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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Orangeburg County

Robert E. Hood, Circuit Court Judge

TOURIARNOLD SPANN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-000525

APPENDIX

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

SARAH GUNTON
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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State of South Carolina,
Plaintiff,
v.
Touriarnold Spann,
Defendant.

March 23, 2015
Orangeburg, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge

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

Ashley Cornwell, Esquire
Attorney for the State

Peggy Hinds, Esquire
Attorneys for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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PLEA

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

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1 MS. CORNWELL: Touriarnold Spann.

2 May it please the Court, Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. CORNWELL: Before you is Touriarnold Spann with his
5 attorney Mr. Stevens. He's here to plead guilty under true
6 billed indictments 2014-GS-38-0799 through 0804. Those are
7 True Billed indictments for malicious injury to personal
8 property, burglary first degree, possession of a weapon
9 during the commission of a violent offense, impersonating a
10 law enforcement officer, car jacking and armed robbery. The
11 State is making a recommendation of 30 years. Those are to
12 be run concurrent. The victims are here and will address
13 Your Honor at the appropriate time.

14 THE CLERK: Please raise your right hand.

15 (WHEREUPON, Touriarnold Spann was
16 sworn to tell the truth.)

17 THE CLERK: Thank you.

18 THE COURT: Mr. Stevens, you represent Mr. Spann in this
19 matter?

20 MR. STEVENS: I do, Your Honor.

21 THE COURT: And have you explained to your client the
22 charges contained in the indictments, the possible
23 punishments and his constitutional right?

24 MR. STEVENS: Yes, I have, ma'am.

25 THE COURT: And how has he indicated to you that he

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1 wishes to plea?

2 MR. STEVENS: Guilty, Your Honor.

3 THE COURT: Do you agree with your client's decision to
4 plead guilty?

5 MR. STEVENS: I do, Judge.

6 THE COURT: Based upon your investigation of the facts
7 and circumstances of the case do you feel the State could
8 produce sufficient evidence to convince a jury of your
9 client's guilt beyond a reasonable doubt and if he were to
10 stand trial his conviction would be probable?

11 MR. STEVENS: Yes, ma'am.

12 THE COURT: All right. Mr. Spann, I have certain
13 questions for you to assure that your plea is freely,
14 knowingly and intelligently made. At any point if you don't
15 understand something please stop to ask me, okay?

16 MR. SPANN: Yes, ma'am.

17 THE COURT: Okay, sir. And how old are you?

18 MR. SPANN: Twenty-eight.

19 THE COURT: And how far did you go in school?

20 MR. SPANN: The eleventh grade.

21 THE COURT: Did you get your GED?

22 MR. SPANN: Yes, ma'am.

23 THE COURT: What type of work do you do?

24 MR. SPANN: I been tying down trailers and brick mason.

25 THE COURT: Are you married?

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1 MR. SPANN: No.

2 THE COURT: Any children?

3 MR. SPANN: I got twins.

4 THE COURT: How old are they?

5 MR. SPANN: They going to be six.

6 THE COURT: Have you ever been treated for the abuse of
7 drugs, alcohol or mental illness?

8 MR. SPANN: No, ma'am.

9 THE COURT: Within the last twenty-four hours have you
10 had any alcohol, drugs or prescription medication?

11 MR. SPANN: No, ma'am.

12 THE COURT: You're pleading guilty to several different
13 indictments here which I will go through with you. The
14 first indictment is burglary in the first degree. Do you
15 understand that that charge carries a potential penalty of
16 15 years up to life; do you understand that?

17 MR. SPANN: Yes, ma'am.

18 THE COURT: Have you also discussed with your attorney
19 that this is considered a violent and most serious offense?

20 MR. SPANN: Yes, ma'am.

21 THE COURT: And you understand the consequences of that?

22 MR. SPANN: Yes, ma'am.

23 THE COURT: All right, sir. You're also pleading guilty
24 to malicious injury to real property which carries up to 30
25 days. Do you understand what that charge carries?

1 MR. SPANN: Yes, ma'am.

2 THE COURT: And a charge of possession of a weapon
3 during the commission of a violent crime. That charge
4 carries up to five years in prison; do you understand that?

5 MR. SPANN: Yes, ma'am.

6 THE COURT: The charge of taking -- taking or attempting
7 to take a vehicle from a person by force without great
8 bodily harm. That charge carries up to 30 years in prison;
9 Do you understand that?

10 MR. SPANN: Yes, ma'am.

11 THE COURT: And that's also considered a violent and
12 most serious offense; do you understand that?

13 MR. SPANN: Yes, ma'am.

14 THE COURT: You're also pleading guilty to armed robbery
15 which carries up to a potential penalty of between 10 and 30
16 years and that's also considered a violent and most serious
17 offense; do you understand that?

18 MR. SPANN: Yes, ma'am.

19 THE COURT: The charge of impersonating a law
20 enforcement officer, that charge carries a penalty of up to
21 one year; do you understand that?

22 MR. SPANN: Yes, ma'am.

23 THE COURT: So you understand what each of these
24 indictments carries and the potential penalty of each?

25 MR. SPANN: Yes, ma'am.

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1 THE COURT: And the fact that considering that all of
2 these you're looking at a potential penalty of life in
3 prison; do you understand that?

4 MR. SPANN: Yes, ma'am.

5 THE COURT: The State is recommending that you receive a
6 30 year sentence, but I don't have to do that. I can give
7 you up to life in prison; do you understand that?

8 MR. SPANN: Yes, ma'am.

9 THE COURT: Knowing all that, do you wish to proceed
10 with your plea here this afternoon?

11 MR. SPANN: Yes, ma'am.

12 THE COURT: All right.

13 Solicitor.

14 MS. CORNWELL: Thank Your Honor.

15 May it please the Court. As it relates to the armed
16 robbery, car jacking and impersonating a law enforcement
17 officer and possession of a weapon during a violent offense,
18 on October 22, 2012, officers responded to a armed robbery,
19 car jacking incident that occurred in the Eutawville area of
20 Orangeburg County. Officers met with the victim, David
21 Smith, who stated as he was driving through the town of
22 Eutawville a car came up behind him and turned flashing
23 lights on. The victim said he pulled over because he
24 thought it was a police car. The victim then stated that a
25 black male then approached his car. He had a badge on his

1 hip as well as a gun. He asked for the driver's license.
2 Once he received the driver's license from the victim he
3 then pulled the victim out of the car and began beating on
4 the victim. The victim was on the ground. He said that
5 there were three other men that came up behind him. All
6 four men had guns which he believed to be Glock's. The
7 victim stated that one of the gentlemen put a gun to his
8 chest and started going through his pockets where they also
9 took \$400 in cash from him. Once they got that money three
10 of the victims -- I'm sorry -- three of the suspects jumped
11 in the victim's car, the fourth got in the truck following
12 and they drove off. Also in the car of the victim was a
13 Russian Makarov handgun. Officers responded to the scene
14 and met with the victim. He was able to give them a
15 description of his vehicle. They put a BOLO out. About 15
16 minutes after that BOLO went out Berkeley responded that
17 they had the vehicle in chase. They were chasing this
18 vehicle through various areas of Cross in Berkeley County.
19 At one point the car wrecked. The suspects jumped out of
20 the vehicle and fled the scene. The suspects were not
21 apprehended at that time, but the vehicle was towed back to
22 Orangeburg County where it was processed for evidence.
23 Through the processing of evidence there was a cell phone
24 found inside the vehicle that did not belong to this victim.
25 Through investigation it was discovered the phone belonged

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1 to one of the sons of Roberta Spann, that was identified
2 through that "Mom" was in the cell phone. Photo lineups
3 were done and this victim was able to identify this
4 defendant as the clean-cut gentleman that first approached
5 his car with the gun on his hip and the badge. We also had
6 evidence tested, fingerprint analysis and DNA analysis done.
7 Fingerprints from the cell phone came back to this defendant
8 as well as DNA inside the vehicle came back to this
9 defendant. And, again, this victim did identify him through
10 a photo lineup, which he said he was 100 percent positive
11 of. Based on that, that is for those charged.

12 For the burglary first and the malicious injury to
13 personal property on November 26, 2012, officers responded
14 to the Eutawville area of Orangeburg County in reference to
15 an alarm. Before arriving at the incident location dispatch
16 notified officers that the homeowner was on the scene and
17 there was damage to the back door. When officers arrived
18 they cleared the home. The point of entry appeared to be a
19 lower panel of the door had been kicked in. Inside the
20 residence the officers could see where a TV had been moved
21 from the living room and placed in the floor in the kitchen
22 along with several other items as if they were gathering
23 items to take out before the alarm went off. Missing from
24 the home were three TV sets, several clothing items,
25 jewelry, electronics, a little bit of cash. Crime scene did

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1 respond and took fingerprints from the scene. Those
2 fingerprints did come back to this defendant. Officers met
3 with this defendant while he was being held and this
4 defendant did give a written statement confessing to
5 breaking into the victim's home.

6 Again, both victim's are here and would like to address
7 Your Honor at the appropriate time. I can also give the
8 prior record at the appropriate time.

9 THE COURT: Mr. Spann, do you agree with the facts as
10 stated by the State?

11 MR. SPANN: Yes, ma'am.

12 THE COURT: And are you, in fact, guilty of each of
13 those charges?

14 MR. SPANN: Yes, ma'am.

15 THE COURT: You understand that by pleading guilty you
16 are waiving certain constitutional rights. You are waiving
17 your right to have a trial by jury where the State would
18 have the burden of proving your guilt beyond a reasonable
19 doubt. You're also waiving the right to remain silent during
20 that trial, at which point the judge would instruct the jury
21 they could not use that against you. You are waiving the right
22 to challenge the State's evidence as well as cross-examining
23 witnesses and presenting any defenses that you may have.
24 You are also waiving your right to challenge any potential
25 incriminating statement that you may have made. Do you

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1 understand that you are waiving each of those rights?

2 MR. SPANN: Yes, ma'am.

3 THE COURT: You've been represented by Mr. Stevens in
4 this matter. Have you been satisfied with how he has
5 advised you in this case?

6 MR. SPANN: Yes, ma'am.

7 THE COURT: Have you spoken with him for as often and
8 for as long as you feel is necessary for him to represent
9 you?

10 MR. SPANN: Yes, ma'am.

11 THE COURT: Have you understood your talks with your
12 attorney?

13 MR. SPANN: Yes, ma'am.

14 THE COURT: Do you need any more time to talk to your
15 attorney?

16 MR. SPANN: No.

17 THE COURT: Do you have any complaints against your
18 attorney?

19 MR. SPANN: No, ma'am.

20 THE COURT: Has anyone promised you anything or held out
21 any hope of reward to get you to plead guilty?

22 MR. SPANN: No.

23 THE COURT: Has anyone threatened or coerced you in any
24 way to get you to plead guilty?

25 MR. SPANN: No, ma'am.

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1 THE COURT: Has anyone associated with your case
2 mistreated you in any way?

3 MR. SPANN: No, ma'am.

4 THE COURT: Have you had enough time to make up your
5 mind as to whether you want to plead guilty?

6 MR. SPANN: Yes, ma'am.

7 THE COURT: Are you pleading guilty of your own free
8 will?

9 MR. SPANN: Yes, ma'am.

10 THE COURT: Have you understood all of my questions?

11 MR. SPANN: Yes, ma'am.

12 THE COURT: Is there anything you'd like to ask me about
13 what we've just been over?

14 MR. SPANN: No, ma'am.

15 THE COURT: Has anyone suggested to you how to answer my
16 questions?

17 MR. SPANN: No, ma'am.

18 THE COURT: Is each and every answer you've given the
19 Court completely truthful and honest?

20 MR. SPANN: Yes, ma'am.

21 THE COURT: You understand you have 10 days to appeal a
22 guilty plea and if you could not afford an attorney one
23 would be appointed to represent you?

24 MR. SPANN: Yes, ma'am.

25 THE COURT: I do find there is a substantial, factual

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1 basis for the plea, that the defendant's decision to plead
2 guilty is freely, knowingly and intelligently made with the
3 advice of counsel with whom he says he is satisfied. I'll
4 accept the plea.

5 Mr. Steven.

6 MR. STEVENS: Thank you, Judge. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. STEVENS: Judge, I've had a chance to get to know
10 Touriarnold since I've been appointed with him. I
11 understand he goes by Wayne with his family members. I
12 either call him Mr. Spann or Touriarnold.

13 He's 20 years of age, Judge. I understand that the
14 recommended sentence is 30 years, concurrent. We are
15 thankful with the opportunity to come up with concurrent
16 sentences on all of these especially to hopefully remove the
17 specter of life without parole. He is single. Although he
18 is single he does have two children. They are twins and
19 they are, to my understanding, approximately five years of
20 age.

