

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable William P. Keesley, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PERRY DRAKE GILMORE, JR.,

APPELLANT

APPELLATE CASE NO. 2017-002283

RECORD ON APPEAL

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State of South Carolina
County of Lexington

Court of General Sessions

State)
)
) Transcript of Record
 v.) 17-GS-32-2177
) 17-GS-32-2179
 Perry Drake Gilmore, Jr.,) 17-GS-32-2180
)
 Defendant.)

August 23 and October 2, 2017
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

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

Bradley P. Pogue, Assist. Solicitor
Attorney for the State

Perry Drake Gilmore, Jr., Pro Se Defendant

Stacy L. Sheppard, RPR
Circuit Court Reporter

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I N D E X

WITNESSES DIRECT CROSS REDIRECT RECROSS

(There were no witnesses.)

E X H I B I T S

NO. DESCRIPTION ID. EVD.

(There were no exhibits.)

1 (The following proceedings were held on
2 August 23, 2017.)

3 PERRY DRAKE GILMORE, JR.,

4 having been duly sworn, testified as follows:

5 **THE COURT:** You're Perry Drake Gilmore, Jr.,
6 sir?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** Mr. Gilmore, my understanding is,
9 from the brief time I've had to look at this file,
10 that you filed a motion to relieve your attorney,
11 and you were represented by the public defender's
12 office. You came before Judge Knie on August the
13 10th. And Judge Knie issued an order on August the
14 11th, which relieved your attorney and indicated you
15 could represent yourself. Does that sound right?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you want another attorney?

18 **DEFENDANT:** In an advisory capacity, I'll
19 accept one, but I want to be primary counsel so that
20 I can file my own motions.

21 (Pause.)

22 **THE COURT:** All right. Mr. Gilmore, I need to
23 go through what's known as a Faretta hearing with
24 you if you want to represent yourself. How old are
25 you, sir?

1 **DEFENDANT:** Thirty-two.

2 **THE COURT:** How far did you go in school?

3 **DEFENDANT:** GED.

4 **THE COURT:** What type of work have you done in
5 your life?

6 **DEFENDANT:** Retail, food prep, construction,
7 general labor.

8 **THE COURT:** Do you know what you're charged
9 with?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** You're charged with assault and
12 battery in the second degree; is that right?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** You're charged with another count
15 of assault and battery in the second degree; is that
16 right?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** And you're charged with two counts
19 of indecent exposure?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** Do you know what kind of time
22 you're facing on those?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** What?

25 **DEFENDANT:** For the indecent exposure, it's

1 three years; zero to three years on both for the
2 assault and battery second degree, zero to three on
3 both; and for the hit and run, zero to one year; and
4 for the possession of Schedule IV drugs, zero to six
5 months.

6 **THE COURT:** Do you have a prior criminal
7 record?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** For what?

10 **DEFENDANT:** Numerous misdemeanors and, as far
11 as a felony conviction, a strong arm robbery and
12 ABHAN.

13 **THE COURT:** Did you have a trial on any of
14 those cases?

15 **DEFENDANT:** No, sir.

16 **THE COURT:** Did you plead guilty on them?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Did you have attorneys on all of
19 them?

20 **DEFENDANT:** Yes, sir, except for some of the
21 misdemeanors. Some of the misdemeanors, I had bench
22 trials.

23 **THE COURT:** You never represented yourself on
24 any of them?

25 **DEFENDANT:** Not the misdemeanors and not on any

1 general sessions offenses.

2 **THE COURT:** Were they misdemeanors in South
3 Carolina?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** Were they in circuit court?

6 **DEFENDANT:** No, sir, magistrate.

7 **THE COURT:** Magistrate's court?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** So do you know anything about
10 making motions?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** What do you know about that,
13 roughly?

14 **DEFENDANT:** I know they have to be authorized
15 by law or a rule and have to serve a copy on the
16 solicitor and file certificates of service, and they
17 can't be frivolous.

18 **THE COURT:** And as far as courtroom demeanor, I
19 mean, I've observed you today, you seem to
20 understand the process well, but do you understand
21 how you're expected to act in court?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you know the procedures,
24 anything about the procedures of how a trial would
25 go?

1 **DEFENDANT:** I'm familiar with the South
2 Carolina Rules of Criminal Procedure. And I know
3 that I have to be quiet when other people are
4 talking, wait my turn, and be brief and relevant.

5 **THE COURT:** How are you familiar with the Rules
6 of Criminal Procedure?

7 **DEFENDANT:** I've read them and I have copies of
8 them.

9 As far as the law, I don't have access to law,
10 so -- and I mentioned that to the jail. They told
11 me that I would need a court order before they'd
12 give me access. And if I get a court order, then
13 they would give me Internet access to online
14 subscriptions to the Westlaw and I think Lexus --
15 Nexus, Lexus, something.

16 **THE COURT:** So have you ever done any kind of
17 legal research?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** When did you do that?

20 **DEFENDANT:** While I was in prison, I studied
21 law, civil and criminal, for, like, four and a half
22 years. I'm still currently studying law, criminal
23 and civil. I'm also defending myself in a civil
24 federal suit.

25 **THE COURT:** Have you ever been diagnosed as

1 having any type of mental illness?

2 **DEFENDANT:** Yes, sir, nothing dealing with
3 intellectual ability, just impulse control disorder.

4 **THE COURT:** Impulse control?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** Do you take any kind of
7 medications?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** What do you take?

10 **DEFENDANT:** Remeron and Tegretol.

11 **THE COURT:** Do you feel those hinder your
12 ability to think clearly?

13 **DEFENDANT:** No, sir.

14 **THE COURT:** What's your bond on these cases?

15 **DEFENDANT:** I'm not sure of all the amounts,
16 but one of the bonds -- one of the bonds -- well, I
17 got arrested for failure to appear, and it's since
18 been lifted. But in the meantime, like, one of the
19 bondsmen, they got relieved of the bond. And one of
20 the other bonds -- yeah, that bond needs to be
21 reinstated.

22 The bond for the indecent exposures -- well,
23 the failure to lift -- I mean, the failure to appear
24 warrants, they were lifted on the conditions that
25 the bondsmen submit affidavit saying that it wants

1 to end my bond, so -- they don't want to do that, so
2 I need to relieve them of the bond, and then get my
3 bond reinstated in order to be able to bond out of
4 them. And then the other bonds for the assault
5 second degrees are 25,000 and 30,000.

6 **THE COURT:** Do you have family in the area?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** What are the relationships with
9 family that's nearby?

10 **DEFENDANT:** I have two brothers, my mother's in
11 Georgia, and a couple cousins.

12 **THE COURT:** Do they visit you?

13 **DEFENDANT:** No.

14 **THE COURT:** Would they be any assistance to you
15 in getting information for you?

16 **DEFENDANT:** No, sir.

