 Q Okay. Did you have any in-person consultations with
7 him?

8 A Yes, sir.

9 Q And that would have been at the Beaufort County
10 Detention Center?

11 A Yes, sir.

12 Q How many in-person consultations did you have with him?

13 A Well, I just glanced back through my notes this morning
14 and just glancing at my notes, these are the attorney-client
15 conferences, as I'll call them, that I remember having with
16 Mr. Stewart, according to my notes. We might have had more.

17 I met with him in December of 2009, January 2010, I
18 believe February 2010, at least twice in March of 2010, at
19 least four times in April 2010, and at least four times in
20 October of 2010. I want to say that I visited him in
21 between that period of time, but I don't have any notes to
22 reflect that.

23 Q Okay. And were there any telephone contacts?

24 A I believe Mr. Stewart telephoned me a few times from
25 the detention center.

1 Q Okay. And did you -- you talked to him about the
2 various charges against him?

3 A Yes, sir.

4 Q Okay. Did you conduct an independent investigation of
5 any of the charges?

6 A Well yes, sir. I spoke with the investigators, or at
7 least with Laurel Alberton in the investigation. I had my
8 investigator, Mr. Rick Chapman, speak with Rebecca Hoglum,
9 who is the individual who was working at Subway on the night
10 of the alleged armed robbery at Subway and he spoke with
11 her. I also followed up with the assistant solicitor and he
12 gave me a little bit more information at different times
13 when I asked him about the case.

14 Q Would it be fair to say that out of the five armed
15 robbery charges, really, the only ones that you and your
16 office investigated was the Subway armed robbery that Mr.
17 Stewart was charged with?

18 A That would be correct, because that was the one I had
19 been noticed for trial on.

20 Q Okay. So none of the others were investigated?

21 A I had read the incident reports and I had gone over
22 them, but as far as sending an investigator out to talk with
23 anybody or interviewing a codefendant, no, I did not.

24 Q Okay. So you were not in a position to give him any
25 evaluative input about whether or not the State had ample

1 proof as to whether or not he was innocent or guilty?

2 A Mr. McIntyre, I was in a very good position to give him
3 advice. I went over the incident report with him for all of
4 the charges. I can't recall if I went over the video
5 footage, at least for Subway, with Morris or not. If I did
6 or if I did not it would have been because he told me he did
7 not want to see it.

8 Now, as far as the other charges go, we went over who
9 the potential witnesses were in each case and what the State
10 would have to prove beyond a reasonable doubt in all of
11 those cases. As far as me, personally, or having an
12 investigator go out and investigate what these individuals
13 would have said, no, I did not do that; but I believe from a
14 reading of the incident report, I was able to acquaint
15 Morris with what the State would attempt to prove at trial.
16 There's absolutely no way of knowing what would have
17 happened at the trial.

18 Q So, then, your evaluation of his innocence or guilt on
19 those charges, other than the Subway robbery, was based on
20 the incident reports provided to you by the Solicitor's
21 Office?

22 A That's correct.

23 Q Okay. And you didn't talk to any of the witnesses?

24 A I don't believe that I did. I have to tell you that I
25 really reviewed my notes on the Subway incident more so than

1 anything else; but I don't believe that I did.

2 Q And you didn't look at any of the videotape footage
3 that was available for any of the other armed robberies,
4 other than the Subway; is that right?

5 A If there was video surveillance footage, I can assure
6 you that I looked at it.

7 Q Well, you had an opportunity to review your notes prior
8 to coming here today?

9 A I did.

10 Q Okay. Did you see anything in your notes that
11 indicated that you actually went out and reviewed any of the
12 surveillance footage that was available for the other armed
13 robberies?

14 A I don't recall there being surveillance for the other
15 armed robberies; if there was, I would have it, pursuant to
16 discovery, but I'll be more than happy to look through my
17 file right now. If there is surveillance footage, I can
18 tell you that I looked at it.

19 Q All right. Do you recall going to a -- gathering from
20 the Sheriff's Office, any of the documentary evidence,
21 photographs and so forth, that they had on the other
22 charges?

23 A Yes. I retrieved from evidence everything that was
24 submitted into evidence.

25 Q Okay. Did you talk to any of the witnesses involved in

1 the other armed robberies?

2 A I don't recall if I spoke to any of the witnesses or
3 not.

4 Q Okay. Did you talk to any of the witnesses regarding
5 the other charges that Mr. Stewart mentioned to you?

6 A Mr. Stewart did not mention any other witnesses to me
7 that I am aware of.

8 Q Does the name, Corrina, ring a bell with you as one of
9 the witnesses he mentioned to you for any of the other
10 charges?

11 A No.

12 Q Now, in the course of representing him, did you make a
13 Rule 5(b) discovery request?

14 A I did.

15 Q Okay. Do you know approximately when you did that?
16 Was it in March or ---

17 A The procedure in our office is once a file is opened,
18 we send out a Rule 5 request for not just one defendant at a
19 time, but for multiple defendants at a time. I cannot tell
20 you what day that Rule 5 motion was filed.

21 Q Okay. And you started representing him some time in
22 about November 2009?

23 A November or December 2009; yes, sir.

24 Q Okay. And so, then, probably within 30 days of making
25 the request to the Solicitor's Office, you most probably

1 would have gotten your response to Rule 5(b); is that right?

2 A Sometimes it takes a little bit longer but about that
3 time, yes sir, I would have at least gotten the incident
4 reports.

5 Q Okay. And did you ever share with Mr. Stewart the
6 results of that Rule 5(b)?

7 A Yes, sir.

8 Q Okay. And when did you do that?

9 A I believe when I received the incident reports I
10 visited with Mr. Stewart at the detention center and
11 reviewed them with him. I believe sometime around the end
12 of April he left me a voice message or spoke with me asking
13 for a copy of his discovery and I gave that to him.

14 Q Do you remember not sending him a copy of the Rule 5
15 (B) discovery that you got from the Solicitor's Office until
16 after the sentencing in May of 2010?

17 A I sent him a copy of his discovery after he was
18 sentenced, pursuant to his request, but he also had a copy
19 of it before that at the Beaufort County Detention Center,
20 which he received, I believe, in April -- the end of April
21 2010.

22 Q Is there any particular reason why there would have
23 been a need for him to get another copy after he had been
24 sentenced if he had already gotten a copy just shortly
25 before that?

1 A I am not familiar with procedures at the Beaufort
2 County Department of Corrections, but I do not know if
3 inmates, when they have papers or other possessions at the
4 Detention Center, if they're allowed to take those with them
5 on to where they are going to be incarcerated. I can't
6 answer that.

7 Q Now did you ever talk to Mr. Stewart about plea
8 negotiations with the Solicitor's Office?

9 A Yes, sir.

10 Q Okay. About how many occasions would you say that you
11 did that?

12 A Whenever I received an offer from the Solicitor's
13 Office, I relayed it to Mr. Stewart; and the State made an
14 initial offer to Mr. Stewart and I relayed that to him.
15 That offer expired, I want to say in April 2010 or May 2010;
16 I can't recall exactly when, but he was aware of that.

17 Q Okay. Was that the offer of basically a max of 15
18 years, all of these sentences to run concurrent?

19 A Right. I believe the initial, and it might have been
20 the only offer, I believe the offer was to plead to
21 everything he was charged with for 15 years concurrent, or
22 he could plead to what he chose to plead to, which would
23 have been a total of about four charges for two of the armed
24 robbery incidents for 18 years.

25 Q Okay. Did he indicate to you that he didn't want to do

1 that?

2 A That's correct.

3 Q Okay.

4 A Well, he indicated at first that he did not want to do
5 that. He was brought over to the courthouse for further
6 discussion to see if he wished to go from there and at that
7 time he said he did not want to.

8 Q Okay. And when that first offer was presented to him,
9 that was back in February or March of 2010?

10 A I believe so.

11 Q Yeah. And then the prescription of time for that ran
12 out and the offer was withdrawn; is that right?

13 A That's correct.

14 Q Okay. And was another offer made prior to trial?

15 A No, sir.

16 Q Okay. Now, on May 25th, 2010, was that the day that
17 was set for trial for this case?

18 A I don't believe it was. I think it was May that he was
19 scheduled for the plea and then he did not plead or -- to be
20 honest, I don't really remember. He may have been scheduled
21 for trial, but not called for trial at one point and time,
22 but it wasn't until October that he was first up for trial.

23 Q So it was October 25th, he was actually scheduled for
24 trial; is that right?

25 A That's correct.

1 Q All right. So when you went to the courthouse that day
2 with him, it was not based on the idea that you were going
3 to be doing a plea, but you were going to actually tbe
4 trying the case?