21 MR. SPANN: Yes, sir.

22 MR. STEVENS: Five years of age. It's also my
23 understanding after speaking with Mr. Spann that one of his
24 children had to have some very serious surgery last week.
25 The point being Judge he's been in pre-trial incarceration

1 on the present charges since May 1, 2014. He's already
2 feeling the detrimental effects of what it means to be
3 incarcerated. He's missing out on lives of his children.
4 He's missing out on lives of his family. His siblings, his
5 mother, sister, brother, you name it. It's hitting very
6 hard. He knows this is very real. He's here to accept
7 responsibility for his actions, Judge. He's knowledgeable,
8 he does have an education to the eleventh grade, plus, he
9 did obtain his GED. Additionally, Judge, he does have a
10 brick masons trade which he did use while he was out and
11 when he was free. My understanding he worked for Ricky
12 Jones Trailer Foundations in Moncks Corner for a couple of
13 years. At another point in his life he worked for Mr. Tony
14 Smith doing some brick laying in Cross.

15 So it's not that he has nothing to offer society,
16 Judge. He does. He does have a family. I've seen him shed
17 tears myself knowing full well what his children are going
18 through when he can't be there and be the father that he
19 wants to be for them.

20 I understand that he is here to take responsibility for
21 his actions, Judge. He's not dodging that, he's not ducking
22 that. In fact, we've had a chance to speak with each other
23 and he is willing to go ahead and give the names of the
24 accomplices that he's claimed to me have been with him
25 during all of them. After speaking with State they are

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1 willing to let him allocute to all of that as well on the
2 record. And with that, Judge, it is also giving assistance
3 to the State and what we are very thankful to have the
4 opportunity to have the offer back on the table for
5 concurrent sentences for 30, we would respectfully request
6 that the Court please consider an additional mercy or
7 leniency in this matter given that he is attempting to help
8 the State catch everyone involved and that's from the
9 perspective of the person who was actually there.

10 With this, especially if it can prove fruitful it
11 should hopefully serve the interest of justice and in so
12 doing he also does know it's not the safest thing to do from
13 his perspective, but is willing to do that, and given that
14 we would also ask for mercy and exercising leniency in the
15 Court's discretion.

16 THE COURT: Mr. Stevens is he ready to proceed and place
17 those matters on the record now?

18 MR. STEVENS: Yes, ma'am, he is.

19 THE COURT: All right, Mr. Spann --

20 MR. STEVENS: If I could have him move a little closer?

21 THE COURT: Sure.

22 All right, Mr. Spann, you need to put on the record
23 exactly what you know about these incidents regarding your
24 co-defendants, your potential co-defendants. You need to be
25 absolutely truthful --

1 MR. SPANN: Yes, ma'am.

2 THE COURT: -- in this matter in order to take that
3 into consideration in this case. Do you understand?

4 MR. SPANN: Yes, ma'am.

5 THE COURT: All right.. You may proceed.

6 MR. SPANN: We was riding in Eutawville, me and two
7 others guys. My brother didn't have nothing to do with it.
8 They done locked my brother up.

9 THE COURT: Slow down one second. She's got to write
10 down everything that you're saying. We need to make sure we
11 have a complete and full statement from you. So take your
12 time and tell us all the details.

13 MR. SPANN: We was riding in Eutawville when a white F-
14 150 stopped at Bells Marina to get gas. He pulled out and
15 we pulled out behind him. We pulled him over and my two
16 other co-defendants, Kendrika (sp) Singleton and --

17 THE COURT: What's the name?

18 MR. SPANN: Kendrika (sp) Singleton and James Bryant, we
19 pull him over and take his truck.

20 THE COURT: Okay. And your two co-defendants, where do
21 they live?

22 MR. SPANN: One live in Cross and one live in
23 Eutawville.

24 THE COURT: Do you know how old they are?

25 MR. SPANN: One 30 and one like 22.

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1 THE COURT: Do you know any other description of them?

2 MR. SPANN: One on parole right now. Kendrika
3 Singleton.

4 THE COURT: What other information do you have about
5 them you can give the State?

6 MR. SPANN: They was with me when it happened. My
7 brother didn't have nothing to do with it. They done locked
8 my brother up. They think it was him. It wasn't him.

9 THE COURT: All right. So when you committed this crime
10 what role did they participate in it?

11 MR. SPANN: I was driving, they got out. Only two
12 person got out and he know that. I stayed in the truck.
13 The other two got out. I stayed in the truck.

14 THE COURT: Did you witness them doing that?

15 MR. SPANN: Yes, ma'am.

16 THE COURT: Do you know exactly what each of them did?

17 MR. SPANN; Yes, ma'am.

18 THE COURT: Tell me.

19 MR. SPANN: They went to his truck, ask him for his
20 license, pulled him out, but they never beat him. Ain't
21 never pulled no gun neither. They just dragged him out the
22 truck. They went in his pants pocket but they didn't take
23 no money. One jumped in his truck and the other jumped in
24 the truck with me and we followed the truck back to Cross.

25 THE COURT: You understand that what you're saying, that

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1 still constitutes actions that constitutes you being guilty
2 of all of these crimes?

3 MR. SPANN: Yes, ma'am.

4 THE COURT: You understand that?

5 MR. SPANN: Yes, ma'am.

6 THE COURT: All right. Solicitor, do you have any other
7 questions for Mr. Spann?

8 MS. CORNWELL: I do. When y'all left him in the road
9 and drove to Berkeley County --

10 MR. SPANN: Yes, ma'am.

11 MS. CORNWELL: Where did you go?

12 MR. SPANN: We stopped at Canal One stop.

13 MS. CORNWELL: Were you in the victim's vehicle when you
14 stopped at Canal One Stop?

15 MR. SPANN: No, ma'am.

16 MS. CORNWELL: Where were you?

17 MR. SPANN: I was at home. I done went and parked the
18 truck.

19 MS. CORNWELL: Who was in the victim's vehicle at Canal
20 One Stop?

21 MR. SPANN: Kendrika and Bryant.

22 MS. CORNWELL: If you drove your truck home how do you
23 know who went to Canal One Stop and who was in the truck?

24 MR. SPANN: Because all them was staying with me.

25 MS. CORNWELL: So they told you that that's where they

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1 went?

2 MR. SPANN: Yes, ma'am.

3 MS. CORNWELL: Okay. Did they tell you what happened
4 after they left Canal One Stop?

5 MR. SPANN: No. I know they been in a high speed chase.

6 MS. CORNWELL: And do you know where that chase ended?

7 MR. SPANN: On Spires Landing Road.

8 MS. CORNWELL: Okay. How close is that to your house?

9 MR. SPANN: I stay over there by the Canal One Stop.

10 MS. CORNWELL: So within a mile from your house?

11 MR. SPANN: Yes, ma'am.

12 MS. CORNWELL: And it's your testimony that Kendrika
13 Singleton and James Bryant got out of your truck after you
14 pulled the victim over. You had strobe lights in your truck
15 to pull the victim over?

16 MR. SPANN: Yes, ma'am.

17 MS. CORNWELL: They approached his truck and pull him
18 out of the car?

19 MR. SPANN: Yes, ma'am.

20 MS. CORNWELL: Did you see them beat him?

21 MR. SPANN: No, ma'am. They never touch him.

22 MS. CORNWELL: Did you see them with firearms?

23 MR. SPANN: They ain't never had no firearms, but they
24 did steal a firearm out of the truck. They ain't never had
25 no gun.

1 MS. CORNWELL: What happened to the firearm that was
2 stolen out of his truck?

3 MR. SPANN: I ain't know what they did with it, ma'am.

4 MS. CORNWELL: Court's indulgence.

5 (Pause)

6 MS. CORNWELL: Thank Your Honor, that's all.

7 THE COURT: Mr. Stevens, anything further from you?

8 MR. STEVENS: Not at this time, Judge. Just simply the
9 Court take all of these things into consideration, that's
10 he's given the identity of the co-conspirators from his
11 perspective that he knows of and he will be testifying on
12 behalf of the State when it comes to that matter, if,
13 indeed, they are able to locate and apprehend those
14 individuals. Judge, we simply ask for consideration.

15 Thank you.

16 THE COURT: Thank you, Mr. Stevens.

17 MR. STEVENS: Thank you, Judge.

18 THE COURT: Does the victim wish to be heard?

19 MS. CORNWELL: I believe they do, Your Honor.

20 Mr. Smith, if you'd like to --

21 THE COURT: Yes, sir. If you'd identify yourself?

22 MR. SMITH: David Smith.

23 THE COURT: Yes, sir?

24 MR. SMITH: It was my car that was car jacked. He was
25 driving the truck. He drove my car away. He slammed me

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1 against that car twice and busted one of my pins where I had
2 by-pass done. Instead of laying flat it pokes out. He
3 threw me in the middle of the street. One of the other car
4 jackers come around, stuck a gun in my chest and took \$400
5 out my pocket. Three of them hopped in the truck. He told
6 the third one to get out and drive the truck. He didn't
7 want the other person in the truck driving it. So they
8 flipped around in the middle of the road and headed towards
9 Cross. I walked down to the --

10 MS. CORNWELL: Just let her know what you want to
11 happen.

12 MR. SMITH: Oh, the sentence. Whatever counsel here
13 agrees on. Earlier they said the sentence with that. It's
14 bothered my family. For nights and nights we stayed up
15 scared they were going to come back. They had threatened us
16 they would come back and get us.

17 THE COURT: Thank you.

18 MS. CORNWELL: Your Honor, this is Ms. Ravenell. She's
19 the victim of the burglary.

20 THE COURT: Yes, ma'am.

21 MS. RAVENELL: I'm Barbara Ravenell. My thing is I'm
22 here because -- have anyone ever felt someone breaking in
23 your house, you feel violated. I feel that I was violated.
24 If someone needs something from me or whatever. All he had
25 to do was ask for it. I don't know this gentleman, I -- at

1 first when I seen him when I came, I think, during hearing.
2 I don't know him. What gave him the reason to break in my
3 house to take anything from me, I don't know. I mean, I
4 have to come up here and work everyday for everything that I
5 have and everything that I get. Only thing I'm saying is he
6 have the opportunity to have a job and work, then that's
7 what he should have been doing instead of breaking into my
8 house. I couldn't go in my room and sleep or anything in
9 fear that, you know, this is going to happen again or I walk
10 in my house after work someone is going to be in there or
11 whatever. I can't -- afraid to stay in my own house. You
12 know, I feel that shouldn't be -- no one should be subject
13 to that. It shouldn't be. If -- I'm the type of person,
14 and people in the neighborhood know, if you want something
15 from me you ask me, but don't go and take anything from me,
16 you know. The TV, he took one I just bought, because it was
17 Black Friday that week before. You know, it just hurts me
18 and I feel violated someone go in my house and take my stuff
19 and they have no reason. I don't do anyone anything. I work
20 for what I want and I feel if he had that opportunity where
21 he saying he worked then he should have been working instead
22 of breaking in my house.

23 THE COURT: Yes, ma'am. Thank you for being here.

24 What's his prior record?

25 MS. CORNWELL: Your Honor, his prior record, he's got a

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1 2003 burglary second degree, violent. He's also got a 2003
2 burglary second degree, non-violent. He's got a 2006
3 resisting arrest and a 2014 assault and battery of a high
4 and aggravated nature, possession of cocaine and possession
5 of cocaine base.

6 MS. RAVENELL: Your Honor, I have one more thing.

7 THE COURT: Yes, ma'am?

8 MS. RAVENELL: There was some things that were taken and
9 maybe I shouldn't bring this up, but I've lost a child and I
10 had this -- this necklace of that child, the child name and
11 everything on it. In the process of them breaking in my
12 house taking everything they took that, too. That's
13 precious to me. It may not mean anything. I know it didn't
14 mean anything to him, but it meant a lot to me. I didn't
15 get those things back.

16 THE COURT: Mr. Spann, do you remember that necklace?

17 MR. SPANN: No, ma'am.

18 MS. RAVENELL: It was in the jewelry box.

19 MR. SPANN: I know. I don't know that, ma'am.

20 THE COURT: What did you do with the jewelry?

21 MR. SPANN: The co-defendants been with me.

22 THE COURT: Pardon me?

23 MR. SPANN: The co-defendants been with me.

24 THE COURT: Do you know what they did with it?

25 MR. SPANN: No, ma'am.

1 THE COURT: The co-defendants with the burglary, does
2 the State know who those were?

3 MR. STEVENS: That's what we just went through, Your
4 Honor. I'll also say he did give -- once he was apprehended
5 he gave a full hand-written and signed statement about the
6 burglary as well. So when it comes to that he's been very
7 up-front with the State in trying to make sure --

8 I do believe that Mr. Spann wanted to apologize to the
9 victims in the courtroom after the Judge is done.

10 MR. SPANN: I apologize for everything I did.

11 THE COURT: All right, sir. Anything further from
12 anyone?

13 MR. STEVENS: I tried to get verified copies of his
14 priors including burglaries. I didn't get actual verified
15 copies of his possession of cocaine or ABHAN.