17 **THE COURT:** Do you have any friends or anybody
18 that might serve that role?

19 **DEFENDANT:** No, sir.

20 **THE COURT:** Are you from this area?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Lived here all your life?

23 **DEFENDANT:** Yes, sir, for the most part, since
24 I was, like, six.

25 **THE COURT:** You understand you have a right to

1 have an attorney?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** You understand that if you want an
4 attorney and cannot afford one, I'll appoint one for
5 you at no charge?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** You understand it's dangerous to
8 represent yourself?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** You understand that while you
11 may -- you seem to be intelligent. You seem to be
12 well versed in many things, but unless you had the
13 same training, education and experience that an
14 attorney had, you could not possibly know the things
15 an attorney might know to help you in your case.
16 You understand?

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

18 **THE COURT:** So do you want an attorney?

19 **DEFENDANT:** No, sir, not as primary counsel.
20 It's been my experience that when I have an
21 attorney, they're so busy with other clients that
22 they can't do things that I need to be done, and
23 it's delaying me getting a trial.

24 I've been -- I mean, I've been arrested for
25 these charges, like, four of the charges since last

1 year without indictments and two of the charges over
2 90 days without indictments. And I've been -- I
3 think I'm due for a PR bond, personal recognizance,
4 because I think it's overdue. There's no reason for
5 the delay. And my attorney hasn't -- well, my
6 former attorney, she hadn't done it.

7 **MR. POGUE:** Your Honor, I can address these
8 matters at the appropriate time.

9 **THE COURT:** Yes, sir, I'll get to you.
10 All right. I'm going to caution you that I
11 think it's not wise for you to proceed without an
12 attorney. You understand that?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** Has anybody forced you, threatened
15 you, coerced you, exercised any type of undue
16 influence over you to get you to waive your right to
17 an attorney?

18 **DEFENDANT:** No, sir.

19 **THE COURT:** So this decision is your decision,
20 made of your own free will?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you have any question about the
23 process or anything that I need to go over with you
24 now?

25 **DEFENDANT:** I would like to ask for a court

1 order for me to have access to law so I can defend
2 myself adequately.

3 **THE COURT:** What did you want to say,
4 Solicitor?

5 **MR. POGUE:** Your Honor, the defendant has filed
6 -- since he was relieved of counsel last term by
7 Judge Knie, he has since filed a speedy trial
8 motion.

9 Your Honor, the State has drafted indictments
10 and submitted them for presentment on September
11 11th, the convening of the grand jury.

12 Your Honor, the State intends -- should the two
13 indecent exposure charges be true billed, the State
14 does intend to call those for trial at the term of
15 October 16th, which I have notice of here for the
16 defendant.

17 Your Honor, I also have -- Your Honor, I gave a
18 written offer to the defendant this morning and
19 spoke with him about the offer. It was the same
20 offer that I had given to his past attorney,
21 Ms. Sarah Mauldin, who's present in the courtroom.
22 He has verbally indicated to me that he does not
23 wish to accept that offer and that he would like to
24 go forward with the trial, which is certainly his
25 right. ,

1 Your Honor, I have copies of the indictments
2 that I have drafted on the charges that he has
3 pending to give to him that will be presented to the
4 grand jury, as well as copies of the discovery
5 related to the two indecent exposure charges. He
6 indicates that he's been given all of the discovery
7 by his client {sic}, but in the interest of making
8 sure that there's no delays for trial since he's
9 filed a speedy trial motion, I just wanted to make
10 sure he had a diff -- copy. And I have those too as
11 well, Your Honor.

12 **THE COURT:** So do you want Ms. Mauldin to be
13 your standby counsel?

14 **DEFENDANT:** Yes, sir -- well, is...

15 **THE COURT:** Here's what I'm going to do: I
16 find that you appear to be an alert, intelligent
17 individual. You understand your right to counsel.
18 You understand your right to appointed counsel. You
19 understand the dangers of self-representation. You
20 have demonstrated knowledge about the charges
21 against you. You understood the possible
22 punishment. You indicated familiarity with various
23 rules of criminal procedure and court rules and
24 procedures. You indicate that you have experience
25 in studying civil and criminal law and that if

1 you -- and you've understood my cautionary statement
2 to you that it's not wise to represent yourself. I
3 find that you have made a free, knowing, voluntary
4 and intelligent decision to waive an attorney, and
5 so you may proceed pro se.

6 I'm going to appoint the public defender's
7 office to represent -- to serve as standby counsel
8 in your case. If they feel they have a conflict,
9 they can assign somebody within that. If there's an
10 issue that comes up, you can let us know. If there
11 is an ability for them to assign it within the
12 office, they'll do that. If there's not, they can
13 assign one of the contract attorneys, one of the 608
14 attorneys.

15 If you have a problem with the process, then
16 you can let us know. The process being the process
17 by which your standby is counsel is selected. All
18 right.

19 **DEFENDANT:** Your Honor, I have a concern.

20 **THE COURT:** What's that?

21 **DEFENDANT:** I have a lawsuit against Mr. Pogue
22 in federal court and I believe it creates a conflict
23 of interest. I believe it will be best that another
24 solicitor be assigned to my case. I don't want
25 there to be any retaliation.

1 **MR. POGUE:** Your Honor, I can address that at
2 the appropriate time as well.

3 **THE COURT:** No. I'm not going to deal with
4 that. If you want to file a motion to exclude the
5 solicitor or the solicitor's office from prosecuting
6 your case, you file a written motion, you give them
7 notice, and we'll schedule it. All right?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** I'm not going to do that off the
10 cuff. It's too important.

11 All right. Good luck to you, sir. Thank you.

12 **MR. POGUE:** Thank you, Your Honor.

13 (A recess transpired.)

14 **THE CLERK:** 2017-GS-32-2179, State versus Perry
15 Gilmore, Jr., indicted for indecent exposure. He is
16 pleading as charged.

17 2017-GS-32-2180, State versus Perry Gilmore,
18 Jr., indicted for hit and run with property damage.
19 He is pleading as charged.

20 2017-GS-32-2177, State versus Perry Gilmore,
21 Jr., indicted for assault and battery second degree.
22 He is pleading as charged.

23 He is waiving presentment to the grand jury on
24 all indictments and is waiving his right to an
25 attorney.

1 PERRY DRAKE GILMORE, JR.,

2 having been duly sworn, testified as follows:

3 **THE COURT:** All right. Mr. Gilmore, you were
4 before me earlier today for a Faretta hearing. And
5 I made inquiry of you for a substantial amount of
6 time about whether you wanted an attorney or not,
7 whether you understood your rights and whether you
8 understood what you were giving up. And I
9 determined that you could represent yourself.
10 Apparently, you all had worked out a guilty plea; is
11 that right?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** Do you want a lawyer now?

