

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County

Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHERWIN ALFONZO GREEN,

APPELLANT

APPELLATE CASE NO 2019-000441

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

RECEIVED
May 28 2020
SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,)

Warrant #s: 12A2820200175, 76, 81,
83

v.)

**NOTICE OF MOTION AND
MOTION FOR A FAST AND
SPEEDY TRIAL**

Sherwin Green)

DEFENDANT.)

FILED FOR RECORD
2013 JUL 31 PM 1:46
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

TO: ASSISTANT SOLICITOR BRETT PERRY

YOU WILL PLEASE TAKE NOTICE that the Defendant Sherwin Green, by and through his undersigned attorney, hereby request that the cases against him be tried by jury forthwith as the continued delay is causing extreme hardship. Defendant Green asserts his right to a fast and speedy trial under the Sixth and Fourteenth Amendments of the United States Constitution and Article One, Section Fourteen of the South Carolina Constitution.

The amount of time the charges listed above have been pending is approximately eight months, and Defendant Green has been incarcerated continuously since early December 2012.

Due to the severity of the allegations, the Defendant Green is being held without bond. He has small children and a girlfriend that he is separated from due to his incarceration and is unable to work to support his family. Defendant's counsel respectfully submits that Defendant Green asserts his innocence in the strongest terms and welcomes an opportunity to answer for the above charges. He is wrongfully having his liberty taken from him on mere allegations with no substantial evidence supporting those charges.

Respectfully Submitted,

Lir P. Derieg

Attorney for Defendant

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
(803) 206-3140

Camden, South Carolina

This 31st day of July, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,)

Warrant #s: 12A2820200175, 76, 81,
83

v.)

CERTIFICATE OF SERVICE

Sherwin Green)

DEFENDANT.)

I certify that on this date I served the Notice of Motion and Motion for Fast and Speedy Trial in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record, Assistant Solicitor Brett Perry, by delivering said motion to his office located at The Office of the Solicitor, Fifth Judicial Circuit, Kershaw County Judicial Center, Second Floor, 111 Broad Street, Camden, South Carolina 29020

Lir P. Derieg

Attorney for ~~Terance Harrell~~

Sherwin Green

Camden, South Carolina

This ____ day of July, 2013

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) COURT OF GENERAL SESSIONS

THE STATE,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
SHERWIN GREEN,)
Defendant.)

July 31, 2013
Camden, South Carolina

B E F O R E :

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

BRETT A. PERRY, DEPUTY SOLICITOR
Attorney for the Plaintiff

LIR P. DERIEG, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

JULY 31, 2013

1
2 MR. PERRY: Sherwin Green. Mr. Green is not
3 here. He is housed at the Alvin S. Glenn Detention
4 Facility over in Richland County. We did not have
5 him transported over today. As I understand it
6 from Mr. Derieg, his presence is not necessary.
7 This is a motion on behalf of Mr. Green for a
8 speedy trial.

9 Your Honor, he is in jail charged with two gun
10 offenses, CDV, burglary first, kidnapping. I
11 believe they are just asking for us to try to
12 schedule this for trial as quick as we can.

13 MR. DERIEG: Yes, ma'am, all of that would be
14 correct. He has been in jail since early December
15 of 2012, so about eight months, going on nine
16 months of continuous incarceration between here and
17 Alvin S. Glenn.

18 For the record, I will waive his presence.
19 I'm not sure how long it is going to be until he
20 goes to trial. He wants to stand for these
21 charges. He adamantly disputes these charges. And
22 we would just ask you to give him a speedy trial as
23 possible.

24 THE COURT: All right. I'll grant the motion
25 for a speedy trial. What I'm going to suggest

1 y'all do -- because I don't want to put a time
2 period -- he is scheduled out through?

3 MR. PERRY: Through December, Judge.

4 THE COURT: We don't have a new schedule for
5 next year. I'm just going to suggest that y'all
6 get with me and schedule a status conference.

7 MR. PERRY: We can do that, Judge. Would you
8 like for us to wait until Court Administration
9 comes out with the schedule for after the first of
10 the year?

11 THE COURT: That will be fine.

12 MR. PERRY: We wouldn't have any idea when we
13 have terms of court otherwise.

14 THE COURT: Yes, it is hard to schedule at
15 this time.

16 MR. PERRY: Sure. As soon as Court
17 Administration releases that schedule, I will get
18 with Mr. Derieg and we will contact your office and
19 schedule a status conference, Judge.

20 MR. DERIEG: Very good. Thank you, Judge.

21 (WHEREUPON, the proceedings were concluded.)
22
23
24

25 (END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,

Warrant #s: 12A2820200175, 76, 81,
83

v.

**NOTICE OF MOTION AND
MOTION TO DISMISS ALL
CHARGES**

Sherwin Green)

DEFENDANT.)
)
)
_____)

TO: ASSISTANT SOLICITOR K. LUCK CAMPBELL

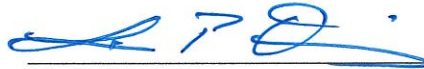
YOU WILL PLEASE TAKE NOTICE that the Defendant Sherwin Green, by and through his undersigned attorney, hereby moves that this Court dismiss all charges against him due to the solicitor controlling when his case would be called to court, thereby denying Defendant of his Constitutional right to a speedy trial.

Defendant cites the following reasons for his motion:

1. Defendant's Sixth Amendment Constitutional right to a speedy trial has been violated;
and
2. SC Code Section 1-7-330 has been declared unconstitutional by State v. Langford, Op. No. 27195 (S.C. Sup. Ct. filed November 21, 2012); and
3. Defendant was substantially and detrimentally damaged in that a key witness in the defense of Defendant, whom Defendant intended to call as a witness on his own behalf, has become an unavailable due to the State's delay in prosecuting his case; and
4. The State's delay in prosecuting Defendant's case is due to a desire, by the now prosecuting assistant solicitors, for personal gratification by obtaining a favorable outcome in a high profile case, for which Defendant was to be a key witness; and
5. Defendant was arrested on December 4, 2012; and
6. Defendant has been continuously incarcerated since arrest and was given no bond; and
7. Defendant asserted his right to a fast and speedy trial on July 31, 2013; and

8. Defendant has been extremely and irreparably prejudiced in that he is now unable to call a witness, on his own behalf, who would have provided exculpatory, and potentially dispositive, testimony for the Defendant.

Respectfully Submitted,



Lir P. Derieg
Attorney for Defendant

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
(803) 206-3140

Camden, South Carolina

This 15th day of July, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,)

Warrant #s: 12A2820200175, 76, 81,
83

v.)

Sherwin Green)
DEFENDANT.)

CERTIFICATE OF SERVICE

I certify that on this date I served the Notice of Motion and Motion in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record, Assistant Solicitor K. Luck Campbell, by delivering said motion to her office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main St., Columbia, South Carolina 29201

Lir P. Derieg
Attorney for Sherwin Green

Columbia, South Carolina

This 15th day of July, 2015



STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,

v.

Sherwin Green

DEFENDANT.

FILED FOR RECORD

2015 JUL 15 PM 2:46

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Warrant #s: 12A2820200175, 76, 81,
83

**NOTICE OF MOTION AND
MOTION TO DISQUALIFY
SOLICITOR AND ENFORCE
PLEA AGREEMENT**

TO: ASSISTANT SOLICITOR K. LUCK CAMPBELL

YOU WILL PLEASE TAKE NOTICE that the Defendant Sherwin Green, through his undersigned attorney, hereby moves that the current solicitors prosecuting him, K. Luck Campbell and/or Joanna McDuffie and/or Megan Walker and/or any other Solicitor or assistant solicitor whose office is not in Kershaw County that may be participating in this case against Defendant, be disqualified from participating any further, in any way, in the prosecution of Defendant. Further, Defendant moves that the previously assigned solicitor, Deputy Solicitor Brett Perry, be reassigned to his case, and that the previously agreed upon plea bargain be enforced.

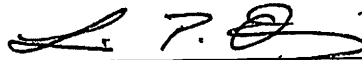
Defendant cites the following reasons for his motion:

1. There was no justifiable cause to remove Deputy Solicitor Brett Perry from Defendant's case other than for the personal gratification of the solicitors, now involved, in securing a conviction in another high profile case, for which Defendant was to be a key witness for the State;
2. Deputy Solicitor Brett Perry is a qualified solicitor that is able to professionally resolve his cases by trial, plea, or any other disposition that he deems favorable towards the interests of justice;
3. Defendant is entitled to the aforementioned plea bargain under a theory of promissory estoppel because Defendant detrimentally relied upon the aforementioned plea bargain, in that a key witness in the defense of Defendant, whom Defendant intended to call as a

witness on his own behalf, has become an unavailable witness due to Defendant's belief that the aforementioned plea bargain, rather than the impending trial, was to be the method of disposition of the above-listed warrants;

4. Defendant has been denied his Constitutional right to Due Process under the law;
5. South Carolina case law, including but not limited to, State v. Langford, Op. No. 27195 (S.C. Sup. Ct. filed November 21, 2012); and
6. See six page letter from Defendant.

Respectfully Submitted,



Lir P. Derieg
Attorney for Defendant

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
(803) 206-3140

Camden, South Carolina

This 15th day of July, 2015

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,

v.

Sherwin Green

DEFENDANT.

FILED FOR RECORD

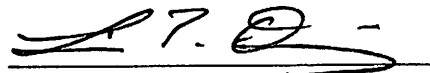
2015 JUL 15 PM 2:46

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Warrant #s: 12A2820200175, 76, 81,
83

CERTIFICATE OF SERVICE

I certify that on this date I served the Notice of Motion and Motion in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record, Assistant Solicitor K. Luck Campbell, by delivering said motion to her office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main St., Columbia, South Carolina 29201



Lir P. Derieg
Attorney for Sherwin Green

Columbia, South Carolina

This 15th day of July, 2015

THE HONORABLE ANDREA BENJAMIN
 CHIEF JUDGE
 FIFTH JUDICIAL CIRCUIT
 1701 MAIN ST
 RICHLAND COUNTY CIRCUIT COURT
 COLUMBIA S.C. 29201

YOUR HONOR; I HAVE A MATTER THAT I BELIEVE NEEDS TO BE ADDRESSED IN OPEN COURT AND THAT ONLY YOUR HONOR COULD POSSIBLY RESOLVE.

THIS INVOLVES FIFTH CIRCUIT SOLICITOR LUCK CAMPBELL.

I'll EXPLAIN ALL IN FULL DETAILS AND PRAY THAT YOUR HONOR WILL GRANT THE SAID MOTION THATS ATTACHED AT THE END OF THIS LETTER AND RELIEVE ASS. SOLICITOR LUCK CAMPBELL FROM MY CASE AND REINSTATE FIFTH CIRCUIT SOLICITOR BRETT PERRY IN CAMDEN BACK TO MY CASE.

IM CHARGED WITH; KIDNAPPING, 1st DEGREE BURGLARY, POSSESSION OF A STOLEN PISTOL AND POSSESSION OF A FIREARM AFTER BEING A CONVICTED FELON.

ITS A DOMESTIC CASE WITH MY NOW EX-WIFE, BUT THE GUN CHARGE IS NOT INVOLVED IN THE DOMESTIC DISPUTE.

UPON MY ARREST ON DECEMBER 04, 2012 I WAS PLACED IN KERSHAW COUNTY DETENTION CENTER FOR KIDNAPPING & BURGLARY WITH NO BOND.

I WAS HOUSED IN THE SAME UNIT (POD) WITH NICK MILLER WHO WAS FACING THE DEATH PENALTY ON A SERIOUS MURDER CHARGE.

I'VE DEFRIENDED HIM IN A MATTER OF DAYS WITH NO KNOWLEDGE OF HIS CRIME.

NICK MILLER, MYSELF, FRANK SINGLETON AND

VINCENT MISSORI ALONG WITH ANOTHER INMATE WAS PLANNING TO ESCAPE, WHICH I HAD NO INTENTION ON DOING SO. BUT THEY WAS SERIOUS.

NICK MILLER DECIDED HE DIDNT WANT TO GO, CAUSE IF HE COULD PROVE THAT SOMEONE ELSE HAD COMMITTED THE CRIME (MURDER) THAT HE'S CHARGED WITH HE IN RETURN COULD BEAT HIS CHARGES.

NICK AND MYSELF CAME UP WITH A PLAN THAT I COULD ASSIST HIM WITH.

HE WANTED ME TO KILL OR RATHER HIRE ME TO HAVE A FEMALE FRIEND OF MINE'S THAT LIVES IN MARYLAND KILL THE WITNESS WHICH WAS HIS GIRLFRIEND AT THE TIME. I AGREED.

HE (NICK MILLER) WROTE ME DETAIL NOTES ON WHERE THE VICTIM LIVES, CAR SHE DRIVES, WHEN THE KID GOES TO SCHOOL AND EVEN WHAT TYPE OF DOG SHE HAS, AND THAT HE WANTED HER STABBED UP AND KILLED THE SAME WAY THE VICTIM ON HIS CASE DIED. SO IT COULD SEEM LIKE THE KILLER IS STILL OUT IN SOCIETY KILLING AND ITS NOT HIM.

HE (NICK MILLER) FURTHER WENT ON TO WRITE ME NOTES ON WHERE HIS OWN MOTHER LIVED, GRANDMOTHER LIVED, THEIR NAMES, ADDRESSES, PHONE NUMBERS AND THAT IF HE DOESNT PAY ME THE MONEY OWED FOR THE HIRED HIT ON THE WITNESS WHEN HE GETS OUT, I COULD HAVE SOME ONE KILL HIS GRANDMOTHER & MOTHER.

YES, ALL OF THIS IS IN HIS OWN HAND WRITING AND HES A COLD HEARTED INDIVIDUAL. PLUS OUR INTERACTION IS ALL ON VIDEOTAPE IN THE JAIL.

I IN RETURN GOT IN TOUCH WITH LT. CATOE IN THE JAIL (KERSHAW) AND TOLD HIM WHAT I GOT. HE IN RETURN GOT IN TOUCH WITH DET. JAMIE JONES THE ARRESTING OFFICER ON NICK MILLERS CASE.

IVE MET WITH DET. JONES TWO TIMES AND GAVE

HIM MY SWORN STATEMENT AND THE NOTES FROM NICK MILLER. DET JONES STATED ITS GREAT INFORMATION AND THAT THEY'LL MORE THAN LIKELY NEED ME TO TESTIFY, TO WHICH I AGREED.

MY LAWYER MR. LIR PATRICK DERIEG GOT IN TOUCH WITH MY THEN SOLICITOR MR. BRETT PERRY AND I'LL ONLY ASSUME DET JONES TALK TO BRETT PERRY TOO, CAUSE MY LAWYER CAME TO ME IN JULY AND SAID BRETT PERRY AGREED TO A TIME SERVED PLEA AND SET MY GUN CHARGE ASIDE FOR A YEAR AND THAT IF I DON'T HAVE NO TROUBLE WITH THE WIFE WITHIN THAT YEAR, HE'LL GRANT PROBATION.

I AGREED, ESPECIALLY SINCE I WAS GOING BACK TO MARYLAND TO BE FAR AWAY FROM THE EX-WIFE.

WE WAS DIVORCED JUNE 28, 2013, MY PLEA DATE WAS JULY 31, 2013.

BRETT PERRY TOLD MY LAWYER (DERIEG) TO REACH OUT TO LUCK CAMPBELL OUT OF BEING CURTEOUS SINCE SHE'S PROSECUTING NICK MILLER'S CASE AND EXPLAIN MY PLEA AND SEE IF SHE'S OKAY WITH IT.

WELL, MY LAWYER REACHED LUCK CAMPBELL'S ASSISTANT JOANNA MCQUFFIE AND EXPLAINED EVERYTHING TO HER.

WHATEVER WAS SAID BETWEEN LUCK CAMPBELL AND JOANNA MCQUFFIE, MY CASE WAS TAKEN FROM BRETT PERRY AND ASSIGNED TO LUCK CAMPBELL.

MY LAWYER (DERIEG) TRIED ON NUMEROUS TIMES TO GET MY CASE RESOLVED OVER THE LAST TWO YEARS THAT LUCK CAMPBELL HAS TAKEN OVER MY CASE AND TO NO AVAIL I'M STILL HERE.

IT GOT TO THE POINT WHERE I REALIZED THAT LUCK CAMPBELL NEEDED ME ON NICK MILLER TRIAL, CAUSE THE PRESIDING JUDGE (HOOD) ON NICK'S CASE TOLD MY LAWYER THAT NOTHING WILL BE DONE WITH MY CASE UNTIL NICK'S CASE IS OVER OR LUCK TOLD MY LAWYER THAT,

IM NOT SURE.

MY LAWYER ASSUMED THAT AFTER NICK'S TRIAL (WHICH WAS IN MARCH 2015) IS OVER THAT LUCK CAMPBELL WOULD GIVE MY CASE BACK TO BRETT PERRY, CAUSE ITS NO REASON FOR HER TO KEEP IT.

NICK MILLER WAS SENTENCE TO LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE.

WHICH I BELIEVE LUCK CAMPBELL USE MY STATEMENT ON NICK, THE NOTES HE WROTE ALONG WITH THE FACT I WAS WILLING TO TESTIFY AGAINST HIM TO GET HIM TO PLEA OUT TO LIFE. HOW I KNOW THIS? CAUSE I RECIEVED WORD THROUGH DIFFERENT INMATES THAT NICK SAID HE'S GONNA GET ME ALONG WITH, I TRIED TO TALK WITH FIELDING PRINGIE ON A MATTER AND SHE SAID I CANT TALK TO ~~HE~~ CAUSE I REPRESENT NICK MILLER. SO I KNOW THEY KNOW ABOUT ME.

MY LAWYER (DERIEG) TALK TO ME IN MARCH AFTER NICK PLEAD OUT TO LIFE AND WAS CONFIDENT THAT LUCK WOULD GIVE MY CASE BACK TO BRETT PERRY. SINCE NICK CASE WAS OVER AND LUCK DIDN'T NEED ME ANYMORE, IT WAS FAVORABLE THAT FOR MY EFFORT I COULD POSSIBLY GET A TIME SERVED PLEA TO GET OUT, MOVE ON WITH MY LIFE AND GO BACK TO MARYLAND.

BUT, LUCK CAMPBELL REFUSES TO GIVE MY CASE BACK TO BRETT PERRY AND NOW HAS A TRIAL DATE SET FOR JULY 27, 2015 AT 9 AM AND THAT IF I WANT TO TAKE A PLEA NOW, IT WILL BE FOR 20+ YEARS.

FIRST OF ALL, IM 100% INNOCENT OF THESE CHARGES AGAINST ME. FURTHERMORE, LUCK CAMPBELL ONLY TOOK MY CASE FROM BRETT PERRY TO FURTHER SUPPORT A CONVICTION ON NICK MILLERS CASE

BRETT PERRY IS A VERY QUALIFIED SOLICITOR TO MAKE A FAIR OUTCOME ON MY CASE. IF HE WASN'T,

THAN I'M QUITE SURE HE WOULDN'T BE A SOLICITOR.

ONLY REASON I WAS READY TO PLEA THIS CASE OUT OVER TWO YEARS AGO, CAUSE I HEARD OF OTHER INMATES SITTING IN THIS JAIL TWO, THREE AND FOUR YEARS WHICH I WASN'T READY TO DO AND LOOK AT IT NOW I'VE BEEN IN THIS JAIL THIRTY ONE MONTHS.

MY CASE WOULD OF BEEN RESOLVED IF LUCK CAMPDELL DIDN'T TAKE MY CASE FROM DRETT PERRY AND HAVE JUDGE HOOD PUT MY CASE ON HOLD UNTIL NICK'S CASE WAS OVER.

FAIR IS FAIR, ALL I ASK IS THAT MY CASE BE GIVING BACK TO DRETT PERRY AND ALLOW HIM TO RESOLVE A DISPOSITION THAT HE SEES FIT FOR THESE CHARGES.

BUT LUCK IS NOW TRYING TO PUT ME IN PRISON WITH NICK MILLER FOR 20+ YEARS. THAT'S NOT FAIR.

"CASES TO REFERENCE TOO."

① WILLIAM M. CANLEY - ATTEMPTED MURDER DOMESTIC VIOLENCE, FAILURE TO STOP BLUE LIGHTS. SENTENCE TO FIVE (5) YRS NON VIOLEN STAYED IN JAIL 26 MONTHS, 40 YRS OLD. BEEN TO PRISON THREE TIMES. PUNCHED HIS WIFE, KICKED HER, THREW A FLAT SCREEN T.V ON HER AND BUST HER IN THE HEAD WITH A GLASS CANDIE. GOES HOME OCTOBER 2015. JUDGE LEE GAVE THE PLEA, LAWYER WAS TRACY PINNOCK, SOLICITOR CONRAD.

② RANDY GRIFFIN - ATTEMPT MURDER, SENTENCE TO THIRTY (30) MONTHS TIME SERVED. 42 YRS OLD, IN AND OUT OF PRISON ALL HIS LIFE, EXTENSIVE RECORD. VICTIM DIED TWICE ON THE OPERATING TABLE.

I COULD GO ON AND ON WITH NUMEROUS CASES, BUT IT'S NOT NECESSARY. YOU CAN SEE MY POINT. I DIDN'T
END

DO NOTHING AND THE INFAMOUS AND NOTORIOUS LUCK CAMPBELL IS
 TRYING TO GO ALL OUT AND PUT ME IN PRISON FOR 20+ YRS
 IF LUCK WILL REVIEW ALL THE FAVORABLE
 EVIDENCE THAT MY LAWYER HAS SUBPOENA FOR, IT WILL SHOW
 HER THAT MY EX-WIFE LIES TO GET HER WAY, MANIPULATES TO
 GET HER WAY, COMITTS FRAUD TO GET HER WAY AND COMITTS
 INFADILITY TO GET HER WAY.

ENCLOSED IS A COPY OF A MOTION TO
 RELIEVE SOLICITOR FROM MY CASE

THE FACTS PRESENTED IN THIS LETTER IS REASON
 TO GRANT SAID ATTACH MOTION.

RESPECTFULLY SUBMITTED
 MR SHERWIN A. GREEN
 #611720

DATED;

C.C.
 LIR PATRICK DERIEG
 ATTORNEY AT LAW

LUCK CAMPBELL
 FIFTH CIRCUIT SOLICITOR

HONORABLE JUDGE
 ANDREA BENJAMIN

SHERWIN A. GREEN
 DEFENDANT

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Kershaw	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SHERWIN GREEN,	)	
	)	
DEFENDANTS,	)	

July 24, 2015
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

JOANNA MCDUFFIE, ASSISTANT SOLICITOR
LUCK CAMPBELL, ASSISTANT SOLICITOR
MEGHAN WALKER, ASSISTANT SOLICITOR
Attorneys for the State

LIR DERIEG, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

1 THE COURT: Okay. We're on the record. This is a
2 Kershaw County case. Mr. Green is where?

3 (Indicating)

4 Come on down, Mr. Green.

5 Represented by Mr. Derieg of the private bar, and the
6 State is present and represented by Meghan Walker, Joanna
7 McDuffie, and Luck Campbell.

8 Come on over here and have a seat next to your
9 lawyer, okay.

10 (Defendant complies.)

11 Okay. These are your motions, Mr. Derieg?

12 MR. DERIEG: Yes, Your Honor.

13 THE COURT: Okay. Go ahead.

14 MR. DERIEG: I think just commonsense wise, I think
15 the motion to dismiss all charges would be the most
16 appropriate one to be first.

17 THE COURT: Okay. And let's start with him waiving
18 jurisdiction and agreeing to have the case heard here
19 today.

20 MR. DERIEG: We do waive jurisdiction, agree to have
21 the case heard today, if you'd like to hear that from
22 Mr. Green.

23 THE COURT: Mr. Green?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Stand up.

1 Has anybody forced you or threatened you to get you
2 to make that decision?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you making it freely and voluntarily?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand you have a
7 constitutional right to have your case heard in Kershaw
8 County?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand you're not in Kershaw
11 County today?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. And are you under the influence of
14 any alcohol or drugs?

15 THE DEFENDANT: No.

16 THE COURT: Okay. Thank you very much.

17 All right. Go ahead, sir.

18 MR. DERIEG: Your Honor, I handed up earlier to the
19 bench a -- approximately a 23-page memo in support of
20 motions to dismiss all charges.

21 With Your Honor's permission, I'd like to make it a
22 Court's Exhibit.

23 THE COURT: Okay.

24 MR. DERIEG: Additionally -- may I approach?

25 THE COURT: Yes, sir.

1 MR. DERIEG: Additionally, Your Honor, the affidavits
2 that are in the packet --

3 THE COURT: Okay.

4 MR. DERIEG: -- of exhibits are unsigned,
5 unnotarized. That's the original, true original copy of
6 the signed, notarized affidavits.

7 Additionally, Your Honor, when we get to that point
8 should Your Honor wish to inquire from Mr. Phillips or
9 Investigator Phillips about the investigation that he did,
10 he is here to --

11 THE COURT: Okay.

12 MR. DERIEG: -- answer Your Honor's questions.

13 THE COURT: Thank you.

14 MR. DERIEG: This motion to dismiss all of
15 Mr. Green's charges comes by way of a violation of his
16 Sixth Amendment right to a speedy trial.

17 I think just logically it will help if I just give
18 Your Honor a little background on this case. This case
19 involves Mr. Green being held for a period of 33 months
20 from the time of his arrest until July 27th which is
21 Monday when his trial is scheduled.

22 Your Honor, Nicholas Miller was arrested and charged
23 with murder, kidnapping and several other charges. He was
24 served. He was arrested in June of 2012 and served a
25 notice of State's intent to seek the death penalty in

1 October of 2012.

2 In November -- on November 28th, 2012, Miller
3 approached a man named Vincent Missouri. He asked Mr. --
4 he asked Vincent Missouri if Vincent Missouri would kill
5 another witness on the outside in order to help Miller's
6 case.

7 Mr. Green was arrested the first time on
8 November 26th but ultimately has been continuously
9 incarcerated since December 4th.

10 Approximately two weeks after Mr. Green arrived at
11 the Kershaw County Detention Center, Mr. Miller also
12 approached Mr. Green with the same -- with the same offer
13 to pay him money to have somebody killed on the outside.

14 Mr. Green and Mr. Missouri both went and spoke with
15 Investigator Jamie Jones, and you'll see in the exhibits,
16 Your Honor, that Nick Miller was charged with solicitation
17 of a felony twice, both -- once for the one for Mr. Green,
18 the other with Mr. Missouri.

19 Mr. Missouri was arrested approximately three weeks
20 before Mr. Green. Mr. Missouri initially had the same
21 prosecutor as Mr. Green.

22 Mr. Missouri was allowed to plead after only two
23 months of incarceration to a time served 60-day sentence
24 of distribution of crack.

25 Mr. Green also had a plea deal worked out through

1 myself with Deputy Solicitor Brett Perry. Upon finding
2 out about that plea agreement, that case was taken away
3 from Brett Perry and given to Ms. Campbell.

4 Since then we have not been able to -- prior to Nick
5 Miller's case being adjudicated or disposed of in March of
6 this year, the State was unwilling to bring Mr. Green to
7 court either for the plea that he had agreed to with
8 Deputy Solicitor Perry back in 2013 or even to trial.

9 In fact, it was asserted to me multiple times that
10 they weren't going to do anything to Mr. Green until after
11 Nick Miller's trial was over.

12 In preparing for this, especially last night, I came
13 to look at Vincent Missouri and Sherwin Green, and both
14 people were arrested almost at the same time. They had
15 this same offer made to them.

16 They both approached the State. They were both going
17 to have to be key witnesses in the case against Nick
18 Miller. However, Mr. Missouri was allowed to plead guilty
19 two months later and go off and face other charges in
20 other counties.

21 The only difference that Mr. Green's situation had
22 that Mr. Missouri's situation didn't have was that Mr. --
23 was that Mr. Green has charges that he must face in
24 Maryland and Virginia as opposed to other counties around
25 South Carolina.

1 There is a hold, an extradition hold, on Mr. Green
2 here in South Carolina, so there was no chance that he was
3 going to be out on the street running around even with the
4 plea deal that Solicitor Perry had given us.

5 Of December 2nd, Your Honor, when he was able to get
6 out of jail on a personal recognizance bond -- when he was
7 able to get a reduced bond by way of Damien Burris,
8 Investigator Burris was having him get out and set people
9 up for illegal gun buys.

10 He was able to set up a gentleman by the name out of
11 Terrell who was arrested with an A.K. 47 semiautomatic
12 assault rifle -- or assault rifle, as well as two illegal
13 handguns.

14 If you'll look at Exhibit B, Your Honor, it's a
15 letter that Mr. Green has written in preparation for this.
16 This is an account of everything that he has done on
17 behalf of the State since he has been incarcerated for the
18 last 33 months, and several of the things that Your Honor
19 was expounding upon and talking about in the last hearing
20 that was in front of you, I think, really applied here.

21 Your Honor, as you see sitting in the back of the
22 courtroom are correctional officers from Alvin S. Glenn
23 Detention Center. We have Correctional Officer Hickman,
24 Lieutenant Sligh, and Correctional Officer Starling.

25 As you'll see, if you look on number three of Exhibit

1 B, it details how Mr. Green helped Starling and how he
2 helped Sligh rid the jail of several officers that were
3 bringing contraband into the jail.

4 More importantly, Your Honor, look at number one, a
5 guy named Riley Furman. Riley Furman killed and
6 dismembered a man and hacked him into eight pieces. He
7 decided that he also wanted to kill Correctional Officer
8 Hickman who is -- she is seated right here in the middle,
9 Your Honor.

10 Mr. Green found out the about the plot to kill
11 Correctional Officer Hickman, and he went forward to
12 Lieutenant Sligh, and as a result, there was a shakedown
13 team that was instituted. A very long shank was found.
14 The crisis was averted, and Ms. Hickman was not injured.

15 It's been essentially posited to me that she does
16 feel very fortunate to even be alive and gives Mr. Green
17 credit for that.

18 Further, while Mr. Green was still in the Kershaw
19 County Detention Center, Nick Miller helped hatch a plan
20 with Jerome Lewis, Frank Singleton, and others to try and
21 escape from the Kershaw County Detention Center.

22 Again, Mr. Green pretended to acquiesce to the plan,
23 and as soon as he could get away from those gentlemen who
24 -- two of the three are already serving life sentences,
25 and one is awaiting trial for murder.

1 He met with Jamie Jones again to tell him everything
2 he knew. Green also contacted Detective Burris and
3 Detective Coleman of the Camden Police Department and gave
4 them information regarding unsolved cold case robberies or
5 armed robberies committed by Singleton and Lewis.

6 After all of the help that he had given there in the
7 Kershaw County Detention Center, he had to come back to --
8 he had to come over to Richland County for safekeeping,
9 and that's where he proceeds to help CO Hickman, CO
10 Starling and Lieutenant Sligh.

11 So for the entire -- for almost the entire pendency
12 of his 33 months in jail, he has been doing nothing but
13 try and help the State, left and right, either to offer
14 his help and to convict a death penalty defendant or try
15 to save the life of one of the corrections officers.

16 Your Honor, on December 13th, 2012 prior to a public
17 defender being appointed to Mr. Green, he filed his own
18 motions for discovery and for a speedy trial. Mr. Green's
19 discovery motion was answered by the solicitor by
20 delivering his discovery to him in jail.

21 However, the speedy trial motion was never called to
22 court, and on June 3rd, 2013, Green filed a motion to
23 dismiss for failure to provide a speedy trial on his own
24 behalf because his counsel at the time refused.

25 Again, Green's motion was never called to court, and

1 you can see the motion that Mr. Green wrote and the
2 frustrated letter that he sent later on to Joyce McDonald
3 being very upset that his motions had not been heard. He
4 had asserted his speedy trial right, and he had never been
5 brought to court for it.

6 Fast forwarding about a month-and-a-half, I got
7 appointed to this case, Your Honor. On July 31st, 2013,
8 we had a speedy trial motion in front of Your Honor over
9 in Camden.

10 It is my client and my recollection, and even
11 speaking with Deputy Solicitor Perry, he agrees that the
12 motion was granted but Your Honor was willing to give the
13 State a little bit of leeway in terms of a reasonable
14 amount of time to dispose of a death penalty case. We
15 were only eight months into the case at that point.

16 On Monday when this trial is scheduled to come to
17 court, we are almost exactly two years since the speedy
18 trial motion was heard and granted.

19 Green was indicted for burglary first degree and
20 kidnapping on May 15th, 2013. I was appointed on
21 July 3rd, 2013. Very shortly thereafter, late July or
22 early August is when Deputy Solicitor Perry and I were
23 able to come to an agreement as to how we felt best to
24 dispose of Mr. Green's case.