16 MR. SPANN: It got thrown out.

17 MR. STEVENS: He thinks some of them were thrown out.
18 Regardless, we understand the scope of everything we're
19 looking at had our case proceeded to trial either on the
20 present charges for the October 22, 2012 incident or the
21 November 26, 2012 incident, Judge. And he's very remorseful
22 and very sorry. We do request the Court to exercise
23 leniency in its sentence.

24 MS. CORNWELL: And Your Honor, for purposes of the
25 record the 2014 ABHAN, possession of cocaine and possession

State v. Spann

3/23/15

25

1 of cocaine base, they came out of Berkeley County. They
2 were originally my cases when I worked in Berkeley County.
3 When I left Berkeley County Brian O'Hara the Deputy
4 Solicitor took over those charges. He also had several
5 other drug charges with those. The ABHAN is the old statute
6 ABHAN so it was not one that would have counted as the
7 strikes, however, that was pled to. A burglary was
8 dismissed with that. And several other drug charges were
9 dismissed. I did speak with Mr. Alfaro on the public index
10 and everything. The ABHAN was pled to as well as the
11 possession of cocaine and cocaine base because I did
12 consult with that on that case.

13 The strike charges would have been the burglary second,
14 violent and then obviously the car jacking, armed robbery.
15 We would have gone forward on the LWOP for the burg first.

16 THE COURT: Mr. Spann, certainly I've taken
17 consideration the fact that you put on the record what
18 happened regarding your co-defendants. However, you have no
19 right to terrorize these people like you did. You're
20 obviously educated and able to work, so that's like what Ms.
21 Ravenell said, it makes no sense in this conduct that you've
22 engaged in.

23 I think your attorney has done an excellent job in
24 getting you the recommendation that you got, because with
25 your record and this type of case you could be looking at --

State v. Spann

3/23/15

26

1 obviously, you are looking at a life sentence. I'm going to
2 follow the recommendation from the State.

3 On indictment 2014-GS-38-0804, armed robbery, you are
4 hereby committed to the State Department of Corrections for
5 a period of 30 years. On indictment 2014-GS-38-0803, for
6 taking or attempting to take a vehicle by force and great
7 bodily harm, likewise you are hereby committed to the State
8 Department of Corrections for a period of 30 years. On
9 indictment 2014-GS-38-0801, possession of a weapon during
10 the commission of a violent crime you are hereby committed
11 to the State Department of Corrections for a period of five
12 years. On indictment 2014-GS-38-0799, malicious injury to
13 real property, you are hereby committed to the County
14 Detention Center for a period of 30 days, time served. On
15 indictment 2014-GS-38-0800, burglary first degree you are
16 committed to the State Department of Corrections for a
17 period of 30 years. On indictment 2014-GS-38-0802, for
18 impersonating a law enforcement officer you are hereby
19 committed to the State Department of Corrections for a
20 period of one year. Each of these are concurrent to each
21 other and you do get credit for the time that you have
22 served.

23 MR. STEVENS: Thank you, Judge.

24 MS. CORNWELL: Thank Your Honor.

25 (This proceeding was concluded.)

State v. Spann

3/23/15

27

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST 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 PLEA IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 23 DAY OF MARCH, 2015.

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

Hilda M. Jordan, CVR-M

March 8, 2016

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of Orangburg)

2015-CP-38-01468

Tawia Arnold Spann - 00305939)

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

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

FILED FOR RECORD
JENNIFER G. CLARK
CLERK OF COURT
ORANGBURG, SC
15 NOV 30 P 12:41**INSTRUCTIONS B 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 Broad River Correctional Institution
2. Name and location of Court which imposed sentence Orangburg County
Court of general session
3. Name(s) of co-defendant(s) (if any) Kevin Spann Kendrick Singleton
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) Burglar First Degree 2014GS 38-0800 Impersonating Law Enforcement 2014GS 38-
0707

- (b) Armed Robbery 2014 GS 38-0804
~~pos. weapon during violent crime 2014 GS 38-0801 Take Attempt & vehicle~~
- (c) from person by force without Great Bodily Harm 2014 GS 38-0803

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) Date march 23, 2015, 30 yr; march 23 2015 1yr, w
- (b) march 23, 2015 30yr, march 23 2015 30yr.
- (c) Armed Robbery march 23, 2015 30yr.

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
- ii. _____
- iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) I was At Reception RFE could not respond to the 20 day
20 day letter Court appeal.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Due process violation
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) fail To Investigate
- (b) Defective Indictment
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

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

WU

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

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

- (a) Initial Appeal
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Mr. Breen Richard Stevens
- (b) your trial, if any? _____
- (c) your sentencing? same
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. Mr. Breen Richard Stevens 190 Gibson Street, P.O. Box 1112
Orangeburg S.C. 29116-1112
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment and plea
 - ii. _____
 - iii. _____

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

New trial

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Orangeburg)

VERIFICATION

I, Touricarnold Spann, 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.

Touricarnold Spann

SWORN to and subscribed before me this

24th
2015

day of

Susan H. Frye (L.S.)
Notary Public

My Commission Expires

My Commission Expires:

Dec 15, 2018

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

I, Touharmold Spann, 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.

Touharmold Spann
Applicant

SWORN or affirmed to and subscribed before me this

24th day of November 2015

Susan H. Dye
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Touriamold Spann, #305939,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

2015-CP-38-01468

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on November 30, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted by the July 14, 2014 session of the Orangeburg Grand Jury for one count of Malicious Injury to Personal Property (2014-GS-38-0799), one count of Burglary first degree (2014-GS-38-0800), one count of Possession of a Weapon During the Commission of a Violent Offense (2014-GS-38-8001), one count of Impersonating a Law Enforcement Officer (2014-GS-38-0802), one count of Taking a Vehicle by Force and Great Bodily Harm (2014-GS-38-0803) and one count of Armed Robbery (2014-GS-38-0804). Applicant was represented by Peggy Hinds, Esquire. Applicant pleaded guilty as indicted to all counts, and on March 23, 2015, was sentenced by the Honorable Maite Murphy as follows:

Indictment Number	Indictment	Sentence
2014-GS-38-0799	Malicious Injury to Personal Property	30 days
2014-GS-38-0800	Burglary 1 st	30 Years

2014-GS-38-8001	Possession of a Weapon During Commission of	5 Years
2014-GS-38-0802	Impersonating a Law Enforcement Officer	1 Year
2014-GS-38-0803	Taking a Vehicle by Force and Great Bodily Harm	30 Years
2014-GS-38-0804	Armed Robbery	30 Years

All sentences are concurrent pursuant to the State's recommendation. Applicant did not appeal his plea or sentence.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Fail [sic] to investigate"
2. Due Process Violation
 - a. "Defective Indictment"

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 *et seq*; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. Attached herewith and incorporated herein by reference are the records of the Orangeburg County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, 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, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 80 L.E.2d 674). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant

must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. 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.

Applicant claims in his application for relief that his rights to due process under the law were violated. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing that his due process and other constitutional rights were violated, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

V.

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

VI.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

July 12, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Touriarnold Spann, #305939,)
Applicant,)
vs)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2015-CP-38-1468

AFFIDAVIT OF SERVICE BY MAIL

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

Mr. Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this 12th day of July, 2016.



Ashley Haworth, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF ORANGEBURG) CASE NO.: 2015-CP-38-01468

TOURIARNOLD SPANN,)
)
 APPLICANT(S),)
)
 v.) TRANSCRIPT OF RECORD
)
 STATE OF SOUTH CAROLINA,)
)
 DEFENDANT(S).)

ORIGINAL

Wednesday, May 24, 2017

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Robert E. Hood, Judge

APPEARANCES:

For the Applicant:
 Jonathan D. Waller, Esquire, Esquire
 Waller Law Group, LLC
 1116 Blanding Street, Suite 2B
 Columbia, SC 29201

For the State:
 Ruston W. Neely, Esquire, Esquire
 Assistant Attorney General
 S.C. Attorney General's Office
 205 E. Main Street
 Lexington, SC 29072

Heather R. Landry, CVR
 Official State Reporter

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1 (The proceeding commenced at 11:08 a.m.)

2 THE COURT: All right. We're on the record in
3 2015-CP-38-1468, Touriarnold Spann against the State of
4 South Carolina. Mr. Waller is present representing the
5 Applicant. Mr. Neely is present representing the State.
6 Are you Mr. Spann?

7 APPLICANT: Yes, sir.

8 THE COURT: All right. Good morning. How are you?

9 APPLICANT: Good morning. How you doing, sir?

10 THE COURT: Doing great. Thank you very much.

11 Mr. Waller, you ready to go forward?

12 MR. WALLER: Yes, Your Honor.

13 THE COURT: Mr. Neely, you ready to go forward?

14 MR. NEELY: Yes, sir, Your Honor.

15 THE COURT: All right. Kick us off.

16 MR. NEELY: Thank you, Your Honor. Applicant is
17 presently confined to the South Carolina Department of
18 Corrections pursuant to orders of commitment by the Clerk of
19 Court, Orangeburg County. Applicant was indicted on
20 July 14, 2014, session by Orangeburg County Grand Jury for
21 one count of malicious injury to personal property, one
22 count of burglary, first degree, one count of possession of
23 a weapon during the commission of a violent crime, one count
24 of impersonating a law enforcement officer, one count of
25 taking a vehicle by force without great bodily harm, one

1 count of armed robbery. And those indictment numbers are,
2 in sequence, 2014-GS-38-0799, 0800, 0801, 0802, 0803, and
3 0804.

4 Applicant was sentenced -- pled guilty and sentenced on
5 March 23, 2015, by the Honorable Judge Murphy to 30 days for
6 malicious injury to personal property, 30 years for
7 burglary, first degree, five years, possession of a weapon
8 during the commission of a violent crime, one year for
9 impersonating law enforcement officer, 30 years for taking a
10 vehicle by force without great bodily harm, and 30 years for
11 armed robbery. Those sentences do run concurrent.

12 MR. WALLER: Your Honor, I believe we have a
13 stipulation as to the taking of a vehicle without great
14 bodily injury. He was sentenced to 30 years. The statute
15 for without great bodily injury only allows for a sentence
16 up to 20 years.

17 THE COURT: Okay.

18 MR. WALLER: I believe the State is consenting to that
19 issue.

20 MR. NEELY: That is correct.

21 THE COURT: All right.

22 MR. NEELY: The sentence was incorrect. I have spoken
23 with Mr. Stevens and he'll be -- obviously, available to
24 testify. But it looks like everybody just missed it, and
25 the judge sentenced him to 30 years, concurrent, on taking a

1 vehicle without great bodily injury, 30 years, when it
2 should've been 20 years.

3 THE COURT: Okay. All right. Good.

4 MR. WALLER: Thank you, Your Honor. I would call
5 Touriarnold Spann.

6 THE COURT: Come on up.

7 (Whereupon, the witness, TOURIARNOLD SPANN, was duly
8 sworn.)

9 THE COURT: Do you understand what we're doing with
10 that one charge?

11 APPLICANT: Yeah. I told them that before we went to
12 court that ---

13 THE COURT: Okay. All right. That's fine. I'm gonna
14 fix that one today. Okay, that sentence is gonna change
15 from 30 years to 20 years because that would be the maximum
16 possible. Okay? You understand that?

17 APPLICANT: Yes, sir.

18 THE COURT: Okay. Mr. Waller, you ready?

19 MR. WALLER: Yes, sir, Your Honor.

20 - - - - -

21 DIRECT EXAMINATION

22 BY MR. WALLER:

23 Q. Good morning, Mr. Spann. How are you today?

24 A. Good morning, sir.

25 Q. Okay. Mr. Spann, I want to kind of jump right into it.

1 You were charged with several crimes but stemming from two
2 different incidents. Is that right?

3 A. Yes, sir.

4 Q. And we the carjacking, was the first incident?

5 A. Uh-huh.

6 Q. Okay. Who was your attorney on those charges?

7 A. First I had Douglas then he got off my case because he
8 been in a backup trial for my brother. Then I had Breen
9 Stevens and he came on it. Then I had Minh Lee because I
10 was gonna go to trial the same week my brother went. The
11 week they give her, she didn't know nothing about my case.