5 A That's correct. I had prepared for trial.

6 Q Okay. And he had indicated to you at that time that he
7 wanted to plead guilty; is that right?

8 A That's correct.

9 Q All right. Do you recall having a conversation with
10 him when you indicated to him that you had had discussions
11 with the Judge and you told him that if he pled guilty she
12 would give him 15 years max to run concurrent on all the
13 charges, or if he didn't, and he was tried and found guilty,
14 that he would get life without parole?

15 A No, sir. I had never said anything along those lines.
16 I believe I might have spoken to the Judge prior to going to
17 trial. As is the case in most cases with trials, the
18 Solicitor's Office and the defense attorney will speak to
19 the judge beforehand. I believe I asked her if my client
20 were inclined to plead guilty, what she would be inclined to
21 do. And I don't even believe that she said that she would
22 give him 15 years. I think she said she listened to what I
23 had to say and see what she could do from there.

24 At that point and time, Morris was not eligible for
25 life without parole on just that one armed robbery charge.

1 It wouldn't be until he pleaded guilty, or is found guilty,
2 on one set of charges, that he would have been eligible for
3 life without parole when he was called on the second set of
4 charges, or the third, or the fourth, whichever the State
5 decided to call.

6 It is my understanding, too, that I advised him that if
7 he decided today, just for argument's sake, that he wanted
8 to plead guilty to the Subway armed robbery, if he pleaded
9 guilty tomorrow to the O'Reilly's armed robbery, then that
10 would make him eligible for life without parole, but if he
11 were to plead guilty it would have to be all at one time in
12 order to avoid the life without parole sentence. He
13 certainly could have gone to trial in October of 2010. If
14 he was found guilty or not guilty even, he would have been
15 tried again on another set of armed robbery charges.

16 Q But you never told him that if he didn't plead guilty
17 that you get life without parole?

18 A No, I did not. In fact, I told him that I had spoken
19 with the Solicitor and I asked him what his intentions would
20 have been if Morris were -- this is the morning of trial
21 that I asked him what his intentions were if Morris were to
22 be found guilty of the Subway armed robbery and associated
23 charges, and he said, "Oh, well, I got the notice of intent
24 to seek life without parole here for when we call the next
25 set of charges to trial," and that is what I related to

1 Morris.

2 Q And at time Mr. Stewart did not want to plead guilty;
3 is that right?

4 A He seemed to be a little bit on the fence. You know,
5 it's been my experience, and nobody really wants to plead
6 guilty, especially when they're facing an awful lot of time.
7 We talked about it thoroughly because of the very serious
8 nature of his charges and the possibility of life without
9 parole. Eventually, he decided he was going to plead
10 guilty.

11 Q Did you notice any hesitancy by him?

12 A I think he had some hesitancy, but when he decided that
13 he wanted to plead guilty, we went forward with that.

14 Q But you didn't notice any hesitancy about his wanting
15 to plead guilty prior to the Court calling it to your
16 attention, did you?

17 A Well, no. He indicated that he did not want to plead
18 guilty, which is why he didn't plead guilty earlier in the
19 year and why it was then called for trial.

20 Q Right. But even then when he indicated to you he
21 didn't want to plead guilty, and then apparently there must
22 have been some indication whether he was wavering or not,
23 that he was going to plead guilty, and you approached the
24 Court with a guilty plea, is that right, on the morning of
25 October 25, 2010?

1 A Right. I'm sure that I asked him if he was sure that
2 this was what he wanted to do because he had theretofore
3 decided that he did not want to plead guilty, which is why
4 the case was called to trial.

5 Q And even there while you were with him and he had
6 indicated in some form or another that he was going to plead
7 guilty, you didn't realize that he was wavering in his
8 decision about wanting to plead guilty, but the Court
9 noticed it and that's when the Court asked you to stand down
10 and consult with your client further on the morning of
11 October 25, 2010; is that right?

12 A When I had spoken with Morris about pleading guilty, I
13 told him that if he is going to plead guilty he has to get
14 up and answer the Court's questions, and while he may have
15 been reluctant to plead guilty, he decided that that was
16 what he was going to do; and I understand you're referencing
17 the transcript where he hesitated and the Judge said, "Fine,
18 we'll go pick a jury; stand down," and I talked to Morris
19 then. He could have said, "I want to go to trial," at that
20 point and he decided to go forward with the plea.

21 Q Okay. But you stood down, is that right?

22 A That's correct.

23 Q Okay. When you talked to him, did you reiterate this
24 notion about that he was going to get life without parole if
25 he didn't plead guilty?

1 A Well, I'm not a fortune teller. I certainly couldn't
2 tell him that he was going to get life without parole.
3 Eventually, if he did not plead guilty today, I said that it
4 is possible that he could get life without parole if he did
5 not plead guilty today, for the reasons that I just
6 explained a few moments ago. That he was charged with at
7 least four or five most serious offenses and that if he were
8 to plead guilty on one day to one set and then plead guilty
9 another day to another set, then that would make him
10 eligible for life without parole. Just the same as if he
11 were to be found guilty at trial in the Subway armed
12 robbery, which we were called for, and then the next term of
13 Court be found guilty of the O'Reilly's or the Latino store
14 or the Outback armed robberies, then he would, at that
15 point, be eligible for life without parole. That's what I
16 explained to him.

17 Q But of course, if he had gone to trial and was found
18 not guilty on the Subway robbery charge, then, of course,
19 none of what you said would be true and that would be
20 irrelevant, wouldn't it?

21 A Well, not completely irrelevant, because then the State
22 still had at least three more bites at the apple and that
23 life without parole possibility would still be hanging out
24 there. I did tell him, of course, there's a possibility
25 that he could be found not guilty of the Subway armed

1 robbery; I did not think that that was likely, but if he
2 took it to trial, then it is a possible outcome.

3 Q You felt that he stood good on the merits of a number
4 of these charges, because you told him, or at least you
5 mentioned to the Court, that you wouldn't recommend that he
6 plea and his fear about your thinking he might get life
7 without parole; is that right?

8 A I felt that some of the charges were stronger than
9 others; that is true. It is this possibility of life
10 without parole that I would think would make the plea the
11 better bet in the situation. If he were to stand trial in
12 all four of those charges, would he have been found guilty
13 of all of them? I don't know.

14 Q But you know that Mr. Stewart told you that he was very
15 vehement in his denial in a number of these charges and his
16 denial of participation in a number of these charges, is
17 that right?

18 A That's correct.

19 Q And he didn't want to plead guilty to those?

20 A That's correct.

21 Q And that's why one of the plea offers was that he might
22 plead to several of these charges and there were four or
23 five charges that he did not plead to that he said he didn't
24 have any part in; is that right?

25 A Well, that's right. He could have chosen the ones that

1 he wanted to plead guilty to for a recommendation of 18
2 years, but he did not want to do that.

3 Q Now, after the sentencing on October 25, 2010, Mr.
4 Stewart mentioned to you that he wanted to file an appeal?

5 A He did.

6 Q Okay. And I believe you filed the appeal notice the
7 day after the guilty plea; is that right?

8 A I believe I filed the notice of intent to appeal as
9 soon as reasonably possible.

10 Q Okay. And that appeal was dismissed; is that right?

11 A Yes, sir. I filed the notice of intent to appeal with
12 an Anders brief. I did not have any problem with the guilty
13 plea, but because my client had asked me to file a notice of
14 intent to appeal, I did that.

15 Q But he shared with you what he believed to be the
16 reasons for wanting to file the appeal. I mean, these are
17 fairly same grounds that we are talking about today; is that
18 right? But you didn't include those in the appeal?

19 A Well, no, because I'm not an appellate attorney. I
20 cannot file an appeal for my client. I can file a notice of
21 intent to appeal, and from there, if he wishes to supply the
22 Court with his reasons for the appeal, then he can do that.
23 As an officer of the Court, I had no reason to believe that
24 Morris didn't understand what he was doing that day or that
25 there were any problems with the plea. If he didn't want to

1 plead guilty, he didn't have to plead guilty.

2 Q Did you refer him to appellate defense?

3 A I believe so. I sent the copy of all of my
4 correspondence to the office of the appellate defense.

5 Q Did you correspond with them in making sure that this
6 appeal was perfected and pursued?

7 A I don't believe so. I made sure that they received a
8 copy of the letter. I corresponded with them if they had
9 asked me any questions. Off the top of my head, I don't
10 recall. I'll be happy to review my file and see if there is
11 anything that I can enlighten you about, but I did forward
12 his notice of intent to appeal on to the Court of Appeals
13 and copied appellate defense, and I copied Morris as well.

14 Q But none of the grounds for appeal that he has stated
15 here, even for his PCR today, were grounds that you thought
16 fit to include in the note of the intent to appeal; is that
17 right?

18 A No. Because I know that I gave him his discovery, and
19 really, Morris' issues are PCR issues, they're not appeal
20 issues. I can't recall off the top of my head if he
21 specifically said, "Well, I think that you were ineffective
22 and I think that you didn't give me my discovery, and I
23 didn't want to plead guilty. Could you please file an
24 appeal?" He did not give me those reasons.