14 **DEFENDANT:** No, sir.

15 **THE COURT:** Now, you'd asked for standby
16 counsel earlier for any trial, but do you need
17 standby counsel for this?

18 **DEFENDANT:** No, sir.

19 **THE COURT:** You don't want to consult with an
20 attorney before you go forward with this plea?

21 **DEFENDANT:** No, sir.

22 **THE COURT:** All right. I have an indictment
23 that charges that in Lexington County, on or about
24 November the 23rd, 2016, you willfully, maliciously
25 and indecently exposed yourself in a public place or

1 on property where others could view you from a
2 street or highway. It's alleged that you exposed
3 your penis to Amy Carter in a Walmart parking lot in
4 West Columbia.

5 Upon your arraignment on that charge, it
6 appears you wish to plead guilty to indecent
7 exposure; is that right?

8 **DEFENDANT:** I would like to plead no contest.

9 **THE COURT:** All right. So you're pleading no
10 contest to indecent exposure?

11 **DEFENDANT:** Actually, it's no contest for
12 mentally ill as mitigating, but not as a defense.

13 **THE COURT:** There ain't no such thing.

14 **DEFENDANT:** I'm not asserting it as a defense.
15 I'm just asserting it as mitigating because I had --
16 as I told you earlier, I have impulse control, so --
17 so I'm not asserting a defense. I'm still pleading
18 no contest. I understand what no contest is.

19 **THE COURT:** But that's not -- the thing about
20 mentally ill is -- the only thing you can do about
21 mentally ill, as far as a plea is concerned, is
22 different than what you can do in mitigation of a
23 sentence. If you want to assert it in mitigation of
24 your sentence that I give you, then that's fine. If
25 you're trying to say that that's some kind of plea,

1 there is no such plea. You either are not guilty by
2 reason of insanity, which means you don't know right
3 from wrong, in layman's terms, or you're guilty but
4 mentally ill, which means that you're able to
5 determine right from wrong at the time of the
6 offense, but because of a mental disease or defect,
7 you're unable to conform your conduct to the
8 requirements of law.

9 Those are the only things that affect mental
10 illness. It's either -- either you're not guilty
11 because you're mentally ill or you're guilty but
12 mentally ill.

13 **DEFENDANT:** Well, because it's a misdemeanor, I
14 was pleading no contest. All my charges are
15 misdemeanors. I mean -- but I can -- I mean, I can
16 assert it as a mitigating factor instead of --

17 **THE COURT:** As long as you understand that that
18 is not a plea. You cannot plea --

19 **DEFENDANT:** I understand, sir.

20 **THE COURT:** What you initially said is not a
21 valid plea.

22 **DEFENDANT:** I understand, sir.

23 **THE COURT:** You can plead no contest and you
24 can assert to me that I should consider your mental
25 health in determining a sentence.

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** But there's no separate plea like
3 what you've stated.

4 **DEFENDANT:** Yes, sir, I understand, sir. I
5 plead no contest.

6 **THE COURT:** Okay.

7 All right. I have another indictment that
8 charges that in Lexington County, on or about July
9 29, 2016, you were driving a vehicle that was
10 involved in an accident resulting in property damage
11 and that you failed to stop and remain at the scene
12 and fulfill the requirements of law.

13 And upon your arraignment on that charge, how
14 do you plead?

15 **DEFENDANT:** No contest.

16 **THE COURT:** You're pleading no contest to hit
17 and run with property damage?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** And then I've got an indictment
20 that charges that in Lexington County, on or about
21 September the 1st, 2016, you unlawfully injured
22 another person or offered or attempted to do so with
23 an apparent present ability to carry that out and
24 that moderate bodily injury resulted or could have
25 resulted. It's alleged that you struck Zachary

1 Morgan multiple times with a closed fist around his
2 head and face causing contusions, lacerations and a
3 broken nasal bone.

4 Upon your arraignment on that charge of assault
5 and battery in the second degree, how are you
6 pleading?

7 **DEFENDANT:** No contest.

8 **THE COURT:** All right. So today are you under
9 the influence of any medicine, alcohol, drug or
10 anything affecting your thinking?

11 **DEFENDANT:** No, sir.

12 **THE COURT:** We went over this earlier in the
13 Faretta hearing. Do you suffer from any physical or
14 mental conditions today that are affecting your
15 ability to think clearly?

16 **DEFENDANT:** Nothing affecting my ability to
17 think, sir.

18 **THE COURT:** You understand that when you enter
19 a plea of no contest, sound -- you're pleading
20 basically as the term sounds; you're not contesting
21 the charge?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** You understand that a no contest
24 plea is a criminal conviction?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** You understand it goes against your
2 criminal record. It has all the same consequences
3 as if you entered a plea of guilty?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** When you enter this plea, you give
6 up important rights, including your right to remain
7 silent and your right to a jury trial. Do you know
8 that?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** If you wanted a jury trial, you'd
11 be presumed to be innocent. The State has to prove
12 you guilty beyond a reasonable doubt to convict you.
13 And you get to see, hear and have your lawyer
14 cross-examine every witness against you. You
15 understand that?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** I said your lawyer. You would get
18 to see, hear and cross-examine every witness against
19 you. You understand that?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** By entering this plea, you give up
22 all of those rights. You give up defenses. You
23 give up challenges to evidence. You understand?

24 **DEFENDANT:** Yes, sir.

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

1 these cases?

2 **DEFENDANT:** No, sir.

3 **THE COURT:** All right. I need you to listen to
4 the State.

5 **MR. POGUE:** Thank you, Your Honor.

6 In regard to the hit and run and the possession
7 of diazepam, Your Honor, this incident occurred on
8 July 29th of 2016 in the West Columbia area of
9 Lexington County. Your Honor, Investigator Morris
10 with the West Columbia Police Department was on
11 traffic stop at the 2300 block of Augusta Road.

12 While at that -- while on that traffic stop,
13 Investigator Morris heard tires sliding across the
14 asphalt, a screeching sound essentially. He
15 observed a black Chevrolet Tahoe and a silver
16 Chevrolet HHR traveling east in lane two of Augusta
17 Road. He witnessed the defendant's vehicle strike
18 the silver HHR in the rear, Your Honor. The
19 defendant was driving the Chevrolet Tahoe.

20 After the initial incident -- initial impact,
21 the vehicle veered off in the roadway and struck a
22 tree, the victim's vehicle, Your Honor, the silver
23 HHR. The defendant then fled the scene traveling
24 east on Augusta Road. Prior to that collision,
25 Investigator Morris indicated that the Tahoe was

1 traveling at a high rate of speed.

2 Your Honor, ultimately, there was a on-scene
3 witness that followed the defendant's vehicle and
4 notified law enforcement. And they responded to
5 where the witness was currently observing the
6 vehicle on Alexander Street, also in West Columbia.