25 Mr. Green accepted the plea offer, but as I discussed

1 with Your Honor before, when that plea offer and one of
2 the potential witnesses in Nick Miller's trial was relayed
3 to Columbia, that case was taken from Deputy Solicitor
4 Perry and given to Ms. Campbell.

5 Additionally -- well, the agreed upon deal for
6 Green's charges of burglary first and kidnapping were to
7 reduce burg first to burg second and kidnapping to CDV
8 second for a negotiated sentence of three years.

9 His gun charges were to be left pending and him go
10 and take care of what he had to take care of in Maryland,
11 and when called upon to come back to South Carolina, his
12 gun charges would have been taken care of after he gave
13 cooperation in the death penalty case.

14 If Your Honor looks at Exhibit E, you'll see that as
15 early as December 2013, I was contacting the State about
16 getting Mr. Green's cases set for trial, and despite
17 multiple schedulings of multiple status conferences either
18 by phone or in person over in Camden, I don't -- I
19 genuinely don't remember anyone that is now involved in
20 this prosecution of Mr. Green ever intended -- I think the
21 best that we got was this last one where some dates were
22 given to the Camden solicitors and told them which dates
23 the prosecution preferred to try this case on.

24 Again, I was told multiple times that the State was
25 not going to do anything until after Mr. Miller's case had

1 been heard, but again in stark contrast to Mr. Green,
2 Mr. Missouri fared much better.

3 He was arrested on November 16, 2012 for distribution
4 of crack. He was approached 12 days later by Miller. The
5 same solicitor's office that would come to refute -- that
6 would come to refuse to honor Mr. Green's initial plea
7 deal is the same solicitor, very same solicitor's office
8 that ends up allowing Mr. Missouri with the same exact
9 testimony to give to plea out after two months for a
10 60-day time served sentence.

11 As I've -- and as I've said, the only thing that I
12 can see different between the situations of Mr. Green and
13 Mr. Missouri other than the charges were the fact that one
14 was going to go to jail in other counties in South
15 Carolina; whereas, Mr. Green was going to go to jail in
16 Maryland.

17 It's believed that the near 30-month delay between
18 Miller being noticed for the death penalty in his eventual
19 plea was due to situations surrounding the law enforcement
20 agent who took Mr. Miller's confession, Sheriff Sam
21 Parker, from -- although the court sealed the records, and
22 there was gag order on this case, from what I understood
23 -- at least through the media, there were some real issues
24 with Sam Parker getting a confession out of Nick Miller
25 and saying that he would take the death penalty off the

1 table if he would just confess and tell -- and tell the
2 truth.

3 As Your Honor knows, that has some real problems if
4 they were to come to court particularly to try him for the
5 death penalty.

6 If you throw out Sheriff Parker's testimony, then
7 Vincent Missouri and Sherwin Green would have had to have
8 been key witnesses against Nick Miller to get him to even
9 take the guilty plea of life that he took.

10 The State met with the victim the first time in
11 February of 2013 prior to Solicitor Perry and I coming to
12 an agreement.

13 The next time they met with the alleged victim in
14 this case wasn't for more than two years. Having filed
15 multiple discovery motions, Your Honor, we're still just
16 getting discovery in here in the last couple of days to
17 two weeks.

18 Discovery that, at least to Mr. Green's assertion, is
19 very, very suspect particularly regarding his cell phone.
20 There are calls that he says were made to and from his
21 phone prior to it being taken from him that currently are
22 no longer on there.

23 There are several missing text messages, and based on
24 the length of time that Mr. Green has had to sit -- and we
25 were not given the cell phone records until approximately

1 -- the cell phone dump until approximately two weeks ago,
2 the contact information that we were relying on was
3 from 2012.

4 Ultimately, myself and Mr. Green were able to
5 decipher and pull out several -- contact information of
6 several witnesses that we -- that Mr. Green thought would
7 be very significant to his case.

8 I got with Mr. Phillips, a private investigator, put
9 him to work to find several of these witnesses. Many of
10 the witnesses were found and interviewed which Your Honor
11 has in front of you the four affidavits regarding the four
12 most significant witnesses.

13 Mr. Green was actually prejudiced by this lengthy
14 delay because two of his witness have left the State of
15 South Carolina. One witness has decided that it's not in
16 his best interest to get involved, and the other witness
17 is having some severe memory problems most likely due to
18 his recreational habits over the last three years.

19 Some very key witnesses to Mr. Green in which the two
20 that are unavailable -- on page seven, Your Honor, I
21 proffered the testimony that we believe that they would
22 have given, and the reason that we were trying to locate
23 them and still trying to locate them because we find very
24 significant to his case.

25 The receipt on the call was Sherwin's girlfriend

1 while he was married to the victim. There are phone calls
2 and text messages between Ms. McCall and the -- and the
3 victim in this case where the victim essentially says,
4 "Well, if I can't have him, I'm going to put him away
5 where nobody can get to him."

6 Your Honor, Katrina Lewis would have evidence and
7 testimony to show that on the incident date, day of arrest
8 of December 4th, 2012, Mr. Green was, in fact, invited
9 over to the house by the alleged victim.

10 In a burglary case where the only unlawful --
11 potential unlawful entry deals with the violation of a no
12 contact order, having the victim herself or having someone
13 that personally witnessed text messages that the victim
14 had sent the defendant about inviting him over would be
15 fairly significant.

16 Your Honor, the sixth amendment to the United States
17 Constitution provides for the right to a speedy trial for
18 all -- for all accused.

19 The seminal case is a 1972 case in Barker v. Wingo
20 which I have handed up to Your Honor is the top -- the top
21 set of paperwork case law that -- it's a balancing test to
22 decide whether or not someone has had their sixth
23 amendment right violated for the lack of a speedy trial.

24 The first is the length of delay, and if you'll look
25 in Exhibit K, there's about 20 different cases from the

1 Supreme Court of -- South Carolina Supreme Court, Georgia
2 Supreme Court, 11th Circuit, 6th Circuit, 4th Circuit, 5th
3 Circuit.

4 They all use this balancing test and all say
5 presumptively more than one year triggers the analysis to
6 take the next step.

7 If you look at the second -- the second prong whether
8 or not he asserted his right to a speedy trial -- and as
9 Your Honor has seen, he asserted that on his own and
10 asserted it through me and was granted that right.

11 When you look at the third factor, it's the reasoning
12 for the delay. Now, Mr. Green did not contribute to the
13 delay in any way, shape, or form.

14 The reason for the 33-month delay is not attributable
15 to Mr. Green in any way, shape, or form, and the only
16 reason that I can see -- or that has been posited to me
17 from the State that Mr. Green was not allowed to go to
18 court prior to Monday was because they wanted to take
19 care -- they wanted to secure him to be in the State of
20 South Carolina to testify against Nick Miller if they
21 needed to, and then his case wasn't going to be handled
22 until afterwards.

23 Your Honor, there's several cases that if you'll look
24 in Exhibit K that talk about bad faith, long -- any delay
25 in bad faith by the State or excessive delays, which 35

1 months has been found to be -- in the United States
2 Supreme Court has been found to be far exceeding meeting
3 any actual prejudice; that a 35-month delay, just having
4 to sit there is bad enough for all the reasons that make
5 jail awful, and all the potential reasons that your
6 defense can be damaged, hurt, destroyed, just gone away
7 completely.

8 Thirty-five months far exceeded the amount of time
9 that the State should have had, and as I have mentioned to
10 Your Honor before, we're at month 33 right now. Then you
11 get -- then if you have so much on the first three
12 factors, you don't even have to get to the fourth.

13 If the -- if the bad faith length of delay or just
14 the length of delay itself are bad enough, you don't even
15 have to get to the fourth factor for actual prejudice.

16 You'll see in the case law that I provided to Your
17 Honor that most of the cases don't even get to an actual
18 prejudice because there isn't an actual prejudice.
19 They're just a very long length of time that a defendant
20 has been sitting behind bars.

21 But in this case, there is actual definitive evidence
22 that he has been damaged. He's lost two witnesses. We
23 look at the evidence that we have been given to look at,
24 which we're only allowed to have the physical evidence and
25 look at it in the last week to ten days is very suspect.

1 There is -- there is a silver voice recorder that
2 currently has a little blue tape inside of it. When you
3 try and hit play on the little blue tape, it just squeals,
4 and you can't hear anything. It's inaudible at this
5 point.

6 Mr. Green contends that there was a blue tape and a
7 green tape that were both with that recorder, and that he
8 recorded the conversations that they had that night in the
9 house.

10 Because of this length of delay, this green tape no
11 longer exists, and the blue tape doesn't work. So besides
12 having his witnesses disappear on him or turn against him
13 for whatever their reason or smoke so much weed that they
14 can't remember what happened in December of 2012, Mr.
15 Green continually loses his ability to defend himself.

16 The 33-month delay between Mr. Green's arrest and
17 detention was uncommonly long, and in light of the case
18 law, the unconscionable delay obviously triggers the
19 speedy trial analysis as it is presumptively prejudicial.

20 Although this case was a very serious one, it is not
21 a complicated case to try. Primarily, the trial involved
22 testimony of one eyewitness and a handful of law
23 enforcement officers regarding fairly simple to prove
24 charges. The extraordinary length of delay weighs heavily
25 against the prosecution in this -- in this regard.

1 Your Honor, in the four cases that I've handed up to
2 you directly, I think that -- Barker I handed up to you
3 because it's the balancing test. It's the seminal case.

4 Doggett I find particularly important because a bad
5 faith delay means an automatic dismissal. No matter how
6 short a period of time it was, a bad faith delay means
7 automatic dismissal, and trying to hold Mr. Green in jail
8 while they wait to make decisions about Nick Miller, and
9 they're waiting to make decisions on Nick Miller because
10 they have to wait to make decisions on Sam Parker is
11 clearly a violation of his constitutional rights.

12 Your Honor, if you'll look at the last case that I
13 handed up to you, State v. -- State v. Buckner. It's --
14 it came down about a year-and-a-half ago. It's from our
15 neighboring State of Georgia and their supreme court.

16 They found a 10-month delay for the prosecution
17 deciding whether or not to proceed in a death penalty
18 against Buckner himself violated the sixth amendment right
19 to a speedy trial, and they dismissed his case entirely
20 because of a 10-month delay in deciding whether or not to
21 go and give him the death penalty.

22 Your Honor, Mr. Green sat for -- well, if we back it
23 up to March, it would be 29 months while they were
24 deciding what to do with Nick Miller.

25 For all the reasons that I discussed, he didn't have

1 to sit for ten months and wait on the State to decide what
2 to do to him.

3 He had to sit for 29 months while the State decided
4 what to do to Nick Miller as a process of deciding what to
5 do about Sam Parker.

6 I think that the case law is very, very clear that
7 you can't do that. That is a bad faith delay, and keeping
8 Mr. Green incarcerated is a clear violation of his sixth
9 amendment right.

10 And I'll look -- in the case that -- as soon as -- as
11 soon as I started writing this motion and started thinking
12 about this motion, this case just screamed Langford. I
13 mean, it's the case that decides that it's
14 unconstitutional for the solicitors to control the docket
15 and for this very reason.

16 In Langford, the period of time wasn't long enough to
17 create the presumption of damage. We're talking about --
18 we're talking about 23 months for Langford. Mr. Green has
19 spent almost an entire -- another year in jail on top of
20 what Langford did.

21 I believe it's on approximately page 16 of the
22 Langford opinion that is in front of Your Honor. The
23 second -- the second paragraph on that page reads,
24 "Finally, we must consider the prejudice Langford
25 suffered." Using the Barker factors, the Supreme Court

1 has identified three types of prejudice the right to a
2 speedy trial seeks to prevent: Oppressive pretrial
3 incarceration, which I think the case law, if you look and
4 read the case law in Exhibit K is very clear that 33
5 months in jail is an oppressive -- is an oppressive
6 pretrial incarceration.

7 Obviously, there is anxiety stemming from being
8 publicly accused of a crime. Then you have the
9 possibility that the accused's defense will be impaired
10 due to the death, disappearance of witnesses, or the loss
11 of memory with the passage of time.

12 One of the most serious -- of these, the most serious
13 is the last because the inability of a defendant
14 adequately to prepare his case skews the fairness of the
15 entire system.

16 And again, Langford was only in jail for two years
17 and nothing -- none of his defense was impaired.
18 Mr. Green has been in jail for three years. He has lost
19 four witnesses.

20 We believe that there's been -- something happened to
21 a few pieces of the evidence that make them call -- that
22 are -- call them into question.

23 I'm almost done, Your Honor. Beg the Court's
24 indulgence just a moment.

25 (Pause).

1 And I'll cite Doggett which your -- Your Honor also
2 has. When Doggett discusses prejudice towards a
3 defendant, the government put forward reasonably diligent
4 efforts to try the defendant. Then the defendant must
5 show specific prejudice to his -- to his defense.

6 No effort ever was made towards trying Mr. Green, but
7 in fact, through roadblock after roadblock after roadblock
8 with nothing but just pure silence for most of the time
9 preventing him from getting into court.

10 But on the other end of the spectrum, if the
11 government intentionally held back its prosecution to gain
12 an impermissible advantage, then the case for dismissal is
13 overwhelming. They intentionally held Mr. Green back to
14 prosecute another person.

15 There is no reason. Vincent Missouri proved that
16 there was no reason that he couldn't have taken the plea
17 that he was originally offered or been taken to trial
18 earlier because in the -- being incarcerated, he is still
19 able to come back and testify.

20 In fact, if he had been incarcerated, it is -- as
21 Your Honor just did with the motion prior to this hearing,
22 he would have even more incentive to come back and
23 testify.

24 And I just believe that the 20 cases that are
25 summarized there in Exhibit K and the four cases that I've

1 given you in total make it very, very clear that the type
2 of delay that Mr. Green suffered is enough by itself to
3 warrant dismissal.

4 However, we take it a step further. Not only do we
5 have the presumptive damage because he was in jail for
6 three years, and the State refused to bring him to court
7 but also we have the particularized damage that we've --
8 that I've hashed out with Your Honor over and over and
9 over again.

10 And going towards him not having to prove any
11 specific prejudice, he has no burden. The burden at this
12 point under the -- under the Barker/Wingo analysis, once
13 the defendant has met both the threshold of the length and
14 the threshold of him having asserted his right to a speedy
15 trial, then the burden shifts to the -- to the prosecution
16 to rebut the presumption that the length of time that
17 Mr. Green sat in jail wasn't oppressive and shouldn't be
18 dismissed or even without any particularized damage.

19 But as you have seen, Your Honor, he has prejudice.
20 He has very particularized prejudice not only with his
21 defense now being completely gutted but also that
22 oppression in trial, pretrial incarceration, and any
23 anxiety and concern that he's gone through.

24 I've met with this man on a monthly basis, sometimes
25 on a biweekly or even weekly basis over the last three

1 years, and if Your Honor is interested in reading, I can
2 provide you volumes of letters that he has written me that
3 very much detail the kind of depression and anxiety and
4 fear that he is dealing with while he is sitting in jail
5 for three years awaiting his speedy trial.

6 Your Honor, the constitutions of the United States
7 and of South Carolina, the Supreme Court of South
8 Carolina, the Supreme Court of Georgia, the 11th Circuit,
9 the 5th Circuit, and the 4th Circuit is my opinion, Your
10 Honor, that they all would demand that this case be
11 dismissed with prejudice.

12 Otherwise, the State has given unfettered discretion
13 to abuse its prosecutorial authority unchecked. Your
14 Honor is the Chief Administrative Judge for the 5th
15 Circuit for criminal -- for criminal court, for General
16 Sessions, which is primarily the reason I wanted to come
17 before Your Honor.

18 Your Honor has the opportunity to serve as a check on
19 the State's unfettered prosecutorial authority in the
20 absence of any clear directive from our Supreme Court.

21 In a post-Langford world, we are still dealing -- we
22 more or less still deal with the same problems of clients
23 having to do solicitor time. They're in jail only because
24 the solicitor refuses to bring their case to court.

25 There is no other remedy that Mr. Green or any other

1 defendant as a matter of public policy could see, no sort
2 of redress that they could get from the court, save
3 dismissal, when you've sat in jail for three years.

4 You had the emotional roller coaster of fear and
5 anxiety. Then when you finally, after two-and-a-half
6 years, close to three years of him asking to see his phone
7 contact list and over two years of me asking for that to
8 finally get the contact information some ten days ago and
9 then to discover that we can't find these witnesses that
10 he so diligently is relying upon, I can't imagine there
11 being any more significant prejudice, actual prejudice,
12 specific prejudice to a defendant than what has happened
13 to Mr. Green.

14 THE COURT: All right. All right. I got it.

15 Who is talking?

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

18 Your Honor, just a little procedural history that I
19 need to correct. This defendant was arrested on
20 December 4th, 2012.

21 He did give information regarding Nicholas Miller
22 towards the midpart of December of 2012. As a result, he
23 was moved to Alvin S. Glenn December 27th, 2012.

24 During that time, he was represented by the Public
25 Defender's Office. He has been continuously represented

1 during his incarceration, and South Carolina doesn't
2 recognize hybrid representation.

3 I believe that Mr. Derieg even acknowledged that he
4 asked his public defender to file a motion for dismissal
5 based on speedy trial, and they denied to do so, Your
6 Honor.

7 Your Honor, Mr. Derieg was then appointed due to a
8 conflict with the Public Defender's Office because of
9 Nicholas Miller.

10 Your Honor, we did file notice of intent to seek the
11 death penalty on Nicholas Miller. That case was quickly
12 assigned to Judge Craig Brown, the Honorable Craig Brown,
13 Your Honor.

14 A scheduling order was one of the first things done
15 in that case. Judge Brown scheduled the trial for
16 September 8th, 2014, Your Honor. That was in place at the
17 time, I believe, when this defendant gave information.

18 Your Honor, we have spoken to Deputy Solicitor Brett
19 Perry in Kershaw. He informs us that he was in
20 discussions with Mr. Derieg about possible plea outcomes;
21 however, no plea offer was extended.

22 Further, he acknowledges that Mr. Derieg did file a
23 motion for a speedy trial. I believe that motion was
24 filed on July 31st at 1:46 p.m., Your Honor.

25 Mr. Derieg alleges in his motion that it was heard by

1 Your Honor on that day. We checked with the Clerk's
2 Office in Kershaw. We spoke with Karen. Karen
3 represented that Your Honor wasn't on the bench that day,
4 but it was Judge Benjamin; and that if a motion is granted
5 in Kershaw, it's their practice that if the judge orders
6 defense counsel or either party to write an order, then
7 that's how it's done.

8 If the judge does not order that, then the clerk's
9 office writes a form order from the bench. There is no
10 order granting, denying, or acknowledging that this motion
11 was heard on July 31st or any day after in Kershaw.

12 However --

13 THE COURT: Was a motion filed?

14 MS. McDUFFIE: The motion was filed at 1:46 p.m. on
15 July 31st.

16 THE COURT: Okay. But according to you, there was no
17 record in the clerk's office of it ever being heard.

18 MS. McDUFFIE: Right. Mr. Derieg alleges that it was
19 heard by Your Honor; however, Karen from the Clerk's
20 Office in Kershaw, says that she believes Judge Benjamin
21 was on the bench that day.

22 Ms. Campbell also checked with Judge Benjamin's
23 secretary, Jerrell. Jerrell also said that Judge Benjamin
24 was in Kershaw for General Sessions that day, so I don't
25 know how to reconcile that, Your Honor.

1 Further, Your Honor, even if we take what Mr. Derieg
2 is saying as true, he said that the motion was granted but
3 said that the court -- and I quote, "The court granted the
4 motion and said the State would be given a reasonable time
5 to resolve Miller and given no specific timetable as when
6 Green was to be tried."

7 Ms. Campbell was assigned this case towards the
8 middle part of 2013 from the Kershaw office. We don't
9 know exactly how that occurred, Your Honor, but she was
10 assigned the case at that point.

11 Your Honor, Mr. Derieg did make an attempt to contact
12 her. He contacted myself and her. When he and I spoke, I
13 told him that any pleas or anything needed to be run
14 through Ms. Campbell.

15 He again wrote Ms. Campbell an email in December
16 saying, "I need to tell him whether or not he will be
17 needed to testify and whether he will or won't be going to
18 trial."

19 Your Honor, Ms. Derieg's conversations with
20 Ms. Campbell consisted of her informing him that if he
21 wanted to testify against Nicholas Miller, if he wanted
22 benefit for that cooperation, that any plea deals would
23 not be made until after the trial of Nicholas Miller.

24 Your Honor, I believe as you're aware, there became
25 an issue with Sam Parker during the course of the Nicholas

1 Miller trial. Because of that, transcripts had to be
2 obtained.

3 It was a lengthy process in order to get those from
4 the court reporter. There were also some state grand jury
5 materials that had to be obtained, and because of that,
6 Judge Brown continued the trial of Nicholas Miller until
7 Tuesday -- I believe it's Tuesday February 9th, 2016, Your
8 Honor. That was the official trial date for Nicholas
9 Miller.

10 It was always represented by Mr. Derieg to our office
11 that this defendant did want to cooperate. He did want to
12 testify against Nicholas Miller. He did want to hopefully
13 receive some benefit for that testimony and cooperation,
14 and that he would wait until the Nicholas Miller case was
15 over before his charges were disposed of.

16 Nicholas Miller ultimately pled guilty on March 4th
17 of this year. After Mr. Miller pled guilty, Ms. Campbell
18 noticed this defendant for trial for the week of June 26th
19 of this year, Your Honor.

20 However, there was a status conference done, I
21 believe, at the end of May. We weren't present, but
22 Curtis Pauling was standing in, Your Honor.

23 Mr. Derieg represented to you that he was protected
24 that week in June and asked for Your Honor not to have the
25 week -- not to have the case called in June but asked for

1 Your Honor continue it until July, and that was done.

2 So it wasn't -- we did notice this case for trial and
3 were prepared to go to trial three months after the
4 disposition of Mr. Miller's case. However, because of
5 defense attorney's schedule, it was continued until July.

6 Your Honor, in terms of the evidence, the first time
7 Mr. Derieg asked me to see the phone, I believe, was
8 towards the end of June.

9 A search warrant was done on that phone for the
10 contents of that phone, I believe the middle of June of
11 this year. So it's not like we were withholding it. It
12 had never been searched. Your Honor, as soon as that
13 information was discovered, we disclosed that to
14 Mr. Derieg.

15 I then made arrangements for Mr. Derieg to view the
16 physical evidence at his request, Your Honor. I called
17 him, I believe it was the week of July 4th.

18 We set up -- I think he was out of town, or there was
19 -- anyway, I don't want to make those contentions. But
20 Your Honor, we met on July 7th at the Camden Police
21 Department for him to look at the phone.

22 He looked at the phone for as long as I believe he
23 could that day or he wanted to that day. He then told me
24 he needed to see it again, and I got the evidence brought
25 over to Columbia and then made it available to him, and he

1 sat in my office for a couple of hours and looked through
2 that.

3 Your Honor, in terms of the missing tape and -- I
4 don't know where that came from. I've never heard of
5 there being a second tape in the photographs of the search
6 warrant.

7 There is no second tape pictured in the photographs
8 to my knowledge, Your Honor. There is no mention of a
9 second tape taken on the return, so I don't know how this
10 delay has made that evidence go missing when that evidence
11 was never collected to begin with, and the State has no
12 knowledge of it.

13 Further, Your Honor, in terms of the witnesses that
14 Mr. Derieg is saying that his client is prejudiced as a
15 result of, Your Honor, there's been no evidence presented
16 to this court that there was any attempt made to contact
17 these witnesses or to make them available for the defense
18 prior to June -- July of this year, Your Honor.

19 So I don't know how -- when the defendant himself
20 made no effort to obtain or contact or do anything with
21 these witnesses, how it is the State that has prejudiced
22 him in this regard.

23 Further, Your Honor, I don't understand what attempts
24 have been made to locate these witnesses other than
25 looking at the phone numbers in his phone, and I don't

1 know that's sufficient to show prejudice that he can no
2 longer find them.

3 Your Honor, the State's position is that there was no
4 plea offer made in this case. There were plea
5 discussions. However, he hasn't shown that he
6 detrimentally relied on that plea and don't believe that
7 that is the case here, Your Honor.

8 We would ask that the motion be denied. We are
9 prepared to go forward in trial on July 27th and further,
10 Your Honor, in the handwritten, I guess letter, that this
11 defendant himself wrote the court that Mr. Derieg attached
12 to his initial motion and sent to the court last week, the
13 defendant himself writes, "It got to the point where I
14 realized that Luck Campbell needed me on the Nick Miller
15 trial, because the judge told my lawyer that nothing would
16 be done with my case until Nick's case is over."

17 Your Honor, I believe that the defense concedes --
18 Your Honor, I believe he says that you said that. The
19 defense concedes that they agreed to wait until
20 Mr. Miller's case was over before we would proceed on
21 Mr. Green's case, and it was their choice to wait so that
22 hopefully he could get some benefit from testifying which
23 did not occur, Your Honor.

24 I don't know how they now want to say that the State
25 intentionally did something or the State prejudiced him by

1 him electing to hopefully get some cooperation for
2 testifying.

3 Your Honor, I would like it to be on the record that
4 from the time of the disposition of Nicholas Miller's case
5 which he chose to wait for until this case was scheduled
6 for trial was three months. It was because of the defense
7 continuance that it's now been pushed to trial.

8 THE COURT: Who set the June trial date? Me, or is
9 that just a standard notice letter?

10 MS. McDUFFIE: Your Honor, we noticed -- Ms. Campbell
11 sent Lir --

12 MS. CAMPBELL: In anticipation of the scheduling
13 conference.

14 MS. McDUFFIE: Correct, Your Honor. Your Honor,
15 there was -- this case was on the status conference list
16 that Your Honor had sent out. We sent him trial notice
17 before that status conference list, and that was done
18 prior to Your Honor's scheduling it.

19 THE COURT: Okay. Okay.

20 MR. DERIEG: Well, Your Honor, the fact that there's
21 no proof that he hasn't looked -- or we didn't look for
22 these witnesses prior to getting the contact information,
23 we -- it was impossible.

24 I asked Detective Damien Burris repeatedly if I could
25 get that phone to get that contact information. I started

1 asking for that stuff in August of 2013, and I never
2 stopped asking for it, either he or Detective Coleman
3 there at the City of Camden.

4 Most of my answers from Detective Coleman was, "You
5 need to talk to Damien Burris," and Damien Burris' answers
6 would be either nonexistent or say he doesn't know where
7 the phone is. Then all of the sudden when the case came
8 to trial, the phone reappears and all of the sudden it's
9 sent off to the Secret Service to have the phone dumped.

10 It was impossible for Mr. Green to be able to get his
11 contact information despite repeated requests to get that
12 contact information, and so it was impossible for him --

13 THE COURT: I mean, you're just going to tell me that
14 you asked the cops about it 15 or 20 times, but you never
15 filed a motion? You never filed a motion to compel? You
16 never send a letter to the prosecutor? You never said,
17 "Where is this? Where is that? I want this. I want
18 that." You never took it up with the judge? You just
19 talked with the cop at the courthouse?

20 MR. DERIEG: I was told that the City of Camden had
21 all of the evidence in their possession, and that's where
22 I went to try to get it.

23 THE COURT: And what's -- I'm not saying you didn't
24 do that, but I mean where is the documentation on that
25 happening?

1 MR. DERIEG: If Your Honor would like, I can pull my
2 phone records and document text messages that I sent.

3 THE COURT: I mean, you don't get it from the cops.
4 You're supposed get it from the prosecutor. When you
5 don't get it in a timely fashion, you're supposed to file
6 a motion to compel.

7 MR. DERIEG: Your Honor, it is almost impossible to
8 speak with members of the solicitor's office unless they
9 want to be spoken to. There are many efforts that I made
10 to try and talk to the Solicitor's Office about this case.

11 I know out of a fear of violating some gag order or
12 protective order on the Nick Miller case that I was
13 stonewalled in my discussions of anything, to include the
14 solicitor himself, when I asked, you know, what's going on
15 here.

16 THE COURT: All right. Why didn't the speedy trial
17 motion get heard? That's what I want to know. I mean, do
18 I need Mr. Perry to answer that question?

19 MS. McDUFFIE: Your Honor, I -- they -- they contend
20 that it was heard.

21 THE COURT: I mean, they say it was heard. I have no
22 record of being in Camden that day, and the way things
23 work in Kershaw County, for the record, is when these
24 pretrial motions are done, the clerk hands you a form.

25 You fill it out. It's almost like a Form 4 for

1 criminal cases that's just unique to Kershaw County.
2 You're telling me that someone, Ms. Kirkland -- that's
3 Karen Kirkland --

4 MS. McDUFFIE: Yes, sir.

5 THE COURT: -- the Criminal Deputy Clerk of Court has
6 no record of any of that happening.

7 MS. McDUFFIE: Correct, Your Honor. We confirmed
8 with her this morning. She has no record of that. She
9 also has no record of your being there on July 31st.

10 THE COURT: Okay. My question is why was a speedy
11 trial motion filed, and it never got heard?

12 MR. DERIEG: Your Honor, I can provide you with email
13 documentation where I communicate with Deputy Solicitor
14 Perry on July 30th about getting -- trying to have
15 Mr. Green transported from Richland County to Kershaw
16 County in anticipation of that motion to solve that.

17 THE COURT: I don't dispute that. I'm not saying
18 that didn't happen but you know.

19 MS. McDUFFIE: Your Honor, we -- we had asked
20 Mr. Derieg earlier when he filed this motion who heard the
21 motion, because we were trying to obtain an order, a
22 transcript, something.

23 THE COURT: Right. That's what I want to know.

24 MS. McDUFFIE: We were -- he told Ms. Walker that
25 y'all -- y'all -- I guess you and him and Brett discussed

1 it, but it was never heard. This motion today, it says it
2 was heard. So I mean, we did everything we knew to do.

3 THE COURT: I mean, here is my question. How doe
4 your client want the benefit of testifying and all that
5 comes from it but also wants the benefit of the speedy
6 trial? I mean, no one is stopping him from pleading
7 guilty. I mean, no one is stopping him. I mean --

8 MR. DERIEG: Well, in fact --

9 THE COURT: I mean, no one -- no one is stopping his
10 defense counsel from looking at the Chief Administrative
11 Judge and saying, "My client wants a trial. He doesn't
12 want to testify against Nicholas Miller. Please schedule
13 it."

14 I mean, none of that is happening. He intentionally
15 waited because he wanted the benefit of dealing and -- to
16 get whatever credit he was going to potentially get or
17 hopefully get or wanted to get or was going to try to get
18 based upon the resolution of the Nicholas Miller case.

19 So I don't understand how the -- I mean, these --
20 these two roads cross. I mean, he is at an impasse. Does
21 he want the benefit of testifying against Miller, or does
22 he want his case resolved?

23 MR. DERIEG: Your Honor, we're here on this motion
24 asking for them to be dismissed.

25 When Ms. McDuffie was speaking particularly about the

1 letter that Mr. Green had written that is attached to
2 defendant's -- to one of the defendant's motions where it
3 talks about -- where she claims that he is waiving his
4 right to trial, or he is acquiescing -- acquiescing to
5 wait, the very next words after where Ms. McDuffie stopped
6 reading are "or Luck Campbell told my lawyer that; that he
7 wasn't going to court until afterwards, until after Nick
8 Miller was over with."

9 Mr. Green at no point acquiesced to not going
10 forward. In fact, I can -- again, I can provide you
11 volumes of letters with him not wanting to testify since
12 he was being held in perpetuity.

13 THE COURT: What's the plea offer now?

14 MS. McDUFFIE: Cap of 20. Your Honor, he was served
15 with notice of intent to seek life without parole based on
16 his numerous violent prior convictions.

17 He was served with that. We told Mr. Derieg that we
18 would take life off the table, reduce burglary first to
19 burglary second violent, and the kidnapping charge he was
20 charged with would be one cap and then 20 years.

21 THE COURT: Mr. Perry says he never cut a deal. He
22 was just talking about it?

23 MS. McDUFFIE: Ms. Campbell spoke with him this
24 morning. He said they were in discussions but never had
25 made a deal, and if he made one, it would have been in

1 writing in the file via email.

2 Your Honor, I believe that he -- I believe Mr. Derieg
3 contends also that he and Mr. Perry made deal, and yet,
4 then he files a speedy trial motion the next day. I don't
5 understand how those things come together either.