25 Q What's the last contact you had with Mr. Stewart?

1 A I believe he wrote me a letter a few months ago and I
2 responded to it. And he more recently, I will say this, he
3 did send me a letter which I received last week asking me
4 about an Alford plea and I just haven't been able to respond
5 to him. I knew that this was coming up and if there were
6 any questions about an Alford plea, that they would be asked
7 today.

8 Q Did you put that on the record?

9 A I did not put it on the record.

10 Q Was that discussed prior to the guilty plea?

11 A Yes, sir. I asked Judge Mullen if she would be willing
12 to accept an Alford plea and I believe for this sort of case
13 she was not willing to accept an Alford plea. It's
14 something you say you're guilty of or you go to trial.

15 Q Okay. Was that something that was kind of off the
16 record?

17 A It was. I believe I approached the bench with the
18 assistant solicitor and asked her about that.

19 MR. MCINTYRE: Your Honor, Court's indulgence for one
20 moment.

21 THE COURT: One moment, counsel, so I can answer this
22 question. Madame Assistant Attorney General?

23 ASST. ATTY. GEN. WILSON: Yes, sir?

24 THE COURT: You will be happy to know that the attorney
25 for Mr. Simmons has decided to return the Court's call; my

1 law clerk is now taking it. You may proceed, Mr. McIntyre.

2 Q Just a couple more questions, Ms. Dovell. Whenever you
3 got your Rule 5(b) on these charges, other than the Subway,
4 because I think that was the armed robbery charge you were
5 going to trial on that day October 25, 2010; is that right?

6 A That's correct.

7 Q And I think Mr. Stewart was dressed out, so to speak,
8 to go to trial that day. When you looked at the Rule 5(b)
9 on the other charges, the one attempted robbery and the
10 three armed robbery charges, and the other associated
11 charges with that, the forgeries and weapon charges, was
12 there any physical evidence that you can recall tying Mr.
13 Stewart to those fingerprints or hairs or surveillance
14 video?

15 A I don't recall off the top of my head. I do not think
16 there was surveillance footage for the other incidents. I'm
17 looking right here at the incident report for the Outback
18 Steakhouse. It looks like I had a copy of an interview with
19 the codefendant. I've got a copy of item two from evidence,
20 whatever that may be. I do not believe that there was
21 surveillance footage from the Outback. I don't think there
22 was surveillance footage from O'Reilly's or the Latino store
23 either. I think the Latino store was an identification by
24 the store owner or the man who was there that night.

25 Q In fact, those cases, you thought yourself that those

1 were relatively weak cases that the prosecution had, didn't
2 you?

3 A I would have said that the O'Reilly's and Latino store
4 would have been the weaker of the two because at O'Reilly's,
5 I don't believe that the bartender identified Mr. Stewart.
6 I think he identified his codefendant who later gave a
7 statement against him. I think that there was just an
8 identification for the Latino store, but honestly, off the
9 top of my head, I do not remember.

10 Q And that's really kind of significant because that kind
11 of dovetails into the other charges, because these weapon
12 charges are related to the armed robbery charges, you know,
13 having a weapon in his possession during the commission of a
14 violent crime; isn't that right?

15 A Right.

16 Q So if the armed robbery charges fall on those, then the
17 charges associated with those would fall too, wouldn't it?

18 A Yes, sir. I would hope so.

19 Q Okay.

20 MR. MCINTYRE: That's all I have, Your Honor. Thank
21 you.

22 THE COURT: Cross-examination.

23 ASST. ATTY. GEN. WILSON: May it please the Court?

24 CROSS-EXAMINATION

25 BY ASST. ATTY. GEN. WILSON:

1 Q Ms. Dovell, you testified today that you went over
2 discovery with the Applicant, the Rule 5 discovery that you
3 received from the Solicitor's Office, correct?

4 A I did.

5 Q And you went over all of the discovery for all of the
6 Applicant's charges?

7 A I did.

8 Q Okay. And you also testified that you reviewed all the
9 indictments. You specifically sent out an investigator for
10 a Subway armed robbery charge against the Applicant and that
11 -- is it your testimony that the Applicant never gave you
12 any witnesses or any leads to pursue in your investigation?

13 A That's correct.

14 Q And after reviewing all of this discovery, you felt
15 like you had enough to proceed with the Applicant's guilty
16 plea?

17 A I did.

18 Q And wasn't it the Applicant's decision to reject the
19 offer to plead guilty initially to the 15 year max with all
20 the charges to run concurrent? It was initially his
21 decision to reject that offer?

22 A Yes. And he also initially had the opportunity to
23 plead guilty to his choice of the sets of charges and have
24 some dismissed for a recommendation of 18 years.

25 Q And he rejected both of those opportunities?

1 A Yes. At that time, he did.

2 Q Okay. After you advised the Applicant that if he pled
3 to one armed robbery or he was convicted of one armed
4 robbery that the State would still be able to proceed with
5 life without the possibility of parole, did you advise him
6 to plead guilty or just leave it up to him?

7 A I advised him to plead guilty, but I informed him that
8 it is his decision.

9 Q But otherwise that day, you were ready to proceed for
10 trial?

11 A I was.

12 Q And you were prepared?

13 A I was.

14 Q And it's your understanding that based on all of the
15 charges the Applicant was facing, and if he had any prior
16 record, that he would indeed be LWOP eligible -- I guess,
17 despite different altering outcomes that could have
18 resulted. What I'm trying to say is, you're pretty clear
19 that the State could have without any problems, pursued LWOP
20 on the Applicant?

21 A If he had been found guilty or pleaded guilty to one of
22 those sets of charges, they would have proceeded with life
23 without parole to notice him of their intent to seek life
24 without parole.

25 Q And did you advise the Applicant that it was probably

1 in his best interest to get all the charges wrapped up
2 together that day as opposed to having maybe one armed
3 robbery hanging out here and there?

4 A I did.

5 Q And do you recall Judge Mullen telling the Applicant
6 that his case may have been life without the possibility of
7 parole eligible if the Solicitor's Office decided to pursue
8 it if he didn't plead to all of them today?

9 A Yes, I do.

10 Q And you also testified that you filed an Anders Brief
11 on behalf of the Applicant?

12 A Yes, I did.

13 Q Is it your understanding that when an Anders Brief is
14 filed with the Court that the Court reviews the record to
15 find any issues?

16 A I believe so, and I think it's also the responsibility
17 of the appellant, at that point, to inform appellate defense
18 or the Court of any grounds for appeal.

19 Q And did you see any appealable issues other than the
20 one that you presented in the Anders Brief?

21 A I did not see any appealable issues. I think that Mr.
22 Stewart's issues were of a PCR nature.

23 Q And did Mr. Stewart ever present you with any issues
24 that he felt were appealable prior to you filing the notice
25 of appeal?

1 A No, I did not receive any supplemental information.

2 Q On the day that the Applicant pled guilty, do you
3 believe it was his decision to plea?

4 A It was his decision. I can't make a decision for my
5 client.

6 Q And you didn't in any way coerce or threaten him to
7 plead guilty that day with this potential LWOP eligibility?

8 A I was pretty strenuous in my telling him about LWOP,
9 but to say that I threatened him or that he was coerced, no.

10 Q And do you recall Judge Mullen reviewing all of the
11 indictments and the facts of each indictment and having the
12 Applicant agree that these were the correct facts during his
13 guilty plea?

14 A That's correct.

15 Q And do you also recall the Applicant's waiver of his
16 right to confront witnesses?

17 A Yes.

18 Q And the day of the Applicant's guilty plea, as far as
19 you know, he understood everything that was happening and
20 all of the guilty plea proceedings?

21 A Yes.

22 ASST. ATTY. GEN. WILSON: No further questions. Thank
23 you.

24 THE COURT: Redirect?

25 MR. MCINTYRE: Just a couple questions.

1 REDIRECT EXAMINATION

2 BY MR. MCINTYRE:

3 Q In that Brief, what prompted you to state in the Anders
4 Brief for the appeal?

5 A That my client wished me to file a notice of intent to
6 appeal, and because of his request, I was doing that. I did
7 not have any grounds for appeal. I simply filed an Anders
8 Brief, which states that I do not have any grounds for
9 appeal, but since my client has asked me to file a notice of
10 appeal, I have done that on his behalf.

11 Q And if she tells you that he thought that his plea was
12 involuntary, wouldn't that be a basis that you would want to
13 state as ---

14 A Yes. But he did -- I do not recall him telling me that
15 it was involuntary and, in fact, he said on the record that
16 it was voluntary, and I asked him prior to the plea whether
17 or not he wanted to really do this and he went forward with
18 it.