7 At that point, officers caught up to the
8 vehicle and they conducted a traffic stop, Your
9 Honor. The defendant did stop his vehicle. At that
10 point, he was ordered out of the vehicle. The
11 defendant indicated that he, essentially, had done
12 the victim, Ms. Susan Smith, a favor because she was
13 the one that was at fault in the collision and that
14 he did her a favor, essentially, by driving off and
15 leaving the scene.

16 Your Honor, upon conducting an inventory -- he
17 was placed under arrest for hit and run. Upon
18 conducting an inventory search of the vehicle,
19 that's when they located 13 round blue pills, which
20 were believed to be the diazepam, which ultimately
21 did test positive for diazepam, Your Honor.

22 Your Honor, the victim in that case, Susan
23 Smith, is a registered nurse. She suffered
24 significant injuries from this accident. She
25 suffered a fractured sternum, three fractured ribs

1 with bruises, and contusions on her pelvis.

2 Your Honor, she has written a letter to the
3 Court that I'd like to hand up, if I could. I have
4 a redacted copy redacting the victim's information
5 that I can hand to the defendant as well so he'll
6 have a copy.

7 Although the victim was out significant amount
8 of money from the deductible on her insurance and
9 lost wages, Your Honor, she's not seeking
10 restitution in this case.

11 Your Honor, you can read her statement and how
12 she believes that Mr. Gilmore deserves an active
13 prison sentence and that he needs anger management.

14 In regard to the -- Your Honor, would you like
15 me to wait for a second for you to read that?

16 **THE COURT:** Give me one more minute.

17 (Pause.)

18 **THE COURT:** All right. I've read it.

19 **MR. POGUE:** Thank you, Your Honor.

20 In regard to the assault and battery, this
21 incident occurred on September 1st of 2016, Your
22 Honor. It occurred at 360 Harbison Boulevard, which
23 is the Walmart in the Columbia area of Lexington
24 County.

25 Your Honor, on that date, the victim in this

1 case, Zachary Morgan, who worked for a pest control
2 agency, was in his Terminix vehicle. He reports to
3 the officers, and it was ultimately caught on --
4 although it's way off at a distance -- on Walmart
5 surveillance video, he was attempting to turn down
6 one of the lanes in the Walmart parking lot
7 traveling in the direction of the Walmart towards
8 the Walmart.

9 At that point, the defendant was driving a red
10 in color Lexus that pulled out in front of him and
11 stopped in the middle of the lane. The victim kind
12 of motioned for the defendant, you know, to move one
13 way or the other so he could continue traveling the
14 correct way down the lane. The defendant, at that
15 point, did not move his vehicle. The victim got out
16 of his vehicle and kind of raised his arms like,
17 what's going on?

18 At that point, I think there was a verbal
19 exchange between the two, Your Honor. The defendant
20 got out of the vehicle -- out of his vehicle,
21 approached the defendant and began punching him in
22 the face. He did break his nose and caused multiple
23 face lacerations, Your Honor. And I do have
24 pictures of the victim from that particular incident
25 as well that I can hand up.

1 (Pause.)

2 **MR. POGUE:** Your Honor, the defendant was
3 provided these pictures in discovery.

4 **THE COURT:** All right.

5 **MR. POGUE:** Your Honor, Mr. Morgan was
6 contacted and made aware of this plea as well. He
7 tried to see if he could get off from work, but he
8 had already missed time from his injuries relating
9 to this incident and other matters that -- personal
10 matters that he had to deal with, so he was not able
11 to be here today. However, he did say that he
12 believes that the defendant definitely needs to be
13 serving time due to this. He doesn't necessarily
14 hold any ill will towards the defendant, but he does
15 believe that he has deep-seated issues.

16 The victim has, again, out -- out money, had to
17 miss work, had medical bills. He believes that the
18 defendant is dangerous and needs some sort of anger
19 management while he's in incarceration.

20 Your Honor, in regard to the indecent exposure,
21 this incident occurred on November 23rd of 2016.
22 This occurred in the West Columbia area of Lexington
23 County, Your Honor, at 2401 Augusta Road, which is
24 also a Walmart parking lot.

25 Your Honor, on that date, officers with the

1 West Columbia Police Department responded to a call
2 of a man exposing himself in a Volkswagen Jetta in
3 the parking lot. The victim, in this particular
4 case, was -- is Amy Carter, Your Honor. She called
5 the police after a -- after the defendant pulled his
6 vehicle, again, a Volkswagen Jetta, up next to hers
7 in the Walmart parking lot. She was talking on the
8 phone to her husband at the time.

9 Your Honor, when the defendant pulled his
10 vehicle up next to hers, he positioned, according to
11 the victim, his vehicle in a way where the victim
12 could see directly into his car. At that point, he
13 put some hair gel or fixed his hair with some hair
14 gel, then took a couple of drinks of a liquor bottle
15 she said, and then, at that point, pulled out his
16 penis and began to masturbate, put some more gel on
17 his penis at that point, Your Honor, before he began
18 masturbating.

19 She said that she followed the vehicle or kept
20 an eye on the vehicle until officers were able to
21 arrive and barricade all of the entrances. He was
22 apprehended on the scene, Your Honor.

23 When -- after he waived his Miranda rights,
24 Your Honor, officers asked him if he did, in fact,
25 do what Ms. Carter alleged, and he said that he was

1 just checking himself for STD.

2 Your Honor, in exchange for his plea, we're
3 also dismissing another count of indecent exposure.
4 The victim in that case was Dorothy Henderson. This
5 occurred just immediately prior to this incident,
6 Your Honor, in the Westside Plaza parking lot, which
7 is right down the road from the Walmart.

8 Your Honor, Ms. Henderson was also made aware
9 of this plea. She said that she didn't wish to be
10 here. She did not want the defendant to see her
11 face because she was afraid of the defendant, what
12 he may do when he was released. She did feel that
13 he also, again, had some issues as well.

14 Ms. Carter was notified of the plea; however,
15 she has to take care of her daughter and was unable
16 to be here in court today because of the fact that
17 she has to take care of her daughter.

18 There was one other assault and battery charge,
19 Your Honor, from earlier this year in May 2017. The
20 victim in that case is Corrections Officer Danny
21 Bane, who was here in court earlier today. That
22 charge, again, is being dismissed as a -- in return
23 for his plea to the other charges that he's pleading
24 to, Your Honor. In that case, Your Honor, again,
25 Danny Bane had his nose broken by the defendant.

1 There is some issue as to whether there was
2 consensual mutual combat in that scenario, Your
3 Honor; however, we are dismissing that charge.

4 Your Honor, I can go over the defendant's
5 criminal record at the appropriate time as well.

6 **THE COURT:** Go ahead.