6 MR. DERIEG: My speedy trial motion was filed prior
7 to a deal being made.

8 Your Honor, if you'll look at Exhibit C, there is a
9 letter written by the defendant on June 30th, 2013 asking
10 that he be brought to court so he could be put on the
11 docket and going forward and that he did not want to waive
12 it.

13 THE COURT: Who was his prior lawyer, Neil Riley?

14 MS. McDUFFIE: Yes, Your Honor.

15 MR. DERIEG: There was a period of time that
16 Mr. Riley had conflicted out Mr. Green. However, Mr Green
17 had not been appointed to anyone else.

18 So in effect, there was a period of a couple of
19 months where Mr. Green went unrepresented, and Your Honor,
20 right at the outset of his case, he did not have a public
21 defender right out of the gate, or at least not his
22 knowledge because it was several months before he and
23 Mr. Riley ever met. That's why he was taking it upon
24 himself to file these motions because he did not believe
25 that he had a lawyer.

1 THE COURT: All right. Anything further from the
2 State?

3 MS. McDUFFIE: No, Your Honor.

4 THE COURT: Mr. Derieg?

5 MR. DERIEG: Not on this motion, Your Honor.

6 THE COURT: Okay. Do you have other motions today?

7 MR. DERIEG: There is the -- there is the, I guess,
8 sister motion to go along with the motion to dismiss that
9 if Your Honor was inclined to dismiss the case, to
10 disqualify the current prosecutors from the case and
11 enforce the prior plea agreement.

12 The only -- the only additional argument that I would
13 have for Your Honor other than what I've said already is
14 that he did, in fact, detrimentally rely on that agreement
15 is -- if for no other reason than his just mental
16 stability and mental health.

17 He believed he was going home. He got everyone,
18 called everyone that he could. There was lots of money
19 spent. There was lots of time spent.

20 There was a great deal of joy and excitement in both
21 his family and his life, and then to have the case ripped
22 away from Solicitor Perry who -- Your Honor, I do contend
23 and will rebut the assertion that Mr. Perry never made a
24 plea offer.

25 I also rebut the fact that any plea offer made coming

1 out of that office would be in writing or in email. I've
2 done several pleas over there every month, and very rarely
3 do I get those in writing.

4 Mr. Green did not agree to sit and wait for three
5 years. He asked over and over and over if they could come
6 to court, and if they weren't going to bring them, then he
7 wasn't going to testify.

8 If Your Honor is interested in seeing the volumes of
9 letters that Mr. Green had written, I'm sure you're more
10 than welcome to, but there is no doubt that Mr. Green was
11 both prejudiced in the general sense and in the very, very
12 specific sense of having -- having his case gutted.

13 Your Honor, I guess the last motion -- and it's
14 actually tough to say this because of everything I just
15 argued, but if Your Honor is not inclined to grant either
16 of the two motions, I would respectfully have to request
17 Your Honor to have a one-time continuance so that we have
18 the ability to have an expert look at this cell phone;
19 that is very much contended by Mr. Green -- Mr. Phillips
20 has served voluminous numbers of subpoenas in this case,
21 and as yet, only about half the documents that we
22 subpoenaed have been returned. We're dealing with
23 multinational corporations like the phone companies.

24 We're not looking to judge shop. I looked at the --
25 I looked at the docket or the court's docket coming up in

1 Kershaw County.

2 I think a very good target date would be back in
3 front of Judge Benjamin on September 8th. It's
4 approximately 45 days from now, and Mr. -- Mr. Green
5 would -- if Your Honor is not inclined to grant either one
6 of the motions, Mr. Green would desperately ask the next
7 45 days -- or actually 43 days to try get everything in
8 line that is yet to get in line because he didn't have his
9 contact information or anything from the cell phone until
10 about ten days ago.

11 There is also several other pieces of evidence
12 including that video -- or the audio recordings that
13 Mr. Green is also interested in trying to have looked at
14 in an expert fashion.

15 Your Honor, I think one of the most significant
16 things in this case potentially could be the call log for
17 Mr. Green's phone, and in this cell phone dump that comes
18 from the Secret Service, inexplicably there is no time log
19 of date and time when these -- when these phone calls come
20 in and out.

21 The best that I've been able to do, Your Honor, if I
22 might approach was...

23 THE COURT: I mean, you've already asked for one
24 continuance. I mean, now you want another continuance?

25 MR. DERIEG: I didn't mean --

1 THE COURT: Are you willing to waive all your
2 constitutional claims on your speedy trial violations,
3 Mr. Green?

4 THE DEFENDANT: I don't understand. I don't
5 understand the question.

6 THE COURT: Okay. This is the problem with the way
7 this system works: He should have been asked on the
8 record whether or not he wanted to give up his right to
9 his trial in June and he wasn't.

10 So I'm asking you now, if you want a continuance, you
11 have to waive all your speedy trial arguments. Is that
12 what you're willing to do?

13 THE DEFENDANT: Yes, sir. Could I speak? Could I
14 say something?

15 MR. DERIEG: Your Honor, Mr. Green asked me if he can
16 address Your Honor.

17 THE COURT: Sure.

18 THE DEFENDANT: First, I want to bring to your
19 attention that they said I never asserted it -- never
20 really asserted my rights with the courts but it's --

21 THE COURT: Okay. You don't get to make legal
22 arguments.

23 THE DEFENDANT: Huh?

24 THE COURT: You don't get to make legal arguments.

25 THE DEFENDANT: Oh, I just want to say take

1 everything into consideration --

2 THE COURT: Okay.

3 THE DEFENDANT: -- with the consideration of the
4 officers with the Nick Miller case.

5 THE COURT: The officer issues are not before me.

6 THE DEFENDANT: I have nothing further, sir.

7 THE COURT: Okay.

8 All right. I want to see all the lawyers in the back
9 including Mr. Goldberg.

10 THE COURT REPORTER: Do you have an exhibit that I
11 was supposed to mark?

12 THE COURT: Yes. It's right here.

13 (WHEREUPON, Court's Exhibit No. 1 was marked for
14 identification only.)

15 (Whereupon, the proceedings were concluded.)
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25

JWP

INVESTIGATIONS

John W. (Jay) Phillips Owner

SLED License # 3164

PO Box 242

Lexington, SC 29071

JWP Invevestigations was tasked by Lir Derieg Esq. to locate Marlon phone number 803-420-7068 in reference to SC v Sherman Green. Marlon is a key witness for the defense of Mr. Green. The phone number is several years old because Mr. Green has been held in jail awaiting trial and had not had recent contact. I was unable to make contact with Marlon at the provided phone number. Through computer research I located Marlon Salmond who is the Marlon Mr. Green need contacted. Mr. Salmond was hesitant to get involved and seemed to have "memory loss" about much of the details of the incident.

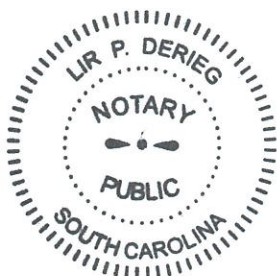
Sworn to and subscribed before me

This 24th day of July, 2015


John Phillips



My commission expires 8/6/20



JWP
INVESTIGATIONS

John W. (Jay) Phillips Owner

SLED License # 3164

PO Box 242

Lexington, SC 29071

JWP Inveestigations was tasked by Lir Derieg Esq. to locate Roshita phone number 443-486-2764 in reference to SC v Sherman Green. Roshita is a key witness in the defense of Mr. Green. I was unable to contact Roshita at the number provided, however the number is several years old due to Mr. Green being encarcerated awaiting trial. I was provided information that Roshita's last name is Mackall and that she lived in Maryland. Through computer research I was able to find information that there is a Roshita Mackall in Maryland, however the current phone number listed was not active at this time.

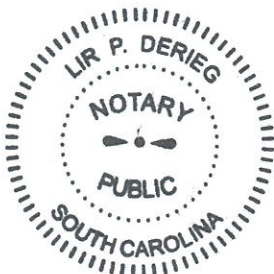
Sworn to and subscribed before me

This 24th day of July, 2015

Lir P. Derieg

John Phillips

My commission expires 8/10/22



JWP

INVESTIGATIONS

John W. (Jay) Phillips Owner

SLED License # 3164

PO Box 242

Lexington, SC 29071

JWP Inveestigations was tasked by Lir Derieg Esq. to locate Trina Lewis, possible phone number 803-669-6613.

I have called the number several times over the past two days and always get a recording that the person that has that number is unavailable to call back later, according to the computer research done a Katrina Lewis did have that number at one time but not since 2013. The current number listed for her is 803-432-1120, with an address of [REDACTED] Rd in Camden SC. I called and spoke with an Ashia Lewis who stated that Katrina did not live there and that she was currently somewhere in New York.

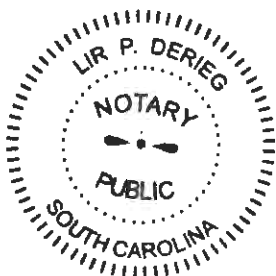
Sworn to and subscribed before me

This 24th day of July, 2015




John Phillips

My commission expires 8/6/22



JWP
INVESTIGATIONS

John W. (Jay) Phillips Owner

SLED License # 3164

PO Box 242

Lexington, SC 29071

JWP Invevestigations was tasked by Lir Derieg Esq. to locate Mike at 803-225-2774 as a defense witness for Sherman Green, SC v Sherman Green. I called the number provided and a female answered, when I asked for Mike she gave3 the phone to a male who identified himself as Mike but declined to give his last name. Mike stated that Sherman Green had been an acquaintance of his several years ago, but did not wish to be involved in his current situation. Mike stated that under no cercumstances was I to call that phone number again.

Sworn to and subscribed before me

This 24th day of July, 2015



John Phillips

My commission expires 8/6/22



STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
)
)

The State of South Carolina,

) Warrant #s: 12A2820200175, 76, 81,
) 83
)

v.

) **MEMO IN SUPPORT OF**
) **MOTION TO DISMISS ALL**
) **CHARGES**
)

Sherwin Green

DEFENDANT.

FACTS

Nickolas Miller was arrested and charged with, among other charges, CSC 1st Degree, Kidnapping, and Murder on December 27, 2011. Miller was indicted for Kidnapping, Murder and CSC 1st on June 20, 2012. He was served notice of the State's intent to seek the death penalty on October 22, 2012. On November 28, 2012, Miller approached Vincent Missouri, who had been locked up about two weeks before, about hiring Missouri to have a key prosecution witness murdered in the same fashion he murdered his victim.

Sherwin Green was initially arrested on November 26, 2012 and charged with CDV and multiple gun infractions. On December 2, 2012, Inv. Damian Burris, of Camden Police Department, helped Green obtain a Personal Recognizance bond in order for Green to make undercover purchases of illegal guns. Green set up a black male by the name of Tyrell by arranging a buy of illegal AK-47 semi-automatic assault rifles and other illegal guns. When the buy was raided, Tyrell was arrested for possessing two illegal handguns and one AK-47 assault rifle.

Green was arrested again on December 4, 2012 and charged with one count of Kidnapping

and one count of Burglary 1st Degree. When Green began his 33 month continuous detention, initially beginning at the Kershaw Co Detention Center, Miller had already been detained almost one year. Within approximately two weeks, Miller had not only confided in Green the how, when, and why of the murder he confessed to committing, but Miller also offered Green money for Green to have a friend "on the outside" kill a key witness against Miller the same way Miller killed his victim. However, instead of agreeing and following through with Miller's plan, Green contacted Inv. Jamey Jones of the Kershaw Co Sheriff's Office and told him everything he knew about Miller. Missouri took the lead from Green and also told Kershaw County Sheriff's Office about being approached by Miller. Miller was charged, additionally, with two counts of Solicitation to Commit a Felony. **(See Exhibit A)**

Further, Miller hatched a plan, along with Green, Jerome Lewis, Frank Singleton, and others, to escape from KCDC. Again, instead of following through with the plan, Green approached law enforcement and gave them all the information he had on the escape. Green also contacted Det. Burris and Det. Coleman, of the Camden Police Department, and gave them information regarding unsolved robberies committed by Singleton and Lewis. Subsequently, Green was transferred to Richland County Detention Center for safe-keeping.

After arriving at RCDC, Green contacted Inv. Jones again, this time about an accused murder named Ralieg Furman. Green gave Jones information regarding the planned malingering Furman planned to exhibit in order to receive a Guilty but Mentally Ill (GBMI) plea. In fact, the letter Green sent Jones was ultimately given directly to Furman in his Discovery Motion. Green would go on to warn Lt. Sligh, supervisor at RCDC, that Furman had a long shank and that the shank was intended to kill another officer named C/O Hickman. Furman's cell was shaken down, and the shank was found. To this day, C/O Hickman credits Green with

saving her life.

Also while at RCDC, Green approached Lt. Sligh and C/O Starling about fellow correctional officers bringing in contraband into the jail. Based on information provided by Green, one correctional officer was fired for bringing crack cocaine and tobacco into the jail. Another correctional officer was fired for bringing marijuana and tobacco into the jail. A third correctional officer was fired for bringing tobacco and marijuana into the jail. **(See Exhibit B)**

On December 13, 2012, prior to being appointed to a Public Defender, Green filed his own Motions for Discovery and for a Speedy Trial. Green's Discovery Motion was answered by the Solicitors by delivering it to him in jail. The Speedy Trial motion, however, was never called to court. On June 3, 2013, Green filed a Motion to Dismiss for Failure to Provide a Speedy Trial on his own behalf because his counsel at the time refused. Again, Green's motion was never called to court. **(See Exhibit C)**

On July 31, 2013, newly appointed defense counsel filed and was heard on a Defendant's Motion for a Speedy Trial. **(See Exhibit D)** During that hearing, Deputy Solicitor Brett Perry, the prosecutor assigned to Green's case at the time and having already met with the alleged Victim in February 2013, asserted to the Court that Green was a vital witness in the Death Penalty trial of Nickolas Miller, and asked for some time to dispose of Miller before handling Green. The Court granted the motion but said that the State would be given a reasonable time to resolve Miller and gave no specific timetable as to when Green was to be tried.

Green was indicted for Burglary 1st Degree and Kidnapping on May 15, 2013. Current Defense Counsel was appointed on July 3, 2013. Shortly thereafter, in late July / early August of 2013, current Defense Counsel and Deputy Solicitor Brett Perry agreed on a plea deal for Green,

which Green accepted. Again, the State met with the alleged Victim in February 2013. The agreed upon deal was for Green's charges of Burg 1st and Kidnapping be reduced to Burg 2nd, Nonviolent, and CDV 2nd for a negotiated sentence of three years. The gun charges were to be left pending until Green fully cooperated with the State against Miller and Miller's cases were disposed. Upon cooperation by Green and the disposal of Miller's case, the gun charges against Green were to be dismissed.

In an effort to keep the prosecutors on Miller's case apprised of the developments with Green, and at the request of Deputy Solicitor Perry, current Defense Counsel contacted the Richland County Solicitor's Office. Upon receipt of the news of the impending plea by Green, Green's case was almost immediately taken away from Deputy Solicitor Perry and reassigned to Assistant Solicitor Luck Campbell. As early as December 2013, current Defense Counsel contacted Ms. Campbell about setting Green's cases for trial. **(See Exhibit E)** And despite multiple schedulings of Status Conferences by this Court for Green's cases, Ms. Campbell failed to attend any of them, even by phone. On multiple occasions, current Defense Counsel was told by Ms. Campbell, and by other representatives of the State, that Green would not be called to court until after Miller's cases were disposed.

In stark contrast to the treatment given by the State to Green, Missouri fared much better. Missouri was arrested on November 16, 2012 for Distribution of Crack. He was approached by Miller on November 28, 2012 and came forward at the same time as Green. The same Solicitor's office that would come to refuse to honor Green's initial plea agreement and ultimately served a notice of intent to seek life after 33 months of detention, allowed Missouri to plead guilty to Distribution of Crack on January 14, 2015. Missouri was given a sentence of 60 days / Time Served. Missouri was then sent off to other counties to face other charges. He was still available

to testify against Miller and is still available to testify against Green. The only difference in situation between Green and Missouri that could explain the State's unequal treatment of two similarly situated people (i.e. Equal Protection) is that while Missouri faced all of his charges in South Carolina, Green has pending charges in Maryland and Virginia. But as will be seen below, the Courts across have unanimously held that the type of detention and delay endured by Green is not a good faith reason to allow the State to deny a person of their Constitutional right to a Speedy Trial. The State denied Green his initial plea agreement and his right to a speedy trial to ensure that Green was in the State of South Carolina to testify against Miller, if needed.

It is believed that the nearly 30 month delay between Miller being noticed for the Death Penalty and his eventual plea was due to situations surrounding the law enforcement agent who took Miller's confession, Sheriff Sam Parker. Not only did the State have an issue with Miller's confession being likely suppressed due to Parker's promise not to seek the Death Penalty in exchange for a confession, but Parker was also being prosecuted for public corruption. Parker's dual issues made Green's and Missouri's assistance even more vital, because without the confession and without Green, the State faced a significant challenge even tying Miller to the dead body of the Victim.

Miller entered a plea of guilty, on March 4, 2015, to all charges against him, including two Solicitation of a Felony charges. In exchange for his plea, the notice of intent to seek the Death Penalty was withdrawn, and Miller was sentenced to Life without Parole for the Murder and received ten years for the Solicitation of a Felony. **(See Exhibit F)**

The State did not meet with the alleged Victim for a second time, this time in preparation for trial, until the Spring of 2015 – after the disposition of Miller's case. On May 27, at a Status Conference, again not attended by any of the prosecutors now assigned to Green's case, Green's

case was set for trial for July 27, 2015. The next day, the State served a Reciprocal Rule 5 Discovery Motion on Current Defense Counsel. **(See Exhibit G)** Afterward, the State amended Green's indictment for Burglary 1st Degree on June 10, 2015, amending the original indictment dated May 15, 2013. **(See Exhibit H)** As of July 27, 2015, Sherwin Green will have been continuously incarcerated for almost 33 consecutive months. The original plea agreement made between Deputy Solicitor Perry, Green, and current Defense Counsel is not being honored by the current prosecutors assigned to Green's cases. The current plea offer extended by the State to Green is to plea as charged with a negotiated sentencing cap of twenty years in prison.

Despite having filed multiple Discovery motions, on his own behalf and twice by appointed counsel, **(See Exhibit I)** and having multiple request to examine the physical evidence as early as the Summer of 2013, particularly for Green's phone in possession of the State, current Defense counsel was not provided access to the phone until approximately two weeks ago. The primary purpose of wanting to access the phone was to gain contact information to vital defense witnesses. Ultimately, Green and Defense Counsel were provided a "phone dump" by the State, which was done by the U.S. Secret Service. Despite a conspicuous absence of particular reports on call logs, missing previously saved contacts, and missing text messages, Green was able to identify the contact information, in his possession in December of 2012, of the witnesses he believed vital to his defense. Current Defense Counsel sought out the help of Private Investigator Jay Phillips. Inv. Phillips was able to many of the witnesses but has been unable to locate two crucial witnesses, Roshita McKall and Katrina Lewis. Further, two of the witnesses found by Inv. Phillips either said they had trouble remembering the events back in November and December 2012 (Marlin Unk Last Name) or had decided that it would be in their best interests not to get involved in Green's case (Mike Unk Last Name). A detailed description

of Inv. Phillips' investigation and efforts to contact and interview the four aforementioned witnesses is attached in the form of Affidavits from Investigator Jay Phillips. **(See Exhibit J)**

By way of Proffer, Green and Defense Counsel assert that the testimony both believe would come from each unavailable witness are as follows:

1. Roshita McKall – Ms. McKall would have evidence and testimony showing that the alleged Victim was planning to set Green up to go to jail because Green was cheating on the alleged Victim with Ms. McKall. “If I can’t have him, I’m gonna put him where nobody can have him.”
2. Katrina Lewis – Ms. Lewis would have evidence and testimony showing that the alleged Victim invited Green over to the house on the incident date in order to “try and work things out.”

Further, there is a voice recorder in evidence that Defense Counsel was given access to inspect 2-3 days ago. Along with the recorder is one blue tape, which at this is inaudible. Green contends that there is also a green tape that was seized from him by law enforcement pursuant to their search warrant. The green tape is nowhere to be found. Green further contends that the contents of the blue and green tapes were recordings of all conversation between Green and the alleged Victim on the incident date.

ARGUMENT

Discussion

The Sixth Amendment to the United States Constitution provides "In all criminal prosecutions, the accused shall enjoy the right to a speedy trial." U.S. Const. amend. VI; see also

Klopfer v. North Carolina, 386 U.S. 213 (1967); Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966). Additionally, our state constitution guarantees that "[a]ny person charged with an offense shall enjoy the right to a speedy trial." S.C. Const. art. I, § 14. "The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense." State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012) (citing State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978)). If a court concludes a defendant's right to a speedy trial has been violated, dismissal of the charges "is the only possible remedy." Barker v. Wingo, 407 U.S. 514, 522 (1972).

Balancing test

The United States Supreme Court explained "[t]he right to a speedy trial is necessarily relative. It is consistent with delays and depends upon the circumstances." Beavers v. Haubert, 198 U.S. 77, 87 (1905). Therefore, the Court explained the appropriate analysis for a speedy trial claim is "a balancing test, in which the conduct of both the prosecution and defendant are weighed." Barker, 407 U.S. at 529. The Barker Court "identif[ied] some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right." Those four factors are (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) the prejudice to the defendant. Id. at 530; see also Doggett v. United States, 505 U.S. 647 (1992); Vermont v. Brillon, 556 U.S. 81 (2009); State v. Foster, 260 S.C. 511, 197 S.E.2d 280 (1973); State v. Monroe, 262 S.C. 346, 204 S.E.2d 433 (1974); Waites, 270 S.C. at 107, 240 S.E.2d at 653; State v. Brazell, 325 S.C. 65, 75, 480

S.E.2d 64, 70 (1997); State v. Evans, 386 S.C.

418, 688 S.E.2d 583 (Ct. App. 2009). However, "none of the four factors identified [are] a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial." Barker, 407 U.S. at 533.

Triggering the speedy trial analysis & length of the delay

In order to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial "has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay." Doggett, 505 U.S. at 652 (quoting Barker, 407 U.S. at 530-531). "The clock starts running on a defendant's speedy trial right when he is 'indicted, arrested, or otherwise officially accused.'" Langford, 400 S.C. at 442, 735 S.E.2d at 482 (quoting United States v. MacDonald, 456 U.S. 1, 6 (1982)). The length of the delay that will trigger the inquiry is dependent upon the peculiar circumstances of the case. Barker, 407 U.S. at 530-531. Generally, the delay tolerated for an ordinary street crime is less than for a serious, complex conspiracy charge. Id. at 531.

The Barker Court found a delay between arrest and trial of well over five years to be clearly "extraordinary." Barker, 407 U.S. at 533. Although seven months of that period was excused by the illness of a witness, the delay of "more than four years was too long a period." Id. at 534. In Doggett, the Supreme Court noted that, depending on the nature of the charges, lower courts have generally found post-accusation delay "presumptively prejudicial" as it approaches one year. Doggett, 505 U.S. at 652; see also United States v. Cope, 312 F.3d 757 (6th Cir. 2002); State v. Cooper, 386 S.C. 210, 217, 687 S.E.2d 62, 66 (Ct. App. 2009). This Court

found a two-year and four-month delay sufficient to trigger further review. Waites, 270 S.C. at 108, 240 S.E.2d at 653. A twenty-three month delay was presumptively prejudicial where the charges were serious, but the factual proof was not complicated. Langford, 400 S.C. at 442-443, 735 S.E.2d at 482. A three year and five month delay was sufficient to trigger the analysis in State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997). The Court of Appeals affirmed a circuit court's decision that a delay of forty-four months triggered the speedy trial inquiry. Cooper, 386 S.C. at 216-217, 687 S.E.2d at 66-67.

Whether a person is incarcerated, the length of that incarceration, and the location of that incarceration, is irrelevant to whether the speedy trial analysis is triggered. The only consideration is the time between the arrest and the trial. See Doggett v. United States, 505 U.S. 647 (1992)(explaining the eight and one-half years' delay between indictment and trial triggered the speedy trial analysis even where the defendant was incarcerated in another country for some period of that time and had returned to the United States voluntarily and was not incarcerated at all for six years). This error permeates the Court of Appeals' opinion.

The 33 month delay between Green's arrest / detention and trial was uncommonly long. In light of the case law, the unconscionable delay obviously triggers the speedy trial analysis, as it is presumptively prejudicial. Although the case was a very serious one, it was not a complicated case to try. Primarily, the trial involved the testimony of one eyewitness and a handful of law enforcement officers regarding fairly simple charges. The extraordinary length of the delay weighs heavily against the prosecution.

Reasons for the delay

The Supreme Court afforded different weights to the different reasons¹ for the presumptively prejudicial delay. On the far end of the spectrum is a deliberate delay by

¹ The burden is on the government to provide an acceptable rationale for the delay. Jackson v. Ray, 390 F.3d 1254, 1261 (10th Cir. 2004)(explaining that the "Supreme Court places the burden on the state to provide an inculpable explanation for delays in speedy trial claims"); see also United States v. Ingram, 446 F.3d 1332, 1337 (11th Cir. 2006); McNeely v. Blanas, 336 F.3d 822, 827 (9th Cir. 2003); United States v. Brown, 169 F.3d 344, 349 (6th Cir. 1999); United States v. Brown, 169 F.3d 344, 349 (6th Cir. 1999); Jones v. Morris, 590 F.2d 684, 686 (11th Cir. 1979); Morris v. Wyrick, 516 F.2d 1387, 1390 (8th Cir. 1975); Georgiadis v. Superintendent, Eastern Correctional Facility, 450 F.Supp. 975, 980 (S.D.N.Y.), aff'd, 591 F.2d 1330 (2nd Cir. 1978)

the prosecution to impede the defendant's ability to defend himself. A prosecutor acts improperly if he intentionally delays a trial to gain some tactical advantage over a defendant or to harass a defendant. Barker, 407 U.S. at 531, n. 32 (citing United States v. Marion, 404 U.S. 307, 325 (1971); Pollard v. United States, 352 U.S. 354, 361 (1957)). Such a reason should be weighted heavily against the prosecution. Even neutral reasons weigh against the state because "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Barker, 407 U.S. at 531.

Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun. And such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness . . . and its consequent threat to the fairness of the accused's trial. Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal suspects assigned to a low prosecutorial priority. The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.

Doggett, 505 U.S. at 657.

The Supreme Court of Georgia dismissed capital murder charges against a defendant based upon a delay of fifty-three months between indictment and the defendant's motion to dismiss. Buckner was indicted in December 2007 for kidnapping, molestation, and murder of a minor. State v. Buckner, 738 S.E.2d 65 (Ga. 2013). Buckner's case had been set for trial on April 4, 2011, but the prosecution announced its intent to seek the death penalty on that date. Id. at 68. Four years later, when Buckner had not been tried yet, he filed a motion to

dismiss based upon his speedy trial right. Id. In light of the announcement, the trial was continued and new lawyers were appointed to represent Buckner. Then, on August 25, 2011, the prosecution decided it would not seek death after all. Buckner's trial was set for February 2012. Buckner filed his motion to dismiss in December 2011. Id. at 69.

The Supreme Court of Georgia acknowledged that the charges were serious, but found the prosecution had completed its investigation by the time Buckner was indicted. The case against Buckner was "no more complicated than most other cases involving such serious crimes." Therefore, the fifty-three month delay was uncommonly long and weighed against the state. Id. at 70.

The reasons for the delay were the negligent inaction of the prosecuting attorneys and the shuffling of the case among prosecuting attorneys. This delay of approximately thirty months weighed benignly against the state. Id. The Court attributed three months of the delay to the defense submitting a notice of conflict, which weighed benignly against Buckner. Id. However, the Court weighed more heavily the delay of ten months in which the prosecuting attorneys intended to seek the death penalty. The Court explained the announcement occurred late in the already delayed case and was unnecessary in light of the prosecutor's subsequent withdrawal of the notice. The prosecution must exercise its discretion to seek the punishment it deems appropriate in each case; however, the Court could not ignore that the state chose not to exercise its discretion until the eve of trial in a case that had been pending for forty months. The late decision was not based on the discovery of new evidence or other notable newly acquired information that would cause a reasonable prosecutor to reconsider the issue of punishment. The ten-month delay due to the death penalty announcement was the result of a deliberate decision by the prosecution and was

something more than mere negligence. Id. at 71. The Court explained that seeking death in the case – one "involving a convicted sex offender accused of murder, kidnapping, and sexually abusing a child" – was hardly novel. Thus, the prosecuting agency should have reviewed the file and made its discretionary determination long before December 2010. Id.

Several federal courts have examined speedy trial claims when the justification for delay offered by the government is the desire to complete proceedings on charges in another jurisdiction. See United States v. Battis, 589 F.3d 673 (3rd Cir. 2009); United States v. Watford, 468 F.3d 891, 902 (6th Cir. 2006); United States v. Shreane, 331 F.3d 548, 554 (6th Cir. 2003); United States v. Thomas, 55 F.3d 144, 151 (4th Cir. 1995). The Tenth Circuit held that while "awaiting the completion of another sovereign's prosecution may be a plausible reason for delay in some circumstances," it "does not necessarily mean that it is a justifiable excuse in every case." United States v. Seltzer, 595 F.3d 1170, 1178 (10th Cir. 2010). In fact, "it is the government's burden to explain why such a wait was necessary in a particular case." This burden requires "a particularized showing of why the circumstances require the conclusion of the [other jurisdiction's] proceedings." Id.

In Battis, the Government delayed trying Battis on the federal charges against him to allow the state prosecutors to try Battis first. Battis, 589 F.3d at 680. The Third Circuit was "not persuaded that the Government's justification for the delay [was] sufficient to balance the scales" where "the Government could have brought Battis to trial at any time." Id. The duty of a prosecutor "to bring the defendant to trial expeditiously" "persists even when state authorities have a strong interest in bringing their own case against the same defendant." Id. In short, the prosecution "cannot indict a defendant and then delay a

case indefinitely ... merely because it is aware of a state proceeding involving the same defendant." Id. The Third Circuit recognized that "the initial delay to allow the state to proceed may have been valid," but the court found "there came a time when the federal Government should have taken some action to proceed in light of the state authorities' inaction." Id.

The stated reasons for the delay in the prosecutor calling Green's case to trial were that Assistant Solicitor Campbell was deciding whether to continue seek the death penalty against Miller, whether the confessions taken by Parker could be used, whether the public corruption case would prevent Parker from being a credible witness, and to secure Green's cooperation against Miller. Although Solicitor Johnson decided very early on to seek death against Miller, he was not sure whether he could continue to seek death against Miller in light of Parker's actions.

The delay was a deliberate attempt by the prosecution to force Green to testify against Miller. The prosecutor held a "sword of Damocles" in the form of a threat of a substantial sentence over the head of Green for 33 months in hopes of forcing Green to assist in the prosecution of Miller. There is simply no reason the prosecution had to wait for Miller's trial to conclude before trying Green.

There is no argument that the State can present except that Green's trial was delayed deliberately by the state in order for the state to gain an advantage in the trial of Nickolas Miller. The prosecution did not have a crowded docket which prevented trial of Green. Additionally, the prosecution did not have a factual presentation of the case that was complicated, as it consisted primarily of the testimony of one eyewitness and law enforcement.

Assertion of the right

The third factor of the speedy trial analysis is the defendant's assertion of his right to a speedy trial. According to the Supreme Court, "[w]hether and how a defendant asserts his right is closely related to the other factors" because the strength of his efforts will be affected by the other factors. Barker, 407 U.S. at 531-532. Petitioner clearly and repeatedly asserted his right to a speedy trial. He filed multiple motions in 2012 and 2013 demanding to be tried in a timely manner. There can be only one conclusion regarding this factor – Petitioner unequivocally and repeatedly asserted his right to a speedy trial.

Prejudice - Presumed

A defendant is not required to show prejudice affirmatively to win a speedy trial claim. Moore v. Arizona, 414 U.S. 25, 26 (1973); see also United States v. Ferreira, 665 F.3d 701, 706-707(6th Cir. 2011); United States v. Molina-Solorio, 577 F.3d 300, 307-308 (5th Cir. 2009); United States v. Erenas-Luna, 560 F.3d 772 (8th Cir. 2009); Battis, 589 F.3d 673, 683 (3rd Cir. 2009); United States v. Mendoza, 530 F.3d 758, 764-765 (9th Cir. 2008); United States v. Ingram, 446 F.3d 1332 (11th Cir. 2006); United States v. Serna-Villarreal, 352 F.3d 225, 232 (5th Cir. 2003); United States v. Clark, 83 F.3d 1350, 1353-1354 (11th Cir. 1996); United States v. Shell, 974 F.2d 1035 (9th Cir. 1992). The United States Supreme Court explained "we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify." In light of the difficult nature of proving prejudice, the Court held that the importance of presumptive prejudice increases with the length of delay. Doggett, 505 U.S.

at 655-656. In the absence of proof of particularized prejudice, the state's negligence and a substantial delay will compel relief unless the presumption of prejudice is either "extenuated, as by the defendant's acquiescence, or persuasively rebutted" by the prosecution. Id. at 658.