19 Q So you don't recall whether he told you that or not,
20 but it's your belief that it wasn't involuntary?

21 A That's correct.

22 Q Okay. That's all I have.

23 THE CROSS: Recross, limited to redirect?

24 ASST. ATTY. GEN. WILSON: Nothing further, Your Honor.

25 MS. ROPER-DOVELL: Your Honor, if I may, I would like

1 to correct one thing that I had stated about the Latino
2 store, as far as evidence.

3 THE COURT: Yes, ma'am.

4 MS. ROPER-DOVELL: I just looked back through the
5 discovery and it looks like there were DNA swabs taken and
6 submitted to SLED, and the analysis had not come back at the
7 time of the plea, so I just wanted to share that. If the
8 Latino store had been taken to trial, I believe that they
9 would have had developed a DNA profile, or not developed a
10 DNA profile; whether or not it matched Morris or not, I
11 don't know, but I did want to clarify that. We had asked if
12 there was any physical evidence whether or not those swabs
13 would have produced anything that remotely resembled a
14 profile for Mr. Stewart, I don't know, but I just wanted to
15 make sure I was being accurate.

16 THE COURT: Re-redirect, in light of her voluntary
17 statement, Mr. McIntyre?

18 MR. MCINTYRE: I don't have any further questions, Your
19 Honor.

20 THE COURT: Very well. You may step down. Call your
21 next witness.

22 MR. MCINTYRE: Your Honor, I would call Morris Stewart.

23 THE COURT: Come around and be sworn, please.

24 (Whereupon, Mr. Morris Stewart is duly sworn.)

25 THE COURT: State your full name and spell your last

1 name for the court reporter.

2 MR. STEWART: Morris Fitzgerald Stewart, S-T-E-W-A-R-T.

3 THE COURT: Your witness, Mr. McIntyre.

4 DIRECT EXAMINATION

5 BY MR. MCINTYRE;

6 Q Mr. Stewart, I believe you were represented back in
7 late 2009 by Helen Dovell?

8 A That's correct.

9 Q And I think you would know her as Mrs. Roper; is that
10 right?

11 A That's correct.

12 Q So Your Honor, for the sake of convenience, I want to
13 just refer to her as Ms. Roper. That's how he refers to
14 her.

15 A I understand.

16 Q Do you remember when Ms. Roper first came to represent
17 you?

18 A I don't remember the exact day.

19 Q Do you remember if it would have been possibly in
20 November or December of 2009?

21 A I believe the first time I spoke with Ms. Roper was in
22 December 2009.

23 Q Okay. Was that at the Beaufort County Detention
24 Center, sir?

25 A Yes, sir.

1 Q And she was court-appointed to represent you?

2 A Yes, sir.

3 Q And I think there were 10 charges that were pending
4 against you. There were five robbery charges, two weapon
5 charges, two forgeries and one kidnapping charge; is that
6 right?

7 A That's correct.

8 Q Okay. On or about how many occasions did you have --
9 strike that. Were you ever out on bond at any time between
10 the time that Ms. Roper came to represent you and the time
11 that you appeared in Court for either trial or you had to
12 plead?

13 A No, sir.

14 Q Okay. So you were incarcerated the whole time?

15 A Yes, sir.

16 Q Okay. About how many times did you have a consultation
17 at the jail with Ms. Roper?

18 A I'm not sure of the exact amount; I'd say maybe 10.

19 Q Okay. And were there any telephone contact?

20 A Yes, there was,

21 Q Okay. And about how many telephone calls?

22 A Between five to ten calls.

23 Q Did you share Mrs. Roper your account of all of these
24 charges?

25 A Yes, I did.

1 Q Okay. Did you ever ask her about Rule 5(b) discovery?

2 A Well, I asked her about it when I was in the county
3 detention center. I called her on the telephone.

4 Q Did you ever get into Rule 5(b) discovery from her
5 prior to your guilty plea on October 25, 2010?

6 A No, sir.

7 Q Okay. Where did you first get Rule 5 (b) discovery
8 from her?

9 A I think I wrote Ms. Roper in February of 2011 and she
10 said to tell me I received it from the mailroom and it was
11 dated February 25th, 2011.

12 Q All right. And that's apart of the papers you actually
13 have over here; is that right?

14 A Yes, sir.

15 Q That's the first time you got any Rule 5(b) discovery
16 from her?

17 A Yes, sir. First time I saw it.

18 Q So, probably, at that time, she never reviewed with you
19 anything that she got from the Solicitor's Office prior to
20 trial or that was planned on October 25, 2010, or prior to
21 the guilty plea on that very same day?

22 A That's correct.

23 Q Okay. So you didn't have any idea what the State had
24 or did not have in terms of proving your innocence or guilt?

25 A That's right.

1 Q Did you ask her whether or not she had conducted an
2 investigation on the various charges?

3 A Well, I've asked her since I've been incarcerated.

4 Q Okay. And did she tell you that she had conducted an
5 independent investigation on the individual robberies or the
6 one attempted robbery?

7 A Well, the first letter she wrote me she said there was
8 no written investigation conducted by Mr. Ray Chapman, so I
9 wrote her again and asked her was there any audio or video
10 investigations, and that's when she told me she had spoke
11 with one of the victims and some things like that, but that
12 was in reference to the Subway charge. She didn't say
13 whether she investigated the other charges.

14 Q Well, as far as you're aware, she never listened to any
15 audio or looked at any video footage that may have been
16 available in any of the charges?

17 A That's right.

18 Q Did she ever provide you with any of the witness's
19 statements?

20 A No, sir.

21 Q Did you provide her with any witnesses you asked her to
22 talk to in regards to the various charges?

23 A I did ask her to speak with one person.

24 Q And who was that?

25 A That was Corrina.

1 Q Okay. That was one witness who would offer evidence
2 that would have not associated you with any of these
3 charges?

4 A That's correct.

5 Q Okay. Do you know whether or not she talked to that
6 one witness?

7 A I don't believe she did. I'm not sure.

8 Q Did she ever report back to you what, if anything, she
9 gathered from that person that she had contact with?

10 A No, sir.

11 Q Okay. Did she ever share with you any proof that the
12 State had of you committing any of these offenses, whether
13 it was photographs, video footage, witness statements,
14 forensic evidence, anything of that nature?

15 A No, sir. I didn't see anything until I got that
16 discovery.

17 Q Whenever you saw Ms. Roper at the jail, what did y'all
18 talk about?

19 A Well, she came to see me and most of the times it was
20 about taking pleas. She came to see me one time and asked
21 me about taking a plea that the State had offered. One was
22 for 18 years for four charges and the other one was 15 years
23 for all the charges.

24 Q So there were two different plea offers; is that right?

25 A That's correct.

1 Q And in both cases, you rejected both?

2 A That is correct.

3 Q And on the morning of October 25, 2010, whenever you
4 were asked by your lawyer to plead guilty again, you wavered
5 in that effort as well; is that right?

6 A That's right.

7 Q And that's when the judge asked the two of you to stand
8 down and for her to talk to you further; is that right?

9 A Well, before I came out, I had planned to go to trial,
10 but Ms. Roper came to me and her exact words to me was, " I
11 spoke with Judge Mullen in her chambers and she said she
12 promised not to give you anything over 15 years if you plead
13 to all charges this morning. If you proceed you will get a
14 life sentence." That's what she told me.

15 Q And did that weigh on you? Did that make you feel
16 forced to plead guilty?

17 A It did.

18 Q Did you share that with her?

19 A Well, yeah. I told her I still didn't want to, you
20 know, I wasn't going to take it. And Ms. Traci Campbell
21 came in and told me, her exact words were, "Why was you at
22 the rec. center?" I told her that I was there picking my son
23 up. She said, "How old is your son?" I said, at the time,
24 he was three ---

25 ASST. ATTY. GEN. WILSON: Objection, Your Honor.

1 Relevance. Hearsay.

2 THE COURT: Sustained. Don't refer to what someone
3 else said. Proceed. Ask direct questions. Proceed.

4 Q You mentioned Traci Campbell. Who is Ms. Campbell?

5 A At the time, she was the Chief Public Defender in
6 Beaufort County.

7 Q Okay. And so, both Ms. Campbell and Ms. Roper told you
8 to plead guilty?

9 A Yes, sir.

10 Q When the Court asked you to stand down on the morning
11 of October 25, 2010, what charge was Judge Mullen -- what
12 indictment was she presenting to you at that time?

13 A She was reading an indictment for kidnapping.

14 Q Okay. But the record reflects that it was an armed
15 robbery indictment that she was reading; is that right?

16 A That's right.

17 Q Was there any mention by your lawyer of an Alford plea
18 in open court on that morning?

19 A I thought it was open court. We were standing in front
20 of the mic. I was standing right beside her.

21 Q Okay. And what did she say?

22 A She asked the Court could I plead under the North
23 Carolina v. Alford, but the judge looked to the State and
24 Mr. Bannon said, "No."

25 Q Okay. And is that anywhere in the transcript of record

1 that you were provided?