7 **MR. POGUE:** Your Honor, in 2002, he had
8 possession of marijuana and a public disorderly
9 conduct. In 2004, he had simple assault. In 2005,
10 he had a shoplifting and driving without a license.
11 In 2007, he had entering premise after warning, a
12 public disorderly conduct and a shoplifting. In
13 2008, he had a malicious injury to personal
14 property. In 2010, he had a simple assault and
15 battery. In 2011, he had a strong arm robbery,
16 which was pled down from an armed robbery. He
17 received a seven-year sentence on that. He also had
18 an assault upon a corrections officer conviction.

19 Your Honor, in 2016, he had assault and battery
20 third conviction. And, Your Honor, I believe he
21 pled guilty in transfer court in Richland County to
22 assault and battery third degree charge earlier this
23 year.

24 Your Honor, I was contacted by Kathryn
25 Cavanaugh, who is a assistant solicitor in Richland

1 County. She indicated to me that the defendant
2 apparently tried to write down a warrant number from
3 one of the cases in Lexington County on the
4 dismissal sheet or on the sentence sheet that was
5 ultimately caught by the clerk in that case.

6 But, Your Honor, based upon his prior criminal
7 convictions, his criminal record, the nature and
8 facts and circumstances regarding the incidents that
9 he's pleading guilty to, Your Honor, the charges
10 that he's pleading guilty to, the fact that he's
11 pleading no contest, Your Honor, we believe is
12 another -- just another indicator of kind of an
13 acute failure to fully accept responsibility for
14 what it is that he's done or show remorse for what
15 it is that he's done. Your Honor, the State
16 believes, as well as multiple victims in this case,
17 that an active prison sentence would be appropriate.

18 **THE COURT:** All right. Is that what you
19 understand the State would intend to prove if you
20 went to trial on any of these cases, Mr. Gilmore?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Has anybody forced you, threatened
23 you, coerced you in any way to get you to plead
24 against your will?

25 **DEFENDANT:** No, sir.

1 **THE COURT:** Any plea bargains the State might
2 have made with you, they have to tell me about on
3 the record in open court or you lose what they
4 haven't told me. You understand?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** So other than what he's stated on
7 the record, has anybody promised you anything to get
8 you to plead?

9 **DEFENDANT:** No, sir.

10 **THE COURT:** Do you have complaints of any kind
11 against anyone who's dealt with your case?

12 **DEFENDANT:** No, sir.

13 **THE COURT:** All right. These cases have not
14 been to the grand jury. If you want the grand jury
15 to review them, at least 12 of the 18 grand jurors
16 have to agree you're probably guilty or the case
17 would stop there. You understand?

18 **DEFENDANT:** Yes, sir.

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

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Indecent exposure is a crime which
24 carries up to three years in prison and a fine. You
25 understand that?

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** I can require you to register as a
3 sex offender for the rest of your life. You
4 understand that?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** It affects your ability to ever be
7 a foster parent or adopt a child. You understand
8 that?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Hit and run with property damage
11 carries up to a year in prison and a 5,000 dollar
12 fine. Do you understand that?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** You lose your driver's license.
15 You understand?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Assault and battery in the second
18 degree carries up to three years. You understand
19 that?

20 **DEFENDANT:** Yes, sir.

21 How long do I lose my driver's license?

22 **THE COURT:** I don't know. Do you want to
23 continue with your plea?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Have you understood everything I've

1 been over with you?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** You sure you want to go forward on
4 this without an attorney?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** Are you sure you want to enter
7 these pleas of no contest?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** Mr. Gilmore's made a free, knowing,
10 voluntary and intelligent decision to waive his
11 rights, including his right to counsel and his right
12 to grand jury presentment, and enter his pleas of no
13 contest. He's done so upon a full understanding of
14 the nature and ramifications of the pleas.

15 **DEFENDANT:** Excuse me, sir.

16 **THE COURT:** Yes, sir.

17 **DEFENDANT:** I'm sorry. Are you about to
18 sentence me because I wanted to state some
19 mitigating facts?

20 **THE COURT:** No. I'm about to accept -- I'm
21 about to go through what I have to do to accept your
22 pleas.

23 **DEFENDANT:** Okay. I'm sorry.

24 **THE COURT:** There is a factual basis for each
25 plea. His pleas are accepted.

1 All right. What do you want to tell me?

2 **DEFENDANT:** As far as this statement on the hit
3 and run, since it's not written in her handwriting,
4 I can't be sure that she wrote it. It's also not
5 sworn.

6 Also, as far as the injuries to her chest, the
7 sternum and ribs, I'm not sure if she was wearing a
8 seatbelt or not, but if she wasn't, then there would
9 be contributory negligence.

10 As far as the hit and run, I would like to
11 remind the Court that it's not a case of me hitting
12 a person, then leaving, or intentionally hitting
13 someone's vehicle, then leaving. It's just a case
14 where I failed to remain at the scene of a car
15 accident. There was no planning or malice involved.

16 I would like to add as mitigating, that there
17 were no children, senior citizens, disabled persons
18 or government officials in the other vehicle.

19 I also would like to make the Court aware that
20 this is a misdemeanor that happened over a year ago
21 in July of 2016, and I have been sitting in jail for
22 almost six months on this charge.

23 For the indecent exposure, I would like to make
24 the Court aware that I was not out in the open. I
25 was in the confines of my car with physical barriers

1 between me and the accuser. I would also like to
2 add that the accuser had admitted in her written
3 statement to police that she had been watching me
4 for a time prior to. And she also said that she saw
5 me take several swigs from a liquor bottle prior to
6 me doing this. And the police report also
7 documented in the report that I had been using
8 alcohol. So as mitigating, I would like to invoke
9 the doctrine of diminished capacity.

10 And I would like to add to mitigating that the
11 accuser was not a child, senior citizen, disabled
12 person, government official -- or a government
13 official.

14 I also would like to state that I'm 32 years
15 old and have never been convicted or charged with a
16 sex crime. Also -- this also is a misdemeanor which
17 has been pending since November of last year, and
18 I've been in jail since February 28th of this year
19 for this charge.

20 As for the assault second degree, it was
21 induced by heat of verbal traffic altercation
22 between me and the victim over who had the
23 right-of-way in a congested Walmart parking lot. I
24 offer as mitigating that this was done in the heat
25 of passion. And the victim was not a minor, elderly

1 person, disabled person, war vet or government
2 official. And I have been diagnosed with having an
3 impulse control disorder. I have been in jail since
4 April 26 of this year on this charge.

5 Considering all of the mitigating factors and
6 that these are misdemeanors, I would request -- and
7 the time that I've spent in jail, I would request
8 between six and ten months time served or, in the
9 alternative, probation as I have never been on
10 probation or parole as an adult. That's it, Your
11 Honor.

12 **THE COURT:** Thank you.