Clearly, the reason for the delay plays a large role in the analysis, for it determines whether a presumption of prejudice applies; therefore, the reasoning used overlaps to some degree with the reasoning discussed earlier. In Doggett, the Court provided three hypotheticals to demonstrate the role of presumptive prejudice in the speedy trial analysis. As one would imagine, the defendant's degree of proof in each of the hypothetical situations varies inversely with the prosecuting body's degree of culpability for the delay. Id. at 657. If the government put forward reasonably diligent efforts to try the defendant, then the defendant must show "specific prejudice to his defense." Id. On the other end of the spectrum, if the government intentionally held back its prosecution to gain an impermissible tactical advantage, then the case for dismissal is "overwhelming." Id.

Occupying the "middle ground" is "official negligence." Id. The Constitution's "toleration of ... negligence varies inversely with its protractedness ... and its consequent threat to the fairness of the accused's trial." Id. Thus, if the prosecuting body's conduct is neither diligent nor malicious – simply negligent – the court must perform another balancing to determine the weight to be accorded such negligence. In conducting this balancing, the court must determine what portion of the delay is attributable to the state's negligence and whether the negligent delay is of such a duration that prejudice to the defendant should be presumed. Id.

Looking at the hypotheticals offered in Doggett, *supra*, it is clear that in at least two circumstances prejudice is presumed: (1) when the government intentionally delayed its

prosecution to gain a tactical advantage, or (2) when the government negligently delayed the prosecution for an inordinate amount of time.

The Fifth Circuit found the presumption of prejudice applicable where the Government had not engaged in bad faith, but merely failed to show diligent pursuit of the charges against the defendant. Molina-Solorio, 577 F.3d at 305. Molina-Solorio escaped from federal custody on September 28, 1997. Id. at 302. The following month, he was indicted for escape. Id. In 1999, the state of Texas apprehended Molina-Solorio on drug charges. After he served his sentence, he was deported to Mexico on February 24, 2001. Id. At the time of his deportation, the federal authorities were aware of the federal warrant against him for escape. Id. at 302-303. In December 2006, federal authorities arrested Molina-Solorio in Texas for illegal re-entry. Id. at 303. In July 2007, he was sentenced on that charge. Shortly thereafter, he was arrested on the escape charge. Id. Molina-Solorio moved to dismiss the escape indictment based on a violation of his speedy trial right. Id.

The Fifth Circuit found the length of the delay "to weigh heavily in Molina-Solorio's favor because the delay was nearly ten years, the last eight of which occurred after Molina-Solorio had been back in state and federal custody." Id. at 305. Additionally, the Fifth Circuit found the authorities' negligence in pursuing Molina-Solorio weighed heavily in his favor where the Government did not pursue him diligently for over eight years. Id. Finally, the Fifth Circuit concluded that because the first three factors weighed heavily in Molina-Solorio's favor, he was relieved of demonstrating actual prejudice. Id. at 307. Thus, the court held the delay violated his right to a speedy trial and dismissed the indictment. Id. at 308.

Green has "no burden of pointing to specific prejudice." In light of the outrageous length of the delay and the admitted reason for the delay, the presumption of prejudice to

Green is great. The prosecution's intentional delay to gain an advantage warrants application of automatic and presumptive delay. However, even if this Court construed the delay as negligence, rather than bad faith, the protractedness of the delay combined with the negligence relieves Green from showing specific prejudice. Just as Doggett relied upon the presumption of prejudice created by the extreme delay, Petitioner is entitled to rely upon the presumption of prejudice. Doggett was unable to "make any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." Doggett, 505 U.S. at 655. Nevertheless, the United States Supreme Court held Doggett's speedy trial rights were violated due to the inordinate delay, reasoning that "affirmative proof of particularized prejudice is not essential to every speedy trial claim" because "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter identify." Id. As observed by the Court, the longer the delay between indictment and trial extends beyond the bare minimum, the heavier this factor weighs in a defendant's favor because "the presumption that pretrial delay has prejudiced the accused intensifies over time." Id. at 652.

The state has presented no evidence to overcome the presumption of prejudice here. Petitioner never extenuated the delay through acquiescence as demonstrated through his repeated assertions of his right to a speedy trial. Further, the state has not "persuasively rebutted" the presumption here. As the Court expressed in Doggett, although the Government "ably counter[ed] Doggett's efforts to demonstrate particularized trial prejudice, it has not, and probably could not have, affirmatively proved that the delay left his ability to defend himself unimpaired." 505 U.S. at 654 n.4.

Prejudice - Particularized

Also, Petitioner has demonstrated particularized prejudice. As the United States Supreme Court has observed, unreasonable delay threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by the loss of memories and exculpatory evidence. Barker 507 U.S. at 532. The Court observed that loss of memory "is not always reflected in the record because what has been forgotten can rarely be shown." Id. According to the Court, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." Id. Being locked up hinders a defendant's ability to gather evidence, contact witnesses, and prepare his defense. Id. at 533. Even a defendant who is not in jail prior to trial is disadvantaged "by restraints on his liberty and by living under a cloud of anxiety, suspicion, and often hostility." Id.

Nevertheless, Green incurred at least four examples of prejudice affecting his trial - Investigator Jay Phillips. Inv. Phillips was able to many of the vital defense witnesses but has been unable to locate two crucial witnesses, Roshita McKall and Katrina Lewis. Further, two of the witnesses found by Inv. Phillips either said they had trouble remembering the events back in November and December 2012 (Marlin Unk Last Name) or had decided that it would be in their best interests not to get involved in Green's case (Mike Unk Last Name). A detailed description of Inv. Phillips' investigation and efforts to contact and interview the four aforementioned witnesses is attached in the form of Affidavits from Investigator Jay Phillips.

Additionally, the mental and emotional anguish Petitioner suffered from the "sword of Damocles" controlled by the prosecution must receive significant weight and consideration.

For almost three years, Petitioner lived in a state of mental and emotional turmoil waiting for the state to make a life-or-death decision.

At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from "undue and oppressive incarceration prior to trial." But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge. First, the possibility that the defendant already in prison might receive a sentence at least partially concurrent with the one he is serving may be forever lost if trial of the pending charge is postponed. Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pendency of another criminal charge outstanding against him.

Smith v. Hooey, 393 U.S. 374, 378 (1969). While "it might be argued that a person already in prison would be less likely than others to be affected by 'anxiety and concern accompanying public accusation,' there is reason to believe that an outstanding untried charge (of which even a convict may, of course, be innocent) can have fully as depressive an effect upon a prisoner as upon a person who is at large." Id. at 379 (citing Klopfer, 386 U.S. at 221-222). In addition to the psychological toll inflicted by the unreasonable delay, even to an individual incarcerated in another jurisdiction, "it is self-evident that 'the possibilities that long delay will impair the ability of an accused to defend himself are markedly increased when the accused is incarcerated in another jurisdiction.'" Id. Such confinement, especially if far from the place where the offense allegedly took place, obviously impairs an individual's "ability to confer with potential defense witnesses, or even to keep track of their whereabouts." Id. at 379-380. "[A] man isolated in prison is powerless to exert his own investigative efforts to mitigate [the] erosive effects of the passage of time." Id. at 380.

"The right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality in the need to have charges promptly exposed." Dickey v. Florida, 398 U.S. 30, 37

(1970). "[T]he time to meet [the charges] is when the case is fresh." Id. "Stale claims have never been favored by the law, and far less so in criminal cases." Id. "[T]he right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial." Id. at 38.

The state delayed trying Green for almost three years. The stated reasons for the delay show negligence at best, and malice at worst. Green asserted his right to a speedy trial and he was relieved of showing prejudice due to the protractedness of the delay and the nature of the reasons offered by the state to justify the delay. In light of this violation, this Court should dismiss the charge against Green.

CONCLUSION

Defendant Sherwin Green, by and through his undersigned counsel, respectfully requests this Court dismiss all cases against him and hold that Green's federal and state constitutional rights to a speedy trial were violated. The Constitutions of the United States and South Carolina, the Supreme Court of South Carolina, and various other courts around the country (**See Exhibit K**) all demand that this Court Order all charges against Sherwin Green be dismissed with prejudice.

Respectfully submitted,



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1924 Barnwell Street
Columbia, SC 29201
803.206.3140

ATTORNEY FOR SHERWIN GREEN.

This 24th day of July, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

V

SHERWIN A. GREEN

**MEMO IN SUPPORT OF
DEFENDANT'S MOTION TO
DISMISS**

EXHIBITS A - K

EXHIBIT A

WITNESSES

JONES - KCSD

ARREST WARRANT NUMBER

2013A2810100356

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAY 15 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-28-0394

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

MAY TERM 2013

42

THE STATE
vs.

NICKOLAS JERMAINE MILLER

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

Defendant

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

Defendant

Witness:

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

FILED FOR RECORD
2013 MAY 15 PM 3:56

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Indictment for

SOLICITATION TO COMMIT A FELONY

SC Code: 17-25-30

CDR Code: 0795

Class MIS/UNC

ARREST WARRANT

2013A2810100356

STATE OF SOUTH CAROLINA
County/ ☐ Municipality of ☐
Kershaw

THE STATE 2013 MAR 15 PM 4:32
2013-1076
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Nickolas Jermaine Miller
Address: [redacted] Lane
Jefferson, SC 29718-
Phone: [redacted] SSN: [redacted]
Sex: M Race: B Height: 6 Weight: 180
DL State: SC DL #: [redacted]
DOB: [redacted] Agency ORI #: SC0280000
Prosecuting Agency: Kershaw County Sheriff
Prosecuting Officer: J D Jones - 7093
Offense: Solicitation / Solicitation to commit a Felony

Offense Code: 0795
Code/Ordinance Sec: C/L, 17-25-0030
This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)
Signature of Judge

RETURN
A copy of this arrest warrant was delivered to
defendant Nickolas Jermaine Miller
on 3-13-2013

T. Wilson #19
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
General Sessions
1121 Broad Street
Camden, SC 29020

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL 3

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Kershaw

Personally appeared before me the affiant J D Jones
being duly sworn deposes and says that defendant Nickolas Jermaine Miller
did within this county and state on or about 12/16/2012
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Kershaw)
in the following particulars:

DESCRIPTION OF OFFENSE: Solicitation / Solicitation to commit a Felony

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about Dec 16, 2012, the Defendant Nickolas Jermaine Miller did willfully and unlawfully Plan and Solicit the Murder of the Victim, Laura Wright Myers, by having conversations, passing handwritten notes of Scheduled Routes, Home Address, Vehicle and Personal Descriptions, along with the amount of money the Defendant was able to pay for this action to occur to an undercover Agent working with the Kershaw County Sheriff's Office. This incident took place at the Kershaw County Detention Center, 101 Bramblewood Plantation Road, Camden, Kershaw County, South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Kershaw

Affiant's Address: 821 Ridgeway Rd.
Lugoff, SC 29078-
Affiant's Telephone (803)423-1512

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/16/2012 defendant Nickolas Jermaine Miller
did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Kershaw) as set forth below:

DESCRIPTION OF OFFENSE: Solicitation / Solicitation to commit a Felony

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

ON 3/11/2013
Signature of Issuing Judge
Roderick M. Todd Jr.
Judge Code: 5074-7028
Judge's Address: P.O. Drawer 1528
Camden, SC 29021-
Judge's Telephone (803)425-1500

Issuing Court: ☒ Magistrate ☐ Municipal

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AFFIDAVIT

S.C. Attorney General
April 21, 2003
SCCA 518

WITNESSES

JONES - KCSD

The State of South Carolina

County of Kershaw

Defendant

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

ARREST WARRANT NUMBER
2013A2810100357

MAY TERM 2013

42

Defendant

Witness:

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

ACTION OF GRAND JURY
TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: **MAY 15 2013**

VERDICT

Foreperson of Petit Jury
Date:

FILED FOR RECORD
2013 MAY 15 PM 3:56
JOYCE MCDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

NICKOLAS JERMAINE MILLER

THE STATE
vs.

Indictment for

SOLICITATION TO COMMIT A FELONY

SC Code: 17-25-30

CDR Code: 0795

Class MIS/UNC

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA)
County/ ☒ Kershaw)

ARREST WARRANT
2013A2810100357
STATE OF SOUTH CAROLINA
County/ ☒ Kershaw

who

Personally appeared before me the affiant J D Jones
being duly sworn deposes and says that defendant Nickolas Jermaine Miller
did within this county and state on or about 11/28/2012 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Kershaw)
the following particulars:
DESCRIPTION OF OFFENSE: Solicitation / Solicitation to commit a Felony

Nickolas Jermaine Miller
Address: [redacted] Lane
Jefferson, SC 29718-

Phone: [redacted] SSN: [redacted]
Sex: M Race: B Height: 6 Weight: 180
DL State: SC DL #: [redacted]
DOB: [redacted] Agency ORI #: SC0280000
Prosecuting Agency: Kershaw County Sheriff
Prosecuting Officer: J D Jones - 7093
Offense: Solicitation / Solicitation to commit a Felony

Offense Code: 0795
Code/Ordinance Sec: C/L, 17-25-0030
This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
is to be arrested and brought before me to be
dealt with according to the law.
(L.S.)

Signature of Judge
Date:

RETURN
A copy of this arrest warrant was delivered to
defendant Nickolas Jermaine Miller
on 2-13-2013

Signature of Constable/Law Enforcement Officer
RETURN WARRANT TO:
General Sessions
1121 Broad Street
Camden, SC 29020

Signature of Issuing Judge
William D. Corbett
Judge Code: 7029

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 2/13/2013

Judge's Address: Post Office Box 1528
Camden, SC 29021-
Judge's Telephone: (803)425-1500

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL ORIGINAL ORIGINAL
95

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
That on or about Nov. 28, 2012, the Defendant Nickolas Jermaine Miller did willfully and unlawfully plan and solicit the Murder of
the Victim Laura Wright Myers by having conversations, passing handwritten notes of Scheduled Routes, Home Address, Vehicle
and Personal Descriptions, along with the amount of money the Defendant was able to pay for this action to occur to an Undercover
Agent working with the Kershaw County Sheriff's Office. This incident took place at the Kershaw County Detention Center, 101
Bramblewood Plantation, Camden, Kershaw County, South Carolina.

Signature of Affiant
Affiant's Address 821 Kidgeway Rd.
Lugoff, SC 29078-
Affiant's Telephone (803)425-1512

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 11/28/2012 defendant Nickolas Jermaine Miller
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Kershaw) as set forth below:

DESCRIPTION OF OFFENSE: Solicitation / Solicitation to commit a Felony

EXHIBIT B

①

SAFETY OF WITNESS INFORMANT.

① BALIEGH FURMAN - CONVICTED OF MURDER, SENTENCE TO LIFE WITHOUT PAROLE.

HE KILLED A MAN AND DISMEMBERED THE BODY.

BY MAIL I GAVE A WRITTEN STATEMENT TO DET. JAMIE JONES ON THIS WHOLE CASE AND THAT FURMAN WAS PLANNING ON USING A DEFENSE OF G.B.M.I - WHICH IS GUILTY BUT MENTALLY INCOMPETENT. WHICH HE'S FAKING.

THE LETTER ENDED UP IN HIS MOTION FOR DISCOVERY AND HE KNEW I WAS WILLING TO TELL AND TESTIFY AGAINST HIM.

THAN HE PLANNED ON KILLING OR ATTEMPTING TO KILL - STAB C.O. HICKMAN/DEAN TO FURTHER ESTABLISH HIS G.B.M.I PLEA. BUT I TOLD LT. SLIGH AND THE BLACK SHAKEDOWN TEAM CAME IN TO SEARCH AND FOUND THE WEAPON AND MOVED THE C.O.

I SAVED HER LIFE AND TIL TODAY, SHE IS VERY GRATEFUL. I SAVED AN OFFICERS LIFE!

THIS ENDANGERS MY LIFE IF I GO TO PRISON.

② FRANK SINGLETON & JEROME LEWIS - FRANK SINGLETON IS SENTENCE TO LIFE WITHOUT PAROLE, JEROME LEWIS IS STILL AWAITING TRIAL. THEY CO-DEFENDANTS ALONG WITH THREE OTHER CO-DEFENDANTS ALL FOR MURDER.

I'VE TOLD DET BURRIS AND DET COLEMAN ABOUT UNSOLVED CRIMES THEY COMMITTED OF ROBBERIES.

THEY ALL KNOW ABOUT ME, THAT'S ONE REASON I WAS MOVED TO ALVIN S. GLENN FROM KERSHAW FOR SAFE KEEPING.

HOW I KNOW THEY KNOW ABOUT ME? CAUSE JASON KIRINCHI A PUBLIC DEFENDER THAT REPRESENTS FRANK SINGLETON TOLD ME MY CASE HAS BEEN CONFLICTED OUT OF THE PUBLIC DEFENDERS OFFICE CAUSE OF IT AND I RECEIVED A PRO-BONO LAWYER. LIR PATRICK DERIEG.

THIS ENDANGERS MY LIFE IF I GO TO PRISON

③ C.O. BROWN 1 - C.O. BROWN 2 - C.O. LEWIS. I'VE HEARD THROUGH OTHER INMATES THAT THESE THREE (3) C.O. HAS BEEN TELLING GUYS IN SOCIETY THAT KNOWS GUYS IN HERE

②

THAT I'VE TOLD ON THEM AND GOT THEM FIRED. I DID. I'VE TOLD ~~LT.~~ SLIGH AND C.O. STARLING ON ALL THREE OF THEM. C.O. BROWN #1 WAS INVOLVED WITH CRACK COCAINE AND TOBACCO. C.O. BROWN #2 WAS BRINGING MARIJUANA AND TOBACCO IN THE JAIL. C.O. LEWIS WAS BRINGING MARIJUANA AND TOBACCO IN THE JAIL.

THIS ENDANGERS MY LIFE IF I GO TO PRISON.

④ NICK MILLER - A CAPITAL MURDER CHARGE, CONVICTED OF MURDER. SENTENCE TO LIFE WITHOUT PAROLE.

I WAS A KEY WITNESS THAT HE HIRED TO GET SOMEBODY TO KILL A WITNESS. HE CONFESS TO ME. GAVE ME WRITTEN NOTES IN HIS HANDWRITING AND WAS SUPPOSE TO TESTIFY AT HIS TRIAL. HE PLEAD OUT TO LIFE WITH THE HELP OF MY STATEMENT, THE NOTES HE WROTE ME AND KNOWING I WOULD TESTIFY AGAINST HIM.

THIS ENDANGERS MY LIFE IF I GO TO PRISON..

⑤ TYRELL - STILL IN SOCIETY, I SET HIM UP WITH THE DETECTIVE BURRIS. HE WAS SELLING ILLEGAL GUN AND I SET UP THE BUY AND THE GUY WAS ARRESTED WITH TWO GUNS AND A AK-47.

HE'S TELLING GUYS HE KNOWS IN PRISON TO GET ME WHEN I GET TO PRISON.

THIS ENDANGERS MY LIFE IF I GO TO PRISON..

THERE HAS TO BE SOME WAY TO GET A KNOWN INFORMANT RELEASED AND THATS RELOCATING TO ANOTHER STATE TO NOT GO TO PRISON.

GREAT INFORMANTS SHULD BE GIVEN CREDIT FOR ALL THEIR INFORMATION, NOT PUT IN PRISON FOR LIFE FOR TO BE HURT OR POSSIBLY KILLED BY THOSE HE TOLD ON OR THOSE FRIENDS OF SAID I'VE TOLD ON.

LT. SLIGH AND C/O STARLING CAN VERIFY THE CASES ON THE C.O.S.

DET. COLEMAN CAN VERIFY THE GUY WITH THE GUNS.
DET. JAMIE JONES, CAN VERIFY ABOUT FURMAN.

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

SHERWIN ALFONZO GREEN,
DEFENDANT,

CASE No: 2012A2820200181

VS.

2012A2820200183

STATE OF SOUTH CAROLINA,
RESPONDENT,

MOTION FOR FAST AND SPEEDY TRIAL

COMES NOW, THE DEFENDANT NAMED ABOVE TO MOVE THIS HONORABLE COURT, HEREBY GIVING NOTICE OF HIS CONSTITUTIONAL RIGHTS UNDER ARTICLE I, SECTION 99 OF S.C. CONSTITUTION. TO HAVE A FAST AND SPEEDY TRIAL.

THUS, THE DEFENDANT WAS ARRESTED ON ABOVE WARRANTS ON 12/5/2012 AND UNDER S.C. CODE OF LAWS, THE STATE HAS 180 DAYS OF WHICH TO BRING THE DEFENDANT TO TRIAL OR DISMISS THE CASE.

RESPECTFULLY SUBMITTED

(s) Sherwin A Green

SHERWIN ALFONZO GREEN
101 BRAMBLEWOOD PLANTATION RD
CAMDEN S.C. 29020

C.C. FILED
12/13/2012

STATE OF SOUTH CAROLINA,
COUNTY OF KERSHAW,

COURT OF GENERAL SESSIONS
Fifth Judicial Circuit

SHERWIN ALFONZO GREEN
DEFENDANT,

CASE NO: 2012 A 2820200181

VS.

2012 A 2820200183

STATE OF SOUTH CAROLINA
RESPONDENT,

MOTION TO DISMISS

COMES NOW, THE DEFENDANT NAMED ABOVE TO MOVE THIS HONORABLE COURT, UNDER S.C. CODE OF LAWS TO DISMISS THE ABOVE CASES ON GROUNDS OF FAILURE TO BRING DEFENDANT TO TRIAL WITHIN THE 180 DAY SPEEDY TRIAL LAW.

ARGUMENT IN SUPPORT

ON DEC. 13, 2012 THE DEFENDANT FILED A MOTION FOR FAST SPEEDY TRIAL WITH THE CLERK OF COURT (JOYCE McDONALD) AT KERSHAW COUNTY COURTHOUSE, 1121 BROAD STREET, CAMDEN S.C. 29020.

THE DEFENDANT WAS NOT REPRESENTED BY ANY ATTORNEY ON DEC. 13, 2012. HE THEREFORE WAS REPRESENTING HIMSELF, MAKING IT NOT NECESSARY TO HAVE ANY ATTORNEY TO MAKE HIS MOTION FOR FAST AND SPEEDY TRIAL VALID.

THE DEFENDANT HAS BEEN INCARCERATED SINCE ARREST ON 12/4/12 AND THE SIX (6) MONTHS FOR SPEEDY TRIAL LAW IS 180 DAYS C.C. FILED; 12/13/12 IS UP ON 6/13/13.

THEREFORE, THE DEFENDANT RESPECTFULLY REQUESTS THAT THIS HONORABLE

COURT DISMISS THE ABOVE CASES AGAINST HIM.

IN CONCLUSION

UPON DISMISSAL OF ABOVE CHARGES, DEFENDANT ALSO REQUEST THE COURTS REINSTATE BOND ON 2012A2820200174, 2012A2820200175, 2012A2820200176 AMOUNT \$7,220.00 WITH CAROLINA BONDING CO. WHICH WAS REVOKED ON DEC 1 2012, SOLELY BASED ON NEW CHARGES THATS BEING REQUESTED TO BE DISMISSED. REINSTATEMENT SHOULD BE GRANTED ALONG WITH THE DISMISSAL BASED ON S.C. CODES OF LAWS.

(SEE ATTACHMENTS)

C.C. FILED; 6/3/2013

COPY; CLERK OF COURT
ATTORNEY NEIL J. RILEY
DEFENDANT

RESPECTFULLY SUBMITTED

MR. SHERWIN A. GREEN #611720
ALVIN S. GLENN DETENTION CENTER
201 JOHN MARK DIAL DR.
COLUMBIA S.C. 29209...

MRS. JOYCE McDONALD
 KERSHAW COUNTY CLERK OF COURT
 KERSHAW COUNTY COURTHOUSE
 1121 BROAD STREET
 CAMDEN S.C. 29020

MR. SHERWIN A. GREEN #611720
 ALVIN S. GLENN DETENTION CTR.
 201 JOHN MARK DIAL DR.
 COLUMBIA S.C. 29209

JOYCE McDONALD, I'M WRITING TO YOU
 IN REGARDS TO BEING PLACED ON THE DOCKET TO HAVE A PUBLIC
 DEFENDER APPOINTED TO MY CASE.

I WAS IN DIVORCE COURT JUNE 28, 13 AND I HAD
 A BRIEF CONVERSATION WITH ATTORNEY, JASON KIRINCICH AND HE
 INFORMED ME THAT MR. NEIL RILEY WHO WAS MY PUBLIC DEFENDER IS
 NOT MY ATTORNEY ANYMORE, DUE TO A CONFLICT OF INTEREST. BUT,
 MR. KIRINCICH SAID I HAVEN'T HAD AN ATTORNEY FOR MONTHS.

THEREFORE, ITS UNFAIR TO HAVE TO BE SITTING IN
 JAIL WRITING NEIL RILEY FOR 3 1/2 MONTHS STRAIGHT REQUESTING FOR
 HIM TO COME SEE ME AND GO OVER DETAILS FOR A PLEA, A TRIAL,
 SPEEDY TRIAL MOTION, DISMISSAL MOTIONS, EVIDENCE, ETC. ETC. AND
 HAVE HIM NOT RESPOND EVER. THEN FIND OUT THROUGH ANOTHER ATTORNEY
 THAT NEIL RILEY AIN'T MY ATTORNEY NO MORE.

I WOULD TRULY APPRECIATE IF YOU CAN GET ME IN
 THE COURT ROOM WITHIN THE NEXT FEW WEEKS TO GET AN ATTORNEY
 APPOINTED ON MY CASE OR HAVE ONE COME SEE ME.

I WOULD ALSO APPRECIATE A RESPONSE IN WRITING
 SO I CAN ATLEAST KNOW THAT SOMETHING IS BEING DONE TO GET
 ME AN ATTORNEY.

I ANXIOUSLY AWAIT YOUR RESPONSE

RESPECTFULLY

MR. SHERWIN A. GREEN

DATED; 6/30/13

P.S. I'VE FILED MOTIONS FOR SPEEDY TRIAL 12/13/2012 AND
 MOTION TO DISMISS FOR FAILURE TO BRING TO TRIAL 180 DAY RULE ON
 6/3/2013 AND YOUR OFFICE NEVER RESPONDED. PLEASE INFORM WHY?

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,
v.

Warrant #: 12A2820200175, 76, 81,
83

Sherwin Green
DEFENDANT.

**NOTICE OF MOTION AND
MOTION FOR A FAST AND
SPEEDY TRIAL**

FILED FOR RECORD
2013 JUL 31 PM 1:46
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

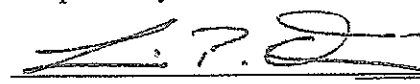
TO: ASSISTANT SOLICITOR BRETT PERRY

YOU WILL PLEASE TAKE NOTICE that the Defendant Sherwin Green, by and through his undersigned attorney, hereby request that the cases against him be tried by jury forthwith as the continued delay is causing extreme hardship. Defendant Green asserts his right to a fast and speedy trial under the Sixth and Fourteenth Amendments of the United States Constitution and Article One, Section Fourteen of the South Carolina Constitution.

The amount of time the charges listed above have been pending is approximately eight months, and Defendant Green has been incarcerated continuously since early December 2012.

Due to the severity of the allegations, the Defendant Green is being held without bond. He has small children and a girlfriend that he is separated from due to his incarceration and is unable to work to support his family. Defendant's counsel respectfully submits that Defendant Green asserts his innocence in the strongest terms and welcomes an opportunity to answer for the above charges. He is wrongfully having his liberty taken from him on mere allegations with no substantial evidence supporting those charges.

Respectfully Submitted,



Lir P. Derieg

Attorney for Defendant

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
(803) 206-3140

Camden, South Carolina

This 31st day of July, 2013

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF GENERAL SESSIONS 107
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,

Warrant #: 12A2820200175, 76, 81,
83

v.

CERTIFICATE OF SERVICE

Sherwin Green

DEFENDANT.

I certify that on this date I served the Notice of Motion and Motion for Fast and Speedy Trial in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record, Assistant Solicitor Brett Perry, by delivering said motion to his office located at The Office of the Solicitor, Fifth Judicial Circuit, Kershaw County Judicial Center, Second Floor, 121 Broad Street, Camden, South Carolina 29020

FILED FOR
2013 JUL 31
JOYCE H. JOHNSON
CLERK OF COURT
KERSHAW COUNTY, S.C.
11:46 AM



Lir P. Derieg

Attorney for ~~Sherrin Green~~

Sherrin Green

Camden, South Carolina

This ____ day of July, 2013

EXHIBIT E



Lir Derieg <lirderieg@gmail.com>

Status Conference request for Sherwin Green

1 message

Lir Derieg <lirderieg@gmail.com>

Wed, Dec 11, 2013 at 11:37 AM

To: 8035761718@rcfax.com

ATTENTION: LUCK CAMPBELL

Luck,

Please call me on this guy when you get a chance so I can get an idea of how you plan to proceed with him. He's been in jail almost a year and getting very anxious. I need to be able to tell him either he will or won't be needed to testify and either he will or won't be going to trial. 803-206-3140

Thanks,

Lir

DERIEG LAW FIRM

Lir Patrick Derieg, Esq.
1924 Barnwell St.
Columbia, SC 29201
Office: (803) 658-0298
Mobile: (803) 206-3140
Fax: (803) 244-8630

CONFIDENTIALITY NOTICE

This message is intended for the individual or entity to which it is addressed. This communication may contain information that is proprietary, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. No privilege is waived by inadvertent transmission. If you have received this message in error, please notify the sender immediately either by phone (803) 206-3140 or reply to this e-mail and delete all copies of this message.

**Fax to Luck Campbell.pdf**

541K

DERIEG LAW FIRM, LLC

Physical Address:
1924 Barnwell St
Columbia, SC 29201
Office: (803) 658-0298
Fax: (803) 244-8630

Attorney Lir Patrick Derieg

Mailing Address:
PO Box 5479
Columbia, SC 29250
Mobile: (803) 706-3140
Lir@DeriegLaw.com

December 11, 2013

VIA HAND DELIVERY

The Honorable Robert E. Hood
2014 GSC Chief Administrative Judge
Kershaw County Courthouse
1121 Broad Street
Camden, SC 29020

Re: Status Conferences Friday, December 13, 2013

Dear Judge Hood,

If possible, I respectfully request one additional defendant be added to the list for the above mentioned status conferences on Friday of this week, or at least bring him to the Court's attention. He is:

Defendant: Sherwin Green Charges: Burglary 1st, Kidnapping, CDVHAN

Prosecutor: Initially was Brett Perry but now I believe that case has been transferred to Luck Campbell.

Mr. Green moved for and was granted a motion for a fast and speedy trial on July 31, 2013. At that hearing, we were told that his case would be scheduled at a status conference at the end of the year.

If Ms. Campbell is in fact the Solicitor who will be handling this case, I will be happy to have this conference over the phone or next week at the Richland County Courthouse.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "L. P. Derieg", written over a horizontal line.

Lir Patrick Derieg

cc: Ms. Luck Campbell, Esq., Mr. Brett Perry, Esq.

EXHIBIT F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	PLEA AGREEMENT
The State	)	
v.	)	INDICTMENT NUMBER(S):
	)	2012-GS28-814; 2012-GS28-816;
	)	2012-GS28-817; 2013-GS28-394;
	)	2013-GS28-395
	)	
	)	
Nickolas Miller	)	
	)	
DEFENDANT	)	

I, Nickolas Miller, the defendant in this Criminal Action do hereby enter a plea of guilty to the following charges:

2012-GS28-814: Murder
 2012-GS28-817: Criminal Sexual Conduct 1st Degree
 2013-GS28-394: Solicitation to Commit a Felony
 2013-GS28-395: Solicitation to Commit a Felony
 2012-GS13-422: Criminal Sexual Conduct 1st Degree
 2012-GS13-423: Kidnapping

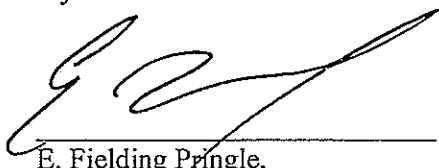
In exchange for my plea of guilty to the charges indicated above and the waiver of my appellate, post-conviction rights, federal habeas petitions and any and all other methods of review I understand that the Solicitor will withdraw the notice of intent to seek the death penalty and will allow me to plea to a negotiated sentence of Life without Parole on indictment 2012-GS28-814, thirty (30) years on indictment 2012-GS28-817, ten (10) years on indictment 2013-GS28-394, ten (10) years on indictment 2013-GS28-395, thirty (30) years on indictment 2012-GS13-422, and zero (0) years on indictment 2012-GS13-423 all to run concurrently; further the State will dismiss indictment 2012-GS28-816.