2 A No, sir.

3 Q Okay. Now, I believe that after you stood down and you
4 talked to Ms. Roper, what kind of time period expired
5 between the time y'all stood down and reappeared before the
6 Court?

7 A Maybe 20 minutes.

8 Q Okay. And what was the nature of that contact?

9 A Well, she told me again the same things that she told
10 me before I came out, that 15 years was offered by Judge
11 Mullen and it would be in my best interest to take it.

12 Q And did you want to plead guilty?

13 A No, I didn't.

14 Q Why did you plead guilty?

15 A Because she kept telling me if I didn't, I would
16 receive a life sentence.

17 Q And so when you reappeared, that's when you plead
18 guilty?

19 A Yes, sir.

20 Q Okay. Did you contact Ms. Roper about doing an appeal?

21 A Yes, sir. I did.

22 Q When did you do that?

23 A I think I spoke with her on the 26th, the day after the
24 plea.

25 Q Okay. And did you give her your grounds for appeal?

1 A Yes. She came to the detention center and I told her I
2 wanted to appeal. I felt I was coerced into taking the
3 plea.

4 Q And what factual basis did you give her for believing
5 that you were coerced?

6 A I don't know if I gave her any factual basis. I just
7 told her I felt I was coerced into taking the plea.

8 Q But why did you feel that you were coerced?

9 A Well, from what she told me, you know, that if I didn't
10 take the offer that the judge was giving, I would receive a
11 life sentence.

12 Q Okay. Were there any other basis you gave her for
13 appeal other than your plea was coerced or involuntary?

14 A No, sir.

15 Q Did you share your concerns about her failure to
16 investigate the charges that were filed against you?

17 A No, I didn't.

18 Q Okay. So the first time that those were made known was
19 when you filed your application for PCR?

20 A Right. But before I did, I wrote her a letter and
21 asked her did she conduct any investigations into the
22 charges.

23 Q Was that -- was that before or after the guilty plea?

24 A That was after the guilty plea.

25 Q Okay. And that's when you heard, and to the best of

1 your knowledge, that's when you learned that she had not
2 conducted an independent investigation?

3 A Right.

4 Q Okay. And is it your understanding that your appeal
5 was dismissed by the South Carolina Court of Appeals because
6 no ground for appeal was preserved?

7 A That's correct.

8 Q Did you have any other "appellate counsel" other than
9 Ms. Roper?

10 A The Office of Appellate Defense told me they didn't
11 represent me on appeal.

12 Q Okay. So all you had was Ms. Roper to the extent that
13 she filed a notice of intent to appeal?

14 A That's correct.

15 Q But for Ms. Roper telling you that morning, when you
16 felt pressured by her telling you that you'd get life
17 without parole, would you have pled guilty?

18 A No, sir.

19 MR. MCINTYRE: I don't have anything further.

20 THE COURT: Cross-examination.

21 ASST. ATTY. GEN. WILSON: May it please the Court?

22 CROSS-EXAMINATION

23 BY ASST. ATTY. GEN. WILSON:

24 Q Mr. Stewart, it's your testimony today that you spoke
25 to Ms. Roper frequently; is that correct?

1 A That's correct.

2 Q And is it your testimony that Mrs. Roper reviewed
3 discovery with you or did not review?

4 A Did not.

5 Q Okay. Did she ever talk to you about the evidence that
6 was against you; what the State said you did?

7 A Well, she told me I was being charged with armed
8 robbery and kidnapping, you know, whatever the charges were.

9 Q Did she tell you, you know, the State would have to
10 prove x, y, z to convict you?

11 A She may have. I'm not really sure.

12 Q And so you're testifying here today that when you
13 received your copy of discovery, some time after you pled
14 guilty, that was the first time that you saw your discovery?

15 A That's correct.

16 Q So are you saying that was the first time you saw your
17 discovery or is that the first time you received a copy to
18 keep?

19 A That's the first time I received it. First time I saw
20 it, as well.

21 Q And do you recall when you pled guilty for each
22 indictment, the Judge going through the facts of the
23 indictment?

24 A Yes, I do.

25 Q And you also, during that time after each indictment,

1 you did not object to the facts that the Judge presented for
2 those indictments; is that correct?

3 A That is correct.

4 Q And you said that Ms. Roper, you gave -- well, let me
5 take a step back. You said you felt Ms. Roper should have
6 investigated -- been involved in further investigation. She
7 failed to investigate; is that correct?

8 A That's correct.

9 Q What would she have found if she had investigated
10 further?

11 A Well, I wasn't involved in them; I know that.

12 Q Okay. But you can't tell me specifically what evidence
13 she would have uncovered?

14 A She would have found I wasn't involved. The people
15 couldn't identify me at the O'Reilly's. There weren't no
16 fingerprints. All they really had, from my understanding,
17 was the statement of a codefendant.

18 Q And you testified that you gave her information of a
19 witness to contact named Corrina?

20 A That is correct.

21 Q And what would Corrina have testified to?

22 A She would be able to testify that I wasn't involved in
23 those crimes.

24 Q Did you provide Ms. Roper with this person's, Corrina,
25 contact information?

- 1 A Yes, I did.
- 2 Q Did you provide a phone number, address ---
- 3 A I gave her a phone number.
- 4 Q And you're saying to us today that you felt forced to
- 5 plead guilty by your attorney; is that correct?
- 6 A That's correct.
- 7 Q And do you recall while your plea proceeding was taking
- 8 place, Judge Mullen asking you if you were satisfied with
- 9 Ms. Roper's representation?
- 10 A I do.
- 11 Q And do you also recall her asking you if Ms. Roper had
- 12 done everything you've asked her to do?
- 13 A I do.
- 14 Q And do you recall what your answer was?
- 15 A Yes, I do.
- 16 Q Okay. And what was your answer?
- 17 A I told her that I was satisfied with Ms. Roper.
- 18 Q And that Ms. Roper had done everything you asked her to
- 19 do; is that correct?
- 20 A That's correct.
- 21 Q And did you also testify during your plea proceeding
- 22 that you understood all the conversations that you had with
- 23 Mrs. Roper?
- 24 A That's correct.
- 25 Q And you said that you didn't have any complaints?

1 A That's correct.

2 Q Okay. And did you also testify that no one promised
3 you or gave you any indication or hope of reward that you
4 would get for pleading guilty; is that correct?

5 A That's correct.

6 Q And did you also testify that you weren't pressured or
7 threatened to plead guilty?

8 A That's correct.

9 Q And the Judge even went as far as to say did anybody
10 from law enforcement or the Solicitor's Office pressure you
11 and you also answered no; is that correct?

12 A That is correct.

13 Q Do you recall Judge Mullen telling you on the record
14 that you could possibly be facing life without the
15 possibility of parole?

16 A I believe she did tell me something of that nature.

17 Q And so you felt forced by Ms. Roper to plead guilty,
18 but you never indicated that to the Court or Judge Mullen?

19 A Well, because Ms. Roper told me to go through with it,
20 because if I didn't and I proceeded to trial, they would
21 give me a life sentence.

22 Q Do you recall being asked by Judge Mullen that it was
23 your desire to plead guilty and you saying, "Yes, it was my
24 desire to plead guilty"?

25 A Probably, because, if I told her it wasn't my desire

1 then they would have had to go through to trial, and from my
2 understanding if I had of went to trial, I would have gotten
3 a life sentence.

4 Q So the day that you were proceeding guilty, you did not
5 want to proceed to trial?

6 A No. I wanted to proceed to trial, but they told me if
7 I did that I would receive a life sentence. She never told
8 me it would be possibly or I might, she told me I would.

9 Q Do you also recall being sworn to tell the truth that
10 day?

11 A I do.

12 Q And you're saying today that the statements that you
13 gave Judge Mullen were untrue?

14 A Yeah.

15 Q Okay. So it's your testimony, you just said that you
16 would have proceeded to trial if trial counsel hadn't told
17 you that you would face life without the possibility of
18 parole. So are you saying that you would have proceeded to
19 trial even if life without the possibility of parole wasn't
20 on the table despite the fact that you'd be facing up to 150
21 year sentence if you were convicted of all of the armed
22 robberies? You had five armed robbery charges; is that
23 correct?

24 A That's right.

25 Q And each one carried a maximum sentence of 30 years,

1 was that your understanding?

2 A Not at that time.

3 Q Well, please take my word for it that the maximum was
4 30 years, okay?

5 A Right.

6 Q And so, despite the fact, that, you know, 5 times 30 is
7 150, if you were convicted on all five charges and you were
8 given consecutive sentences, you could have been facing up
9 to 150 years?

10 A Right.

11 Q Do you understand what I'm saying?

12 A Yes.

13 Q Okay. And despite the fact that you could have been
14 facing up to 150 years, you still would have proceeded to
15 trial on all of your charges?

16 A At that time, I would have.

17 Q Okay. And you also said you talked about filing an
18 appeal with Mrs. Dovell. And you testified earlier that the
19 only issue that you gave her for your appeal was that you
20 were coerced into pleading guilty?