12 Q. Okay. So you had -- originally you had Doug Mellard.
13 Is that correct?

14 A. Yeah. Yes, sir.

15 Q. Okay. But he had some involvement with your brother?

16 A. Yeah. He been at backup trial for my brother.

17 Q. Okay. Now, was your brother charged in any of these as
18 well?

19 A. Yeah. He right there. He had an acquittal on all his
20 charges.

21 Q. Okay. Hold on. Hold on. He was charged in the
22 carjacking incident as well. Is that right?

23 A. Yes, sir.

24 Q. Okay. And so, Mr. Mellard obviously could not
25 represent both of you?

Direct Examination of Mr. Spann by Mr. Waller

7

1 A. Yes, sir.

2 Q. Okay. So you were appointed Mr. Stevens. Is that
3 right?

4 A. Yes, sir.

5 Q. Okay. I want to talk about the incidents completely
6 separately and then we'll come back at the end. In those
7 set of charges, okay, what did you and Mr. Stevens talk
8 about the first time you met about those charges?

9 A. He's saying -- like, Ashley Caldwell, like, she's
10 saying I'm guilty. She knew that I'm guilty because she
11 know me from Berkeley County. That's all he was saying at
12 first that he knew I'm guilty.

13 Q. Okay. He was saying that -- who is Ashley Caldwell?

14 A. That's the solicitor on my case. She knew me from
15 Berkeley County that -- I had some drug charges in 2014. I
16 went to court but I was doing some time at Turbeville on my
17 YOA sentence. And I maxed out on May 1st, they had a hold
18 on me in Orangeburg County. Then Doug just got on my case,
19 then he got off my case and I met with Breen. We talked, we
20 talked a little bit and stuff, but I started asking him
21 about the search warrant for the cell phone and everything.
22 He never presented it.

23 Q. Okay. We're gonna get to that. We're gonna get to
24 that in just a second.

25 THE COURT: And you're not saying Caldwell, you're

1 saying Cornwell. Is that right?

2 APPLICANT: I don't know. Yes, sir.

3 THE COURT: Okay. Cornwell, C-o-r-n-w-e-l-l. Okay.

4 BY MR. WALLER:

5 Q. Did you Mr. Stevens discuss for each of those charges
6 the penalties, the potential penalties they carry?

7 A. Yes, sir.

8 Q. Did y'all discuss your constitutional rights?

9 A. Yes, sir.

10 Q. Okay. Now, the other charge you had were a set of
11 burglary charges. Is that right?

12 A. Yes, sir.

13 Q. Okay. Did y'all discuss the potential penalties in
14 that case?

15 A. Yes, sir.

16 Q. Okay. When were you arrested? Were they separate
17 arrests or just one arrest?

18 A. Just one arrest for all of them.

19 Q. All right. You got arrested at the same time --

20 A. Yes, sir. I was incarcerated already. I incarcerated
21 at Turbeville.

22 Q. Okay. You were incarcerated at Turbeville for a YOA?

23 A. Yes, sir.

24 Q. Okay. So you were served with all these warrants at
25 once?

1 A. Yes, sir.

2 Q. They were supposedly from two separate incidents?

3 A. Yes, sir.

4 Q. Okay. Back to the carjacking for just a second. You
5 testified a minute ago that there was a search warrant for
6 the cell phone?

7 A. Yes, sir.

8 Q. Is that how you were identified?

9 A. Yeah. That was the bulk of the case is the cell phone.

10 Q. Okay. So what was your understanding of how you were
11 identified from the cell phone?

12 A. That they went inside my phone, but the phone was
13 locked. And he's saying that they went to the phone records
14 and they state my mom name in the phone. And it came back
15 to her son's. Well, my name never came up and it came up my
16 brother and my other little brother, but my other little
17 brother incarcerated. So they show some photo lineup to the
18 victim and he pointed my brother out in a photo lineup. But
19 he wait till two years later and pointed me out of the
20 lineup.

21 Q. Okay. So your understanding is there was a search
22 warrant done of your phone?

23 A. Yes, sir.

24 Q. And through that, a search warrant to access your
25 phone. Is that right?

1 A. Yes, sir.

2 Q. And through that they called your mom?

3 A. They just did a ROTC and they state my mom name and it
4 came back to her address. And now they pull pictures up of
5 my brothers'.

6 Q. Okay. Did you and Mr. Stevens have a chance to discuss
7 that search warrant?

8 A. I mentioned to him, but he never mention nothing back
9 to me.

10 Q. Did you ever see the search warrant?

11 A. Never did.

12 Q. Okay. Did y'all ever file a motion to challenge the
13 search warrant?

14 A. I told him everything. He never followed.

15 Q. Okay. You say you were picked out of a lineup sometime
16 later?

17 A. Two years later.

18 Q. Okay. Did y'all have a chance to discuss that lineup?

19 A. No.

20 Q. Okay. Did y'all discuss how your picture would've
21 ended up in a lineup?

22 A. No, sir.

23 Q. Okay. You testified -- is it your understanding it was
24 from the cell phone?

25 A. Yes, sir.

Direct Examination of Mr. Spann by Mr. Waller

11

1 Q. Okay. Did you all discuss the theory of "through the
2 poisonous tree"?

3 A. No, sir.

4 Q. What did y'all discuss about the cell phone?

5 A. We really didn't discuss nothing. All he keeps saying
6 is my fingerprint on the cell phone and then I keep saying
7 I'm gonna go to trial. That what me and my brother
8 screaming from day one, trial, trial. And then he start
9 saying something about a T-shirt that they find on the scene
10 with like 3D, three different DNA been on the T-shirt.

11 Q. Okay. And this is the scene of the carjacking
12 incident?

13 A. Yes, sir.

14 Q. All right. You said there were three different DNAs on
15 the T-shirt?

16 A. Yes, sir.

17 Q. Did you see any results from any DNA testing?

18 A. No, sir.

19 Q. Okay. How did he know there were three different ones
20 then?

21 A. By reading my motion.

22 Q. Okay. Did y'all discuss the different DNAs on the
23 T-shirt?

24 A. No, sir.

25 Q. Okay. To your knowledge, was it ever identified who

1 the three people were?

2 A. He saying one; and the other two people, they never
3 say.

4 Q. Okay. What do mean when he's "saying one"? Who is he?

5 A. Breen. He's saying only person he seen on the T-shirt
6 was me, Touriarnold Spann. The other person they never
7 identified. They never say nothing about it.

8 Q. Do you know if they were identified at all or just that
9 they were two different people?

10 A. They never identified all because it's not in my
11 motion.

12 Q. Okay. Did y'all ever discuss hiring somebody to have
13 the samples tested?

14 A. No. He never said nothing to me.

15 Q. Okay. I want to talk about the burglary charge.

16 A. Yes, sir.

17 Q. Okay. What did y'all talk about the burglary charge?

18 A. That's one thing we never mentioned anything about the
19 burglary charge. I keep asking him about the fingerprints
20 that he's saying he got off the TV, but they never present
21 no fingerprint. But the fingerprints inside my motion say
22 no matches.

23 Q. Okay. Now, obviously, you were in Turbeville you said
24 when you got arrested or served with these warrants?

25 A. Yes, sir. I was served with one warrant at first.

Direct Examination of Mr. Spann by Mr. Waller

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1 Then I called my mom. The day I got to Orangeburg, they
2 served me one more. That one was less the damage than
3 burglary. Still, like a couple of hours later, they turn me
4 to the victim advocate place, they served me with like seven
5 more warrants.

6 Q. Okay. So you obviously weren't arrested at the time of
7 the burglary?

8 A. No, sir.

9 Q. Okay. How were you identified then, to your knowledge?

10 A. I don't know. They seen my fingerprints.

11 Q. Okay. Did you and Mr. Stevens ever discuss the
12 fingerprints?

13 A. No. No, sir.

14 Q. Okay. Well, when he said you were identified by your
15 fingerprints, did you ask him any questions?

16 A. Yeah. I asked him what he get my fingerprint off. I
17 never seen nothing in my motion, he keep saying a TV. Never
18 seen a TV, and the fingerprints in there, but it say no
19 matches.

20 Q. Okay. So you saw a report that said there were no
21 matches on the fingerprints?

22 A. Yes, sir.

23 Q. Okay. Did y'all discuss challenging the fingerprints?

24 A. No, sir.

25 Q. Okay. Did you ask him about challenging the

1 fingerprints?

2 A. No. No, sir. Because I was going through so much
3 stress between me and my brother being locked up and he was
4 innocent, he ain't had nothing to do with it. So I really
5 don't have a law library, so I really couldn't study it
6 until I got out the row in the prison. And I really found
7 out everything about my case.

8 Q. Okay. We talked earlier. I want to circle back to
9 this. We talked earlier about you were originally appointed
10 Douglas Mellard?

11 A. Yes, sir.

12 Q. Okay. But he was representing your brother?

13 A. Yes, sir. He was a backup lawyer for my brother.

14 Q. Okay. He was with the public defender's office?

15 A. Yes, sir.

16 Q. Okay. Mr. Stevens is with the public defender's
17 office?

18 A. Yes, sir.

19 Q. Ms. Wyman (ph) is with the public defender's office?

20 A. All of them.

21 Q. Okay. Did you ever ask the question how they were able
22 to all represent you?

23 A. No, sir. He never mentioned nothing about me. But
24 when I got out the row, it's a standing ground law of
25 conflict of interest because all them work in the same

Direct Examination of Mr. Spann by Mr. Waller

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1 public defender's office and all them know about the same
2 case. I as coerced if you ask me, because they the one that
3 put everything on me and freed my brother.

4 Q. Okay. We'll get there in just a second. Did you and
5 Mr. Stevens ever discuss that two members of the same office
6 can represent codefendants?

7 A. No, sir.

8 Q. Did you ask him about it?

9 A. No, sir.

10 Q. Did you know to ask him about it?

11 A. No, sir. Not until I got out the row and start
12 studying my law.

13 Q. Okay. You testified a minute ago that you wanted to go
14 to trial?

15 A. Yes, sir.

16 Q. Okay. What did you and Mr. Stevens talk about as far
17 as going to trial?

18 A. Well, when I said I want to go to trial, he was like,
19 Mr. Spann, how you gonna go to trial and all the evidence is
20 pointing to you.

21 Q. Okay. Was that your entire conversation with him?

22 A. That's all he give me.

23 Q. Okay. Well, did you tell him you wanted to go to
24 trial?

25 A. Yeah.

1 Q. Okay. What did he say?

2 A. He says it's up to me. Then my mother came and talked
3 to me and I had to free my brother, so . . .

4 Q. Okay. Mr. Spann, I want to back up just a second. You
5 testified that Mr. Stevens said it was up to you whether you
6 wanted to go to trial?

7 A. Yes, sir.

8 Q. Okay. Had y'all discussed any potential defenses you
9 might have had for those charges?

10 A. No, sir.

11 Q. Okay. Since that time, do you feel that you had some
12 defenses?

13 A. Yes, sir. I got a lot of defenses.

14 Q. Okay. Did you and Mr. Stevens discuss any them?

15 A. No, sir.

16 Q. Okay. If y'all had, would you have still pled guilty?

17 A. No, sir. I would have went to trial.

18 Q. Okay. Mr. Spann, I have asked you all the questions
19 that I have. Is there anything that I've left out or stated
20 wrong the Court needs to be aware that I missed, or about
21 just Mr. Stevens representation of you? Anything we haven't
22 talked about already?

23 A. No. That's everything.

24 Q. Okay.

25 A. And the search warrant to the phone and everything,

Cross-Examination of Mr. Spann by Mr. Neely

17

1 yeah, that's everything.

2 Q. Okay.

3 MR. WALLER: Please answer any questions Mr. Neely has.

4 - - - - -

5 CROSS-EXAMINATION

6 BY MR. NEELY:

7 Q. How you doing, Mr. Spann?

8 A. How you doing, sir?

9 Q. Gonna go over a couple of things you mentioned earlier.
10 Now, you say the only evidence against you at the burglary
11 was the fingerprint?