13 **DEFENDANT:** Your Honor, I would also like to
14 state that the reason I pled no contest is because
15 of my uncertainty as to legal reasons. I do admit
16 wrong, and I do express sincere remorse about things
17 that I've done, and I apologize for it. I did not
18 make that plea because I felt that I was wrong.

19 **THE COURT:** All right.

20 (Pause.)

21 **THE COURT:** If there's nothing else, the Court
22 accepts the pleas.

23 The sentence on the assault and battery second
24 degree and indecent exposure case, that you be
25 committed to the South Carolina Department of

1 Corrections for three years, plus pay the costs and
2 assessments as applicable. Pay your court costs
3 within six months of being released from prison.
4 Restitution is deferred.

5 On the hit and run, the sentence is one year,
6 plus costs and assessments.

7 The sentences run concurrently. You're given
8 credit on all of them for jail time served under
9 Section 24-13-40 to be calculated and applied by the
10 department of corrections. Restitution is deferred
11 on each. The court costs are to be paid within six
12 months of being released from prison on all the
13 charges. I've noted on the sentence sheets that
14 need for anger management counseling. Do you
15 understand your sentences?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** If you wish to appeal anything from
18 the proceedings, you have to do so in writing. You
19 have a very short timeframe, make sure you file your
20 appeals, if any, within that short timeframe. Good
21 luck to you, sir.

22 **MR. POGUE:** Thank you, Your Honor.

23 (The proceedings were concluded for August
24 23, 2017.)

25 (The following proceedings were held on

1 October 2, 2017.)

2 **THE COURT:** All right. I received a letter
3 from Mr. Gilmore after he entered his pleas
4 representing himself. And the way I'm interpreting
5 this, it appears to be a motion to withdraw his plea
6 and a motion for reconsideration of the sentence.
7 What would you like to say, sir?

8 **DEFENDANT:** Yes. As far as the motion to
9 withdraw the plea, I don't want to withdraw my
10 guilty plea altogether. What I was wanting to do is
11 instead of pleading no contest, I wanted to plead
12 guilty but mentally ill. So -- it can be informally
13 done by just scratching out no contest but mentally
14 ill.

15 I wanted to do that because I wanted to
16 admit culpability to take responsibility for my
17 wrongdoing because Solicitor Pogue, he stated that
18 the fact that I pled no contest indicates that I
19 didn't want to take responsibility for my crime, and
20 I felt like when he said that, that was an
21 aggravating factor. It affected my sentence. So I
22 wanted to admit culpability, take responsibility for
23 my crime as far as pleading guilty but mentally ill.

24 On the sentencing sheet, you ordered that I
25 receive anger management counseling, and Solicitor

1 Pogue stated that the victims felt like I had issues
2 and I needed help. So what I was wanting to do was
3 get sentenced to a more therapeutic setting, one
4 that's exclusively designed to treat mental illness
5 rather than one that's more so designed to punish.

6 Also, in the plea hearing -- well, before the
7 plea hearing, I signed a sentencing sheet, and the
8 sentencing sheet said that there will be no
9 recommendations. And in the plea hearing, Pogue
10 made recommendations, and he said that the victims
11 recommended that I serve time. And I felt like that
12 kind of violated the agreement that there wouldn't
13 be any recommendation.

14 As far as the victim's recommendation to do
15 time, they weren't sworn there by themselves in the
16 plea hearing, and I felt like that was improper.
17 But I felt like because I did time prior to
18 pleading, that that satisfied their interest that I
19 do time and Pogue's interest that I do time.

20 And since I've done time, since I last pled and
21 was sentenced, I feel like this month and, like, a
22 week satisfied the interest that I do time. So in
23 the end, what I was wanting is to plead guilty but
24 mentally ill and either be placed on probation until
25 I finished satisfying your order that I receive

1 mental health counseling or that I be sentenced to a
2 psychiatric hospital or SCDC's Gilliam Psychiatric
3 Hospital until I finish receiving anger management
4 counseling and then I be discharged for all
5 sentences.

6 **THE COURT:** Solicitor.

7 **MR. POGUE:** Thank you, Your Honor.

8 In light of the facts that the State gave at
9 his plea hearing, Your Honor, coupled with his
10 extensive criminal record, Your Honor, the State
11 believes that the sentence that was handed down at
12 the plea hearing was appropriate.

13 Your Honor, in regard to the defendant's
14 statements about the recommendation box not being
15 checked on the sentencing sheet, I think the
16 defendant, Your Honor, may be confused as to what
17 that exactly indicates from a plea hearing
18 standpoint. Obviously, whenever there's no
19 recommendation, the State is, you know, is at
20 liberty to ask the Court for whatever sentence that
21 they believe is appropriate as opposed to when a
22 recommendation, Your Honor, would be obviously when
23 the -- the recommendation is something that the
24 defendant is seeking or desires as a benefit to
25 his -- to his giving his plea as a bargain for

1 exchange, Your Honor, so to speak.

2 I actually handed Mr. Gilmore -- and, Your
3 Honor, permission to approach.

4 I actually handed Mr. Gilmore a signed written
5 offer which clearly indicates that there's no
6 recommendation as to what the State would or would
7 not be advocating for upon his plea hearing.

8 And also, Your Honor, in regard to the issues
9 of his desire to plead guilty but mentally ill, I
10 believe Your Honor covered that with him at the
11 initial plea hearing. The State would certainly
12 agree with Your Honor on the legal basis of him
13 attempting to plea under that -- under that law,
14 Your Honor.

15 **DEFENDANT:** Can I speak, Your Honor?

16 **THE COURT:** Just a moment, please.

17 (Pause.)

18 **THE COURT:** Yes, sir.

19 **DEFENDANT:** Okay. In the plea hearing, I --
20 what I attempted to do was plead no contest but
21 mentally ill, and you stated that I can't do that.
22 And I felt like that was incorrect because if that
23 was the case, that would imply that people who are
24 mentally ill can't exercise the right to plead no
25 contest, only people who are sane could. So I

1 didn't feel that was correct, but I didn't really
2 argue because I didn't want to lose my opportunity
3 to make a plea, so I just made a mental note of
4 the -- of the issue and then filed these motions.

5 But it's really moot because I don't wish to
6 plead no contest but mentally ill anymore. I want
7 to go ahead -- like I said, I want to go ahead and
8 admit culpability and plead guilty but mentally ill.

9 **THE COURT:** Have you been assessed by anyone as
10 meeting those qualifications?

11 **DEFENDANT:** Not by the South Carolina -- what
12 is it called?

13 **THE COURT:** Department of mental health.

14 **DEFENDANT:** Yeah, not by them, but as far as
15 when I was previously incarcerated in SCDC, I've
16 been diagnosed with impulse control disorder called
17 intimate explosive disorder. And while I was at the
18 county jail, I was diagnosed and treated. But I
19 couldn't get -- I wanted to bring the paperwork and
20 show y'all, but they said that I couldn't get them
21 myself, and I told them I was representing myself.
22 And they was like --

23 **THE COURT:** Who is they?