I understand all terms, conditions, obligations, duties, and rights that are listed below and that the sentencing court is incorporating by reference this complete plea agreement as part of the sentencing order imposed by the court.

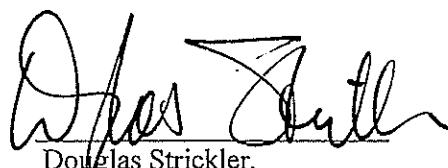
I understand that if the Court accepts the plea as indicated above, I give up my right to trial by jury, at which I would have the following rights: (a) The right to have a jury determine my guilt or innocence; (b) The right to see and hear witnesses testify and to have my lawyer question them for me; (c) The right to subpoena witnesses in my behalf and present items of evidence in my defense; (d) The right to testify or remain silent; (e)

CERTIFICATE OF DEFENDANT'S ATTORNEY

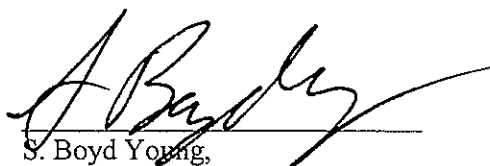
I, Defendant's Counsel of Record, certify that: I have discussed this case with the Defendant, including the nature of the charges, essential elements of each, the evidence against him of which I am aware, the possible defenses he has, the maximum penalty of the charges and his waiver of the right to appeal. No promises have been made to the defendant other than as set forth in this plea or on the record. I believe he fully understands this written plea, the consequences of entering it, and that the Defendant does so of his own free will. I have reviewed the Discovery in this case and have discussed the evidence in this case with the Defendant, I believe this plea is in my client's best interest.



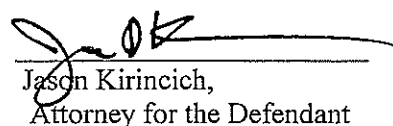
E. Fielding Pringle,
Attorney for the Defendant



Douglas Strickler,
Attorney for the Defendant



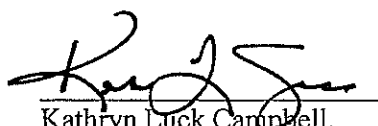
S. Boyd Young,
Attorney for the Defendant



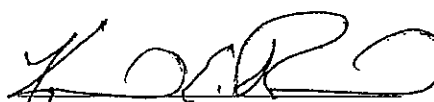
Jason Kirincich,
Attorney for the Defendant

CERTIFICATE OF SOLICITOR

This plea agreement represents the total agreement between the defendant, Nickolas Miller, and the State of South Carolina. There are no promises made by anyone other than those contained in this agreement.

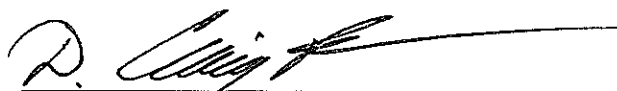


Kathryn Luck Campbell,
Asst. Solicitor, Fifth Judicial Circuit



Kernard Redmond
Deputy Solicitor, Forth Judicial Circuit

This plea is entered by the Defendant and accepted by the undersigned this fourth (4) day of March, 2015.



D. Craig Brown
Circuit Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF 114 Kershaw
STATE VS.Nickolas Jermaine Miller

AKA: _____

Race: BLACK Sex: M Age: 26DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] LaneCity, State, Zip: Jefferson, SC 29718DL#: [REDACTED] SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Solicitation / Solicitation to commit a Felonyin violation of § 00-00-0000 of the S.C. Code of Laws, bearing CDR Code # 0795☒ 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: [Signature] 13009 [Signature] [Signature] Pringle 11218
Campbell, Luck 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 10 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: All pleas of 3-4-15.
☒ 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	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 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	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS280395A/W#: 2013A2810100357Date of Offense: 11/28/2012S.C. Code § : 00-00-0000CDR Code #: 0795

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: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]Judge Code: 2160Sentence Date: 3/4/2015

COUNTY OF Kershaw
 STATE VS.
Nickolas Jermaine Miller

AKA: _____
 Race: BLACK Sex: M Age: 26
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED] Lane
 City, State, Zip: Jefferson, SC 29718
 DL#: [REDACTED] SID#: _____

*CDI. Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Solicitation / Solicitation to commit a Felony

INDICTMENT/CASE#: 2013GS280394
 A/W#: 2013A2810100356
 Date of Offense: 12/16/2012
 S.C. Code § : 00-00-0000
 CDR Code #: 0795

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 00-00-0000 of the S.C. Code of Laws, bearing CDR Code # 0795
☒ 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: [Signature] 13009 [Signature] [Signature]
 Campbell, Luck 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 10 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: All pleas 7-3-4-15
☒ 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 \$ <u>100.00</u>
§ 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 \$ <u>25.00</u>
§ 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 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ <u>3.90</u>
TOTAL	\$ <u>133.90</u>

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: _____

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

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011)

Presiding Judge [Signature]

Judge Code: 2160

Sentence Date: 3-4-2015

EXHIBIT G

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
The State of South Carolina

FILED FOR RECORD
MAY 28 PM 2:43
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

**RECIPROCAL RULE 5 FOR DISCOVERY
AND DISCLOSURE OF EVIDENCE**

-v-

SHERWIN A. GREEN

Defendant.

**WARRANT #(S) – 2012A2820200181
2012A2820200183
2012A2820200175-176**

The prosecution would, through *Assistant Solicitor Kathryn L. Campbell*, respectfully request the following:

Any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant in which the defendant intends to introduce as evidence in chief at the trial.

Any results or reports of physical or mental examinations and scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at trial when the results or reports relate to his testimony.

The offense occurred on *December 3, 2012 at 905 Kirkwood Circle, Camden, South Carolina*. The prosecution would request written notice of defendant's intention to offer an alibi defense stating the specific place or places at which the defendant claims to have been at the time of the offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

The prosecution would request written notice of the defendant's intention to offer a competency, insanity and/or mental illness defense, stating the names, addresses, and telephone numbers of the witnesses upon whom he intends to rely to establish such defense(s).

The prosecution would request written notice of the defendant's intention to offer a duress or necessity defense, stating the specific circumstances which the defendant claims to have been under duress at the time the offense was committed and the names and addresses of the witnesses upon whom he intends to rely to establish duress or necessity.

This Motion is pursuant to Circuit Court Rule 5, upon compliance by the prosecution with the defendant's previous Motion for discovery and disclosure based upon the same circuit court rule. The duty to make said disclosure is a continuing duty up to and during trial.

Respectfully submitted,

Dana Outen for

Kathryn L. Campbell

Kathryn L. Campbell

Assistant Solicitor

Fifth Judicial Circuit

Camden, South Carolina

May 28, 2015

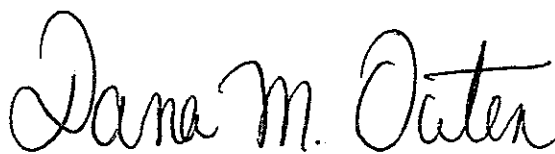
IN RE: State of South Carolina vs. *SHERWIN A. GREEN*

WARRANT NUMBERS: *2012A2820200181*
2012A2820200183
201AA2820200175-176

CERTIFICATE OF SERVICE BY MAIL

I, *Dana M. Outen*, the undersigned employee of the Richland County Solicitor's Office, certify that a copy of the Reciprocal Rule 5 for Discovery and Disclosure of Evidence has been served upon the following attorney of record by mailing a copy of the same in the United States Mail, first class postage prepaid, addressed to their office as shown below, on the 28th day of May 2015.

PERSON SERVED: *Lir P. Derieg, Esquire*
1924 Barnwell Street
Columbia, SC 29201

A handwritten signature in cursive script that reads "Dana M. Outen". The signature is written in black ink and is positioned above a horizontal line.

Dana M. Outen
Paralegal

Camden, South Carolina

Date: May 28, 2015

EXHIBIT H

WITNESSES

(S) Tyrrell Coleman – Camden Police
Department

ARREST WARRANT NUMBER

2012A2820200183

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUN 10 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-28-0458

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

JUNE TERM 2015

42

THE STATE
vs.

Sherwin Alfonzo Green

AMENDED INDICTMENT

Indictment for
BURGLARY 1ST DEGREE

SC Code: 16-11-0311
CDR Code: 0079

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 RECORD
2015 JUN 10 PM 3:20

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

WITNESSES

(S) Tyrrell Coleman -- Camden Police
Department

ARREST WARRANT NUMBER

2012A2820200183

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAY 15 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-28-0458

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

MAY TERM 2013

K96

THE STATE
vs.

Sherwin Alfonzo Green

Indictment for
BURGLARY 1ST DEGREE

SC Code: 16-11-0311
CDR Code: 0079

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 RECORD
2013 MAY 15 PM 3:54
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

ARREST WARRANT

2012A2820200183

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CAMDEN

THE STATE

against

SHERWIN ALFONZO GREEN

Address: 905 KIRKWOOD CR

CAMDEN SC 29020

Phone:

SSN:

Sex: M

Race: B

Height: 6-2

Weight: 180

DL State:

DL#:

DOB: [REDACTED]

Agency ORI#: SC0280100

Prosecuting Agency:

CAMDEN POLICE DEPARTMENT

Prosecuting Officer:

T. COLEMAN

Offense:

BURGLARY 1ST

Code/Ordinance Sec. 16-11-0311

Offense Code: 0079

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be

dealt with according to law.

The accused

Signature of Judge _____ (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant SHERWIN ALFONZO GREEN

on 12/5/12

Signature of Constable/Law Enforcement Officer

#1170

RETURN WARRANT TO:

CAMDEN MUNICIPAL COURT

1000 LYTTLETON STREET

CAMDEN, SC 29020

(803) 425-6025

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

Personally appeared before me the affiant DET TYRRELL COLEMAN

being duly sworn deposes and says that defendant SHERWIN ALFONZO GREEN

did within this county and state on 12/03/2012 to 12/04/2012 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CAMDEN)

in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-0311 / BURGLARY 1ST

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON 12/03/2012 THE DEFENDANT(SHERWIN ALFONZO GREEN) DID COMMIT THE ABOVE STATED OFFENSE IN THAT HE DID IN THE NIGHT TIME HOURS ENTER THE HOME OF 905 KIRKWOOD CIRCLE ONCE INSIDE (SHERWIN ALFONZO GREEN) DID TAKE A KNIFE HELD THE VICTIM IN THE HOUSE AGAINST HER WILL REFUSING TO LET HER LEAVE. DURING THE COMMISSION OF THIS CRIME. THIS SAID OFFENSE OCCURRED IN THE CITY LIMITS OF CAMDEN, SC. STATEMENTS TO PROVE THE SAME.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

Affiant's Address

816 W DEKALB ST

CAMDEN SC 29020

Affiant's Telephone

803-425-6025

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 12/03/2012 defendant SHERWIN ALFONZO GREEN

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CAMDEN

) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12-5-12

(L.S.)

RODERICK TODD

Judge's Address

1000 LYTTLETON STREET

CAMDEN SC 29020

Judge's Telephone

803-425-6025

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 2012-2173

ORIGINAL

23

FILED FOR RECORD
2012 DEC 18 PM 1:50
JOYCE MOON
CLERK OF COURT
KERSHAW COUNTY

WITNESSES

(S) Tyrrell Coleman – Camden Police
Department

ARREST WARRANT NUMBER

2012A2820200181

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAY 15 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-28-0457

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

MAY TERM 2013

K96

THE STATE
vs.

Sherwin Alfonzo Green

Indictment for
KIDNAPPING

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

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

Defendant

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

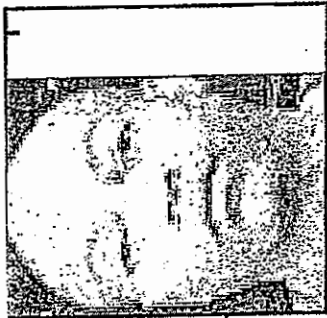
Defendant

Witness:

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

FILED FOR RECORD
2013 MAY 15 PM 3:54

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.



ARREST WARRANT
2012A2820200181
STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
CAMDEN

THE STATE
[REDACTED]

SHERWIN ALFONZO GREEN
Address: 903 KIRKWOOD CR
CAMDEN SC 29020
Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: B Height: 6-2 Weight: 180
DL #: [REDACTED]
DOB: [REDACTED] Agency ORI#: SC0280100
Prosecuting Agency: CAMDEN POLICE DEPARTMENT
Prosecuting Officer: T. COLEMAN
Offense: KIDNAPPING
Code/Ordinance Sec. 16-03-0910 Offense Code: 0095

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
is to be arrested and brought before me to be
dealt with according to law.

Date: [REDACTED] Signature of Judge [REDACTED] (L.S.)

RETURN
A copy of this arrest warrant was delivered to
defendant SHERWIN ALFONZO GREEN
on 12/5/12
Lee Boon #1170
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
CAMDEN MUNICIPAL COURT
1000 LYTTLETON STREET
CAMDEN, SC 29020
(803) 425-6025

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
CAMDEN

Personally appeared before me the affiant DET TYRRELL COLEMAN who
being duly sworn deposes and says that defendant SHERWIN ALFONZO GREEN
did within this county and state on 12/03/2012 to 12/04/2012 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CAMDEN)
in the following particulars:
DESCRIPTION OF OFFENSE: 16-03-0910 / KIDNAPPING

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THAT ON DECEMBER 03, 2012 AT APPROXIMATELY 10:55 PM THE DEFENDANT, (SHERWIN ALFONZO GREEN), DID HOLD
THE VICTIM HIS WIFE AT KNIFE POINT WHILE AT THEIR HOME LOCATED AT 905 KIRKWOOD CIRCLE IN THE CITY LIMITS OF
CAMDEN, SC. SHE WAS HELD AGAINST HER WILL AND WAS NOT FREE TO LEAVE DO TO (SHERWIN ALFONZO GREEN)
ORDERING HER TO AT KNIFE POINT. WITNESSES AND STATEMENTS TO PROVE THE SAME.

Signature of Affiant
STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
CAMDEN
Affiant's Address 816 W DEKALB ST
CAMDEN SC 29020
Affiant's Telephone 803-425-6025
ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/03/2012 defendant SHERWIN ALFONZO GREEN
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of CAMDEN) as set forth below:
DESCRIPTION OF OFFENSE: KIDNAPPING / KIDNAPPING

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on 12-5-12)
RODERICK TODD (L.S.)
Judge Code: TODD
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit
Judge's Address 1000 LYTTLETON STREET
CAMDEN SC 29020
Judge's Telephone 803-425-6025

ORIGINAL
Case: 2012-2173

EXHIBIT I

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
)

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 12A2820200175, 176, 181, 183

The State of South Carolina,)
)

vs.)

**MOTION FOR DISCOVERY
AND DISCLOSURE OF EVIDENCE**

Sherwin Green,)
Defendant.)

TO: ASSISTANT SOLICITOR BRETT PERRY

The above-named Defendant would, through his counsel, respectfully request the following information:

FILED FOR RECORD
2013 JUL 31 PM 4:45
JOYCE M. DUNN
CLERK OF COURT
KERSHAW COUNTY, S.C.

1) Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the Defendant whether before or after arrest in response to interrogation by any person then known to the Defendant to be a prosecution agent;

2) A copy of Defendant's prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

3) Any books, papers documents, photographs, tangible objects, building or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence

in chief at the trial, or were obtained from or belong to the Defendant;

4) Any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at trial;

5) Any relevant written or recorded statements made by any witnesses, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statements made by any witnesses;

6) The names and addresses of any witnesses who have given written or oral statements of information concerning the incident(s) in question;

7) A copy of the original incident report and any supplemental reports produced by the arresting or investigation agency;

8) Any other information or evidence within the knowledge or possession of the State that tends to indicate the innocence of the Defendant, or that tends to mitigate any punishment should he be found guilty;

9) Demand is made that any chemist, analyst, and all persons within the chain of custody appear in Court for the purpose of personally testifying. Attorney for the Defense thus objects to the introduction of any chemist's or analyst's report pursuant to Rule 6, SCRCrimP.

10) The defendant hereby asserts his Fifth Amendment right to remain silent and does not wish to be questioned in the absence of counsel, pursuant to *McNeil v. Wisconsin*, 111 S.Ct. 220

(1991), and *Edwards v. Arizona*, 451 U.S. 477 (1981), the United States Constitution, Amendments Five and Fourteen, and the South Carolina Constitution, Art. I § 12.

This information is requested pursuant to Rules 5 and 6, SCRCrimP.

This information is further requested pursuant to *Brady v. Maryland*, 373 U.S. 83, 10 L.E.2d 215 83 S.Ct. 1194 (1963), along with the following cases: *Crane v. Kentucky*, 476 U.S. 683 (1986), *U.S. v. Bagley*, 473 U.S. 667 (1986), *U.S. v. Agurs*, 427 U.S. 97, 49 L.E.2d 342, 96 S.Ct. 2392 (1976), *Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct. 763 (1972), *Napue v. Illinois*, 360 U.S. 264 (1958), *Goodwin v. Metts*, 885 F.2d 157 (4th Cir. 1989), *McDowell v. Dixon*, 858 F.2d 945 (4th Cir. 1988), *Chavis v. N.C.*, 637 F.2d 213 (4th Cir. 1980), *Norris v. Slayton*, 540 F.2d 1241 (4th Cir. 1976), *State v. Jackson*, 396 S.E.2d 101 (S.C. 1989), *State v. Osborne*, 361 S.E.2d 256 (S.C. Ct. App. 1986), *State v. Mixon* 274 S.E.2d 406 (S.C. 1981).

Furthermore, this information is requested on the grounds that it is essential to insure the Defendant's right to a fair trial, right to confrontation of witnesses, the right to effective Counsel and due process of law and fundamental fairness guaranteed by the South Carolina Constitution Art. I §§ 3 and 14, and Amendments Six and Fourteen to the United States Constitution.

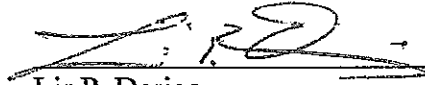
WHEREFORE, Defendant prays:

(a) That the Solicitor be Ordered to produce all information described herein and allow the Defendant the right to examine, inspect, copy and photograph, such materials and information at a specific time and place to be fixed by the Court.

(b) That the information be provided no later than 30 days from the date of this request, as reflected by the Clerk of Court's time-stamp appearing on the face of this document.

(c) That the Court enter an Order requiring the Solicitor's Office to make continuing

disclosure of all matters requested herein up to and during the Trial of the charges against the Defendant.

A handwritten signature in black ink, appearing to read "Lir P. Derieg", is written over a horizontal line.

Lir P. Derieg
Attorney for Defendant

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
(803) 206-3140

Camden, South Carolina

This 31st day of July, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 12A2820200175, 176, 181, 183

The State of South Carolina,)
)
)

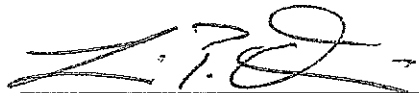
vs.)
)
)

Sherwin Green,)
Defendant.)

CERTIFICATE OF SERVICE

FILED FOR RECORD
2013 JUL 31 PM 4:45
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

I certify that on this date I served the Motion for Discovery and Disclosure of Evidence in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record, Assistant Solicitor Brett Perry, by delivering said copy to him office located at The Office of the Solicitor, Fifth Judicial Circuit, Kershaw County Judicial Center, Second Floor, 1121 Broad Street, Camden, South Carolina 29020, and leaving it with his clerk or other person of authority at said office.



Lir P. Derieg

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
(803) 206-3140

Camden, South Carolina

This 31st day of July, 2013

EXHIBIT J

JWP
INVESTIGATIONS

John W. (Jay) Phillips Owner

SLED License # 3164

PO Box 242

Lexington, SC 29071

JWP Invevestigations was tasked by Lir Derieg Esq. to locate Roshita phone number 443-486-2764 in reference to SC v Sherman Green. Roshita is a key witness in the defense of Mr. Green. I was unable to contact Roshita at the number provided, however the number is several years old due to Mr. Green being encarcerated awaiting trial. I was provided information that Roshita's last name is Mackall and that she lived in Maryland. Through computer research I was able to find information that there is a Roshita Mackall in Maryland, however the current phone number listed was not active at this time.

Sworn to and subscribed before me

This ____ day of July, 2015

John Phillips

My commission expires _____

JWP
INVESTIGATIONS

John W. (Jay) Phillips Owner

SLED License # 3164

PO Box 242

Lexington, SC 29071

JWP Invevestigations was tasked by Lir Derieg Esq. to locate Trina Lewis, possible phone number 803-669-6613. I have called the number several times over the past two days and always get a recording that the person that has that number is unavailable to call back later, according to the computer research done a Katrina Lewis did have that number at one time but not since 2013. The current number listed for her is 803-432-1120, with an address of [REDACTED] Rd in Camden SC. I called and spoke with an Ashia Lewis who stated that Katrina did not live there and that she was currently somewhere in New York.

Sworn to and subscribed before me

This ____ day of July, 2015

John Phillips

My commission expires _____

JWP
INVESTIGATIONS

John W. (Jay) Phillips Owner

SLED License # 3164

PO Box 242

Lexington, SC 29071

JWP Invevestigations was tasked by Lir Derieg Esq. to locate Mike at 803-225-2774 as a defense witness for Sherman Green, SC v Sherman Green. I called the number provided and a female answered, when I asked for Mike she gave3 the phone to a male who identified himself as Mike but declined to give his last name. Mike stated that Sherman Green had been an acquaintance of his several years ago, but did not wish to be involved in his current situation. Mike stated that under no cercumstances was I to call that phone number again.

Sworn to and subscribed before me

This ____ day of July, 2015

John Phillips

My commission expires _____

JWP

INVESTIGATIONS

John W. (Jay) Phillips Owner

SLED License # 3164

PO Box 242

Lexington, SC 29071

JWP Invevestigations was tasked by Lir Derieg Esq. to locate Marlon phone number 803-420-7068 in reference to SC v Sherman Green. Marlon is a key witness for the defense of Mr. Green. The phone number is several years old because Mr. Green has been held in jail awaiting trial and had not had recent contact. I was unable to make contact with Marlon at the provided phone number. Through computer research I located Marlon Salmond who is the Marlon Mr. Green need contacted. Mr. Salmond was hesitant to get involved and seemed to have "memory loss" about much of the details of the incident.

Sworn to and subscribed before me

This ____ day of July, 2015

John Phillips

My commission expires _____

EXHIBIT K

SUMMARY OF RIGHT TO SPEEDY TRIAL LAW AND CASE LAW

Sixth Amendment – “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

Barker v. Wingo (SCOTUS 1972): The right to a speedy trial is fundamental. Imposed on the states through the Due Process Clause of the 14th Amendment.

July 20, 1958 – date of incident (double murder). D and co-D were arrested shortly thereafter. Indicted on September 15. Counsel appointed on September 17. Trial set for October 21. State got 16 continuances & D did not object to the first 11. State wanted co-D to testify against D and had better case against co-D. Took 6 trials to convict co-D. Finally convicted in December 1962. D got out on bail in September 1959. After 12th continuance, D filed a motion to dismiss the indictment. 2 more continuances & D did not object. Set for trial on March 19, 1963 but the state moved to continue because ex-sheriff was ill. D objected. Continued again in June for the same reason, over objection. Set for October 9, 1963. D objected, but overruled. D was convicted & co-D testified against him.

There is a societal interest in providing a speedy trial which exists separate from and at times in opposition to the interests of the accused. The inability of the courts to provide a prompt trial has contributed to a large backlog of cases.

Confinement to local jail if no bail – overcrowding and deplorable state; lengthy exposure to these conditions has a destructive effect on human character and makes rehabilitate of the individual offender much more difficult. Lengthy pretrial detention is costly.

Necessitates a functional analysis of the right in the particular context of the case. The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. Remedy is dismissal.

Presuming waiver of a fundamental right from inaction is inconsistent with waiver rules. Courts should indulge every reasonable presumption against waiver and should not presume acquiescence in the loss of fundamental rights. Presuming waiver from a silent record is impermissible. A defendant confined to jail prior to trial is obviously disadvantaged by delay as is a defendant released on bail but unable to lead a normal life because of community suspicion and his own anxiety.

A defendant has no duty to bring himself to trial. The state has that duty as well as the duty of insuring that the trial is consistent with due process. The defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered.

BALANCING TEST. Identify “some of the factors” which courts should assess: length of the delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant.

“The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” Length of delay that can be tolerated is necessarily dependent upon the peculiar circumstances of the case.

Reason for the delay. “A deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government, not the defendant.” A valid reason, such as a missing witness, should serve to justify an appropriate delay.

Whether and how a defendant asserts his rights is related to the other factors. The strength of his efforts will be affected by the length of the delay, the reason for the delay, and by the personal prejudice. “The defendant’s assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right.”

Prejudice to the defendant. Interests: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired.

Time spent in jail – loss of a job, disrupts family life, enforces idleness; dead time. No recreational or rehabilitative programs. Locked up – hindered in ability to gather evidence, contact witnesses, and prepare for the defense.

None of the four factors is a necessary or sufficient condition to finding a deprivation of the speedy trial right.

This is a close case. Length of the delay was “extraordinary.” 5 years between arrest and trial. Only 7 months attributed to a strong excuse – illness of witness. “Perhaps some delay would have been permissible under ordinary circumstances, so that co-D could be utilized as a witness in D’s trial, but more than four years was too long a period, particularly since a good part of that period was attributable to the state’s failure or inability to try Co-D under circumstances comported with due process.”

Prejudice was minimal. Prejudiced to some extent by living over four years under a cloud of suspicion and anxiety. Released on bond, but did spend 10 months in jail. No claim that a witness died or become unavailable. Only 2 minor lapses in memory, not significant to the outcome.

MORE important to the absence of prejudice is that D did not want a speedy trial. No action for first 4 years to assert speedy trial right. Gambled on co-D’s acquittal.

“We do not hold that there may never be a situation in which an indictment may be dismissed on speedy trial grounds where the defendant has failed to object to continuances.”

Doggett v. United States (SCOTUS 1992): D was indicted on 2/22/1980 for conspiring with others to distribute cocaine. D not arrested because he could not be found. In 9/1981, he was arrested in Panama. Released in July and D went to Colombia where he lived with an aunt. On 9/25/1982, he returned to US and was a good boy. Government did not seek to extradite D from Panama – just asked that he be expelled. Although Panama told the State Department about D’s departure to Columbia, the DEA did not learn of it until 1985. DEA made no effort to find out about D. In 9/1988, the Marshal’s Service ran a credit check and found D within minutes. On September 5, 1988, D was arrested. This was 8.5 years after his indictment.

To trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from presumptively prejudicial delay. Also, then consider, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim. 8.5 years clearly suffices to trigger the inquiry.

Presumption that pretrial delay has prejudiced the accused intensifies over time. No serious effort to find D for six years. No evidence D knew of the indictment so no ability to assert right.

Prejudice – “oppressive pretrial incarceration, anxiety and concern of the accused, the possibility the defense will be impaired.” Impairment of one’s defense is the most difficult form of speedy trial prejudice to prove because time’s erosion of exculpatory evidence and testimony can rarely be shown. “Excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify.”

“Bad faith delay would make relief virtually automatic.” “Condoning prolonged and unjustifiable delays in prosecution would both penalize many Ds for the state’s fault and simply encourage the government to gamble with the interests of criminal suspects assigned a low prosecutorial priority.”

“To be sure, to warrant granting relief, negligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice.” Here, the government’s egregious persistence in failing to prosecute D is clearly sufficient.

“When the government’s negligence causes delay 6 times as long as that generally sufficient to trigger judicial review, and when the presumption of prejudice, albeit unspecified, is neither extenuated as by the D’s acquiescence, nor persuasively rebutted, the defendant is entitled to relief.”

FN 4 – “While the government ably counters D’s efforts to demonstrate particularized trial prejudice, it has not, and probably could not have, affirmatively proved that the delay left his ability to defend himself unimpaired.”

FN 1 – LaFave says 1 year is presumptively prejudicial.

Klopper v. NC (SCOTUS 1967): NC allows solicitor to NP with right to restore. By indefinitely prolonging this oppression, and the anxiety and concern accompanying public accusation, the criminal procedure of NP with right to restore denies D the right to a speedy trial.

Moore v. Arizona (SCOTUS 1973): Barker expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial. Question is did the state discharge its constitutional duty to make a diligent, good-faith effort to bring him to trial. Prejudice is not confined to prejudice to his defense. May seriously interfere with D's liberty, may disrupt employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.

"Some of these factors may carry quite different weight where a defendant is incarcerated after conviction in another state, but no court should overlook the possible impact pending charges might have on his prospects for parole and meaningful rehabilitation."

State v. Brazell (SC 1997): 2/4/1987 – date of AR and murder; 2/23/1987 – D arrested. D was detained in jail. 1/26/1998 – NP with right to restore. 1991 – new investigation. In 12/1991, D was served an arrest warrant while he was in prison on another crime. RE-indicted in April 1992 only for murder. D filed motions for speedy trial. On July 27, 1994 – reindicted for AR. Asserted right to speedy trial. Tried August 1-4, 1994.

Delay for murder. Total of 3 years and 5 months. Delay is sufficient to trigger review. State offers no justification for the initial 11 months. State says delay was due to complexities of the case including the location of the witnesses and piecing the evidence together. Also upheaval at the solicitor's office. "These reasons do not excuse the lengthy delay."

Unclear when D asserted the right. "The long delay was negated by the lack of prejudice to the defense." "There is no evidence the delay was willful or intentional."

State v. Cooper (Ct. App. 2009): Murder, AR, conspiracy to commit AR, and kidnapping. Indicted in January 1990. Tried on 2/22/1991, sentenced to death. 3 years later, reversed murder. Next year, D filed for PCR on other 3 charges. All agreed to wait on re-trial until the end of PCR. D got relief on all other charges too. Remitted on 8/29/2002. July 15, 2003, D filed a motion for speedy trial. Heard 8/25/2003. Solicitor said call the case between April and June 2004. February 10, 2005, renewed speedy trial motion. J said for the case to be heard by the end of 2005. June 1, 2005, D filed to dismiss. Counsel opposed an August trial due to a conflict. Solicitor moved to be excused because of a conflict. In 9/05, a new solicitor appointed. On 12/29, D filed a motion to dismiss. Tried May 22-June 1, 2006. Total delay of at least 44 months was sufficient to trigger the analysis. Delay was to some degree the result of prosecutorial and governmental negligence, and partly justifiable. Excuses together sufficiently justified the delay: complexity of the case, solicitor's relocation of offices due to mold, overcrowded docket, confusion over a judge, and recusal of the solicitor. State's conduct was not apparently willful. Always asserted his right. The main prejudice suffered was pretrial incarceration. The presumption of prejudice has been persuasively rebutted.

State v. Evans (Ct. App. 2009): On 3/4/1994, D's trailer caught fire killing her kids. D was not home. Confessed on March 14, 1994. Arrested; indicted on 4/18/1994. PD assigned. In 1994 or 1996, PD was elected solicitor. Case was transferred to AGO. 3/25/1998, attorney appointed to represent D. ON 4/29/1998, D filed for speedy trial. May 4, 1998, Denno hearing & D's confession was suppressed. Interlocutory appeal. On 6/12/2000, the COA affirmed. Petition for rehearing granted. New opinion reversing filed on 1/2/2001. On 6/9/03, the Supreme Court reversed. Remitted on 7/15/2003. 6/18/2003 the case was transferred to the 5th Circuit. That solicitor went to the 1st Circuit and took the case. Motion for speedy trial heard on 3/29/2005 & denied. Same day, indicted on 3 charges of HBCA. 1/13/2006, case transferred to 11th Circuit. Motion for speedy trial denied again on 10/16/2006. October 31, 2006, indicted on HBCA and involuntary manslaughter. Tried on 12/11/2006. DV on HBCA. Guilty of involuntary manslaughter.