12 A. Yes, sir.

13 Q. Didn't you give a confession to law enforcement that
14 you went in the house?

15 A. Yeah. But she told me that she was gonna work a deal
16 then she take it back.

17 Q. Okay. So you did give a confession but you thought it
18 was because you were getting a deal?

19 A. Yeah. Yes, sir.

20 Q. Okay. And you mentioned your brother's trial. Was
21 your brother found not guilty?

22 A. He had acquitted on all charges.

23 Q. And did you testify at that trial?

24 A. I just say he ain't had nothing to do with it. That's
25 all I said.

1 Q. So you did testify at that trial?

2 A. Yes, sir. But I was coerced.

3 Q. Okay. You were coerced into the guilty plea and
4 testifying at that trial?

5 A. Yes, sir.

6 Q. Okay. And the phone had your fingerprint on it?

7 A. Yes, sir.

8 Q. You discussed that with Mr. Stevens?

9 A. Yes, sir.

10 Q. Okay. And Mr. Stevens discussed the DNA evidence that
11 was found on the shirt that was against you as well?

12 A. Yeah. But later down the line, I didn't know that
13 three DNA was on the shirt. And then he had a DVD; he ain't
14 show the DVD till I done got sentenced to 30 years. They
15 showed me the DVD the second day of my brother's trial.
16 They got victims at the store who had something to do with
17 the crime. He showed me the DVD like during my brother
18 trial. He ain't show during the time that I was getting
19 sentenced. Never seen a DVD till I got 30 years.

20 Q. Okay. And did y'all ever discuss the fact that your
21 prior criminal history put you up for LWOP, or life without
22 parole?

23 A. Yes.

24 Q. Did you take that into consideration when you pled
25 guilty?

1 A. I was -- like that's -- no, sir. Not really.

2 Q. Okay. You recall swearing to tell the truth at your
3 guilty plea?

4 A. Yes, sir.

5 Q. And do you recall telling the Court that you were
6 pleading voluntarily, freely, and without coercion?

7 A. Yeah. I said that, but I was coerced because I didn't
8 know the law right then and there.

9 Q. Okay. And you told the Court that you had enough time
10 to talk with your attorney before pleading guilty?

11 A. Yes, sir.

12 Q. And no one had suggested how to answer those questions?

13 A. No, sir.

14 Q. And did you mentioned with Mr. Waller earlier that, in
15 your discussion with Mr. Stevens he told you that it was
16 entirely your decision whether you wanted to plead guilty or
17 go to trial?

18 A. Yeah. But he seen everything, all the evidence pointed
19 at me. He talking about all the fingerprints, the DNA on
20 the shirt, like he saying that I did the crime. He even
21 saying it like all the evidence on you.

22 Q. Okay. So y'all discussed the evidence when you were
23 talking about whether to plead guilty or not?

24 A. Yes, sir.

25 Q. Okay.

1 MR. NEELY: That's all the questions I have.

2 MR. WALLER: Just very briefly, Your Honor.

3

- - - - -

4 REDIRECT EXAMINATION

5 BY MR. WALLER:

6 Q. Mr. Spann, you testified about a DVD?

7 A. Yes, sir.

8 Q. And was that part of -- was it part of your case as
9 well?

10 A. Yes. Yes, sir.

11 Q. And you testified that you didn't see it until after
12 your case was already over?

13 A. I see it the second day of my brother trial. Never
14 seen it the whole time they was coming to see me.

15 Q. Okay. Had you and Mr. Stevens ever discussed what it
16 contained?

17 A. No, sir.

18 Q. Okay. Did you actually get served with a notice of
19 intent to seek life without parole?

20 A. Yeah. Yes, sir.

21 Q. Okay.

22 MR. WALLER: No further questions.

23 MR. NEELY: Nothing on redirect, Your Honor.

24 THE COURT: You may step down. Thank you very much.

25 Call your next witness.

Direct Examination of Mr. Stevens by Mr. Neely

21

1 MR. WALLER: Nothing more from the Applicant, Your
2 Honor.

3 THE COURT: Thank you very much.

4 MR. NEELY: The State would call Mr. Stevens to the
5 stand.

6 THE COURT: You're still under oath.

7 - - - - -

8 DIRECT EXAMINATION

9 BY MR. NEELY:

10 Q. Good morning, Mr. Stevens. How you doing today?

11 A. Doing well. How y'all doing today?

12 Q. Doing good. I guess first off, just going over the
13 stipulation, the carjacking without great bodily injury
14 carries nearly 20 years?

15 A. Yes.

16 Q. Is that your understanding?

17 A. It certainly is, yes.

18 Q. And did you do a guilty plea checklist in this case?

19 A. I did.

20 Q. And does that checklist reflect the different sentences
21 and all the different defenses you went over with the
22 defendant?

23 A. Yes, it does. I can get it for you if you like.

24 Q. Please do. And does that checklist reflect the amount
25 of time the carjacking without great bodily injury carries?

1 A. It does. It says 20 years for the crime of carjacking.

2 Q. Okay. So you actually went over that with him before
3 the guilty plea and just missed it at the guilty plea?

4 A. Yes, sir. In fact, I totally missed it at the hearing.
5 I believe I even put 20 years for the carjacking sentence in
6 the notice of appeal I filed immediately after. So I missed
7 it. I should have moved for a motion to reconsider the
8 sentence on the carjacking sentence orally or in writing.

9 Q. But the recommendation overall was for 30 years?

10 A. That's correct. He's pleading to not just the
11 carjacking but also armed robbery which carries ten to 30.
12 The recommendation was 30. He's also pleading guilty to
13 this first-degree burglary charge. They were recommending
14 30 on that one even though we would've been exposed to a lot
15 more, life without parole.

16 Q. And based on his prior criminal history, he was
17 actually potentially up for LWOP notice?

18 A. That's correct. Not only, you know, did they tell us
19 this is what they're gonna do, I checked with the clerk of
20 court's offices and specifically pulled the indictments and
21 sentencing sheets for those underlying offenses and did
22 confirm that he would have been exposed to that had he gone
23 to trial and lost.

24 Q. And you said the solicitor's office told you they were
25 planning on filing the notice if he went to trial?

Direct Examination of Mr. Stevens by Mr. Neely

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1 A. Oh, yeah. Oh, yes. I mean, he is right on one thing.
2 The particular solicitor in this case did not like him.
3 That said, it doesn't really impact my representation of my
4 clients. But yeah, it's a fact that she did not like
5 Mr. Touriarnold Spann. Then again, most prosecutors don't
6 like most of my clients, and I don't let that bother me.

7 Q. Just briefly, could you go over the evidence the State
8 had against Mr. Spann in the carjacking case and the
9 burglary case.

10 A. Sure. If you're all right with it, I think I got a
11 11/12 page letter that I wrote to him detailing everything
12 before his plea. If it's all right, I'll give that. Beg
13 the Court's indulgence.

14 Okay, here we go. It's a 15-page letter I sent to him
15 just following up on our conversations on the case. I went
16 over what all the charges were. And again, even in this
17 letter, I did tell him that --

18 THE COURT: You talk really fast.

19 THE WITNESS: Oh, I'm sorry.

20 THE COURT: You read even faster.

21 THE WITNESS: I apologize, Judge.

22 THE COURT: It's okay.

23 A. In this letter, again, I did notify him that carjacking
24 is a 20-year offense for what he was charged with, not 30.
25 And we went over all the different witnesses involved. We

1 went over, you know, the difference between serious and most
2 serious and LWOP eligibility and what is it, if it's a
3 violent offense. I went over the elements of each charge
4 and what each charge carries. And then I walked through,
5 you know, the types of evidence that are there, direct,
6 circumstantial. And then I walked through the different
7 witnesses.

8 Now, the carjacking incident is the one that took place
9 first. My understanding is that there was -- the victim in
10 the case was David Smith. He was gonna testify that on the
11 night of the incident, he was stopped by a white pickup
12 truck around nine o'clock. There was a black male that
13 walked up to his blue Suzuki Vitara and asked him for his
14 driver's license. I think it was one of those trucks with
15 it had like, you know, flashing lights, kind of like what
16 you would see at construction sites. Anyway, they had
17 lights in there, they had flashing lights in the front.
18 Walked up, asked for his driver's license and then that man
19 pulled Mr. Smith from the vehicle, demanded his money and
20 his wallet. And then three more black males came up and
21 started beating and kicking Mr. Smith while he was on the
22 ground. Mr. Smith was gonna testify to all four had handguns
23 during the incident. The armed men that took his wallet,
24 about -- dollars, and his vehicle which also had a 380
25 Russian pistol inside.

Direct Examination of Mr. Stevens by Mr. Neely

25

1 THE COURT: Is that the one you can -- on one stock?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay.

4 THE WITNESS: That's correct.

5 A. Essentially what happened is the truck was actually
6 seen on the camera from the canal one-stop a little before.
7 He was exiting local -- parlor. It was like almost directly
8 across the street from there. And the guy left and then you
9 see the pickup truck leaving -- and was down the road
10 further on where they have no streetlamps.

11 Q. Stop you for one second.

12 A. Yes, sir.

13 Q. You're speaking about a camera. Is that what the DVD
14 was?

15 A. Yes, sir.

16 Q. Did you go over the DVD with him?

17 A. I don't have a copy of it in my file. I can't say
18 whether we had it before or after his plea. But what I can
19 say is that -- one second.

20 I got to go through -- I'll go through a certain part
21 of my file. It's been pulled all apart because it had
22 already been scanned and put in storage. When they do that,
23 they pull my whole file apart. So I'll go back and look
24 through and see if where they did actually indicate --
25 because I went over some information close to the -- close

1 to the -- itself. And I know for a fact that on March 18th
2 I went and reviewed the prosecutor's entire file by policy.
3 And so, my policy is if I had it, I would've gone over it.
4 If I didn't have it then I would've opposed his admission at
5 trial.

6 Regardless, the video that was later shown at his
7 brother's trial when Touriarnold did testify pretty much
8 acknowledging everything including his own activity and
9 action and involvement in the matter. What was testified to
10 at trial pretty much confirmed what was actually on the
11 video. Anyway, the man left the place that was a little
12 kind of catty-corner across the street and he wandered down
13 the road. It's a rural area. And then the pickup truck,
14 white pickup truck, left the gas station and followed and is
15 later on down that area. We went out there; we visited the
16 area ourselves to check out the scene with the investigator,
17 whatnot, and checked everything out and where everything
18 occurred.

19 After that, the man was pretty much left out there.
20 They took off with both his vehicle as well as his own pick
21 up truck. Later on there was a chase because I believe the
22 vehicle was spotted, Berkeley County Sheriff's office, the
23 other side of the border of the county. Eventually the
24 vehicle was kind of going down some back roads. And when I
25 was doing our own review of where everything had occurred

1 with our investigator we actually followed out there --
2 actually lead toward the area where Touriarnold lived. The
3 vehicle was found abandoned, and people just left the
4 vehicle.

5 When police examined the vehicle, they saw a cell phone
6 inside as well as a couple of other items of clothing. The
7 victim Mr. Smith said no, the cell phone is not his and
8 neither is the clothing items. Later they indicated in
9 their arrest reports that they did ask for a warrant and
10 obtained a warrant to search the contents of the phone
11 itself. That's where they said they actually found phone
12 numbers of Touriarnold's mother and where they developed or
13 tried to develop Kevin Spann, his brother, as a suspect. On
14 that phone they also located a fingerprint. I think it was
15 a thumbprint on the outside surface of the phone.
16 Additionally, when they tested the DNA it came back as a
17 CODIS hit. So they even had his DNA to test against. What
18 they did was they ran it though -- SLED ran it through the
19 CODIS system and it came up a his DNA as a hit, as a match
20 one. Came on back and that's kind of how they put him in
21 the vehicle he wasn't supposed to be in at the time.

22 Q. And did you discuss that evidence with Mr. Spann?

23 A. Yes, sir.

24 Q. And is that in that 15-page letter?

25 A. It might me. Let me see here. I go through all of

1 what they were gonna say including Investigator Ketcherside
2 what he was gonna say regarding thumbprints and whatnot,
3 too. We also hired through ex parte funding our own DNA
4 expert Dr. Ronald Ostrowski from North Carolina. I also
5 filed specific Brady motions demanding everything you could
6 imagine regarding SLED's qualifications for the DNA experts,
7 all the manuals, procedures, policies, everything as well as
8 all the bench notes. And I sent all that information to
9 Dr. Ostrowski. And to put it bluntly, he indicated we had a
10 problem. He was asking look, is there a way you can explain
11 why your client's DNA is here is because everything was done
12 right.

13 We also applied for and obtained funding for our own
14 expert to go over fingerprints. We hired Mr. Gurnt (ph).
15 And Don Gurnt went over everything and he said, you know,
16 it's a good print. And so we had problems when it comes to
17 the forensic evidence, and we discussed that as well. So he
18 was fully aware of what were looking at. When it comes to
19 potential defenses, I mean we had his original statement he
20 told police regarding this incident where he said, you know,
21 no, he had nothing to do with that. He may have been in the
22 truck before but not -- you know, after a certain point he
23 was home and that also his brother had nothing to do with
24 it. After, we discussed the case repeatedly, quite often,
25 whatever the evidence we had. Let me see here.