21 A That's correct.

22 Q Okay. Do you recall Judge Mullen telling you on the
23 record that you were facing up to a 200 year sentence?

24 A Yes.

25 Q Do you also recall Judge Mullen telling you that

Cross-examination of Mr. Morris Stewart by Ms. Wilson
Redirect examination of Mr. Morris Stewart by Mr. McIntyre

54

1 pleading guilty today would make all of your crimes that
2 were classified as violent and most serious count as one
3 strike?

4 A That's correct.

5 Q And do you recall the Solicitor reading into the record
6 the facts of all your indictments?

7 A Yes.

8 Q And you didn't object to any of those facts, did you?

9 A No, ma'am.

10 ASST. ATTY. GEN. WILSON: Okay. No further questions.
11 Thank you, Your Honor.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MR. MCINTYRE:

15 Q Mr. Stewart, prior to standing down on the morning of
16 October 25, 2010, you rejected all the offers to plead
17 guilty?

18 A That's correct.

19 MR. MCINTYRE: That's all I have, Your Honor.

20 THE COURT: Recross, limited to redirect?

21 ASST. ATTY. GEN. WILSON: Nothing further, Your Honor.

22 THE COURT: You may step down. Call your next witness,
23 Mr. McIntyre.

24 MR. MCINTYRE: That's all the witnesses I have, Your
25 Honor.

1 THE COURT: Very well. The Applicant rests. You may
2 call your first witness, Ms. Wilson.

3 ASST. ATTY. GEN. WILSON: Your Honor, the State has no
4 witnesses and the State also rests.

5 THE COURT: Mr. McIntyre, I'll hear you briefly in
6 argument in closing.

7 MR. MCINTYRE: Your Honor, just briefly. Mr. Stewart
8 has filed this PCR on the basis of his ineffective
9 assistance of counsel. He believes that counsel was
10 insufficient in not providing him with a copy of Rule 5(b)
11 so he could make an intelligent decision about whether or
12 not to proceed to trial or to plead guilty ---

13 THE COURT: It basically boils down to your issues you
14 outlined for me in opening. Whether or not this 5(b)
15 discovery was provided to him in a timely fashion, whether
16 or not this was an intelligent and voluntary guilty plea,
17 and the issue that you raised concerning an appeal and an
18 Alford issue?

19 MR. MCINTYRE: Yes, sir. That's correct.

20 THE COURT: I think I understand that. Anything else?

21 MR. MCINTYRE: No, sir.

22 THE COURT: Thank you.

23 MR. MCINTYRE: Thank you very much.

24 THE COURT: Briefly, Ms. Wilson, in argument.

25 ASST. ATTY. GEN. WILSON: Yes, Your Honor. It's the

1 State's position that we request that the Court deny the
2 Applicant's Post-Conviction Relief Application. As to the
3 Applicant's allegation that trial counsel didn't do any
4 independent investigation of the charges pending against
5 him. Today we heard credible testimony from Ms. Dovell on
6 the matter and she said that she was apprised of all the
7 facts of the case enough to advise the Applicant on whether
8 or not to plead guilty.

9 In addition, Your Honor, when an Applicant puts forth
10 allegations that trial counsel failed to investigate, he
11 also has to put forth some evidence about what trial counsel
12 would have found had she investigated further and the
13 Applicant has put forth no evidence of that nature.

14 Regarding the Applicant's allegation that no discovery,
15 he never received no discovery. We have testimony from
16 trial counsel that she provided the discovery and went over
17 it with him. It was also her testimony and the Applicant's
18 testimony that they met frequently and it's likely they were
19 discussing these matters in the evidence against the
20 Applicant from the State.

21 Regarding the Applicant's allegation of his involuntary
22 guilty plea, he testified on the record and before Judge
23 Mullen that it was his desire to plead guilty, he wished to
24 plead guilty, he was guilty, he wasn't threatened, coerced,
25 or in any way forced to plead guilty.

1 With regard to Ms. Dovell in the filing of the
2 Applicant's appeal, the record reflects that she filed an
3 appeal. She filed an Anders Brief in the Applicant's case,
4 in which the Court of Appeals reviewed the entire record to
5 find any appealable issues and they found none in this case
6 and dismissed the appeal, Your Honor. So the State just
7 requests that you dismiss this application for Post-
8 Conviction Relief. Thank you.

9 THE COURT: Thank you very much. All right, Counsel,
10 I'm going to ask you both to submit proposed orders to me.
11 Please submit them to me within 14 days of today. Please
12 submit them to me at P.O. Drawer 470, Walterboro, 29488.
13 Please copy opposing counsel on your transmittal of the
14 proposed orders. Please include a self-addressed, stamped
15 envelope with sufficient postage affixed thereto for the
16 return of your proposed order.

17 If you want to e-mail me your proposed order, you may
18 do so; however, you are still going to have to mail me your
19 envelope with returned postage. My e-mail address is
20 pbucknerj@sccourts.org. If you e-mail me you must copy
21 opposing counsel, I also request that you e-mail my law
22 clerk a working copy and forward him a working copy of your
23 proposed order. My law clerk is pbucknerlc@sccourts.org;
24 his mailing address is the exact same as mine. His name is
25 Camden Hodge. Any questions about the proposed order

1 procedure from counsel for the Applicant?

2 MR. MCINTYRE: No, sir.

3 THE COURT: Any questions about the proposed order
4 procedure from counsel for the State of South Carolina?

5 ASST. ATTY. GEN. WILSON: No, Your Honor.

6 THE COURT: This concludes the hearing in connection
7 with this matter.

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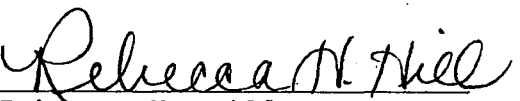
STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department 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 in the hearing of the captioned case, in the Court of Common Pleas, Post-Conviction Relief Hearing, for Beaufort County, South Carolina, on the 5th day of September 2012.

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

December 21, 2012


Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	2011-CP-07-4558
	)	
Morris Stewart, #343460	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

#1
 PnB

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 27, 2011. The Respondent made its Return on August 7, 2012. An evidentiary hearing into the matter was convened on September 4, 2012 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Bernard McIntyre, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Helen Roper Dovell, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and the Respondent's Return.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the December 2009 term of the Beaufort County Grand Jury for five (5) counts of armed robbery (2009-GS-2581, -2582, -2584, -2585, -2614), two (2) counts of possession

of a weapon during a violent crime (2009-GS-07-2583, -2586), and one count of kidnapping (2009-GS-07-2611). He was also subsequently indicted for two (2) counts of forgery less than \$5000 (2010-GS-07-0676, -0677). Helen Roper Dovell, Esquire, represented the Applicant. The Applicant pled guilty as indicted. The Honorable Carmen T. Mullen sentenced the Applicant to confinement for fifteen (15) years for each armed robbery charge, five (5) years for each weapons charge, fifteen (15) years for kidnapping, and five (5) years for each forgery. The sentences were to run concurrently. The Applicant appealed his convictions and sentences. A timely notice of appeal was filed and the Court of Appeal dismissed the Applicant's appeal by order filed January 20, 2011. The Remittitur was sent on February 7, 2011.

#2
PnB

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to present a defense "Doyle Violation"
2. The State failed to produce the proof needed for a plea or conviction
3. Involuntary guilty plea
 - a. Pled under "duress, coercion, compel force, by threat"

At the hearing, Applicant waived all grounds for relief except ineffective assistance of counsel.

1. Ineffective assistance of counsel
 - a. Failed to discuss discovery with the Applicant
 - b. Failed to conduct an independent investigation
 - c. Failed to follow up with filing of appeal
2. Involuntary guilty plea
 - a. Coerced to plea because counsel advised him he would get life if he did not plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

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At the beginning of the evidentiary hearing, the Applicant moved for a continuance. The Applicant stated that he needed a continuance because the transcript of his guilty plea was incomplete. The Applicant said that a discussion with the Judge about the possibility of entering an Alford plea was missing from the record. The Applicant also stated that during a certain portion of the proceeding he recalls the judge referring to a kidnapping indictment, but the record reflects the judge referring to armed robbery indictment. The Applicant also stated that the case should be continued because someone transcribed the transcript other than the person who recorded it. The State opposed the Applicant's motion stating that the transcript was accurate and that the State was ready to proceed with the evidentiary hearing. The post-conviction relief court denied the Applicant's motion and proceeded with the evidentiary hearing.

At the evidentiary hearing, the Applicant testified that he was represented by counsel and that he consulted with her about ten times prior to his plea. He testified that trial counsel never reviewed his discovery with him prior to his plea. He testified that he never reviewed any video or witness statements from his discovery package. The Applicant testified that he never received a copy of his discovery until after his plea. The Applicant conceded that counsel did discuss the charges against him and the elements of the crimes that the State was required to prove at trial.