Prejudice due to delay – loss of 4 witnesses. Reasons for delay – case transferred to various solicitor's offices; statement was suppressed; appeal took 5 years. J found nothing was going to be prejudicial specifically to the defendant.

State v. Foster (SC 1973): Offenses occurred on 12/12/1964. Arrested during the acts. Indicted in the May 1965 term. Imprisoned in Florida on other crimes while on bond. SC placed a detainer on them. By letter dated 2/11/1971, Ds demanded a speedy trial. On June 9, 1971, SC Governor requested their return. Returned and tried in May 1972.

Length of the delay (7 years) triggered the analysis. Clear that neither the Ds nor the state pursued the matter until 11/1970. No active attempt by the state to delay the trials. Delay due to the state's inaction & state's administrative procedures for returning Ds to SC. No reason the right was not asserted sooner. Record is simply void of even minimal prejudice.

State v. Langford (SC 2012): Trial delayed nearly two years (23 months) after arrest. Serious charges but factual proof was not complicated. Length of time was presumptively prejudicial and triggers the remaining inquiry. Reasons for the delay: (1) inability to get an interpreter to speak with Vs (Chinese) – negligent in doing so because not best efforts; (2) coercion by D of witness to change his statement. Evidence in the record to support coercion. Gutted the state's case. Those do not count against the state.

Good prejudice discussion – straight out of Barker.

FN 10- “While extreme delays may warrant relief based solely on pre-trial incarceration, this case has not crossed that threshold.” Cite to Doggett “To warrant relief, negligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice.”

SOR: ABUSE OF DISCRETION

US v. Frith, 181 F.3d 92 (4th Cir. 1999) (not published): May 12, 1991 – sealed indictment against D. D was not aware of it. DEA put undercover in the operation from August 1992 until February 1996. Superseding sealed indictment in 1/1997. Unsealed the following month. Trial in January

1998. Delay was due to government's efforts to investigate the cartel. Weighs in favor of the government. Showing of actual prejudice is not required in all speedy trial cases. "When delay is justified by a legitimate governmental purpose, such as the need to obtain a missing witness, a speedy trial claim will fail absent a demonstration of actual prejudice." "A lengthy bad faith delay by the government may present an overwhelming case for dismissal even without a showing of actual prejudice. Here, the delay was justifiable.

State v. Waites (SC 1978): Arrested 8/21 & 8/26 of 1974. Prelim not held for 2 years and 4 months (tried twice before but magistrate had conflict). Bound over. Delay was disturbing. Sufficient to trigger review of the factors. Delay was attributable to the state's witness calling the magistrate (recusal), someone calling on D's behalf, and D agreed to a continuance. D stated he did not want the case to come to a trial. Therefore, D contributed to the delay. No record of demand for speedy trial.

US v. Molina-Solorio (5th Cir. 2009): 1997, D was charged with escaping from federal custody. Arrested in 2007 for escape. Filed a motion to dismiss based on speedy trial. 1999 – state police apprehended D and sentenced him to prison. After serving his time, he was deported on 2/24/2001. Feds knew where he was prior to deportation. 12/2006, D was arrested in the US again and in 7/2007, he was sentenced again. Arrested on the escape charge shortly.

Delay of 10 years triggers the analysis. D was in the US for the last 8 years of the delay. No bad faith, but no diligent pursuit. Close issue on assertion of the right.

Prejudice – ordinarily, the burden is on the defendant to demonstrate actual prejudice, but where the first three factors together weigh heavily in the defendant's favor, we may conclude that they warrant a presumption of prejudice relieving the defendant of his burden. Here D is relieved of the burden. Dismiss the indictment.

BIG DISCUSSION about SOR. Review application of the factors under a de novo standard.

US v. Clark (11th 1996): Arrested on 7/1/1993 for drugs. Charges went federal. Indicted 9/7/1993. Not arrested until 2/22/1995 – 17 months later. Presumption of prejudice applies. Reason for delay of arrest is the government's negligence. Assumed the US Marshal's had the warrant and planned to serve him. "In the absence of proof of particularized prejudice, government negligence and a substantial delay will compel relief unless the presumption of prejudice is either extenuated as by a defendant's acquiescence or persuasively rebutted."

Toleration of negligence varies inversely with the length of the delay caused by that negligence. Here, not such a long delay (17 months). Should have required D to show actual prejudice. No showing here.

US v. Ferreira (6th Cir. 2011): 35 month delay between indictment and guilty plea was sufficient to trigger speedy trial analysis. Delay was due to gross negligence by the government. D was in state prison in GA. Government got notice of his being transported to a different state prison in GA but sent notice to the wrong prison. Dismissal. Extreme delays may on their own give rise to a strong presumption of evidentiary prejudice. Excessive delay presumptively compromises the

reliability of a trial in ways that neither party can prove or identify. When a defendant is unable to articulate the harm caused by delay, the reason for the delay will be used to determine whether the defendant was presumptively prejudiced. 8th Circuit & 11th Circuit had found that a 3.5 year delay and a two year delay, respectively, caused by serious negligence and egregious negligence were sufficient to presume prejudice. The government's negligence cannot be tolerated simply because the accused cannot demonstrate exactly how it has prejudiced him.

US v. Clark (11th 1996): 17 month delay between indictment and arrest. Government made no effort to arrest. Government thought the Marshal's planned to serve the warrant. Unintentional, but the government failed to act with the appropriate diligence in pursuing D. Regarding Doggett, SCOTUS has held that an 8.5 year delay caused solely by government negligence is long enough to excuse a defendant from having to show particularized prejudice. Here, the 17 month delay was not enough to relieve the burden. No showing of prejudice here.

Vermont v. Brillon (SCOTUS 2009): D was arrested in 7/2001. Tried nearly 3 years later. Pre-trial, D had at least 6 different attorneys appointed to represent him. D fired the first. The third withdrew when D threatened his life. Can charge the state with the time (6 months) that D did not have a lawyer if the trial court failed to appoint counsel with dispatch or if there were a breakdown in the PD system. Due to the changes in counsel, time was requested to get up to speed.

State v. Monroe (SC 1974) – 8.5 month delay between time D was returned to custody and time of trial did not violate speedy trial right. Reason for the delay was a badly overcrowded docket. Record showed solicitor was exerting every effort to dispose of the cases.

State v. Buckner (Ga 2013) - 53 month delay between indictment and demand for speedy trial. [GA has abuse of discretion standard] This was a state's appeal. 12/2007 – D was indicted. Case was set for trial on 4/4/2011. On that date, prosecutor said it's a DP case. Trial continued. New lawyers appointed to D. 8/25/2011, prosecutor withdrew DP and case set for trial in 2/2012. In 12/2011, D filed a motion to dismiss. Delay of one year triggers the analysis. This delay raises a presumption of prejudice. Here, the charges were "as serious as they come," but the state essentially had completed its investigation of the case by the time D was indicted. Case was no more complicated than other cases involving serious crimes. 53 month delay was uncommonly long. Much of the delay – 30 months - was attributable to negligent inaction of the prosecution. 10 months attributed to D because of agreements to continuances. Announcement about DP weighed against the state because announced on the eve of trial.

D did not assert his right to a speedy trial for almost 4 years. Weighs heavily against him. Mitigated by constant insistence that the state comply with discovery.

Prejudice – 2003 investigation of evidence tampering in the case revealed two police officers and a retired police officer were in V's bedroom before it was secured. At least one tampered with evidence. Officer who investigated could not recall important details.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS

The State of South Carolina)

ORDER

-v-)

Indictment – 2013-GS28-455-458

Sherwin Green,)

Defendant.)

FILED FOR RECORD
 2015 JUL 29 AM 10:23
 JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, SC

On July 24, 2015, the Defendant through his attorney, Lir Derieg, moved to Dismiss the above indictments for violation of Defendants Right to Speedy Trial. The State was represented by Joanna McDuffie, Luck Campbell, and Meghan Walker. The Defendant waived jurisdiction, and consented to a hearing in Richland County.

On December 4, 2012, the Defendant was arrested and charged with Burglary in the First Degree and Kidnapping and was detained at the Kershaw County Detention Center. In December of 2012 the Defendant provided information to Law Enforcement regarding another inmate, Nickolas Miller. Nickolas Miller was also in pretrial detention and had been served with notice of intent to seek the death penalty. Neil Riley was initially appointed to represent the defendant; however, due to a conflict Lir Derieg was appointed to represent Mr. Green on July 3, 2013. Mr. Derieg filed a motion for a speedy trial on July 31, 2013. The defendant contends that the motion for a speedy trial was heard and granted on July 31, 2013 by the Honorable Robert E. Hood. According to defense counsel “the Court granted the motion but said that the State would be given a reasonable time to resolve Miller and gave no specific timetable as to when Green was to be tried.” There is no record that Judge Hood held court in Camden on July 31, 2013 or that the motion was ever heard, in fact, on July 31, 2013, Judge Hood was presiding over the trial of State v. Marcus Bailey in Richland County. Additionally, the Kershaw County Clerk of Court’s does not have a written order granting/denying the motion in the file which is,

according to Deputy Clerk of Court Karen Kirkland, customary practice.

Nickolas Miller pled guilty on March 4, 2015. The State noticed the defendant for trial to occur the week June 22, 2015. The Honorable Robert E. Hood held a status conference regarding this case on or about May 26, 2015. At that time, defense counsel moved for a continuance due to a scheduling conflict the week of June 22, 2015. The Court continued the case at the request of defense counsel until the week of July 27, 2015. The State is prepared to call the case to trial the week of July 27, 2015.

The Sixth Amendment to the United States Constitution provides, in part, “In all criminal prosecutions, the accused shall enjoy the right to a speedy ... trial.” U.S. Const. amend. VI. Similarly, the South Carolina Constitution guarantees that “[a]ny person charged with an offense shall enjoy the right to a speedy ... trial.” S.C. Const. art. I, § 14. The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense. *State v. Waites*, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978). The United States Supreme Court stated in *Beavers v. Haubert* that “the right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances.” *Beavers v. Haubert*, 198 U.S. 77, 87 (1905). The United States Supreme Court has acknowledged that it “can do little more than identify some of the factors” for courts to examine. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, (1972). These factors include the length of the delay, the reason for it, the defendant's assertion of his right to a speedy trial, and any prejudice he suffered. *Id.*; see also *Waites*, 270 S.C. at 107, 240 S.E.2d at 653 (recognizing the same factors apply under South Carolina law).

In the present case the Defendant filed a motion speedy trial on July 31, 2013, which was not ruled upon. However, the Defendant also sought to gain some benefit for cooperation in testifying against Nickolas Miller, and chose not to have his charges disposed of until after Mr. Miller's case was resolved. Further, the State attempted to call the defendant's case for trial three (3) months after disposition of Mr. Miller's case, at that time it was defense counsel who delayed these proceedings further.

The Court finds that the reason for the delay in this case was with the consent of the defendant so that he could attempt to secure an advantage for himself by testifying in the State v.

Nickolas Miller. The Court further finds that the State attempted to promptly dispose of this case; however, subsequent continuances were at the request of the defendant.

The defendant further contends that he has been prejudiced because he can no longer secure witnesses on his behalf. The defendant represented to The Court that he is unable to secure the attendance of four witnesses: Roshita McKall (unable to locate), Katrina Lewis (unable to locate), Marlin (troubling remembering events), and Mike (does not want to get involved). The defendant made no effort to locate, secure, or talk to any of these witnesses prior to July of 2015 although they were all known to him since 2012. The defendant represents that he is aware of the out of state locations of the two "unavailable witnesses," however, no efforts have been made to secure their attendance through an out of state subpoena. There is no evidence before The Court that the length of time prior to trial has contributed in any way to the defendant's ability to procure these witnesses.

After careful review of Defendants motions and the evidence presented and considering a variety of factors to include: the length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant in this case the Court finds that the defendant's rights to a speedy trial were not violated.

NOW THEREFORE, IT IS ORDERED that Defendant's motion to dismiss based on a violation of the right to speedy trial is hereby denied.

AND IT IS SO ORDERED.

Robert E. Hood

The Honorable Robert E. Hood
Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina
July 27, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS
 FIFTH JUDICIAL CIRCUIT

The State of South Carolina,)

Warrant #s: 12A2820200175, 76, 81,
 83

v.)

FILED FOR RECORD
 2015 SEP -3 PM 3:59
 JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

**NOTICE OF MOTION AND
 MOTION TO DISMISS ALL
 CHARGES**)

Sherwin Green)
 DEFENDANT.)
)
)
 _____)

TO: ASSISTANT SOLICITORS K. LUCK CAMPBELL AND JOANNA MCDUFFIE

YOU WILL PLEASE TAKE NOTICE that the Defendant Sherwin Green, by and through his undersigned attorney, hereby moves that this Court dismiss all charges against him due to the solicitor controlling when his case would be called to court, thereby denying Defendant of his Constitutional right to a speedy trial.

Defendant cites the following reasons for his motion:

1. Defendant's Sixth Amendment Constitutional right to a speedy trial has been violated;
 and
2. SC Code Section 1-7-330 has been declared unconstitutional by State v. Langford, Op. No. 27195 (S.C. Sup. Ct. filed November 21, 2012); and
3. Defendant was substantially and detrimentally damaged in that key witnesses in the defense of Defendant, whom Defendant intended to call as witnesses on his own behalf, have become unavailable due to the State's delay in prosecuting his case; and
4. The State's delay in prosecuting Defendant's case is due to a desire, by the now prosecuting assistant solicitors, for personal gratification by obtaining a favorable outcome in a high profile case, for which Defendant was to be a key witness; and
5. Defendant was arrested on December 4, 2012; and
6. Defendant has been continuously incarcerated since arrest and was given no bond; and
7. Defendant asserted his right to a fast and speedy trial on July 31, 2013; and

8. Defendant has been extremely and irreparably prejudiced in that he is now unable to call a witness, on his own behalf, who would have provided exculpatory, and potentially dispositive, testimony for the Defendant.

Respectfully Submitted,



Lir P. Derieg
Attorney for Defendant

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
(803) 206-3140

Camden, South Carolina

This 3rd day of September, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS
 FIFTH JUDICIAL CIRCUIT

The State of South Carolina,)

Warrant #s: 12A2820200175, 76, 81,
 83

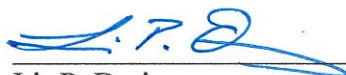
v.)

Sherwin Green)

DEFENDANT.)

CERTIFICATE OF SERVICE

I certify that on this date I served the Notice of Motion and Motion in this case on The State of South Carolina by mailing and emailing a copy of this motion to the State's attorney of record, Assistant Solicitor K. Luck Campbell and Joanna McDuffie, by by mailing said motion to their office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main St., Columbia, South Carolina 29201 and by their office email.



Lir P. Derieg
 Attorney for Sherwin Green

Columbia, South Carolina

This 3rd day of September, 2015

FILED FOR RECORD
 2015 SEP -3 PM 4:00
 JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,

v.

Sherwin Green
DEFENDANT.

FILED FOR RECORD

2015 SEP -3 PM 3:59

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Warrant #s: 12A2820200175, 76, 81,
83

**NOTICE OF MOTION AND
MOTION TO
ENFORCE
PLEA AGREEMENT**

TO: ASSISTANT SOLICITOR K. LUCK CAMPBELL

YOU WILL PLEASE TAKE NOTICE that the Defendant Sherwin Green, through his undersigned attorney, hereby moves that the current solicitors prosecuting him, K. Luck Campbell and/or Joanna McDuffie and/or Megan Walker and/or any other Solicitor or assistant solicitor whose office is not in Kershaw County that may be participating in this case against Defendant, be compelled to plea Defendant to the offer which the previously assigned solicitor, Deputy Solicitor Brett Perry, agreed upon – an offer which was accepted by Defendant and defense counsel prior to the case being taken away from Deputy Solicitor Perry and reassigned to the current prosecutors.

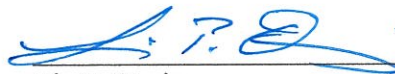
Defendant cites the following reasons for his motion:

1. There was no justifiable cause to remove Deputy Solicitor Brett Perry from Defendant's case other than for the personal gratification of the solicitors, now involved, in securing a conviction in another high profile case, for which Defendant was to be a key witness for the State;
2. Deputy Solicitor Brett Perry is a qualified solicitor that is able to professionally resolve his cases by trial, plea, or any other disposition that he deems favorable towards the interests of justice;
3. Defendant is entitled to the aforementioned plea bargain under a theory of promissory estoppel because Defendant detrimentally relied upon the aforementioned plea bargain, in that a key witness in the defense of Defendant, whom Defendant intended to call as a

witness on his own behalf, has become an unavailable witness due to Defendant's belief that the aforementioned plea bargain, rather than the impending trial, was to be the method of disposition of the above-listed warrants;

4. Defendant has been denied his Constitutional right to Due Process under the law;
5. Defendant was not allowed to enter into the plea bargain, offered by the Solicitor's office and accepted by Defendant and counsel, because Defendant's case was taken away from Deputy Solicitor Perry and the offer was revoked. Instead, Defendant was extended an offer approximately 6 to 7 times longer than was initially offered and accepted.
6. South Carolina case law, including but not limited to, State v. Langford, Op. No. 27195 (S.C. Sup. Ct. filed November 21, 2012); and
7. See six page letter from Defendant.

Respectfully Submitted,



Lir P. Derieg
Attorney for Defendant

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
(803) 206-3140

Camden, South Carolina

This 3rd day of September, 2015

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,

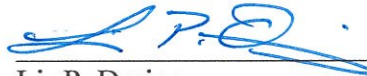
Warrant #s: 12A2820200175, 76, 81,
83

v.

CERTIFICATE OF SERVICE

Sherwin Green
DEFENDANT.

I certify that on this date I served the Notice of Motion and Motion in this case on The State of South Carolina by mailing and emailing a copy of this motion to the State's attorney of record, Assistant Solicitor K. Luck Campbell and Joanna McDuffie, by mailing said motion to their office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main St., Columbia, South Carolina 29201 and by their office email.



Lir P. Derieg
Attorney for Sherwin Green

Columbia, South Carolina

This 3rd day of September, 2015

FILED FOR RECORD
2015 SEP -3 PM 3:59
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF KERSHAW) IN THE GENERAL SESSIONS COURT

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5) 2013-GS-28-455-457
6 Sherwin Alfonzo Green,)
7 Defendant.) September 28 and 29, 2015
8) Camden, South Carolina
9)

10 B E F O R E:

11 HONORABLE L. CASEY MANNING, JUDGE
12
13

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

15 MEGHAN L. WALKER, ESQUIRE
16 KATHRYN LUCK CAMPBELL, ESQUIRE
17 Attorneys for the State

18 LIR PATRICK DERIEG, ESQUIRE
19 Attorney for the Defendant
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

1 (Proceedings September 28, 2015)

2 MS. WALKER: May it please the Court, Your Honor.

3 State vs. Sherwin Green. I believe before we take up any
4 others that he has a motion to dismiss he wishes you to
5 hear.

6 THE COURT: All right. Proceed.

7 MR. DERIEG: That's correct, Your Honor.

8 There are actually two motions before Your Honor. One
9 is the motion to dismiss all of the charges for failure to
10 provide a speedy trial to Mr. Green, and the other one is a
11 motion to enforce what we believe is our prior plea
12 agreement.

13 I'll start off with the one to dismiss all charges.
14 By way of introduction of a little bit of the facts, I'll
15 give you a brief summarized version of what we believe the
16 facts to be.

17 In the memo that I handed up to Your Honor or to Your
18 Honor's law clerk last week it certainly goes into much
19 more detail concerning all of the facts. For my argument
20 I'm going to streamline a little bit of this.

21 THE COURT: All right, sir.

22 MR. DERIEG: Your Honor, my client was arrested on
23 December the 4th of 2012. Within two weeks of being
24 arrested he had been approached by a man by the name of
25 Nickolas Miller who was noticed for a death penalty trial

1 about trying to kill --

2 THE COURT: And he was going to testify against Mr.
3 Miller. But he pled guilty.

4 MR. DERIEG: Correct.

5 THE COURT: And the case was carried over. They
6 didn't want to handle this case until that first case was
7 resolved.

8 Am I right so far?

9 MR. DERIEG: That's correct, Your Honor.

10 My client filed a pro se motion for a speedy trial on
11 December the 13th of 2012, along with a discovery motion.

12 The speedy trial motion was never heard, never brought
13 to court back then, but that discovery motion was answered
14 in discovery sent to him.

15 So there's pretty good evidence that those motions at
16 least got received by the clerk of court's office and sent
17 to the solicitor's office because the solicitor's office
18 provided him with that discovery back in December of 2012.

19 On June -- well, excuse me -- May 15th of 2013
20 Mr. Green was indicted.

21 On June the 3rd Mr. Green filed a motion -- or June
22 the 3rd of 2013 he filed a motion to dismiss for not having
23 been provided a speedy trial based on the amount of time
24 that had lapsed between when he filed his motion for a
25 speedy trial and when he was filing a motion to dismiss for

1 lack of a speedy trial. That was never heard either.

2 Approximately July 28th or July 29th of 2013 I was in
3 plea negotiations with Assistant Deputy Solicitor Brett
4 Perry.

5 We came to what I believed was an agreement for a plea
6 deal for Mr. Green, and I communicated that to Mr. Green.
7 He accepted that.

8 And as a courtesy and at the request of Brett Perry I
9 called the solicitor's office to let them know what we were
10 going to be doing with one of their witnesses for this
11 death penalty case. Shortly thereafter the case was
12 reassigned to Ms. Campbell and those plea negotiations
13 broke off.

14 December or approximately two days later I filed a
15 speedy trial motion. It was heard the same day that it was
16 filed. It was heard in front of Judge --

17 THE COURT: Judge Benjamin.

18 MR. DERIEG: Judge Benjamin. And she granted it and
19 said that we needed to know how to status --

20 THE COURT: Work out the parameters, I do believe,
21 because you had to wait for the other trial to get out of
22 the way first.

23 MR. DERIEG: No, sir.

24 THE COURT: Even though he pled.

25 MR. DERIEG: No, sir.

1 THE COURT: Go ahead.

2 MR. DERIEG: When she granted the -- when she granted
3 the motion for a speedy trial she said that it should be
4 set for a status conference.

5 Solicitor Perry suggested that we do it at the end of
6 that year because we didn't have -- the trial docket was
7 full for the rest of 2013, and we didn't have the terms of
8 court come out yet for Kershaw County. So she directed
9 that it be a status conference in December of 2013.

10 There was a status conference in December of 2013 that
11 was done by phone. A trial date was never set during that
12 status conference.

13 Mr. Miller pled on March the 4th of 2015. Shortly
14 thereafter I believe the solicitor's office began meeting
15 with the victim. May 27th of this year there was a status
16 conference set and the trial was set for July 27th of 2015.

17 Defendant's indictment was amended June the 10th of
18 2015. Then it was amended again in August of this year.

19 There have been a couple of continuances that occurred
20 in this case from the defense side, once because on -- for
21 the July 27th date. I got injured that weekend and my knee
22 was swollen up and I was under medication where the doctor
23 said I wasn't allowed to appear in court.

24 And then we were noticed again for September the 8th.
25 And approximately five to six days before September the 8th

1 my cell phone expert let me know that there was a -- some
2 special technique to recover some deleted text messages off
3 of my client's phone.

4 I requested and received that continuance from Judge
5 Benjamin, and she ordered that the case be tried either
6 this week or at the following term October the 19th or else
7 she would file sanctions against myself. And that leads us
8 here today.

9 Your Honor, in Barker vs. Wingo, United States Supreme
10 Court, that sets out the balancing test for a speedy trial
11 motion. The four factors under Barker are the length of
12 delay, the reason for the delay, defendant's assertion of
13 his right, as well as any damage that was caused to the
14 defendant.

15 Your Honor, the length of the delay, I'll concede that
16 since June of this year -- from June until now -- those
17 months are on the defense as far as why the trial was
18 delayed.

19 However, that doesn't relieve the state of its
20 obligation to have provided a speedy trial prior to that
21 date going all the way back from December the 4th of 2012.

22 So from December the 4th of 2012 until June of 2015
23 Mr. Green was being held without being allowed to have a
24 speedy trial despite having filed for it in July of 2013.
25 And according to the Supreme Court case of Doggett a year

1 or more is presumptively prejudicial, which triggers an
2 inquiry into the other three factors.

3 Here in South Carolina, Lanford, a 23-month delay was
4 presumptively prejudicial where the charges were serious
5 but factual proof was not complicated. And that's the
6 situation that we have here.

7 The state is probably going to tell that from the time
8 they finished Miller until the time when they noticed it
9 for trial the first time was only three months. So it
10 wasn't a complicated case. It's mostly an eye witness case
11 with a couple of other law enforcement agents sprinkled in.

12 In my factual presentation I did forget to tell Your
13 Honor that Mr. Green actually represented to Lieutenant
14 Casso multiple times that he wanted to be brought to court
15 so that he could have his charges resolved. And this is
16 back in the summer of 2013.

17 And according to Doggett and Lanford it's an
18 extraordinary length of delay weighs heavily against the
19 prosecution.

20 Move on to reason for the delay. Under Jackson vs.
21 Ray the burden is on the state to provide an acceptable
22 rationale for the delay. And Jackson further states the
23 Supreme Court places the burden on the state to provide an
24 inculpable explanation for delay.

25 In a Georgia Supreme Court case of State vs. Buckner

1 where a man was noticed for a death penalty trial and there
2 was a 53-month delay, the Court in that case went through
3 and parsed out the different reasons for the delay
4 attributing some to the defense, attributing some to the
5 state making -- and for the most part the state's reasons
6 for delay were neutral at worst.

7 However, there was a 10-month delay in Buckner where
8 they spent ten months trying to figure whether or not they
9 were going to go forward in the death penalty against Mr.
10 Buckner.

11 THE COURT: And this is a case out of Georgia --
12 Buckner?

13 MR. DERIEG: Yes, sir.

14 Your Honor, in this case we have a nearly 30-month
15 delay, not to decide whether or not to seek the death
16 penalty on him but to seek it on Nickolas Miller.

17 Also, in U.S. or Selzer vs. U.S. the state is required
18 to show particularized reasons of why circumstances require
19 the conclusion of the other preceding case. There was no
20 reason that Nickolas Miller had to go first other than they
21 wanted to secure his testimony.

22 In the stated reasons for the delay in the prosecution
23 of Mr. Green's case, bringing it to trial, was they were
24 deciding whether or not to seek the death penalty against
25 Miller where the confusions for Miller were taken by

1 Sheriff Sam Parker.

2 So the majority of the delay was in an effort to
3 determine whether or not Sam Parker's testimony or
4 confessions that he had gotten from Nickolas Miller were
5 even going to be admissible. And after a period of time
6 they ended up taking the notice of the death penalty off
7 and Nickolas Miller pled to life.

8 It's also worth noting Nickolas Miller pled to the
9 charge and got ten years for which Mr. Green had gone
10 forward.

11 The delay was a deliberate attempt by the prosecution
12 to get Mr. Green to testify.

13 However, there was another person that was making the
14 same or given the same cooperation against Nickolas Miller
15 named Vinson Missouri. Vinson Missouri came forward at the
16 exact same time as Mr. Green. However, he was allowed to
17 plea out in January of 2013, whereas Mr. Green was forced
18 to wait until this year.

19 In our prior hearing in front of Judge Hood, Judge
20 Hood asked how it was that Mr. Green -- because through the
21 course of all of this I was performing what I thought was
22 my ethical obligation to my client to try and seek the best
23 sort of plea deal that I could get for my client. So I did
24 ask the state several times, well, what kind of deal are we
25 looking at if, you know, he testifies, I know you're not

1 going to promise anything, I'm just trying to figure out
2 what help you may or may not be willing to give and even
3 further trying to figure out if they even needed his help
4 to -- for the trial.

5 But for 30 months there was simply no reason that
6 Mr. Green had to sit and wait. I mean 17-25-65 gives him
7 the ability to not only have his case heard in a speedy
8 judicious manner but also get help if he did end up indeed
9 testifying against Nickolas Miller.

10 And I believe that Vincent Missouri was planning on
11 trying to avail himself of that statute itself, not only in
12 testifying against Nickolas Miller if called upon, but he
13 has given evidence in this trial as well. So he's still
14 trying to get even after being sentenced, still trying to
15 get the benefit of coming in and helping out the state.
16 There's no reason that Mr. Green couldn't have had his case
17 resolved back in early 2013.

18 THE COURT: Is this Jose Missouri? Is that one?

19 MR. DERIEG: Vinson Missouri. It's one of his
20 relatives.

21 THE COURT: Vinson Missouri. I know there's a bunch
22 of them. I'm sorry. It's a family.

23 MR. DERIEG: Yes, there is.

24 The next factor is the assertion of the right for a
25 speedy trial.

1 In our last hearing in front of Judge Hood it was --
2 it was a major contention as to whether or not that motion
3 ever even got heard.

4 Unfortunately, there wasn't any documentation of it,
5 and subsequently after that hearing where there was no
6 proof that I could provide the Court showing that this
7 motion ever got heard, I went and sought out the court
8 reporter who had been there on July the 31st of 2013 and
9 got the transcript where Judge Benjamin unequivocally said
10 that she granted Mr. Green's motion and that it was to be
11 set at a status conference later this year or later that
12 year.

13 Additionally, Judge Hood repeated -- repeatedly had
14 said to the state that Mr. Green, if they wanted him to
15 waive his speedy trial right, should have had him do it on
16 the record, should have asked him and had him do it on the
17 record.

18 In fact, Judge Hood when asking -- after he denied
19 the -- after he denied this dismissal motion in an effort
20 for us to try and get a continuance, he asked Mr. Green if
21 Mr. Green would be willing to waive his speedy trial right
22 in order get a continuance, to which Mr. Green was confused
23 at first and then eventually said yes.

24 However, Judge Hood denied his motion, denied his
25 motion for a continuance. That continuance the next week

1 was the result of my knee being the size of a cantaloupe.

2 You get the final factor, which is the actual damage
3 to the defendant. In Moore vs. United States says
4 defendant is not required to show prejudice affirmatively
5 to win a speed trial motion.

6 Doggett goes on to say that specific prejudice is only
7 required where the state has put forth reasonably diligent
8 efforts to try the defendant.

9 Doggett continues on saying if the state intentionally
10 held back prosecution to gain impermissible tactical
11 advantage the case for dismissal is overwhelming.

12 And in U.S. vs. Molina-Salerno -- Soloreo presumed
13 prejudice where the government merely failed to show a
14 diligent pursuit of the charges against the defendant.

15 United States Supreme Court held Doggett's speedy
16 trial rights were violated due to the inordinate delay,
17 reasoning that affirmative proof of particularized
18 prejudice is not essential to every speedy trial claim
19 because excessive delay presumptively compromises the
20 reliability of trial in ways that neither party can prove
21 or for that matter even identify. The presumption that
22 pretrial delay has prejudiced the accused intensifies over
23 time. And in Doggett it was roughly a 23-month delay. So
24 we're a good six to eight months past that.

25 The state has presented no evidence to overcome the

1 presumption of prejudice here. The defendant never
2 extenuated a delay through any acquiescence as demonstrated
3 through his repeated assertions to the right of a speedy
4 trial. He files it on his own behalf and I file it on his
5 behalf so that he can actually have -- he can actually have
6 it heard.

7 Further, the state has not persuasively rebutted his
8 presumptions. As the Court -- as the Court expressed in
9 Doggett, although the government ably countered Doggett's
10 efforts demonstrating particularized trial prejudice, it
11 has not, and probably could not, have affirmatively proven
12 delay left his inability to defend himself unimpaired.

13 And, again, Your Honor, Mr. Green has been waiting
14 longer than Mr. Doggett did in order to have his trial
15 heard.

16 And then you get to the actual prejudice -- actual
17 prejudice. You have courts in Smith vs. Hooey and
18 Klinhopper and in Doggett talks about the mental and
19 emotional anguish that defendants get through prolonged
20 pretrial incarceration.

21 In fact, they say a present pretrial incarceration,
22 anxiety concerning the accused and potential for impeding
23 defense due to loss of memory or loss of exculpatory
24 evidence. And the last one in terms of impeding his
25 defense is the most important.

1 Here, Your Honor, there were four examples of
2 particularized prejudice. Because we didn't get access to
3 phone records of -- or to the cell phone of Mr. Green until
4 June or July of this year, the ability to contact several
5 primary key defense witnesses was impossible.

6 Once we got access to that phone we are able to
7 contact two of the four people that I'm going to tell you
8 about, and one of the person -- one of the people named
9 Marlon said that he didn't remember what happened back in
10 2012 and he wouldn't be -- he couldn't come and testify to
11 anything other than he didn't remember.