1 Q. And that statement to law enforcement, was that the
2 same statement where he committed the burglary?

3 A. I think that was actually a different -- an interview
4 they had with a different officer. I can go back and look
5 and see which officer actually there to basically
6 countersign his own handwritten statements. He did not want
7 me to file for Schmerber hearing and fight the buccal swab.
8 We discussed that when we're talking about DNA on August 26,
9 2014. Let's see here. That's because we didn't receive the
10 DNA until August 15th. So we went over it. When I had the
11 first opportunity to do that it would've been the 26th, we
12 discussed the DNA, we discussed everything about it, they
13 had so far, and his options on whether he wanted me to go
14 ahead and fight them getting a buccal swab through a
15 Schmerber hearing. He said no, don't fight it. And he did
16 not want to file for a bond reduction.

17 Later on, September 10, 2014, I met with him again. We
18 did have a hearing. That's when they served with the
19 indictment for burglary, first degree, and a bond was set on
20 that charge for -- thousand dollars, no contact with the
21 victim. Even though they're separate incidences, we were
22 kind of going along, you know, step one, step two, left
23 foot, right foot, as they were proceeding together.

24 Let's see here. He was wanting to know what was going
25 on with his bond a lot because he wanted his folks to be

1 able to do that. One of the indictments in our copies from
2 his prior burglary convictions and, you know, we continued
3 to discuss discovery the entire time. When Ms. Wyman was
4 present, basically she was gonna be my second chair in this
5 case should it go to trial. We were gearing up for trial.
6 It was March 6th that he indicated that he did not want to
7 go forward with a trial because he was very concerned if he
8 was convicted he would get LWOP. And I think that was a
9 legitimate concern. He wanted us to try to negotiate with
10 the prosecutor for a plea possibly to give names of two
11 others and testify against them regarding the carjacking. I
12 don't have a copy of the guilty plea, but I do believe he
13 did at least make some stipulations at that point. When I
14 say situations, proffer at that point regarding the events
15 of the incident itself.

16 Let's see here. It was the 9th of March that -- I'm
17 sorry. After speaking with him there on the 6th, I was able
18 to contact the prosecutor and discuss the possibility of
19 reopening his plea offer before and trying to basically get
20 as low as we possibly can -- on the 9th, they allowed us --
21 they essentially said the offer was to allow him to plead
22 guilty. Under the old offer, he pleaded to the burg first
23 charge with recommendation of a sentence, 30 years including
24 a recommended cap of 30 years on the first-degree burglary.
25 They were unwilling to lower the recommended range even if

Direct Examination of Mr. Stevens by Mr. Neely

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1 he provided information regarding the other two robbers.
2 Which I thought was ridiculous, but you know I don't get to
3 force the mind of a prosecutor. I do what I can when it
4 comes to motions and then try to be as persuasive as I can,
5 but there is that moment we move on.

6 Q. And did you do a guilty plea checklist with Mr. Spann
7 in this case?

8 A. Yes, sir.

9 Q. Do you have that with you?

10 A. I do.

11 Q. And did you review that with him?

12 A. I did.

13 Q. And did you sign it?

14 A. I did.

15 Q. Did he sign it?

16 A. He did.

17 MR. NEELY: Your Honor, at this time I'd like to
18 introduce this as State's Exhibit 1.

19 MR. WALLER: Can I see it first?

20 (Brief pause.)

21 MR. WALLER: No objection, Your Honor.

22 THE COURT: Admitted without objection.

23 (State's Exhibit No. 1, Plea Sheet, was marked and
24 received into evidence.)

25

1 BY MR. NEELY:

2 Q. And you said most of your representation you were
3 preparing for trial and then that switched ---

4 A. Yes, sir.

5 Q. --- on March 6th?

6 A. Well, it's one of those things where I expected this
7 case to go to trial, I really did. And so, we were prepared
8 to go either way. That's why Ms. Wyman came in; she was
9 gonna be second chair. I was not the initial attorney
10 appointed to represent him on the case. That was
11 Mr. Mellard. But apparently, there would've been a conflict
12 had he continued his representation. In our office we
13 actually have two offices. Even though it's under the
14 public defender's for Orangeburg, half of our office is
15 located inside the courthouse, the other half is located
16 across the street, the -- building.

17 Ms. Hinds already represented Kevin Spann. And so even
18 though we had other attorneys that was there, you know, she
19 was -- and that was that. When it comes to Mr. Mellard,
20 since he was going to represent him, they just appointed me
21 when it comes to it. I know that's not how -- often work
22 because of ethics. My understanding is based on official
23 comments in the rules of ethics that whatever reason the
24 Supreme Court and rules of ethics view public defenders'
25 offices a little differently. I guess because of the case

Direct Examination of Mr. Stevens by Mr. Neely

33

1 load we have and the challenges when we do have cases with
2 multiple codefendants. Our office policy -- even though
3 technically we probably be allowed to soak up one public
4 defender per codefendant and just make sure there's a really
5 good Chinese wall in place. Our policy in Orangeburg is one
6 side of the office will have one person, another side of the
7 office will have another, and then as far as being across
8 the street. And then if there are any more codefendants
9 after that then we just send them out to the conflict place.
10 And so that would've maintained one in our office in the
11 courthouse side of the street, and one in the office across
12 the street.

13 Q. And when Mr. Spann was represented a short period of
14 time before he was transferred to you by Mr. Mellard, did
15 you have any substantive conversations in their
16 representation?

17 MR. WALLER: Objection. I'm not sure how he can
18 testify to that.

19 THE COURT: Rephrase your question.

20 Q. During your discussions with your defendant, did he
21 ever reference discussions he had with Mr. Mellard?

22 A. If he did, I don't recall specifics. What I can say is
23 that any time I get a client, new client or whether
24 transferred from somebody else, I'm gonna make sure I go
25 over everything top to bottom anyway because I don't want to

1 be relying on what somebody else said. That's just how I
2 try to do things. That way I can try and be sure that we're
3 on par with how I'll do things.

4 MR. NEELY: That's all the questions I have, Your
5 Honor.

6 THE COURT: Cross?

7 MR. WALLER: Thank you, Your Honor.

8 - - - - -

9 CROSS-EXAMINATION

10 BY MR. WALLER:

11 Q. Mr. Stevens, which office are you in?

12 A. I believe at the time I was over in the courthouse
13 office.

14 Q. Okay. What office are you in now?

15 A. Now I'm across the street in the Covington office.

16 Q. Okay. What office was Ms. Hinds in at the time?

17 A. Covington office.

18 Q. Okay. What office was Mr. Mellard in at the time?

19 A. He was over in our side in the courthouse office.

20 Q. Okay. What access do you have, like do y'all have a
21 computer system or how are the files kept separately?

22 A. We have a computer system, Defender Data. Quite
23 frankly, it's less than user-friendly. I've had an
24 opportunity to work in lots of different places with lots of
25 different case management systems. I don't particularly use

1 Defender Data because it's not user-friendly for how an
2 attorney with a high case load would have to operate. In
3 private practice, I was fortunate enough to work at a firm
4 that had a really good system. When I was public defense,
5 we had our own way we had to do things there. And so it was
6 very unique and that was fine. And so, basically, I would
7 typically go off of a hard-file system.

8 Q. Okay. If you had typed into your system Kevin Spann,
9 would you have been able to pull up his file?

10 A. Probably.

11 Q. Okay. And so vice versa, so Ms. Hinds would be able to
12 pull up Mr. Touriarnold Spann's file?

13 A. If she wanted to. But I'll definitely say this, I
14 choose not to really use the Defender Data system because I
15 don't like it. Ms. Peggy Hinds has been around for a while,
16 and she's one of the folks that prefers not to use computer
17 systems . . .

18 Q. Okay. You were talking earlier about the DVD. You
19 testified that you may have not had it before
20 Mr. Touriarnold Spann's plea?

21 A. It's possible. It's unlikely, but it's possible. And
22 I can't testified a hundred percent unless I actually see
23 the piece of paper from the solicitor's office indicating it
24 was given over to us.

25 Q. Would you have known that it existed at the time of his

1 plea?

2 A. Well, I know we asked for it. We asked for everything.
3 We filed not just one but multiple specific Brady motions.
4 Those are initial motions, and I followed up with multiple
5 specific Brady motions. So they're under the obligation to
6 turn it over.

7 Q. Did you specifically ask for a DVD?

8 A. I don't know if I specifically asked for a DVD. But I
9 do know is that pursuant to Brady law and the continuing
10 obligation, we don't even have to specifically demand a
11 specific item. They're under the obligation to turn it over
12 to us.

13 Q. I understand.

14 A. If They did not and it was incriminating, and they
15 tried to spring it on us last minute of trial, I would've
16 moved for suppression based on their failure to -- actually,
17 let me back it up. One of the first motions I make during
18 pretrial motions, if we were in trial, is the motion for the
19 government to acknowledge they had fully complied with and
20 satisfied their obligations in discovery and both Rule 5 as
21 well as Brady versus Maryland -- Then I turn around and get
22 into other -- and what I also do if I have to, I'll turn
23 around and put up to the Court and make court's exhibits my
24 motions that I filed throughout the life cycle of that case.
25 And then as I push in trying to make other motions, if the

1 government brings out new items or new information, I'll
2 move to have that suppressed because of their
3 acknowledgement they did comply with that, obviously did
4 not. If they try to spring it on me during the trial
5 itself, I make the record that this needs to be suppressed,
6 otherwise we need a continuance in the case to, A, review
7 the materials and then, B, obtain the services of our own
8 experts if we feel it's necessary to properly prepare for
9 that evidence.

10 Q. Would a video of an incident or a video prior to an
11 incident, would that not be useful for you to advise your
12 client as to whether to even go to trial?

13 A. Oh, yeah, I would love to have video. I look at it
14 this way, I'm of the mind were the more information I have
15 about an incident then the better I can advise my client. I
16 agree.

17 Q. Okay. You testified that you went to the solicitor's
18 office and reviewed their file?

19 A. That's correct.

20 Q. But you have not record of the DVD in your file, no
21 record of reviewing it with Mr. Spann?

22 A. I'm not saying that. What I am saying is I'll go
23 through and look and see if there is -- typically, if the
24 prosecutor's office in Orangeburg County turns over a DVD,
25 there's going to be a specifical letter with that, right.

1 I'll go through and see if it's indeed there. If it's
2 there, then yes, I go over everything with my client, I mean
3 everything. Typically, multiple times. If I obtained it at
4 a later date by going through their own file, I would've
5 gone over it with my client; would've demanded a copy and
6 gone over with my client. If they didn't -- because they
7 don't always have everything. Sometimes they'll say well,
8 this is, you know, they'll say this is an open file policy.
9 But, I mean, let's be quite blunt, just because there's an
10 open file policy doesn't mean they're gonna have everything
11 in their file, all right. So I don't know whether -- I'm
12 not saying the prosecution in this case was trying to play
13 -- not saying that. What I'm saying is if I was aware that
14 there was a DVD and we were in possession of it, we would
15 have most certainly gone over together.

16 Q. Okay. All I'm asking, you testified earlier there was
17 not an actual copy in your file?

18 A. Not right now, no.

19 Q. Okay.

20 A. Let me put it this way, too. When we actually go
21 through our hard files and they're pulled apart and scanned
22 and then put back in loose form and everything, put down
23 into storage, we take out the DVDs and put them in a
24 separate location other than the file itself. And we have
25 all the DVDs with the case came on there, and those are

1 actually stored in a separate location. I do not have a
2 copy of a DVD from that separate place in my hard file with
3 me today.

4 Q. Okay. I think you testified earlier that your notes of
5 your meetings with Mr. Spann don't have a specific reference
6 to viewing a DVD with him. Is that correct?

7 A. I don't think so. Let me look over it just to make
8 sure. Typically, what I'll put is reviewed discovery is
9 what I'll put for my notes.

10 (Brief pause.)

11 A. All I have repeatedly is, you know, discussed case
12 status of discovery, items like that. I don't have specific
13 items -- I typically don't put in there -- I mean, sometimes
14 I will, but typically I don't.

15 Q. Okay. You talked about hiring a DNA expert?

16 A. Uh-huh.

17 Q. Okay. Were there other samples on the article of
18 clothing? You testified there was CODIS stain on one of
19 them?

20 A. That's correct. Actually, I think it was on both items
21 of clothing.

22 (Brief pause.)

23 A. Let me backup. I apologize. When I reviewed the
24 solicitor's file, pictures of the Suzuki including the phone
25 on the driver's side floor, and she also indicated the pics

1 are on the DVD and CD that we already have. That's what I
2 have in my notes. If we do have that, we would have done
3 it.