24 **DEFENDANT:** The mental health counselor and the
25 doctor. I tried to get my own records and they was

1 like, You can't get your own mental health records;
2 you have to get your attorney to get them. And I
3 said, Well, I'm representing myself. So then I
4 showed them paperwork where I represent myself and
5 that said I'm pro se at the bottom.

6 And the plea hearing came up before they could
7 actually get back with me, but they kind of acted
8 like they was reluctant to give it to me for some
9 reason. I don't know why.

10 Also, there's some newly discovered mitigating
11 evidence that I would like to present for your
12 consideration before you make a decision. Inside
13 the plea hearing, he submitted a letter that was,
14 allegedly, the victim of the hit and run's letter.
15 And in that letter, she stated that -- well, whoever
16 stated that she developed carpal tunnel syndrome as
17 a direct result of the accident, shortly after the
18 accident.

19 Since I was sentenced, I've discovered that
20 carpal tunnel syndrome is -- it's a syndrome that
21 develops after a long period of time of repetitive
22 hand movement, such as playing piano, typing or
23 sewing. And this would mean that she defrauded the
24 Court if she wrote that letter, and she committed
25 insurance fraud to get money so that she could get

1 corrective surgery for the carpal tunnel syndrome.

2 I also would like to say that I would like to
3 reexpress my sincere, deep remorse for all the wrong
4 that I did do, and I promise that I won't do it
5 again. After this charge and these sentences, I
6 will be moving out of state to Washington to live
7 with my girlfriend who is a drill sergeant in the
8 Army and is stationed there while I've been
9 incarcerated. My public defender -- my former
10 public defender, Sarah Mauldin, spoke with her and
11 could verify this.

12 And I ask that all this be considered in making
13 your decision, please.

14 **THE COURT:** Yes, sir.

15 Anything else from the State?

16 **MR. POGUE:** Your Honor, I don't believe the
17 State has any further response.

18 **THE COURT:** I'll notify you of a decision in
19 writing. Thank you very much.

20 **MR. POGUE:** Thank you, Your Honor.

21 **DEFENDANT:** Thank you, sir.

22 **THE COURT:** You're still at Kirkland or have
23 they assigned you yet?

24 **DEFENDANT:** Kirkland R&E, sir.

25 **THE COURT:** You're still at R&E?

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DEFENDANT: Yes, sir.

THE COURT: Thank you.

END OF PROCEEDINGS

C E R T I F I C A T E

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearings of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 23rd of August and 2nd of October, 2017.

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

March 17, 2018

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Official Court Reporter

FILED

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) IN THE COURT OF GENERAL SESSIONS

LISA H. COOPER
CLERK OF COURT
LEXINGTON SC

The State of South Carolina,)

-vs-)

Perry Drake Gilmore, Jr.,)

Defendant.)

ORDER DENYING MOTION
TO WITHDRAW PLEAS AND
FOR RECONSIDERATION
2016A3221100654 / 2017GS3202179
2017A4021600601 / 2017GS3202177
~~5102P0030607 / 2017GS3202130~~

The defendant moved to withdraw his pleas and/or to have the court reconsider the sentences imposed upon him. A hearing was held on October 2, 2017. The motion is denied.

WPK
#1

On August 23, 2017, the defendant appeared in a self-represented capacity and the court accepted his pleas of no contest on charges of indecent exposure, assault and battery in the second degree, and hit and run involving property damage. At the time of the pleas, he indicated that he wanted to plead no contest, but mentally ill, and the court indicated that there was no such plea. The defendant freely, knowingly, and voluntarily elected to go forward with his no-contest pleas. In exchange for his pleas, the State dismissed one other indecent exposure charge and one other assault and battery charge which were from incidents that were allegedly separate and distinct from each other and from the charges to which he entered his pleas. The court sentenced the defendant to the maximum sentences, but did not run them consecutively. That allowed the defendant to receive credit for his pre-plea detention on all charges.

Earlier in the day that he pleaded no contest, the court conducted a *Faretta* hearing on the record. An order had previously been entered by the Honorable Grace G. Knie that relieved

counsel based on the defendant's motion. Because of concerns about whether a *Faretta* hearing had been conducted, the undersigned judge, as Chief Judge for Administrative Purposes, had directed that Mr. Gilmore be brought to court to determine that issue. The defendant renewed his desire to act *pro se*. A motion in one or more of the files for a *M'Naughten* evaluation has never been ruled upon, and the court saw nothing to indicate that the defendant was incompetent and knew nothing about whether a *M'Naughten* issue would be presented by the defendant.

*Motion said I will
plea but mentally
ill.*

Later, Mr. Gilmore appeared, indicated that he had reached a plea agreement, and entered his pleas of no contest. He did not request to consult with stand-by counsel. He now states that he wants to be housed in a more therapeutic setting. He believes that the State had agreed not to make a recommendation based on the indication on the sentence sheet and, when the State conveyed to the court in the sentencing proceeding that one or more of the victims wanted the defendant to do time for the offenses, that the State had violated the no-recommendation provision. He also stated that he has newly-discovered evidence in mitigation related to the victim of the wreck stating that she developed carpal tunnel syndrome from the wreck. This apparently is because of his argument that carpal tunnel can only be developed through repetitive motion. The information about carpal tunnel syndrome had no impact upon the court's sentence.

*WPM
#2*

On August 29, 2017, the defendant filed motions to withdraw his pleas or, in the alternative, to have the court reconsider the sentences imposed. What the defendant seems to want is to change his pleas to guilty but mentally ill, and to have the court reduce his sentences and/or grant him probation.

GUILTY BUT MENTALLY ILL

As for the change of pleas from no contest to guilty but mentally ill, the defendant has no expert witness to offer in an attempt to meet the provisions of that affirmative defense. Guilty but

mentally ill is a statutory creation that grew out of concerns about what some perceived as the all-or-nothing consequence of being found not guilty by reason of insanity. Under the common law, a person who is unable to distinguish right from wrong is incapable of forming the criminal intent necessary to commit a crime.

The legislature made the following changes in South Carolina under statutes that provide, in part:

SECTION 17-24-10. Affirmative defense.

(A) It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.

(C) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the defense of insanity.

HISTORY: 1984 Act No. 396, Section 1; 1988 Act No. 323, Section 1; 1989 Act No. 93, Section 1.

SECTION 17-24-20. Guilty but mentally ill; general requirements for verdict.

(A) A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

(B) To return a verdict of "guilty but mentally ill" the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill as defined in subsection (A).

(D) A court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in Section 17-24-20(A). [Emphasis added.]