12 Mr. Green's friend Mike told my investigator, Jay
13 Phillips, that -- said that he didn't want to have anything
14 to do with Sherwin any more, said that he wasn't going to
15 testify on his behalf or against him. He just wanted no
16 part of Mr. Green any more.

17 The two females that have yet to be located, one of
18 them's name is Katrina Lewis, the other's named Reshita
19 McCall -- in fact, Your Honor, I got a phone call from
20 Ms. McCall as recently as approximately a week ago where
21 she was calling through 3-way with her sister because she
22 does not want to be found.

23 She did confirm to me the exculpatory evidence that
24 Mr. Green told me that she would have, but she also told me
25 that she was not going to come to this state. My

1 investigator Jay Phillips made repeated attempts to try and
2 find Ms. McCall, and they proved unsuccessful.

3 In addition to that particularized prejudice you have
4 the psychological toll inflicted on a defendant by
5 unreasonable delay, especially to an incarcerated -- to an
6 incarcerated defendant in another jurisdiction.

7 It's self-evident, the possibilities along the way
8 will impair the ability of an accused to defend himself are
9 markedly increased when the accused is incarcerated in
10 another jurisdiction. Such confinement, especially if far
11 from the place where the offense allegedly took place,
12 obviously impaired an individual's ability to confer with
13 potential witnesses or even keep track of their
14 whereabouts.

15 "A man isolated in prison is powerless to exert his
16 own investigative efforts to mitigate these erosive effects
17 with the passage of time." That also came from Klopfer,
18 386 U.S. at 221 through 222.

19 And, Your Honor, that's exactly what we have here.
20 Mr. Green after coming forward about Nickolas Miller was
21 taken to Richland County and had a very long delay in which
22 all of his friends or contacts that would have been able to
23 testify for him back in 2013 were still around disappeared
24 or turned on him.

25 Your Honor, the right to a speedy trial is not a

1 theoretical or abstract right but one rooted in hard
2 reality in the need to have charges promptly exposed. That
3 was Dickey vs. Florida.

4 It went on to say, "The time to make the charges is
5 when the case is fresh. Stale claims have never been
6 favored by the law, and far less so in criminal cases. The
7 right to a prompt inquiry into criminal charges is
8 fundamental, and duty of the charging authority is to
9 provide a prompt trial."

10 Mr. Green meets all four of these factors that Barker
11 outlined in Barker vs. Wingo.

12 His excessive delay where they say more than a year is
13 presumptively prejudicial. He sat for 30 or 31 months.

14 You have the reason for the delay, to secure his
15 participation in the trial against Nickolas Miller.

16 You have whether or not the defendant asserted his
17 right to a speedy trial, and he unequivocally did on
18 July the 31st of 2013.

19 And then you have the prejudice, both the presumed
20 prejudice, and you have an extensive delay like this, and
21 then you have the actual prejudice which I just outlined
22 for Your Honor.

23 And as I told you, Your Honor, I concede the final two
24 to three months delay was on my part. And in these cases
25 of Buckner and Doggett they take and farce out the

1 different reasons for the delay.

2 And here in this case you can attribute three months
3 to me, but the other 30 months Mr. Green had nothing to do
4 with. At no time did he ever acquiesce to waiting and
5 sitting.

6 In fact, he wrote letters that are in the exhibits for
7 Your Honor to Ms. McDonald saying please bring me to court,
8 asking that his cases be dismissed because he hasn't had a
9 speedy trial yet.

10 He repeatedly asserted his right to a speedy trial
11 either pro se when he felt that he was -- when he believed
12 that he was not being represented, and then once he knew
13 that I had been appointed to his case through me.

14 And there's also an equal protection argument dealing
15 with Vincent Missouri because they were two very similarly
16 situated defendants, the only difference being that Vincent
17 Missouri was going to be spending his time after his plea
18 in the State of South Carolina.

19 Based on the plea that I -- I thought that Mr. Perry
20 and I had come up with, Mr. Green was going to be spending
21 his time in jail in Maryland because he's facing 12 to 20
22 on a drug plea up in Maryland, which after Maryland's done
23 with Mr. Green, then Virginia has got a 6-year, 9-month
24 parole revocation on him.

25 So Mr. Green wasn't going to be out on the streets

1 anywhere, but he was going to be confined in another
2 jurisdiction. So they sought to keep him in South
3 Carolina's jurisdiction until they could finish with
4 Nickolas Miller.

5 And while I concede that a motion to compel back in
6 2013-2014 in hindsight would have been probably the more
7 proper course to have gone in trying to turn -- trying to
8 get these phone records, instead I -- I followed my normal
9 course of dealings with the Kershaw County Solicitor's
10 Office where -- and even to this day and even in this case
11 as recently as a few months ago where if I don't have
12 something that I think I should have, I can just call up
13 the Camden Police Department and get that stuff.

14 However, in this case there were unanswered phone
15 calls, unanswered text messages, and then a lot of
16 I-don't-knows and I'll-get-back-to-you up until a point
17 where the solicitor's office went and got the phone dumped
18 by the secret service. And because it got done so quickly
19 it's clear that at any point in the three years prior to
20 when the phone-dump got done in late June or early July of
21 2015 that that phone dump could have been done as well.
22 And my -- and my failure to make a motion to compel does
23 not relieve the state of its discovery obligations.

24 For all of these reasons, Your Honor, I respectfully
25 request that Mr. Green's case be dismissed for failure to

1 provide a speedy trial to the defendant.

2 THE COURT: Thank you, sir.

3 MR. DERIEG: Thank you.

4 THE COURT: Yes.

5 MS. WALKER: Your Honor, I think primarily Mr. Derieg
6 is running afoul of Rule 4. Judge Hood has already issued
7 a -- a written order in this denying a request to dismiss
8 the charges.

9 THE COURT: Based on a speedy trial.

10 MS. WALKER: Based on a speedy trial.

11 He held that the Court finds that the reason for the
12 delay in this case was with the consent of the defendant so
13 that he could attempt to secure an advantage of himself --
14 for himself by testifying in State vs. Nickolas Miller.

15 The Court further found that the state attempted to
16 properly dispose of this case, however something --
17 subsequent continuances were at the request of the
18 defendant. So I'm not quite certain how at this point we
19 can undo what Judge Hood has already ruled on.

20 THE COURT: Well, Judge Hood -- although he went to
21 the Citadel -- opined after a careful review of the
22 defendant's motion and the evidence presented, considering
23 a variety of the factors to include the length of the
24 delay, the reason for the delay, the defendant's assertion
25 of his right, prejudice to defendant's case -- the Court

1 finds the defendant's rights of a speedy trial were not
2 violated. That's dated July 27th of 2015.

3 MS. WALKER: I mean, I can stop there unless you want
4 me to go on, but I didn't --

5 THE COURT: Make up your mind.

6 MS. WALKER: I think that's all we need, Judge. I
7 think he --

8 THE COURT: Rule 4.

9 MS. WALKER: Yes, Your Honor.

10 THE COURT: Thank you.

11 Yes, sir. Anything further?

12 MR. DERIEG: Yes, Your Honor.

13 In regards to Rule 4 we're coming back in front of
14 Your Honor to make this motion with new evidence found.

15 There was a search by us and by the state, and you
16 have up there in that packet the transcript from the motion
17 hearing that we -- that we had back on July the 27th where
18 Ms. McDuffie talks about her diligent efforts to try and
19 find if there was any documentation of that July 31st of
20 2013 hearing. She wasn't able to find it; I wasn't able to
21 find it. However, after the hearing I was able to find it.
22 So with new evidence found we come back before Your Honor.

23 Additionally, Judge Hood stated that he didn't believe
24 that his ruling had any bearing on who the trial -- on what
25 the trial judge was going to do, that we were more than

1 free to come back in front of the trial judge and make
2 these same motions.

3 THE COURT: Well, it's not what Judge Hood says. It's
4 the parameters of Rule 4, is what she's arguing.

5 Anything further? Thank you all so very much.

6 Your motion to dismiss is denied.

7 END OF PROCEEDINGS SEPTEMBER 28, 2015

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1 (Proceedings September 29, 2015)

2 (Whereupon, the defendant was duly sworn.)

3 THE COURT: The stolen pistol carries five, is that
4 right?

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: And the ammunition -- five or ten? Five
7 also?

8 MS. CAMPBELL: The way?

9 THE COURT: Possession of ammunition.

10 MS. CAMPBELL: That should be possession of a pistol.

11 THE COURT: Possession of a firearm or ammunition by a
12 person convicted of a felony.

13 MS. CAMPBELL: That I believe also carries five.

14 THE COURT: Is that five or ten, do you know?

15 MR. DERIEG: I believe zero to five.

16 THE COURT: Huh?

17 MR. DERIEG: I believe it's zero to five.

18 THE COURT: Anyway, it's all worked out. I think --
19 I'm not sure. Let's see. Then we've got the kidnapping
20 and burglary second.

21 Yes, ma'am.

22 MS. CAMPBELL: May it please the Court, Your Honor.
23 This is Sherwin Green.

24 Your Honor, if I may approach, he was initially
25 noticed for intention to seek a life sentence of life

1 without parole. He had the qualifying convictions, two
2 from Virginia which were burglaries and a 1986 conviction,
3 New York conviction, for what would be an armed robbery
4 under our statute -- or an attempted armed robbery.

5 Your Honor, we have been in negotiations with defense
6 counsel and with the consent of the victim in this case.
7 In exchange for his plea here today to the charges which
8 you have reviewed we are willing to withdraw the notice of
9 life without parole. He is pleading to a cap of 20 years,
10 and the state is asking for 20.

11 THE COURT: All right. Is that fair enough?

12 MR. DERIEG: Yes, Your Honor.

13 THE COURT: All right. Help me if I mispronounce your
14 name four or five times. Okay?

15 MR. DERIEG: I will.

16 THE COURT: It's Derieg.

17 MR. DERIEG: Yes, sir.

18 THE COURT: Derieg. You're sure.

19 MR. DERIEG: Yes, sir.

20 THE COURT: All right. Mr. Derieg, you represent
21 Sherwin Green, is that correct?

22 MR. DERIEG: I do.

23 THE COURT: Have you explained to Mr. Green the
24 charges contained in these four indictments, the possible
25 punishments and his rights including his constitutional

1 right to a jury trial?

2 MR. DERIEG: Yes, sir.

3 THE COURT: And in your opinion does Mr. Green
4 understand the charges, the punishments and his rights?

5 MR. DERIEG: He does, Your Honor.

6 THE COURT: How does he indicate to you he wishes to
7 plead, guilty or not guilty?

8 MR. DERIEG: Guilty.

9 THE COURT: You agree with his decision to plead
10 guilty?

11 MR. DERIEG: I do.

12 THE COURT: From your investigation of the facts and
13 circumstances surrounding these cases do you feel that the
14 state could produce sufficient evidence to convince a jury
15 here in Kershaw County of Mr. Green's guilt beyond a
16 reasonable doubt and that if he were to stand trial on
17 these charges his convictions would be probable?

18 MR. DERIEG: I do, Your Honor.

19 THE COURT: Has Mr. Green been ordered to submit to a
20 mental examination to determine his competency to stand
21 trial?

22 MR. DERIEG: No, sir.

23 THE COURT: Any question in your mind, Mr. Derieg,
24 that Mr. Green is, in fact, competent to enter this plea?

25 MR. DERIEG: No question whatsoever.

1 THE COURT: You are Sherwin Green, is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Green, before I can accept your plea
4 of guilty it's necessary for me to make sure that you're
5 making this plea freely and voluntarily. To do that, sir,
6 I need to ask you a series of questions.

7 At any point during my questioning of you if you do
8 not understand anything I say or any words that I use,
9 please stop me. I'll be more than happy to repeat or
10 explain anything I say, Mr. Green.

11 Additionally, I'll be more than happy to stop this
12 plea and allow you as much time as you feel you may need to
13 consult with your lawyer, Mr. Derieg. Do you understand,
14 sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How old are you, Mr. Green?

17 THE DEFENDANT: Forty-nine.

18 THE COURT: Forty-nine?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. How far did you go in school?

21 THE DEFENDANT: Graduated two years of college.

22 THE COURT: Two years of college.

23 What kind of work have you done?

24 THE DEFENDANT: Retail grocery. I worked for Whole
25 Foods.

1 THE COURT: Mr. Green, have you ever been treated for
2 the abuse of alcohol or drugs or for mental illness?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you taken any medications, drugs or
5 alcohol in the past 24 hours?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you today aware of any physical,
8 nervous or emotional problem that might keep you from
9 understanding what you're doing?

10 THE DEFENDANT: No, sir.

11 THE COURT: You know what you're doing, Mr. Green. Is
12 that fair enough?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You agree, Mr. Derieg, that Mr. Green
15 knows and understands and appreciates what he's doing here
16 this morning.

17 MR. DERIEG: Yes, Your Honor.

18 THE COURT: Now, Mr. Green, you heard your lawyer tell
19 me that he has explained to you the charges contained in
20 these four indictments, the possible punishments and your
21 rights, including your right to a jury trial, and that you
22 understand these things, is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Mr. Green, you are first
25 before me on Indictment 2013-457, the State vs. Sherwin

1 Green. This is an indictment for kidnapping. Do you
2 understand this charge, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: This indictment, Mr. Green, alleges that
5 you did here in Kershaw County on or about December the
6 3rd of 2012 seize or keep or kidnap or abduct or carry away
7 one Rakeshia Green --

8 THE DEFENDANT: Kia Green.

9 THE COURT: -- without authority of law. Do you
10 understand this allegation?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you want to plead guilty to
13 kidnapping, is that correct, Mr. Green?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Realize by that by pleading guilty to
16 kidnapping, Mr. Green, you could go to jail for 30 years.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Knowing then, sir, that you can go to
19 prison for 30 years while pleading guilty to this charge --
20 kidnapping -- do you still wish to plead guilty to it?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Next, Mr. Green, I have before
23 me Indictment 2013-458, the State vs. Sherwin Green. This
24 is an indictment for burglary in the first degree, but
25 you're here before me today to proffer a plea, that is

1 actually to plead guilty to burglary in the second degree.

2 Do you understand that charge, burglary in the second?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is this violent or nonviolent?

5 MS. CAMPBELL: Violent.

6 THE COURT: Nonviolent. All right.

7 This indictment, Mr. Green, alleges that you did here
8 in Kershaw County on or about December the 3rd of 2012
9 enter the dwelling of Rakisha Green located at 905 Kirkwood
10 Circle, Camden, without consent and with the intent to
11 commit a crime therein.

12 Was this your exwife or estranged wife or something
13 like that?

14 THE DEFENDANT: We was married at the time.

15 THE COURT: Huh?

16 THE DEFENDANT: We was married at the time.

17 THE COURT: You were married. Okay. Well, you broke
18 into her house. You understand this. And you want to
19 plead guilty to burglary in the second degree, is that
20 correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You realize that by doing so, Mr. Green,
23 that you could go to jail for -- is that ten years now?

24 MS. CAMPBELL: It's violent, so it's 15.

25 THE COURT: Fifteen.

1 All right. You could go to jail for 15 years. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Knowing that, Mr. Green, that you can go
5 to prison for 15 years by pleading guilty to burglary
6 second nonviolent, do you still wish to plead guilty to it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Next, Mr. Green, I have before
9 me Indictment No. 2013-456, State vs. Sherwin Green. This
10 is an indictment for possession of a stolen pistol. Do you
11 understand this charge, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: The indictment, sir, alleges that you did
14 in Kershaw County on or about November the 25th of 2012
15 knowingly buy, sell, transfer, pawn or receive or possess a
16 stolen pistol. Do you understand this allegation?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You want to plead guilty to having a
19 stolen gun, is that correct?

20 You realize that by pleading guilty to this charge,
21 Mr. Green -- possession of a stolen pistol -- you could go
22 to jail for five years. Knowing that, you still want to
23 plead guilty, is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Next, Mr. Green, I have before me

1 Indictment No. 2013-455, State vs. Sherwin Green. This is
2 an indictment for possession of firearm, ammunition by a
3 person convicted of a violent theft. Do you understand
4 this allegation?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I meant do you understand the charges.

7 The allegation is, Mr. Green, that you did here in
8 Kershaw County on or about November the 25th of 2012
9 unlawfully possess a firearm or ammunition and that you've
10 been convicted of a violent crime as defined under Section
11 16-1-60. That's classified as a felony, that is burglary.
12 You understand this allegation.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you plead guilty to possession of
15 firearm or ammunition after being convicted of a violent
16 crime. And you realize that by pleading guilty to
17 this charge, this is a 5-year sentence also.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Knowing that, you still want to plead
20 guilty, is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Green, are you currently on probation
23 or parole for any prior offenses?

24 THE DEFENDANT: No, sir.

25 THE COURT: I think you have some pending charges

1 elsewhere as well.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You don't?

4 THE DEFENDANT: I do.

5 MS. CAMPBELL: I think he's got a probation
6 revocation.

7 THE DEFENDANT: I have pending charges in Maryland and
8 Virginia.

9 THE COURT: Okay. All right. Anyway, I can run these
10 sentences on these four charges consecutively, Mr. Green,
11 that is one after the other, add one to the other.

12 Let's see, 45. I think it's 55 years total, something
13 like that with the kidnapping, the burglary second
14 nonviolent, that's 15, and the other two, the gun charges I
15 think carry five years. But you're looking at about 55
16 years if I stack them on top of each other. Do you
17 understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Knowing then that you could go to jail for
20 maybe about -- about 55 years if I were to run these
21 sentences consecutively, Mr. Green, do you still wish to
22 plead guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, Mr. Green, when you plead guilty you
25 have to give up certain basic rights.

1 First of all, you have to give up your right to remain
2 silent. Now, this is your right against
3 self-incrimination, Mr. Green, your right to say nothing at
4 all. No one can compel you to come into court to provide
5 evidence or to testify against yourself. Do you understand
6 this, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Secondly, Mr. Green, when you plead guilty
9 you have to give up your right to a jury trial, that is
10 your right for a jury here in Kershaw County to decide
11 whether or not you're guilty of these four charges beyond a
12 reasonable doubt.

13 A jury would base its decision on whatever evidence
14 the state would introduce at trial against you and also on
15 whatever evidence you and your lawyer, Mr. Derieg, may wish
16 to introduce. I emphasize may wish to introduce, sir,
17 because in a trial you'd be presumed innocent, would not
18 have to prove anything, and you could not be convicted
19 unless the state convinced all 12 jurors of your guilt
20 beyond a reasonable doubt.

21 The jury's decision would have to be unanimous. All
22 12 would have to agree you were guilty in all four of these
23 indictments. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Thirdly, Mr. Green, when you plead guilty

1 you give up your right to confront and to be confronted by
2 the witnesses against you, that is your right to see, hear
3 and cross-examine any witnesses the state may call to
4 testify against you during the trial.

5 In addition, Mr. Green, by pleading guilty you're
6 giving up your right to subpoena and call witnesses on your
7 own behalf, that is someone who may testify for you. Do
8 you understand that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, do you understand these rights I just
11 mentioned to you, Mr. Green?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand, sir, that when you
14 plead guilty you have to give up these constitutional
15 rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, is that what you want to do?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you want to give up your constitutional
20 rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, you realize you would not receive a
23 jury trial on any of these four charges or indictments by
24 pleading guilty to them. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And, once again, Mr. Green, you're
2 pleading guilty to kidnapping. That carries up to 30
3 years. Burglary second nonviolent, 15 years; the two gun
4 charges, five years apiece.

5 I've explained to you already that you're facing a
6 total if they were stacked on top of one another or run
7 consecutively of about 55 years. You've giving up all of
8 your constitutional rights.

9 Now, considering what I just said to you, I'll ask you
10 once again. How do you wish to plead to these charges,
11 guilty or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: You realize, Mr. Green, that when you
14 plead guilty you admit the truth of the allegations
15 contained in these indictments against you. Do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I tell you that, sir, because you may have
19 some defenses to these charges. Of course I have no way of
20 knowing that. But you do realize that by pleading guilty
21 today you give up any defenses you might have. Do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Additionally, I tell you that, Mr. Green,
25 because when you were arrested you may have given some type

1 of incriminating statements or made some admissions or
2 confessions about your guilt.

3 You need to realize that by pleading guilty here this
4 morning you waive you right to later on challenge or
5 contest if you gave any statements whether or not they were
6 taken or obtained from you freely and voluntarily in
7 accordance with your constitutional rights. Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So, Mr. Green, I'll ask you once again.
11 Did you commit these offenses?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. So, once again, Mr. Green,
14 you're telling me you're pleading guilty to Indictment
15 2013-458 and 2013-457. This is kidnapping and burglary,
16 because you did, in fact, here in Kershaw County on or
17 about December 3rd of 2012 -- you broke into Rekisha
18 Green's house located at 905 Kirkwood Circle, Camden, and
19 you held her against her will.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is that fair enough?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You're pleading guilty to kidnapping and
24 burglary second nonviolent because you committed these
25 offenses, once again.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And, once again, Mr. Green, in connection
3 with Indictment 2013-456, possession of a stolen pistol,
4 once again, back on November the 25th of 2012 you had a
5 stolen pistol in your possession. That's what you're
6 pleading guilty to.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And finally, once again, Mr. Green, in
9 connection with Indictment 2013-455, possession of firearm
10 or ammunition by a person convicted of a violent felony,
11 back on November the 25th, once again, 2012, you had a gun
12 and ammunition after you'd been convicted of a burglary.
13 Is that fair enough?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You're pleading guilty to all of these
16 charges, Mr. Green, are you not, sir, because you are
17 guilty of all of these charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. And the plea negotiations are
20 a cap of 20 years, I do believe.

21 MS. CAMPBELL: We'll be asking for 20 years on the
22 kidnapping.

23 THE COURT: Anything else needs to be added to the
24 record in connection with any plea negotiations or any
25 recommendations? Anything being dropped or --

1 MR. DERIEG: No, Your Honor. There was some confusion
2 with Mr. Green as to whether or not a cap of 20 meant zero
3 to 20 or just 20, or he was confused as to what a cap of 20
4 meant. I just told him that I would put on the record that
5 a cap of 20 meant just no more than 20.

6 THE COURT: No more than 20. And I'll give him a
7 chance to talk me down from there. I don't know what I'm
8 going to do, but, I mean, you don't get over 20 years, is
9 what the deal is. Do you understand that, Mr. Green?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you still wish to continue to plead
12 guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Yes, sir. Are you fully satisfied the
15 manner in which your lawyer here, Mr. Derieg, the way he
16 has advised and represented you on these charges?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you talked with him for as long and
19 for as often as you feel it necessary for him to properly
20 represent you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you need any more time to talk to him?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you understood your talks with him?

25 THE DEFENDANT: Yes.

1 THE COURT: Mr. Green, has your lawyer done everything
2 for you you feel he should do or could do on your behalf in
3 advising and representing you on these charges?

4 THE DEFENDANT: Yes, he has.

5 THE COURT: Sir?

6 THE DEFENDANT: Yes, he has.

7 THE COURT: All right. Has he done anything you feel
8 he should not have done?

9 THE DEFENDANT: No.

10 THE COURT: Are you completely satisfied with his
11 services?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are there any complaints? Well, let me
14 ask you this. Has anyone promised you anything or held out
15 any hope of reward in order to get you to plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anyone threatened you or used force
18 against you to plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Has anyone used any pressure or
21 intimidation to cause you to plead guilty?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you had enough time to make up your
24 mind as whether or not you want to plead guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you're pleading guilty of your own
2 free will and accord.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Do you have any complaints
5 against anyone at the Kershaw County Sheriff's Department,
6 I think it is?

7 THE DEFENDANT: No.

8 THE COURT: Okay. No. Camden Police Department. Any
9 complaints?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. Camden Police Department.
12 Any complaints against anyone working here in the
13 solicitor's office?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Have you understood my
16 questions, Mr. Green?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything you want to ask me about
19 what I just went over with you, anything at all?

20 THE DEFENDANT: No, sir. I understand everything
21 clearly.

22 THE COURT: Beg your pardon?

23 THE DEFENDANT: I understand everything clearly.

24 THE COURT: Okay. You realize you have a right to
25 appeal this guilty plea and whatever sentence that may be

1 imposed upon you, but if you're going to appeal you need to
2 file a notice of intent to appeal within ten days of
3 today's date. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Additionally, once you're in the
6 department of corrections if you later on think or feel
7 that you do have some complaints against your lawyer,
8 against the solicitor's office, against the Camden Police
9 Department or anybody else, you need to make those
10 complaints known by filing a post conviction relief
11 application within one year from today's date. Do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Very well.

15 Solicitor, be happy to hear from you.

16 MS. CAMPBELL: May it please the Court, Your Honor.

17 To give you a little bit of background, the defendant
18 and the victim in this case were married. They had met
19 when they were living in Maryland. They got married up
20 there about a year or a year and a half before all of this
21 happened. Maybe closer to two years.

22 And, in fact, Mrs. Green had moved to South Carolina
23 to be near her family and to get away from the defendant
24 because she realized the marriage was not working.

25 She came down here. The house, to be clear on the

1 burglary charge, was only in her name. She was on the
2 rental agreement. We've got that. She was the lessor
3 [sic] on that thing.

4 He followed her down here. The chain of events that
5 occurred, Your Honor, leading up to this start with the gun
6 charges that had also a C.D.V. charge that he ultimately
7 was convicted of as well that arose back on November the
8 25th of 2012.

9 Basically, on that date in question -- this is right
10 around Thanksgiving -- the defendant and the victim got
11 into a verbal altercation. At some point he puts hands on
12 her. Then her son who was 14, I believe, at the time tried
13 to intercede on her behalf.

14 There was an altercation between them, and ultimately
15 the victim and her sister also became back embroiled into
16 it.

17 The police responded. Once they got there they did
18 arrest the defendant, and at that point they found a Kel
19 Tec 9mm pistol in the home that belonged to the defendant.
20 And I believe he had pulled a pistol during the incident
21 involving the victims in the case.

22 At that point he went into bond court. Bond was set.
23 A condition of bond was that he was to have no contact with
24 the victim or not to go near her in any way, shape or form.

25 I believe approximately a day or two days before this

1 happened he was able to bond out. He actually got someone
2 to call a friend of theirs, and she acted like she was his
3 aunt, even though that wasn't true, in order to bond him
4 out.

5 He then ultimately bonded out, and I believe at that
6 point too he was trying to cooperate with the Camden Police
7 Department because that's kind of what he does. Whenever
8 he gets in trouble, he tries to cooperate.

9 He was supposed to set up a buy for some guns, some
10 stolen guns or some type of guns, to buy at that point.
11 When he bonded out he was to have no contact with the
12 victim.

13 Your Honor, moving on to December the 4th when this
14 actually occurred, this starts on December the 3rd.
15 Basically, that was the victim's birthday. She had gone on
16 a trip that weekend. She was returning to her home. She
17 had small children in the home. None of her children are
18 with him.

19 At that point she got home that evening. She had a
20 conversation with a friend of hers. She went to bed. She
21 didn't know anything, or anything.

22 Unbeknownst to her, in the meantime the defendant was
23 in the basement waiting for her to go to sleep. And
24 through some text messages which we just recently got that
25 the defense got we were able to determine that his plan

1 was, is that he was waiting for her to go to sleep. He was
2 going to wake her up, and that he was trying to get the
3 car. And then he also mentioned some bank cards. And I'll
4 read you some of these later in the recitation.

5 She goes to sleep. At some point after she's asleep
6 she feels something cold on her stomach. She wakes up.
7 He's got a knife in each hand. He's on top of her on her
8 bed. Her children are on one end of the house. Her bed
9 was on another end.

10 And at that point he starts threatening her, tells her
11 if she screams or anything -- he threatens her life and
12 threatens her children's life. I'll let her tell you more
13 of the type of threats he made the whole night.

14 She's scared to death. At some point she starts
15 begging him can she just go to the bathroom. She's, as she
16 says, about to wet herself. And because of her history
17 with him she knows that she's trying to talk him kind of
18 down.

19 Eventually he does let her go to the bathroom. He
20 stays with her. He still has both knives, but he runs out
21 of cigarettes. You can actually see in some of the photos
22 where he's smoking and the cigarette butts are in the bed.

23 At that point he indicates that he needs cigarettes
24 and suggests that they go to the local market to get
25 cigarettes. They end up going.

1 He takes one of the -- he leaves one of the knives
2 there. He takes the other knife and puts it in his pants,
3 still threatening her and telling her he will harm her, her
4 kids, things of that nature.

5 They go to the one gas station that's actually open
6 that time of night when they -- because the one closest to
7 them has already closed because it's after midnight.

8 They get there, and you can actually see on the video
9 we had, Your Honor, where they enter the business. He's
10 nearby. He never displays the weapon in the business, of
11 course.

12 She then purchases cigarettes, and she's thinking the
13 whole time. She actually uses her debit card so that there
14 will be something that -- she's worried the police could
15 have something to follow up on as far as tracking her
16 movements that night and seeing who she was with.

17 They then return back to the house. Once back at the
18 house they continue to have conversations. He makes
19 demands on what he wants from her. She starts telling him
20 you can have the money, you can have the car, you can have
21 whatever you want and things of that nature.

22 Eventually around 5:45 that morning -- and I believe
23 he's been in the house totally by the time she gets out
24 seven hours holding her at knifepoint -- he actually when
25 she wakes up, she also notices he has a roll of duct tape

1 with him. He never actually uses it, but he's got it with
2 him. And I've got photos where that's recovered at the
3 scene.

4 He -- the son's alarm clock goes off around 5:45. She
5 starts begging him, let me just get the children out of
6 here, they don't know anything's going on, let me just get
7 them to school.

8 She then makes preparations to take them to school.
9 She talks him into doing that, indicates to him she will
10 come back, she will get him the money, she'll get him the
11 car, anything he wants. And eventually she's able to do
12 that.

13 As soon as she gets far enough away from the house she
14 then calls the police department indicating that, you know,
15 he's been there, that he's after her. And she basically
16 takes her children to school because she doesn't want them
17 involved in this and goes to the police department
18 immediately and reports everything.

19 Once it's reported to police they start looking for
20 him. When they respond to the house they see him on the
21 outside of the house, of her house, not his house. And a
22 chase ensues. It occurs, it happens, over a period of
23 time, Your Honor. They're able to chase him through some
24 fields.

25 Eventually they actually get the dogs out to track him

1 down and are able to apprehend him later that day. At that
2 point, Your Honor, he is taken into custody. He does give
3 a statement that was recorded where he denies anything
4 pretty much and says she's crazy.

5 Subsequent to that, Your Honor, we are able to -- and
6 I've got photos where you can see his backpack that he left
7 at the scene. They're actually his items.

8 The whole time apparently leading up to the point
9 where he goes up into the house and then subsequently while
10 he's hiding he is texting some young woman. I don't know
11 who it is.

12 Here are the knives that were recovered at the house;
13 here is the duct tape on the bed where he left it; and here
14 is the general area showing how the knives and all of that
15 are in relation to each other.

16 He's texting her during the course of the night. He's
17 texting this young woman saying -- she's texting him, "Are
18 you still outside in the car?" And he says, "Waiting for
19 everybody to go to sleep. I'm going to go in and get the
20 keys." Says, "I know how hard she sleeps. Chill."

21 Then the young woman texted back, said, "when are you
22 going to get going? You take it."

23 They have another course of conversation. He says,
24 "Baby, it depends on where the keys are." And then the
25 young woman writes back, "Her purse," with dots after it.

1 And it says, "Woow, you should take the whole thing." He
2 writes back, "I will. Money and bank card too. And then
3 the next thing he says, "She wakes up, she done."

4 It continues, Your Honor. "I'm in the basement now,
5 got to move up quietly. I don't want to get caught. Wish
6 you were here." And continue. There's a time period where
7 there's no texting back and forth.

8 Then you could tell the police were chasing him. At
9 one point I think he's hiding under a porch or something
10 somewhere. Says, "Don't want to get locked up and be
11 stuck. I'm under a porch again. Police chasing me. I'm
12 going to hurt Kia." and that's when he called her Kia. "My
13 clothes are dirty. woow." And then it says, "I've been
14 hiding under the porch all night from police and didn't do
15 shit wrong."

16 THE COURT: All right.

17 MS. CAMPBELL: That's some of the things that would
18 have corroborated what the victim says.

19 Your Honor, at the proper time we would ask to be
20 heard. And while we did reduce the charges and allow him
21 to plead to a cap of 20, what our thinking was on that,
22 because he does have an extensive prior record which I'll
23 give you at the appropriate time.

24 THE COURT: All right. That's a mouth full.

25 Now, that's substantially how everything unfolded. Is

1 that fair?