4 Q. Okay.

5 (Brief pause.)

6 A. Okay. I've got a couple of lab analyses. The first
7 one from July 2014, they didn't have Touriarnold as a
8 suspect at the time. That's where they indicated that a DNA
9 profile was developed from 4.1 and that was the white large
10 T-shirt found in the passenger seat of the Suzuki that was
11 stolen.

12 Q. Were there any other samples even unidentified found on
13 that T-shirt?

14 A. Well, I'll read the results if that will help.

15 Q. Yep.

16 A. Okay. Okay. It says -- yes. It says it's a mixture
17 of at least two individuals. A DNA profile of a major
18 contributor if -- mixture is from an unidentified male
19 individual has been entered in the combined DNA, basically
20 CODIS system, Combined DNA Index System. Mr. David Smith
21 and Kevin Spann are excluded as minor contributors. And
22 then the DNA profile of item 5.1 and that was another
23 clothing item found in the vehicle which was a white, long
24 sleeve thermal undershirt. That's the one where they said
25 it's a mixture of at least three individuals, partial DNA

1 profile of the major contributor to the mix was consistent
2 with DNA profile of a major contributor to the other shirt,
3 item 4.1. And that also excluded David Smith, the owner of
4 the vehicle, as well as Kevin Spann, his brother, the
5 codefendant. Due to that, they submitted those results into
6 CODIS. And that's when the CODIS hit came back to
7 Touriarnold.

8 Q. And they were all mixtures. Is that correct?

9 A. That's correct.

10 Q. Okay.

11 A. That's correct. And then after that they did the tests
12 based on the buccal swabs of Touriarnold Spann. And the DNA
13 analysis was done December 11, 2014, according to the
14 report. Results of that one for both item 4.1 and 5.1, it
15 said the DNA profile of a major contributor to this mixture
16 matches the DNA profile of Touriarnold Spann, probability of
17 randomly selecting unrelated individual having a DNA profile
18 matching the major contributor is approximately one and 28
19 quadrillion.

20 Q. Okay. Are there any other --

21 A. I'm sorry, what?

22 Q. Were there any other -- you have 4.1 and 5.1. Was
23 there a 4.2 or any other samples, maybe different cuttings
24 from those shirts, taken?

25 A. I don't think cuttings. I'll go through if you like.

1 One was a swab from the steering wheel door. Two was swabs
2 from the Verizon Samsung phone. Three was a swab from the
3 metal headrest found in the passenger seat. 4.1 was a swab
4 from the white T-shirt. And 5.1 was from the long sleeve
5 thermal undershirt.

6 Q. Okay. Let's switch gears a little bit to the cell
7 phone. Did you ever see a copy of the search warrant for
8 the cell phone?

9 A. I did not.

10 Q. Okay. Did you ever see a copy of the affidavit used to
11 obtain that search warrant?

12 A. I do not. The only information I had about that search
13 warrant was based on the arrest report that the police made
14 on it. I was happy about that, actually. That gives me
15 something to argue if it does go to trial.

16 Q. Do you know how they would've accessed the phone? What
17 system they would've used?

18 A. You know, I know what my own experts in the past have
19 told me that they like to use when it comes to Lexington
20 County. I know that the Orangeburg folks and the County
21 Sheriff's office typically send cell phones that they want
22 to information extracted from it, they'll send it up to
23 Lexington County Sheriff's Office or over to Lexington.
24 They have an individual over there who I believe uses the
25 Cellebrite system. I don't know if he has any other system

1 to go into it. I know the expert we like to use; Mr. Tom
2 Savinski (ph) has got access to a lot of different stuff. I
3 don't know if the folks they use, the sheriff's office, had
4 more than just Cellebrite.

5 Q. Okay. So you don't know how -- you don't know what was
6 mentioned to obtain the search warrant?

7 A. All I have is the information from incident report, or
8 the arrest report because it's got incident reports and then
9 logs of all the arrest reports. And the arrest report had
10 indicated that they sought a warrant based on the fact that
11 there was a stolen vehicle, the car was wrecked, inside the
12 vehicle they found this phone, the owner of the vehicle
13 indicated it was not his. Based on that, they wanted to get
14 a warrant.

15 Q. Okay. And you don't know how they actually accessed
16 the phone and what information would have been retrieved
17 from it?

18 A. That's correct.

19 Q. Okay.

20 MR. WALLER: Beg the Court's indulgence.

21 (Brief pause.)

22 MR. WALLER: No further questions. Thank you.

23 MR. NEELY: Nothing from the State, Your Honor.

24 THE COURT: Thank you very much. Call your next
25 witness.

1 MR. NEELY: No more witnesses, Your Honor.

2 THE COURT: All right. Summation?

3 MR. WALLER: Just briefly, Your Honor.

4 Your Honor, Mr. Spann testified first and foremost that
5 he wanted to go to trial, that he would not have pled
6 guilty. Your Honor, he testified that there was no
7 discussion about a search warrant, how information was
8 obtained from the cell phone which was how he was ultimately
9 identified. Additionally, there was some issues with the
10 DNA that were not discussed with him. Mr. Spann testified
11 that he did not see a DVD of any surveillance footage.
12 Mr. Stevens testified that there was a DVD, but he did not
13 point to anywhere in his file where he had actually received
14 it or gone over it with him, with this client. We would ask
15 the Court to consider the filings we've already made and the
16 testimony of the Applicant and Mr. Stevens.

17 MR. NEELY: Just briefly, Your Honor. He pled guilty.
18 Mr. Stevens went over the evidence against him very
19 thoroughly, left the decision up to him. Concerning the
20 DVD, his notes said that we reviewed it, that they had the
21 DVD. So I think that's pretty clear from his notes that
22 they did have the DVD to review it. A search warrant,
23 Applicant waived all of his defenses when he pled guilty.
24 And Mr. Stevens testified had that gone to trial, certainly
25 he would have challenged the search warrant, but that's --

1 guilty plea. And the evidence against Mr. Spann was fairly
2 overwhelming including a confession to the burglary. And
3 again, the State does concede to the fact this -- the 20
4 years on the carjacking without bodily injury charge. But
5 other than that, seems like everything was done according to
6 procedure.

7 THE COURT: All right. Let y'all know by the end of
8 the week.

9 MR. WALLER: Thank you, Your Honor.

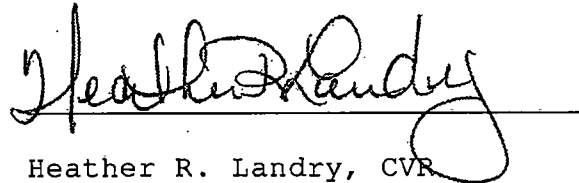
10 (The proceeding concluded at 12:04 p.m.)
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) CERTIFICATE OF REPORTER

3
4 I, HEATHER R. LANDRY, then Official Court Reporter for
5 the Judicial Department of the State of South Carolina, do
6 hereby certify that the foregoing is a true, accurate and
7 complete Transcript of Record of the proceedings had in the
8 hearing of the captioned case, in the Court of Common Pleas
9 for Orangeburg County, South Carolina, on the 24th day(s) of
10 May 2017.

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

13
14 June 17, 2019

15
16 
17
18 Heather R. Landry, CVR
19 Official Court Reporter
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

County of Orangeburg

COURT OF COMMON PLEAS

Case # 15 -CP-38 - 1468Touria Arnold Spann

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

TEMPORARY ORDER

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

✓ 1. The application for post-conviction relief is hereby: ✓ denied granted under advisement; a formal order will be filed (see below - No.6)

 2. Motion(s) was/were heard in this case and the court orders:

 The motion to dismiss and/or for summary judgment is hereby granted denied under advisement based upon the statute of limitations and/or the successive nature of the application or other reason as follows:

 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

 Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

 The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.

✓ 5. Other: THE CAR JACKING SENTENCE SHALL BE REDUCED TO 20 YEARS, PURSUANT TO THE STATUTE, + WITH THE CONSENT OF THE STATE. CONCURRENT

✓ 6. The court further orders:

✓ The ✓ Attorney General Applicant's counsel is/are directed to submit to the court a proposed order and to serve the order on opposing counsel within 20 days. The court reserves the right to issue an order prior to the submission of any proposed orders.

 The court does not request proposed orders.

IT IS SO ORDERED.

Date: 5 / 24 / 17Re Hood

Presiding Judge

Court Reporter

Heather Landry

Attorney for Applicant

Jonathan Waller

Attorney for Respondent

Ruston Neely

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Touriarnold Spann, #305939,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2015-CP-38-01468

ORDER OF DISMISSAL

FILED FOR RECORD
WHITNEY B. CLARK
2017 JUN 28 PM 3:05
CLERK OF COURT

The above-captioned matter is before the court based on a post-conviction relief (PCR) application filed by Touriarnold Spann, on November 30, 2015. This Court convened an evidentiary hearing into this matter on May 24, 2017 at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was Breen Stevens (Counsel), Esquire, who was present and testified. This Court had the opportunity to listen to the testimony and assess the credibility of Applicant and Counsel. This Court had before it the records of the Orangeburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant was indicted by the July 14, 2014 session of the Orangeburg Grand Jury for one count of Malicious Injury to Personal Property (2014-GS-38-0799), one count of Burglary first degree (2014-GS-38-0800), one count of Possession of a Weapon During the Commission of a Violent Offense (2014-GS-38-8001), one count of Impersonating a Law Enforcement Officer (2014-GS-38-0802), one count of Taking a Vehicle by Force and Great Bodily Harm

(2014-GS-38-0803) and one count of Armed Robbery (2014-GS-38-0804). Applicant was represented by Peggy Hinds, Esquire. Applicant pleaded guilty as indicted to all counts, and on March 23, 2015, was sentenced by the Honorable Maite Murphy as follows:

Indictment	Indictment	Sentence
2014-GS-38-0799	Malicious Injury to Personal	30 days
2014-GS-38-0800	Burglary 1 st	30 Years
2014-GS-38-8001	Possession of a Weapon During	5 Years
2014-GS-38-0802	Impersonating a Law	1 Years
2014-GS-38-0803	Carjacking	30 Years
2014-GS-38-0804	Armed Robbery	30 Years

All sentences are concurrent pursuant to the State's recommendation. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to object to thirty-year sentence on carjacking.
 - b. Failure to investigate DNA evidence, search warrant, or fingerprint analysis.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds Counsel's testimony was credible and persuasive and Applicant's testimony was not credible. Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

1. Failure to object to thirty-year sentence on carjacking.

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin, 395 U.S. at 243. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leake, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge, 431 U.S. at 73-74. Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford, 519 F.2d at 350. Applicant failed to show that he should be allowed to depart from the truth of the statements he made

during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability, but for trial counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial instead. See Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

An applicant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy, 339 S.C. at 34, 528 S.E.2d at 421. "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874. Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874.

This Court agrees with Applicant's assertion that his sentence was unlawful. The maximum sentence for carjacking without great bodily injury is twenty years. Applicant was sentenced to thirty years on that charge. However, the plea deal offered by the State and accepted by Applicant was for a recommendation of thirty years and Applicant received concurrent thirty-year sentences for Burglary 1st degree and Armed Robbery.

Applicant was not prejudiced because the sentence he received was not altered by the

incorrect sentence on Carjacking and the plea deal he agreed to, incarceration for thirty years, is the sentence he received. Therefore, this Court finds Applicant failed to prove he was prejudiced by Counsel's lack of investigation such that there was a reasonable probability Applicant would have insisted on trial rather than plead guilty. This Court also finds Applicant's guilty plea was voluntarily, intelligently, and knowingly made. This Court, with the consent of the State and Applicant, resentenced Applicant to twenty years' incarceration on his Carjacking charge during the PCR hearing. Therefore, this Court dismisses the allegation Applicant's guilty plea was involuntary based on the unlawful sentence.

2. Failure to investigate DNA evidence, search warrant, or fingerprint analysis.

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant's assertion Counsel should have investigated further is purely speculative. Applicant did not present what Counsel would have found if he had hired an investigator sooner or done further investigation. Notwithstanding the fact this Court does not find Counsel deficient for failing to investigate, a court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. "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). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the

part of Applicant. This Court finds Applicant failed to prove he was prejudiced by any lack of investigation by Counsel.

Having reviewed the pleadings, considered the applicable law, and reflected upon the testimony provided at the evidentiary hearing, this Court finds Applicant's allegation that his guilty plea was involuntary to be meritless. Applicant failed to present any evidence that Counsel's performance or advice was deficient or that he was prejudiced by the deficiency.