The Applicant also testified that counsel did not investigate his charges. He testified that he asked counsel about her investigation and that he was told by counsel that she did not do any written investigation. He testified that he told counsel to speak to a witness named Corina and

that counsel never contacted Corina. He testified that if counsel had investigated further she would have found that he was not involved in the incidents and could not be identified by the victims. The Applicant testified further that Corina would have testified that he was not involved in the incidents.

#4
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The Applicant testified that his meetings with counsel were about taking a plea offer. He testified that he rejected two plea offers from the State. The Applicant also testified that counsel told him that the judge promised not to give him over fifteen years if he pled guilty, but that if he did not plead guilty he would get life without the possibility of parole. The Applicant testified that he felt forced to plea and that he did not want to plea. He testified that he pled because counsel told him he would get a life sentence. The Applicant testified further that he recalls the judge telling him that he was eligible for life without the possibility of parole if he proceeded to trial and that he would have proceeded to trial despite facing up to a 150 years sentence on all the armed robberies and the possibility of a life sentence.

Lastly, the Applicant testified that he told his counsel to file an appeal of his guilty plea. He testified that he felt his guilty plea was appealable because he felt coerced to plead guilty and the State gave no factual basis for his plea. The Applicant testified that he later learned that he should have appealed the issue of counsel's failure to investigate. He testified that his appeal was later dismissed because no appealable issues were preserved for review. The Applicant testified further that he recalls telling the judge he was satisfied with counsel's representation and that he had no complaints with her service.

Plea counsel was present at the evidentiary hearing and testified that she was appointed to represent the Applicant. She testified that she has extensive experience in criminal law as a public defender and as a private attorney. Counsel testified that she met with the Applicant at

least thirteen times before his plea. She testified that she also spoke to the Applicant several times from the jail via phone. Counsel testified that she filed a Rule 5 motion in the Applicant's case. She testified that when she received the Applicant's discovery, she shared it with the Applicant. She testified further that around the end of April 2009, the Applicant requested a copy of his discovery and she sent him a copy. Counsel also testified that she sent the Applicant another copy of his discovery after his plea in May 2010.

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Counsel testified that she discussed with the Applicant the charges against him and that she conducted an independent investigation of his charges. Counsel testified that she spoke with the victim of the Subway armed robbery and followed up with the solicitor on the case for more information. Counsel testified that she investigated the Subway armed robbery a little more thoroughly than the other charges because she was preparing for trial on that particular armed robbery.

Counsel testified further that she went over the incident reports and reviewed the statements from all the witnesses for all of the Applicant's charges. She testified that from reading the incident reports on the other charges she was in a good position to give the Applicant advice about the charges and to tell the Applicant what would likely happen if he proceeded to trial. Counsel testified that she reviewed all video footage from the incidents and if there was any surveillance footage she reviewed it. Counsel also testified that she did not recall the Applicant giving her the name of any potential witnesses to contact.

Plea counsel testified that she entered into plea negotiations on the Applicant's behalf. She testified that whenever offers were made by the State she conveyed the offers to the Applicant. She testified that the State offered the Applicant a fifteen (15) year maximum sentence to run concurrent in exchange for a plea to all pending charges. Counsel testified that

the State also offered the Applicant a plea to whichever charges he wanted to plea to in exchange for an eighteen (18) year sentence. She testified that counsel rejected the plea offer and was never given any new offers prior to trial. Counsel testified that the Applicant's case was first up for trial in October 2010 and they were prepared for trial, but the Applicant indicated he wanted to plead guilty.

#1
PAB
Counsel testified further that she spoke to the judge prior to trial to gauge the judge's inclination as to a possible sentence if the Applicant were to plea. She testified that she discussed off the record with the judge whether or not the judge would accept an Alford plea from the Applicant. She testified that the plea judge said she would not accept an Alford plea. Counsel testified that he advised the Applicant that ^{As of} he went to trial and was convicted or pled guilty to one armed robbery charge that he would be eligible for life without the possibility of parole. She testified that she never told the Applicant that if he did not plead guilty he would get life without the possibility of parole, but she did advise the Applicant to plea to avoid being eligible for life without the possibility of parole.

Counsel said that the Applicant seemed to be on the fence about pleading guilty and that they discussed his plea thoroughly. She testified that the Applicant eventually decided to plead guilty and was ready to plead guilty. She testified that she did not threaten the Applicant to get him to plead guilty and that it was the Applicant's decision to plead guilty. Counsel also testified that she told the Applicant that during the plea proceedings he would have to answer questions from the judge.

Counsel testified that the Applicant understood that he could become eligible for life without the possibility of parole and that when the Applicant hesitated during the plea proceeding she spoke with him again and he decided he still wanted to go forward with the plea.

Lastly, counsel testified that after the Applicant's plea he mentioned to her filing an appeal. She testified that she filed a timely notice of appeal on the Applicant behalf. She also testified that she filed an Anders brief because she saw no appealable issues. Counsel testified that she did not believe the Applicant did not understand the plea proceeding and that she felt his plea was entered voluntarily. She testified that she felt the appeal issues that the Applicant had were post-conviction relief issues and not direct appeal issues.

Ineffective Assistance of Counsel

#7
PMB
The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. 115, 386 S.E.2d 624 (1988).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced

the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

#8
PMB
To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

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

acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. This Court finds that Applicant understood the terms of sentence and that if he was convicted of one of his armed robbery charges that he could face life without the possibility of parole.

#9
PAB
Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that the Applicant has failed to prove that trial counsel was ineffective for failing to review with the Applicant his discovery. This Court finds that plea counsel properly requested the Applicant's discovery by filing a Rule 5 motion. The Court finds that counsel gave credible testimony that she received the Applicant's discovery and thoroughly reviewed the contents of the discovery packet with the Applicant. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that counsel was ineffective.

This Court finds that the Applicant has failed to prove that trial counsel was ineffective for failing to investigate the Applicant's charges. Our case law provides that defense counsel

must, at a minimum, interview potential witnesses. Edwards v. State, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011). As long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Id. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

10
PnB
This Court finds that counsel conducted a reasonable investigation of the Applicant's case prior to his plea. This Court finds that the Applicant interviewed all potential witnesses. This Court also finds that the Applicant has failed to show what would have resulted from further investigation by counsel. Counsel gave credible testimony that she investigated all the Applicant's charges and that she was never given the names of any potential witnesses by the Applicant. Counsel also gave credible testimony that she had investigated the Applicant's charges and reviewed his discovery enough so that she could advise the Applicant on the likely results if he were to proceed to trial. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that counsel was deficient for failing to investigate the Applicant's case.

This Court finds that the Applicant has failed to prove that trial counsel was ineffective for failing to properly appeal the Applicant's case. This Court finds that this allegation is completely without merit. Counsel gave credible testimony that she filed a timely notice of appeal and Anders brief on the Applicant's behalf. The Applicant's appellate court records also reflect that counsel filed a timely notice of Appeal and Anders brief on the Applicant's behalf. The South Carolina Court of Appeals by order filed January 20, 2011 dismissed the Applicant's appeal. The Remittitur was sent February 7, 2011. This Court finds that this allegation is without

merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to file an appeal.

#1
PAB

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. This Court finds that the Applicant was neither threatened nor coerced to plead guilty. The record reflects that during his plea colloquy, the Applicant told the judge that he had not been promised anything to make him plead guilty. (T. 22, ln. 13-16) The record also reflects that the Applicant told the judge that he had not been threatened or coerced into pleading guilty. (T. 22, ln.17-19). This Court finds that the Applicant had full understanding of the charges and the consequences of the plea. This Court finds that the Applicant was fully advised of all his constitutional rights. The record reflects that the Applicant was advised of the potential sentences for his charges (T.10, ln. 3-13), his right to a jury trial (T. 21, ln.1-4), the right to remain silent (T. 21), and the right to confront witnesses (T. 21). The record also reflects that the Applicant stated he was not under the influence of any drugs or alcohol at the time of his plea. (T. 6, ln.17-19). This Court finds further that the plea judge took all steps necessary to ensure that the Applicant's plea was entered freely and voluntarily, including allowing the Applicant to stand down when he seemed apprehensive about pleading guilty. (T. 7). This Court finds that the Applicant has failed to carry his burden of proving that his guilty plea was not entered freely and voluntarily.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without

merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

#12
B
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15th day of October, 2022.


The Honorable Perry M. Buckner
Presiding Judge
14th Judicial Circuit

Waltham, South Carolina.

WITNESSES

Albertin/BCSO

ARREST WARRANT NUMBER

1028874

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury,
Date: 12/17/09

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2009GS0702581

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2009

THE STATE

vs.