HISTORY: 1984 Act No. 396, Section 2; 1988 Act No. 323, Section 2; 1989 Act No. 93, Section 2.

*W. Act.
#3*

SECTION 17-24-70. Sentencing of defendant found guilty but mentally ill.

If a verdict is returned of "guilty but mentally ill" the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty, however:

(A) If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence.

(B) If the sentence includes a probationary sentence, the judge may impose those conditions and restrictions on the release of the defendant as the judge considers necessary for the safety of the defendant and of the community.

HISTORY: 1984 Act No. 396, Section 7; 1988 Act No. 323, Section 4.

So, under guilty but mentally ill provisions, the only difference in the sentencing is that
the defendant is first taken to a facility of the Department of Corrections for treatment, but only
kept there until the Department determines that the defendant can safely be moved to the general
population. He then serves the sentence. This defendant had been in the local jail for an
 extended time before his plea. No psychiatrist or psychologist has provided evidence that the
 defendant meets the standard for guilty but mentally ill at the time(s) of the alleged offense(s).
 The defendant has only produced his statements about his diagnosis of impulse control disorder,
 which is insufficient to establish that he is entitled to this defense. The motion to change his
 pleas is denied.

MODIFICATION OF SENTENCE

The defendant believes that the sentence imposed is excessive and was, at least in part, the result of the State improperly telling the court that a victim wanted the defendant to be incarcerated for the crime. The court denies the motion.

W.P.C.
#4

doesn't explain the below

First, the standard-form sentence sheet has three possible options to be checked: (1) that the plea is a negotiated plea, meaning that the court can accept the plea bargain or reject it, but cannot modify it; (2) that the plea is based on a recommendation from the State regarding sentencing, which means that the court can vary from the recommendation entered in the plea bargain; or, (3) that the plea is without negotiations or recommendation, which basically means that the sentencing is entirely within the discretion of the judge. Mr. Gilmore is placing a meaning on the provision about no recommendation that does not comport with common understanding of the term in practice. It is understandable why he has that interpretation, but it is not what the form means in common practice, and there is no indication that the State did anything in this case to give him an incorrect impression. Further, the State did nothing inappropriate in communicating to the court what the victim wanted the court to hear. In fact, it was obligated to do so under the South Carolina Constitution.

*WPK
#5*

In 1998, the Constitution was amended to add the Victim's Bill of Rights. In Article I, Section 24, victims have the specific right to "be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing," and, to "confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition . . . [.]

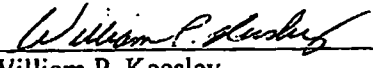
Secondly, the decision to impose the sentences was based on several factors that the court deems appropriate to justify the incarceration imposed and have little, if anything, to do with the victims' statements read to the court by the Assistant Solicitor. The incidents occurred on various dates. At least one demonstrates violence. They indicate a lack of respect for the requirements of law. One deals with improper sexual conduct. Most significantly, they were

committed by someone who has a criminal record that began in 2002 and has run to the present day, which includes various assaults, a strong-arm robbery, and malicious damage to property.

THEREFORE, IT IS ORDERED that the motion is denied:

AND IT IS SO ORDERED.

October 9, 2017



William P. Keesley
Circuit Judge

#6

WITNESSES

Columbia Police Department

Matthew D McCoy

Law Enforcement Case #: 160028244

BPP

ARREST WARRANT NUMBER

2017A4021600601

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3202177

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

**THE STATE
vs.**

Perry Drake Gilmore Jr

CDR #: 3413

Indictment for

Assault & Battery, 2nd Degree

§ 16-03-0600(D)(1)

S.R. Hubbard III, SOLICITOR

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

Perry Gilmore Jr
DEFENDANT

8/23/17
DATE

Mega...
WITNESS

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

INDICTMENT FOR
Assault & Battery, 2nd Degree

§ 16-03-0600(D)(1)

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

That **Perry Drake Gilmore, Jr.** did in Lexington County, South Carolina, on or about September 1, 2016, unlawfully injure another person, or offered or attempted to injure another person with the present ability to do so, and moderate bodily injury to another person resulted or moderate bodily injury to another person could have resulted; to wit: the defendant struck the victim, Zachary Morgan, multiples times with a closed fist about the victim's head and face causing numerous contusions, lacerations, and a broken nasal bone, in violation of §16-03-600(D) of the South Carolina Code of Laws of 1976, as amended

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


ASSISTANT SOLICITOR

WITNESSES

West Columbia Police Department

Jeremy C Amick

Law Enforcement Case #: 1634495

BPP

ARREST WARRANT NUMBER

2016A3221100654

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3202179

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER 2017 TERM

THE STATE

vs.

Perry Drake Gilmore Jr

CDR #: 0091

Indictment for

Indecent Exposure

§ 16-15-0130

S.R. Hubbard III, SOLICITOR

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

DEFENDANT

DATE

WITNESS


STATE OF SOUTH CAROLINA :
COUNTY OF LEXINGTON :

INDICTMENT FOR
Indecent Exposure
§ 16-15-0130

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

That **Perry Drake Gilmore Jr** did in Lexington County, South Carolina on or about November 23 2016 did willfully, maliciously, and indecently did expose his person in a public place or property of others or to the view of another person on a street or highway, to wit: the Defendant did expose his penis to Amy Carter while in the Walmart parking lot located at 2401 Augusta Road, West Columbia, South Carolina, all in violation of Section 16-15-130 in the Code of Laws of South Carolina (1976), as amended

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


ASSISTANT SOLICITOR

WITNESSES

West Columbia Police Department

R. W. Fair

Law Enforcement Case #:

BPP

ARREST WARRANT NUMBER

5102P0030607

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3202180

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

THE STATE

vs.

Perry Drake Gilmore Jr

CDR #: 2464

Indictment for

Hit & Run, Property Damage

§ 56-05-1220

S.R. Hubbard III, SOLICITOR

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

Perry Gilmore Jr
DEFENDANT

8/23/17
DATE

Melva Woods
WITNESS

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)


INDICTMENT FOR
Hit & Run, Property Damage

§ 56-05-1220

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

That **Perry Drake Gilmore, Jr.** did in Lexington on or about July 29, 2016, being the driver of a vehicle involved in an accident resulting in damage to a vehicle which was driven or attended by a person or persons, did unlawfully fail to stop and remain at the scene of the accident and fulfill the requirements of Section 56-5-1220 of the Code of Laws of South Carolina (1976) relative to giving information and rendering aid, in violation of Section 56-5-1220 of the Code of Laws of South Carolina (1976) as amended

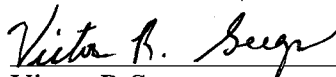
Against the peace and dignity of the State, and contrary to the statute in such case made and provided


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Victor R Seeger
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 13th day of November, 2018.

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SC Court of Appeals