Further, the evidence against Applicant was overwhelming. Applicant gave a written confession to the crime and was linked to the crime by fingerprints, DNA evidence, and Applicant's phone which was left at the scene. Based on the testimony, this Court also finds the evidence against Applicant was overwhelming and any error of Counsel would not have prejudiced Applicant. Therefore, Applicant cannot prove prejudice where the evidence against her was overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008).

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate. This Court also finds Applicant failed to prove he was prejudiced by Counsel's lack of investigation such that there was a reasonable probability Applicant would have insisted on trial rather than plead guilty. Accordingly, this Court denies and dismisses this allegation.

IV. CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review.

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

IT IS THEREFORE ORDERED THAT:

1. The Application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant is remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 13 day of April, 2018.

ReHood

ROBERT E. HOOD
Presiding Judge
1st Judicial Circuit

Columbia, South Carolina

WITNESSES

Lakesha Gillard

Orangeburg County Sheriff

2012-12229

ARREST WARRANT NUMBER

2013A3810700373

Arrested: May 1, 2014

**ACTION OF GRAND JURY
TRUE BILL**

Melissa Tarrant

JUL 09 2014

Date
Foreperson of Grand Jury
Date: July 9, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0800

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

July 14, 2014 TERM

**THE STATE
vs.**

Touriarnold Wayne Spann

Indictment for

BURGLARY FIRST DEGREE

ATTEST: TRUE COPY

Wynne B. Clark
**CLERK OF COURT
ORANGEBURG COUNTY, SC**

SC Code: 16-11-311

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.

2014 JUL -9 PM 10:11J
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

INDICTMENT
 2014GS38-0800

At a Court of General Sessions, convened on July 14, 2014 the Grand Jurors of Orangeburg County present upon their oath:

BURGLARY FIRST DEGREE

That in Orangeburg County, South Carolina, on or about November 26, 2012, the Defendant, Touriarnold Wayne Spann, did willfully and unlawfully enter the dwelling of Morris & Barbara Ravenell, without consent and with the intent to commit a crime therein and the defendant did so while having convictions for at least two prior burglaries. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

ORANGEBURG COUNTY, SC
 CLERK OF COURT
 11/14/2014
 ALFRED KNOTT, JR.

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


 Ashley B. Cornwell, Solicitor

STATE OF SOUTH CAROLINA

15 yrs - 1st

IN THE COURT OF GENERAL SESSIONS

(1cc. says)

COUNTY OF Orangeburg

STATE VS.

Touriamold Wayne Spann

AKA:

Race: BLACK Sex: M Age: 28

DOB: SS#: [REDACTED]

Address: Nicholas Drive

City, State, Zip: Cross, SC 29436

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary - First Degree

INDICTMENT/CASE#: 2014GS38-0800

A/W#: 2013A3810700373

Date of Offense: 11/26/2012

S.C. Code §: 16-11-311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST

Cornwell, Ashley B.

SC Bar# 76577

Defendant

Attorney for Defendant

SC Bar# 79788

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014GS380804; 0803; 0801; 0802☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2166

Sentence Date: 3/23/15

66

WITNESSES

John C Stokes

Orangeburg County Sheriff

2012-11173

ARREST WARRANT NUMBER
2014A3810700380

Arrested: May 2, 2014

ACTION TRUE BILL
GRAND JURY

Melissa Tonnant

Date **JUL 09 2014**

Foreperson of Grand Jury
Date: July 9, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0801

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

July 14, 2014 TERM

THE STATE
vs.

Touriarnold Wayne Spann

Indictment for

POSS. WEAPON DURING VIOLENT
CRIME, IF NOT ALSO SENTENCED TO
LIFE WITHOUT PAROLE OR DEATH

SC Code: 16-23-490

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.

2014 JUL -9 PM 12:40
FILED FOR RECORD
CLERK OF COURT
ORANGEBURG COUNTY, SC
Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

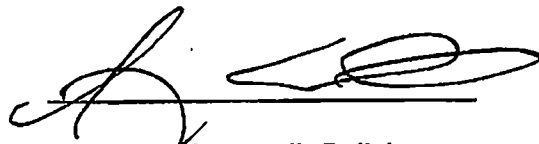
INDICTMENT
2014GS38-0801

At a Court of General Sessions, convened on July 14, 2014 the Grand Jurors of Orangeburg County present upon their oath:

**POSS. WEAPON DURING VIOLENT CRIME, IF NOT ALSO SENTENCED TO
LIFE WITHOUT PAROLE OR DEATH**

That in Orangeburg County on or about October 22, 2012, the defendant, Touriamold Wayne Spann did visibly display or have in his possession, a handgun during the commission of a violent crime. This offense in violation of Section 16-23-490, of the South Carolina Code of Laws, as amended.

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


Ashley B. Cornwell, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg

STATE VS.

Tourianold Wayne Spann

AKA:

Race: BLACK Sex: M Age: 28

DOB: SS#

Address: Nicholas Drive

City, State, Zip: Cross, SC 29436

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Poss. Weapon During Violent Crime, If not Also Sentenced to Life without Parole or Death

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Cornwell, Ashley B.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 201465380802; 0800; 0804; 0803☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS38-0801

A/W#: 2014A3810700380

Date of Offense: 10/22/2012

S.C. Code § : 16-23-490

CDR Code #: 0549

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

(defendant's initials)

☒ Recommendation by the State.

79788

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 201465380802; 0800; 0804; 0803☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be paid in installments consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: ORANGEBURG COUNTY, SOUTH CAROLINA

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2166

Sentence Date: 3/23/15

WITNESSES

John C Stokes

Orangeburg County Sheriff

2012-11173

ARREST WARRANT NUMBER

2014A3810700381

Arrested: May 2, 2014

ACTIVE BAIL

Melissa Tourant

Date JUL 09 2014

Foreperson of Grand Jury

Date: July 9, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS38-0802

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

July 14, 2014 TERM

THE STATE

vs.

Touriarnold Wayne Spann

Indictment for

**IMPERSONATING LAW
ENFORCEMENT OFFICER**

Wingia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-17-720

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.

FILED FOR
WITH
CLERK
COURT
ORANGEBURG, SC

2014 JUL -9 PM 12:40

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2014GS38-0802

At a Court of General Sessions, convened on July 14, 2014 the Grand Jurors of Orangeburg County present upon their oath:

IMPERSONATING LAW ENFORCEMENT OFFICER

That in Orangeburg County, South Carolina, on or about October 22, 2012, the Defendant, Touriamold Wayne Spann, knowingly and unlawfully represent that he was a law enforcement officer, and, acting upon such representation, impersonate a law enforcement officer or act in accordance with the authority commonly given to such officers, and as a result violated Section 16-17-720, 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.


Ashley B. Cornwell, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS.Touriarnold Wayne Spann

AKA:

Race: BLACK Sex: M Age: 28DOB: [REDACTED] SS#: [REDACTED]Address: Nicholas DriveCity, State, Zip: Cross, SC 29436DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Impersonating Law Enforcement officer

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS38-0802A/W#: 2014A3810700381Date of Offense: 10/22/2012S.C. Code § : 16-17-720CDR Code #: 0088

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-17-720 of the S.C. Code of Laws, bearing CDR Code # 0088☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Cornwell, Ashley B.76577
SC Bar#Touriarnold Spann
Defendant[Signature]
Attorney for Defendant79788
SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014GS38-0801; 0803; 0804; 0800☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Hilda Jordan

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2166Sentence Date: 3/23/13 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp.

May serve W/E be

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in installments consecutive weekly/monthlypmts. of \$ beginning \$ paid to ERB or Defender FundOther: ORANGEBURG COUNTY, SOUTH CAROLINA

WITNESSES

John C Stokes

Orangeburg County Sheriff

2012-11173

ARREST WARRANT NUMBER

2014A3810700382

Arrested: May 2, 2014

TRUE BILL
ACTION OF GRAND JURY*Melissa Tarrant*Date **JUL 09 2014**

Foreperson of Grand Jury

Date: July 9, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS38-0803**The State of South Carolina**

County of ORANGEBURG

COURT OF GENERAL SESSIONS

July 14, 2014 TERM

THE STATE

vs.

Touriarnold Wayne Spann

Indictment forTAKE OR ATTEMPT A VEHICLE FROM
PERSON BY FORCE WITHOUT GREAT
BODILY HARM

SC Code: 16-3-1075(B)

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.

2014 JUL -9 PM 12:40
 RECEIVED
 CLERK OF COURT
 ORANGEBURG COUNTY, SC
Wingia B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

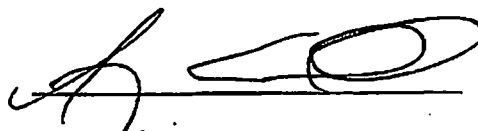
INDICTMENT
2014GS38-0803

At a Court of General Sessions, convened on July 14, 2014 the Grand Jurors of Orangeburg County present upon their oath:

**TAKE OR ATTEMPT A VEHICLE FROM PERSON BY FORCE WITHOUT
GREAT BODILY HARM**

That in Orangeburg County, South Carolina, on or about October 22, 2012, the Defendant, Touriarnold Wayne Spann did willfully and unlawfully did take or attempt to take, a motor vehicle from David Smith by using force, violence or intimidation while was operating the vehicle or inside of the vehicle. This offense in violation of Section 16-3-1075 of the South Carolina Code of Laws, as amended

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



Ashley B. Cornwell, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg

STATE VS.

Tourianold Wayne Spann

AKA:

Race: BLACK Sex: M Age: 28

DOB: SS#:

Address: Nicholas Drive

City, State, Zip: Cross, SC 29436

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Take or Attempt a Vehicle From Person by force without Great Bodily Harm

in violation of § 16-3-1075(B) of the S.C. Code of Laws, bearing CDR Code # 2599

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Cornwell, Ashley B.

76577 SC Bar#

Tourianold Spann Defendant

Attorney for Defendant

79788 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014GS380801; 0802; 0800, 0804
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS38-0803

A/W#: 2014A3810700382

Date of Offense: 10/22/2012

S.C. Code § : 16-3-1075(B)

CDR Code #: 2599

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse/Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: ORANGEBURG COUNTY, SOUTH CAROLINA

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2164

Sentence Date: 5/23/15

Clerk of Court/ Deputy Clerk: J. Glenn

Court Reporter: Hilda Jordan

SCCA/217 (03/2011)

WITNESSES

John C Stokes

Orangeburg County Sheriff

2012-11173

ARREST WARRANT NUMBER
2014A3810700383

Arrested: May 2, 2014

ACTION OF GRAND JURY
TRUE BILL

Melissa Tarrant
JUL 09 2014

Date

Foreperson of Grand Jury

Date: July 9, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS38-0804

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

July 14, 2014 TERM

THE STATE
vs.

Touriarnold Wayne Spann

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

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.

ATTEST: TRUE COPY
Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

FILED FOR RECORD
WINGJA B. CLARK
CLERK OF COURT
ORANGEBURG COUNTY

2014 JUL -9 PM 12:40

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

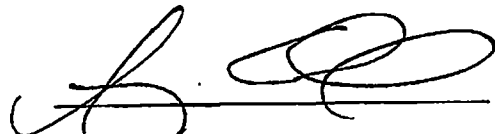
INDICTMENT
2014GS38-0804

At a Court of General Sessions, convened on July 14, 2014 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about October 22, 2012, in Orangeburg County, the defendant, Touriarnold Wayne Spann did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, David Smith , with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a handgun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to read 'Ashley B. Cornwell', written over a horizontal line.

Ashley B. Cornwell, Solicitor

110

STATE OF SOUTH CAROLINA

10-30 yrs

COUNTY OF Orangeburg
STATE VS.Touriarnold Wayne Spann

AKA:

Race: BLACK Sex: M Age: 28DOB: [REDACTED] SS#: [REDACTED]Address: Nicholas DriveCity, State, Zip: Cross, SC 29436DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS38-0804A/W#: 2014A3810700383Date of Offense: 10/22/2012S.C. Code § 16-11-330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Cornwell, Ashley B.SC Bar# 76577Defendant Touriarnold Wayne SpannAttorney for Defendant Dean D. [REDACTED]SC Bar# 79788WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014GS38-0804; 0801; 0800; 0803☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

	\$	\$
§ 14-1-206 (Assessments 107.5 %)		
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk: V. GhenaCourt Reporter: Hilda Jordan

SCCA/217 (03/2011)

Presiding Judge Walter MurphyJudge Code: 2166Sentence Date: 3/23/15Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive, weekly/monthly pmts. of \$ _____ beginning _____

CLERK OF COURT
\$ ORANGEBURG to Public Defender Fund
JUDGE COUNTY, SOUTH CAROLINA

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

ATTEST: TRUE COPY