Morris Fitzgerald Stewart Jr

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed**

SC Code: 16-11-0330(A)
CDR Code:0139

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

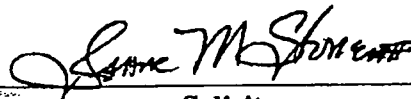
INDICTMENT
 2009GS0702581

At a Court of General Sessions, convened on December 17, 2009, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed

That on or about October 28, 2009, in Beaufort County, South Carolina, the Defendant, Morris Fitzgerald Stewart Jr, at _____, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Brittany Hopkinson with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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



Solicitor

Beaufort

WITNESSES

Novak/BCSO

ARREST WARRANT NUMBER

1028877

ACTION OF GRAND JURY

True Bill

Angela Courney
Foreperson of Grand Jury
Date: 12/17/09

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2009GS0702582

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2009

THE STATE

vs.

Morris Fitzgerald Stewart Jr

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed**

SC Code: 16-11-0330(A)
CDR Code:0139

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

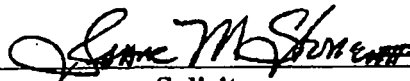
INDICTMENT
 2009GS0702582

At a Court of General Sessions, convened on December 17, 2009, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed

That on or about October 12, 2009, in Beaufort County, South Carolina, the Defendant, Morris Fitzgerald Stewart Jr, at Hilton Head Island, SC, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Jose Torres with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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


 Solicitor

Beaufort

WITNESSES

Novak/BCSO

ARREST WARRANT NUMBER

1028878

ACTION OF GRAND JURY

True Bill

Angela Courtney
Foreperson of Grand Jury
Date: 12/17/09

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2009GS0702583

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2009

THE STATE

vs.

Morris Fitzgerald Stewart Jr

Indictment for

**Weapons / Poss. weapon during violent crime,
if not also sentenced**

SC Code: 16-23-0490
CDR Code:0549

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

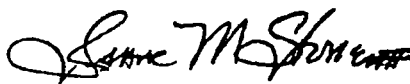
INDICTMENT
2009GS0702583

At a Court of General Sessions, convened on December 17, 2009, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sentenced

That in Beaufort County, South Carolina, on or about 2009-10-12, the Defendant, Morris Fitzgerald Stewart Jr, did possess a weapon or visibly display what appeared to be a weapon during the commission, or attempted commission, of Armed Robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



Solicitor

2009
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WITNESSES

Albertin/BCSO

ARREST WARRANT NUMBER

H504775

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 12/17/09

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2009GS0702584

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2009

THE STATE

vs.

Morris Fitzgerald Stewart Jr

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed**

SC Code: 16-11-0330(A)
CDR Code:0139

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2009GS0702584

At a Court of General Sessions, convened on December 17, 2009, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed

That on or about November 7, 2009, in Beaufort County, South Carolina, the Defendant, Morris Fitzgerald Stewart Jr, at Hilton Head Island, SC, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Rebecca Hanglum with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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



Solicitor

2009
12
17
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11

WITNESSES

Albertin/BCSO

ARREST WARRANT NUMBER

H504776

ACTION OF GRAND JURY

True Bill

Angela Courtney
Foreperson of Grand Jury

Date: 12/17/09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS0702585

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2009

THE STATE

vs.

Morris Fitzgerald Stewart Jr

Indictment for

**Robbery / Attempted armed, or allegedly armed,
robbery**

SC Code: 16-11-0330(B)

CDR Code:0026

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2009GS0702585

At a Court of General Sessions, convened on December 17, 2009, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Attempted armed, or allegedly armed, robbery

That on or about October 28, 2009, in Beaufort County, South Carolina, at _____ on Head Island, SC, the Defendant, Morris Fitzgerald Stewart Jr, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the attempted robbery reasonably believed to be a deadly weapon, did attempt to take and carry away goods or monies from the person or immediate presence of John Tinti with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended

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



Solicitor

True Bill

WITNESSES

Albertin/BCSO

ARREST WARRANT NUMBER

H504777

ACTION OF GRAND JURY

True Bill

Angela Courtney
Foreperson of Grand Jury
Date: 12/17/09

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2009GS0702586

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2009

THE STATE

vs.

Morris Fitzgerald Stewart Jr

Indictment for

**Weapons / Poss. weapon during violent crime,
If not also sentenced**

SC Code: 16-23-0490
CDR Code:0549

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2009GS0702586

At a Court of General Sessions, convened on December 17, 2009, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime. If not also sentenced

That in Beaufort County, South Carolina, on or about November 7, 2009, the Defendant, Morris Fitzgerald Stewart Jr, did possess a weapon or visibly display what appeared to be a weapon during the commission, or attempted commission, of Armed Robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



Solicitor

Beaufort

WITNESSES

Novak/BCSO

ARREST WARRANT NUMBER

1028887

ACTION OF GRAND JURY

True Bill

Angela Courteney
Foreperson of Grand Jury
Date: 12/17/09

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2009GS0702611

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2009

THE STATE

vs.

Morris Fitzgerald Stewart Jr

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910
CDR Code:0095

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

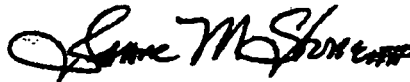
INDICTMENT
2009GS0702611

At a Court of General Sessions, convened on December 17, 2009, the Grand Jurors of Beaufort County present upon their oath:

Kidnapping / Kidnapping

That in Beaufort County, South Carolina, on or about September 24, 2009, the Defendant, Morris Fitzgerald Stewart Jr, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Muhittin Bostanci, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended)

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



Solicitor

True Bill

WITNESSES

Novak/BCSO

ARREST WARRANT NUMBER

1028888

ACTION OF GRAND JURY

True Bill

Angela Courney
Foreperson of Grand Jury
Date: 12/17/09

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2009GS0702614

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2009

THE STATE

vs.

Morris Fitzgerald Stewart Jr

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed**

SC Code: 16-11-0330(A)
CDR Code:0139

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2009GS0702614

At a Court of General Sessions, convened on December 17, 2009, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed

That on or about September 24, 2009, in Beaufort County, South Carolina, the Defendant, Morris Fitzgerald Stewart Jr, at : Hilton Head Island, SC, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Muhittin Bostanci with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

FILED
JUN 17 2010
CLERK OF COURT
BEAUFORT COUNTY

WITNESSES

T. Calhoun/ BCSO

ARREST WARRANT NUMBER

J338099

ACTION OF GRAND JURY

True Bill

B. Smith
Foreperson of Grand Jury
Date: APR 29 2010

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2010GS0700676

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

April
~~March~~ Term 2010

THE STATE

vs.

Morris F Stewart

Indictment for

Forgery / Forgery, value less than \$5,000

SC Code: 16-13-0010(B)(2)
CDR Code:2427

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

Certified - A True Copy

Kathleen M. McCormick
Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2010GS0700676

April 29, 2010

At a Court of General Sessions, convened on March 20, 2010, the Grand Jurors of Beaufort County present upon their oath:

Forgery / Forgery, value less than \$5,000

That in Beaufort County, South Carolina, on or about July 22, 2009, the Defendant, Morris F Stewart, with intent to defraud, falsely did make, forge, counterfeit or did cause or procure falsely to be made, forged, or counterfeited a writing, or did utter and publish as true a forged, false or counterfeited writing, or willfully act or assist in any of the foregoing, to wit: present check number 2693 to Wachovia Bank 75 Matthews Dr. drawn on the Wachovia account of John W. Myers, the check in the amount of 750.00, all in violation of Section 16-13-10, Code of Laws of South Carolina, (1976, as amended).

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


 Solicitor

WITNESSES

T. Calhoun/BCSO

ARREST WARRANT NUMBER

J338100

ACTION OF GRAND JURY

True Bill

B. Smith
Foreperson of Grand Jury
Date: **APR 29 2010**

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2010GS0700677

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

April
~~March~~ Term 2010

THE STATE

vs.

Morris F Stewart

Indictment for

Forgery / Forgery, value less than \$5,000

SC Code: 16-13-0010(B)(2)
CDR Code:2427

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

Defendant

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

Defendant

Witness:

**C.C.C. PLS. and G.S.
Certified - A True Copy**

Kathleen M. McCormick
Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0700677

April 29, 2010

At a Court of General Sessions, convened on ~~March 20, 2010~~, the Grand Jurors of Beaufort County present upon their oath:

Forgery / Forgery, value less than \$5,000

That in Beaufort County, South Carolina, on or about July 27, 2009, the Defendant, Morris F Stewart, with intent to defraud, falsely did make, forge, counterfeit or did cause or procure falsely to be made, forged, or counterfeited a writing, or did utter and publish as true a forged, false or counterfeited writing, or willfully act or assist in any of the foregoing, to wit: present check number 2570 to Wachovia 75 Matthews Dr. drawn on the Wachovia account of Gary Beaulieu, the check in the amount of 600.00, all in violation of Section 16-13-10, Code of Laws of South Carolina, (1976, as amended).

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



Solicitor