2 MR. DERIEG: We would have some issue with a few of
3 the -- I'll say more minor details of the recitation of the
4 facts.

5 THE COURT: Okay. But substantially.

6 MR. DERIEG: But as far as the substantial charges go
7 and the major issues, yes, sir.

8 THE COURT: All right. Very well.

9 I find that there is a substantial factual basis for
10 your plea, Mr. Green.

11 I further find your decision to plead guilty to be
12 freely, voluntarily, knowingly and intelligently made, that
13 you've had the advice of competent counsel, and you
14 indicate to me you're satisfied with. Therefore I'll
15 accept this plea.

16 Now, I think -- am I to understand some of these
17 things from being briefed by my law clerk -- is there
18 something we need to discuss in chambers, or do you want to
19 put it all on the record here?

20 MS. CAMPBELL: I think we can just put it all on the
21 record.

22 THE COURT: Oh, that's fine.

23 MS. CAMPBELL: I don't think there's anything we need
24 to discuss in chambers.

25 THE COURT: Very well.

1 MS. CAMPBELL: Your Honor --

2 THE COURT: Yeah. I'm sorry. Yeah.

3 MR. DERIEG: Mr. Green would prefer for the part that
4 I believe you're talking about, Your Honor, if we could do
5 that in chambers.

6 THE COURT: Let's take a brief break and let's -- this
7 is -- this has nothing to do with the specific allegations
8 of this case. Something else.

9 Out of an abundance of caution, I think I should talk
10 to y'all in chambers before we put something on the record.
11 It's a collateral matter.

12 (Whereupon, a recess was taken.)

13 THE COURT: We are back on the record in this case.
14 Mr. Green, I think I just -- oh, he's not here yet.

15 MS. CAMPBELL: Your Honor, just for the record, as far
16 as his prior record, he does have a prior record from New
17 York, Virginia, Maryland.

18 THE COURT: Let's hold off. Mr. Green is not here.

19 MS. CAMPBELL: Sorry.

20 THE COURT: Here he comes.

21 (Pause.)

22 THE COURT: Mr. Green, I just -- I think I'd just
23 accepted a plea, and Ms. Campbell is getting ready to go
24 into his prior record, I believe.

25 MS. CAMPBELL: Yes, Your Honor. I'm sorry.

1 He does have a prior record from New York, Virginia,
2 Maryland and South Carolina starting in no particular
3 order, Your Honor.

4 But 1991 he was convicted of failure to appear on an
5 assault charge; in 1988, he was guilty of a larceny that
6 was a felony; and in 1991 another assault, misdemeanor,
7 guilty; then he has another failure to appear in 1992; a
8 damage to property in 1992; domestic assault. That would
9 be his first domestic assault charge, Your Honor, in 1992.

10 In 1993 he was convicted of a larceny; in 1994,
11 forgery of a public record. And these are all from
12 Virginia I believe. Yes. Still in Virginia in 1996 we get
13 to a grand larceny; in 1996 his first possession of cocaine
14 conviction; then in 1996 a worthless check conviction; 1997
15 -- '96 -- excuse me -- another one. Then in 1997 another
16 check conviction; in 1998 a petty larceny; in 1998 a
17 vandalism; and in 1998 a failure to appear conviction,
18 which is amazing.

19 In 2000 credit car theft; credit card forgery; credit
20 card fraud. And we're still in Virginia. Possession of
21 marijuana from 1999; larceny or theft third or subsequent
22 offense in 1999; in 2000 possession of a controlled
23 substance; and in 2002 burglary second violent; in 2006
24 breaking and entering conviction; in 2006 a grand larceny
25 that went with that one; in 2005 he has another failure to

1 appear on a felony charge, 2006 a destruction of property.

2 Moving on to New York, Your Honor, in 1987, this is
3 the attempted armed robbery conviction; from 1988 felony
4 grand larceny; 1995 forgery of credit card, petty larceny;
5 2003 -- I can't read that. That may be just his discharge
6 on those, Your Honor. And moving on to -- is that enough?

7 THE COURT: That's enough.

8 MS. CAMPBELL: Okay. There's more.

9 THE COURT: That's fine. I get the idea.

10 And we talked a little bit. That's substantially his
11 prior record without going into everything. It was
12 extensive, and I think everybody knew that.

13 Now, at this point in time you want the victim to
14 speak or -- then I'll just let you give whatever. She's
15 invited to come up.

16 Is it still Mrs. Green?

17 THE VICTIM: No, sir.

18 THE COURT: Oh, it's changed. Okay. That's fine.

19 MS. CAMPBELL: She's been divorced from him since --

20 THE COURT: Ma'am?

21 MS. CAMPBELL: She's gotten a divorced from him.

22 THE COURT: Okay.

23 MS. CAMPBELL: So they're divorced now.

24 Your Honor, with her is her son and her stepfather.

25 Her son is --

1 THE COURT: Good morning.

2 THE VICTIM: Good morning. On -- and I apologize.

3 THE COURT: That's all right, ma'am.

4 THE VICTIM: On December the 3rd of 2012, the day of
5 my 35th birthday, the man that I fell in love with, Sherwin
6 Green, broke into my house.

7 Since that night for the past two years my birthday
8 has never been the same. A day meant for celebration and
9 happiness has now been replaced with dark reminders of
10 being kidnapped and having my life threatened.

11 I'm grateful to God that my children and I were not
12 harmed by his stated murderous intentions. However, the
13 pain, suffering and mental anguish that was planted in my
14 mind and soul that night will grow in my family's lives
15 forever.

16 My son who was 14 at the time is now 17, and despite
17 everything we went through he's a successful senior in high
18 school playing football. It's just like we survived that
19 night and we're continuing to survive now.

20 Today my children who are not by him are 17, 13, 10
21 and 8. And based on the sentencing cap, Your Honor, I wish
22 to request that he is sentenced to the maximum of 20 years,
23 because throughout our marriage he would always tell me
24 that we would be together until the casket dropped. And
25 after that night I do feel like if he's released too soon

1 my casket will drop in Mr. Green's hands, Your Honor.

2 And it's not without regard for his life that I give
3 you this statement today. But having my life and my
4 children's life jeopardized by somebody that I took a vow
5 with before God, it brought me to the realization of a lot
6 of things.

7 There are consequences to every action, and everybody
8 is punished for their mistakes. The biggest mistake I made
9 being a woman and a single mother -- single mother, and
10 that of four -- was marrying Mr. Green. And the events of
11 that night, those were my consequences. And him acting out
12 those events, that was his mistake, Your Honor.

13 And today you have the authority to allow him to
14 suffer the consequences for the mistakes that he made. And
15 I'd just like to thank you for your time.

16 THE COURT: Thank you, ma'am.

17 Anything further, Ms. Campbell?

18 MS. CAMPBELL: No, sir.

19 THE COURT: This is your son. He played for the
20 Bulldogs?

21 THE VICTIM: No, sir.

22 THE COURT: Who do you play for?

23 MS. CAMPBELL: He's a high school football player,
24 Your Honor.

25 THE COURT: Huh?

1 THE VICTIM: I don't wish to disclose.

2 MS. CAMPBELL: She doesn't want me to tell him where
3 they are now.

4 THE COURT: Oh.

5 MS. CAMPBELL: He's here in South Carolina. He's
6 playing high school football.

7 THE COURT: I understand. That's fine. Good looking
8 kid.

9 THE VICTIM: Thank you.

10 THE COURT: Mr. Derieg, be glad to hear from you, sir.

11 MR. DERIEG: Thank you, Your Honor. May it please the
12 Court.

13 You already know a little bit of background of
14 Mr. Green. He's from Brooklyn, New York. He's almost 50
15 years old. In two months he'll be 50. He's got a
16 31-year-old son and a 24-year-old daughter and 5-year-old
17 grandson.

18 Your Honor, had we gone to trial and he be found not
19 guilty he likely still would never have hit the streets for
20 potentially the rest of his life. He's almost 50 years
21 old.

22 He's facing 12 to 20 in Maryland. He's got a plea
23 that's already been arranged where the low end is 12 and
24 the high end is 20 that when South Carolina is done with
25 him he's got to go face in Maryland. And when Maryland is

1 done Mr. Green is facing a 6-month -- a 6-year, 9-month
2 probation violation. So even if he'd been found not guilty
3 in this courtroom through trial, he still likely never in
4 his life is going to hit the streets again.

5 Your Honor, we would be asking you for a minimal
6 sentence. We thought that back in the summer of 2013 --
7 Mr. Green and I, at least, were of the belief that we had
8 come to a plea agreement that would have allowed Mr. Green
9 to spend a minimal amount of time in South Carolina and
10 then go back and face these up to almost 27 years left in
11 prison that he's got in Maryland and Virginia, particularly
12 based on the fact of what we have discussed in chambers,
13 Mr. Green's safety in the department of corrections is --
14 would be extremely compromised.

15 We would ask, Your Honor, that the 3-year sentence
16 that -- or the 3-year plea that we thought we had gotten
17 back in 2013, I think that would be appropriate. He's been
18 in jail for approximately 1058 days.

19 At the appropriate time Mr. Green would like to
20 address the Court, but we would -- I respectfully ask Your
21 Honor to allow Maryland and Virginia to pay to house
22 Mr. Green for the rest of his life as opposed to the state
23 of South Carolina.

24 THE COURT: All right. Thank you, sir.

25 Mr. Green, I'll be happy to hear anything you'd like

1 to tell me, sir.

2 THE DEFENDANT: I don't want to talk too much to the
3 Court.

4 I just want to explain that we both didn't know each
5 other, you know. It was a bad marriage. We only knowed
6 each other 68 days. We got married. So I didn't know her
7 and she didn't know me. So it was rough from the very
8 beginning. So I don't blame her for anything. You know, I
9 mean, I -- what I did, I did, and I want to apologize to
10 the courts for that.

11 But I'm facing a long time in Maryland and facing a
12 long time in Virginia. I'm roughly looking at getting out
13 when I'm 70.

14 I do have a grandchild that I would like to know and
15 get to spend some time with. So I want you just to take
16 everything into consideration that my lawyer spoke to you
17 about, and the time I'm facing that will allow me to go to
18 Maryland and Virginia and do my time up there.

19 That's all I have, Your Honor. Thank you.

20 THE COURT: All right. Anything further, sir.
21 Anything further?

22 MS. CAMPBELL: No, Your Honor.

23 THE COURT: On Indictment 2013-456, State vs. Sherwin
24 Green, that's possession of a stolen pistol, sentence five
25 years.

1 On Indictment 2013-455, Sherwin Green, possession of
2 firearm or ammunition by a convicted felon, five years.

3 On Indictment 2013-457, kidnapping, Sherwin Green,
4 sentence, 20 years.

5 Indictment 2013-458, burglary second, 15 years to run
6 concurrent. Credit for time served.

7 My observation of you, Mr. Green. I don't think
8 there's anything that specifically prohibits you from
9 working out a deal with Maryland and other places and make
10 all of this time run concurrent anyway.

11 So, in fact, believe it or not, this is sort of an
12 observation that I've made and lawyers make. By getting
13 the sentence that you received today here is going to make
14 it easy to get rid of the other charges in the other
15 states. That's what I sincerely believe, and I hope that's
16 how it works out for you.

17 Thank y'all so very much. It's a thousand and how
18 many days?

19 MR. DERIEG: By my count it's 1058. Well, that was
20 yesterday. So today 1059.

21 THE COURT: Good luck to you, Mr. Green. It might
22 work out the way I suggested. I've seen that done before.
23 Believe it or not, getting the sentence like you got here
24 today might help you.

25 END OF REQUESTED TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

The State of South Carolina,

vs.

Sherwin A. Green,

Defendant.

) IN THE GENERAL SESSIONS COURT
) Indictment Number: 2013-GS-28-0455,
) 0456, 0457, 0458
)
)
)
)
)
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)

NOTICE OF MOTION
TO RECONSIDER

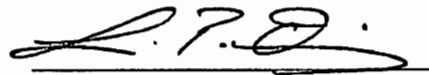
FILED FOR RECORD
2015 OCT -9 PM 2:16
JOYCE HICKSON, D.
CLERK OF COURT
KERSHAW COUNTY, S.C.

Date: September 28, 2015
Judge: Casey L. Manning
Court Reporter: Debbie McCurdy
Solicitor: K. Luck Campbell
Public Defender: Lir P. Derieg

Pursuant to Rule 29(a) of the South Carolina Rules of Criminal Procedure, Defendant, Clifton D. Cooke respectfully requests a hearing for a Motion to Reconsider his sentence.

On Monday, September 28, 2015, Mr. Green entered a plea of guilty to charges of Burglary 1st Degree, Kidnapping, Possession of a Stolen Pistol, and Possession of a Firearm by a Person Convicted of a Violent Felony. The Honorable Casey Manning sentenced Mr. Green to twenty years in the South Carolina Department of Corrections.

Mr. Cooke was originally indicted in 2013 for the charges listed above. He filed a Speedy Trial Motion in 2013, which was granted. He later made a motion to dismiss pursuant to a failure to receive a speedy trial, both of which were denied. During the sentencing hearing Mr. Green would like to further elaborate on several instances of help provided to the State, which prosecutors at his sentencing were previously unaware of prior to sentencing.



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Camden, South Carolina
October 7, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS
 FIFTH JUDICIAL CIRCUIT

The State of South Carolina,)

Warrant #: 12A2820200175, 76, 81,
 83

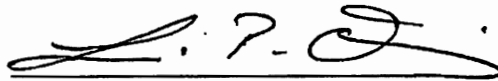
v.)

Sherwin Green)

DEFENDANT.)

CERTIFICATE OF SERVICE

I certify that on this date I served the Notice of Motion and Motion in this case on The State of South Carolina by mailing and emailing a copy of this motion to the State's attorney of record, Assistant Solicitor K. Luck Campbell and Joanna McDuffie, by mailing said motion to their office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main St., Columbia, South Carolina 29201 and by their office email.



Lir P. Derieg
 Attorney for Sherwin Green

Columbia, South Carolina

This 7th day of October, 2015

FILED FOR RECORD
 2015 OCT -9 PM 2:17
 JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE GENERAL SESSIONS COURT
Indictment Number: 2013-GS-28-0455,
0456, 0457, 0458

The State of South Carolina,

VS.

Sherwin A. Green,

Defendant.)

AMENDED MOTION
TO RECONSIDER

FILED FOR RECORD
2016 JUN 20 PM 1:01
JOYCE McDONALD
CLERK OF COURT
BERSHAN COUNTY, S.C.

Date: September 28, 2015
Judge: L. Casey Manning
Court Reporter: Linda D. Moffitt
Solicitor: K. Luck Campbell
Defense Attorney: Lir P. Derieg

Pursuant to Rule 29(a) of the South Carolina Rules of Criminal Procedure, Defendant, Sherwin A. Green respectfully requests, by and through the undersigned counsel, a hearing for a Motion to Reconsider his sentence.

On Monday, September 28, 2015, Mr. Green entered a plea of guilty to charges of Burglary 1st Degree, Kidnapping, Possession of a Stolen Pistol, and Possession of a Firearm by a Person Convicted of a Violent Felony. The Honorable Casey Manning sentenced Mr. Green to twenty years in the South Carolina Department of Corrections. Within the required ten (10) day period of time, Defendant submitted his initial Notice of Motion and Motion for Reconsideration.

Mr. Green was originally indicted in 2013 for the charges listed above. He filed a Speedy Trial Motion in 2013, which was granted. He later made a motion to dismiss pursuant to a failure to receive a speedy trial, which was denied initially by Judge Hood, stating that although Judge Hood was the Chief Administrative Judge for General Sessions, he was not the proper judge to hear the motion to dismiss and that the trial judge would be the appropriate judge to hear the motion. However, when the motion to dismiss came before the trial judge, Judge Manning, Judge Manning granted the State's request to deny Defendant's motion pursuant to Rule 4 of the South Carolina Rules of Criminal Procedure. Defendant has been denied his constitutional right to due process, as his motion to dismiss has never been ruled upon based on its merits. Either by a judicial mistake as to which judge should have been the proper judge to hear the motion, or by a creative use of SCRCrP Rule 4 on the part of the State, Mr. Green's compelling motion to dismiss for a failure to provide him a speedy trial has never gotten a ruling based on the merits of the

motion itself.

Defendant will also request that Defendant's Motions to Dismiss and to Enforce Plea Agreement, as well as Defendant's memo in support of the motions be made an official part of the record.

Additionally, during the reconsideration hearing, Mr. Green would like to further elaborate on several instances of help provided to the State, of which prosecutors at his sentencing were previously unaware of prior to sentencing.

Specifically, after arriving at RCDC, Green contacted Inv. Jamey Jones, about an accused murder named Ralieg Furman. Green gave Jones information regarding the planned malingering Furman planned to exhibit in order to receive a Guilty but Mentally Ill (GBMI) plea. In fact, the letter Green sent Jones was ultimately given directly to Furman in his Discovery Motion. Green would go on to warn Lt. Sligh, supervisor at RCDC, that Furman had a long shank and that the shank was intended to kill another officer named C/O Hickman. Furman's cell was shaken down, and the shank was found. To this day, C/O Hickman credits Green with saving her life.

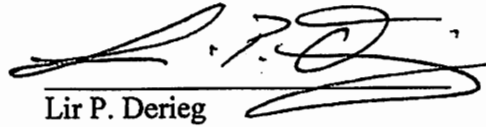
Also while at RCDC, Green approached Lt. Sligh and C/O Starling about fellow correctional officers bringing in contraband into the jail. Based on information provided by Green, one correctional officer was fired for bringing crack cocaine and tobacco into the jail. Another correctional officer was fired for bringing marijuana and tobacco into the jail. A third correctional officer was fired for bringing tobacco and marijuana into the jail.

Moreover, Defendant moves this court for reconsideration because Defendant's Motion to Enforce Plea Agreement has never been ruled upon. Defendant moved before both Judge Manning and Judge Hood that they each compel the State to abide by the terms of a prior oral plea agreement which Defendant contends was extended to the undersigned counsel and was accepted by Defendant by and through the undersigned counsel. Both Judge Manning's and Judge Hood's orders denying Defendant's Motion to Dismiss for a Violation of his Right to a Speedy Trial failed to include any language referencing Defendant's Motion to Enforce Plea Agreement. To the best of the undersigned counsel's recollection and notes, and upon information, memory and belief of Defendant, no other written or verbal orders have been issued in this case. Therefore, Defendant will ask for a further reconsideration in order to obtain a ruling on his motion to enforce plea agreement, regardless of the ruling, so that he may at least be able to include any denial in his subsequent appeal.

Finally, Defendant will ask this court to reconsider his twenty (20) year sentence in light of both Maryland's and Virginia's denial of Defendant's request to both resolve

his cases in each of those respective States and then to have any sentence run concurrent to his twenty (20) year sentence imposed by this court. Defendant has even attempted to get his Virginia and Maryland cases either resolved or dismissed pursuant to the Interstate Agreement on Detainers. Those efforts have proven fruitless, as well. Therefore, Defendant will ask for a further reconsideration of his twenty (20) year sentence.

Respectfully Submitted,



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Camden, South Carolina
June 12, 2016

FILED FOR RECORD
2016 JUN 20 PM 1:01
JOYCE McDONALD
CLERK OF COURT
Kershaw County, S.C.

State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
County of Kershaw)
 2013-GS-28-0455
 2013-GS-28-0456
 2013-GS-28-0457
 2013-GS-28-0458

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Sherwin Alfonzo Green,)
)
 Defendant.)
)
)

August 15, 2017
Columbia, South Carolina

B E F O R E:

The Honorable L. Casey Manning, Judge

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

Kathryn Luck Campbell, Esquire, Assistant Solicitor
Joanna A. McDuffie, Esquire, Assistant Solicitor
Meghan L. Walker, Esquire, Assistant Solicitor
Attorneys for the State

Lir P. Derieg, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

1 THE COURT: You filed -- was it you that filed the
2 motion to reconsider some sentence a couple of years ago in
3 Camden?

4 MR. DERIEG: Yes, Your Honor.

5 THE COURT: You can refresh my recollection about it,
6 and somebody said the file was in Camden, but that's okay.
7 The main thing is to hear what you intend to present to get
8 me to change my mind.

9 MS. CAMPBELL: I've got a copy of the sentencing
10 sheet.

11 THE COURT: All right.

12 MS. CAMPBELL: If that would help, and I think I've
13 got the indictments, too, if you want those.

14 MR. DERIEG: And, Your Honor, this is a copy of the
15 motion to reconsider.

16 THE COURT: All right.

17 MS. CAMPBELL: Is that the amended motion?

18 MR. DERIEG: Yes, ma'am.

19 THE COURT: You ready, Mr. Derieg?

20 MR. DERIEG: Yes, Your Honor.

21 THE COURT: It's your motion. Proceed.

22 MR. DERIEG: Thank you, Your Honor. We're here today
23 asking Your Honor to reconsider the twenty-year sentence
24 that was handed out to Mr. Green for a variety of reasons.
25 The first of which I will begin with, Your Honor, is Your

1 Honor was aware of the help that Mr. Green had given to the
2 state in regards to a, a Nicholas Miller that was on trial.
3 I think he ultimately pled guilty to life out of Kershaw
4 County, but originally it was a death penalty case.

5 THE COURT: All right.

6 MR. DERIEG: And originally Mr. Green had been served
7 with LWOP and based on that help, the LWOP was taken off.
8 However, Your Honor, there were some other -- additional
9 help to the state that Mr., Mr. Green gave, the first of
10 which would be to guards at the Alvin S. Glenn Detention
11 Center.

12 We have here, Your Honor, Lieutenant Sligh and
13 Corrections Officer Hickman. C.O. Hickman, I think it's
14 fair, fair to characterize Mr. Green helped save her life.
15 There was an inmate there by the name of Riley Furman who
16 was planning to kill Ms. Hickman, and it's kind of -- I
17 think it was evidence that he was crazy and that he
18 shouldn't have to go on trial, but part of, part of his
19 plot was to kill C.O. Hickman. Mr. Green found out about
20 that, informed the proper authorities there at the jail,
21 and potentially saved C.O. Hickman's life, and she's here
22 today to answer any questions Your Honor might have.

23 THE COURT: Yeah. I'll invite her to come up and tell
24 me her own version.

25 Come up, please, ma'am, and just tell me your name for

1 the record. Give me a little bit of background, how long
2 you've been at Alvin S. Glenn, and the circumstances that
3 bring you here today.

4 OFFICER HICKMAN: Yes, sir. My name is Wanda Hickman.
5 I was at the Alvin S. Glenn Detention Center now for about
6 six and a half years, going on seven years.

7 THE COURT: Okay.

8 OFFICER HICKMAN: And I'm here. Mr. Sherman [sic] --
9 on that, that day, I was working Unit Hotel with Mr., with
10 Mr. Green. He came to the desk and he said Ms. Hickman, I
11 need for you to get in contact with Lieutenant Sligh. I
12 said about? He said I just need for you to get in contact
13 with Lieutenant Sligh. It's a emergency. He said here's a
14 grievance. So, I took the grievance and I placed the
15 grievance in the box, if I can remember, and he said no.
16 That grievance needs to come out that box. I need to talk
17 to Lieutenant Sligh. I said, well, Lieutenant Sligh don't
18 pick up grievance until on Wednesday and it was, if I can
19 recall, it was that Friday. And he said Officer Hickman,
20 please get in touch with Lieutenant Sligh. I said okay.

21 So, I got on the phone. I called Lieutenant Sligh and
22 I said Lieutenant Sligh, Mr. Green needs you to come down
23 here. He needs to talk to you about a grievance that I
24 placed in the box. So, Lieutenant Sligh said I'll call
25 Officer Starling down to talk to him. So, Officer Sterling

1 came and talked to Mr. Green. Somehow they retrieved the
2 grievance out the box.

3 I wasn't aware that Mr. Furman, you know, wanted to
4 kill me. Whatever he did, it was some kind of contact with
5 my stepson. He killed my stepson stepfather.

6 THE COURT: So, Mr. Furman killed your stepson's
7 father?

8 OFFICER HICKMAN: Stepfather.

9 THE COURT: Stepfather. Okay.

10 OFFICER HICKMAN: His stepfather. My stepson, that
11 was his stepfather that he killed.

12 THE COURT: Is that why he was in the detention center
13 at the time?

14 OFFICER HICKMAN: Mr. Riley?

15 THE COURT: Mr. Thurman.

16 OFFICER HICKMAN: Yeah, I -- for murder.

17 THE COURT: Okay.

18 OFFICER HICKMAN: And so then that next day -- well,
19 that same evening, Lieutenant Sligh now, Lieutenant Sligh
20 and the director called the ERT team in to have a shakedown
21 on the room, but whatever -- the note had stated --
22 Lieutenant Sligh read it to me and my mother. Stated that
23 Mr. Furman was going to play insanity and come out the room
24 and kill me with the shanks in cold blood. And if it
25 wasn't for Mr. Green, I probably would have lost my life,

1 and I thank him for that.

2 THE COURT: Okay, and all that you've told me -- I'd
3 ask you raise your right hand.

4 (WHEREUPON, WANDA HICKMAN IS DULY SWORN BY THE COURT.)

5 THE COURT: So, what you just said is the truth ---

6 OFFICER HICKMAN: Yes, sir.

7 THE COURT: --- to the best of your knowledge and
8 ability?

9 OFFICER HICKMAN: Yes, sir.

10 THE COURT: All right. Thank you, ma'am.

11 Anyone have any questions?

12 All right. Thank you.

13 And you are Lieutenant Sligh?

14 LIEUTENANT SLIGH: Yes, sir.

15 THE COURT: Come on up, Lieutenant Sligh, and a little
16 bit of background: how long you've been there, where you're
17 from, the circumstances just described to me.

18 LIEUTENANT SLIGH: I'm Lieutenant Ken Sligh. I've
19 been at the Alvin S. Glenn Detention Center for thirty
20 years.

21 THE COURT: Yes, sir.

22 LIEUTENANT SLIGH: I'm the gang investigator at the
23 jail, and in dealing with Mr. Green, he told -- he did told
24 me about that incident. I hear when a lot of -- bunch of
25 incident that drugs are coming into my jail. He was

1 telling me -- sometimes we'll get the sheriff's department
2 with the drug agent, they'll come in. So, he tells me a
3 whole lot of information that been coming in, coming in the
4 jail.

5 But the incident with, with Mr. Hickman [sic], when I
6 went, got started and got the letter and he gave it to, so
7 I read the letter and it was saying that they got a shank.
8 They going to kill one of my officers, a Mr. Hickman. So,
9 I went to the director, Mr. Myers. I said, hey, we got a
10 guy talking about killing one of the officers. They say
11 the weapon is in the dorm.

12 So, I'm a commander with the Emergency Response Team,
13 so I called some of my people to come in. We shook down
14 the whole dorm and we found a long shank like this up in
15 the window. The shank's in the door. And so -- but -- so,
16 most the information he always giving most often be true.

17 THE COURT: So, y'all, you actually found a shank in
18 the presence of or nearby Mr. Thurman or Furman?

19 LIEUTENANT SLIGH: Yes, sir.

20 THE COURT: Furman or Thurman? What's his name?

21 MR. DERIEG: Furman, Your Honor.

22 THE COURT: Furman, okay. Was it in his cell?

23 LIEUTENANT SLIGH: No. It was in, like a plumb
24 shakes. He had it up under the door because they ain't
25 going to put it in they cells.

1 THE COURT: I understand.

2 LIEUTENANT SLIGH: And it was at the plumb shakes
3 where Mr. Green say he ain't ---

4 THE COURT: He had ready access to the shank?

5 LIEUTENANT SLIGH: Yeah. He was sharpening it; he was
6 sharpening it. Every time he sharpened a little bit, he'll
7 put it back until it get real sharp. Then he'll use it.

8 THE COURT: And what you just told me, of course I
9 consider it being an officer and all that.

10 LIEUTENANT SLIGH: Yes.

11 THE COURT: You understand that?

12 LIEUTENANT SLIGH: Yes, sir.

13 THE COURT: Thank you so much, Lieutenant Sligh.

14 MS. CAMPBELL: Could I ask him a couple questions?

15 THE COURT: Yes, ma'am.

16 MS. CAMPBELL: You said it wasn't in his cell. How
17 many people would have access to the shank that you found?

18 LIEUTENANT SLIGH: It would be about -- at that time
19 we probably had between forty-nine to sixty, seventy people
20 in the cell.

21 MS. CAMPBELL: In the cell, a place that would ---

22 LIEUTENANT SLIGH: In the, in the ---

23 MS. CAMPBELL: --- have had access to ---

24 LIEUTENANT SLIGH: --- the dorm.

25 MS. CAMPBELL: --- that same shank?

1 LIEUTENANT SLIGH: Yes.

2 MS. CAMPBELL: And this was out in an open area or in
3 a doorway?

4 LIEUTENANT SLIGH: It was in the dorm, right inside
5 the plumb shakes.

6 MS. CAMPBELL: Right inside the what? I'm sorry.

7 LIEUTENANT SLIGH: Like where the plumbing area go at.

8 MS. CAMPBELL: Yeah, yeah, yeah.

9 LIEUTENANT SLIGH: Where you got to slide it up under
10 the door.

11 MS. CAMPBELL: So, all those people would have had
12 access to the same shank?

13 LIEUTENANT SLIGH: Yeah.

14 MS. CAMPBELL: Thank you.

15 THE COURT: But y'all believe that because of his
16 efforts, it saved her life. Is that fair enough?

17 LIEUTENANT SLIGH: Yes, sir.

18 THE COURT: Thank you, Lieutenant Sligh.

19 Anything further?

20 MR. DERIEG: Yes, Your Honor. I did want to hand up
21 to the court -- if I might approach?

22 THE COURT: Have you shown them a copy?

23 MR. DERIEG: Yes, Your Honor.

24 THE COURT: Of course I know I always ask that
25 question. It's been twenty-something years.

1 MR. DERIEG: Since Mr. Green has been sentenced --
2 well, at the time of the sentencing, he was facing twelve
3 to twenty ---

4 THE COURT: Charges in Maryland.

5 MR. DERIEG: In Maryland, yes, Your Honor, and a six
6 month, nine year probation violation out of Virginia. He's
7 since tried to get them -- get those cases handled and, and
8 run concurrent to the twenty-year sentence that Your Honor
9 gave him, and as you see, those motions have been denied or
10 summarily dismissed.

11 Your Honor, he's currently -- I think it'd be fair to
12 describe him as, as living in fear. Nicholas Miller has
13 made multiple phone calls down to McCormick where Sherwin
14 is housed trying to get his people to hurt or kill Mr.
15 Green, as well as Riley Furman and his friends.

16 Mr. Green was arrested on December the 5th, 2012, and
17 has been continuously incarcerated since. And just as a
18 matter of housekeeping, I believe that the initial hearing
19 and when the sentencing happened, there had been a motion
20 to dismiss based on a failure to provide a fast and -- fast
21 and speedy trial and a motion to enforce a three-year plea
22 agreement that never got ruled on. Just regardless of, of
23 what that ruling is, I feel compelled just to ask Your
24 Honor to, to make a final determination on that so that --
25 for the record and purposes of PCR going forward.

1 THE COURT: All right.

2 MR. DERIEG: And, Your Honor, we just ask that Mr.
3 Green's twenty-year sentence be reduced to five years and
4 we send him back up North to do all the time that he has to
5 do there where he's not ---

6 THE COURT: Well, he also received a fifteen-year
7 sentence the same day, I do believe. Twenty years and ---

8 MS. CAMPBELL: Fifteen years for the burglary.

9 MR. DERIEG: Well, we would ask that all of the ---

10 THE COURT: Fifteen years on a burglary, yeah.

11 MR. DERIEG: And we'd ask that all of those sentences
12 be reduced to five years and have him go back up North
13 where he's not under threat of being killed by people that
14 he's informed against.

15 THE COURT: All right. Thank you.

16 MR. DERIEG: Thank you.

17 MS. CAMPBELL: Your Honor, that would be impossible
18 for Mr. Green to go anywhere where he's ever been ---

19 THE COURT: Okay.

20 MS. CAMPBELL: --- that he has not ---

21 THE COURT: Slow down, please, Ms. Campbell. Go
22 ahead.

23 MS. CAMPBELL: Mr. Green's history is getting out of
24 sentences because of his cooperation with law enforcement.
25 In fact, two days prior to committing this offense, he had

1 been arrested on a domestic violence charge involving the
2 same victim.

3 He'd gotten out of jail because he approached the
4 police about how he was going to be able to buy guns that
5 were coming into Camden for them, at which point they then
6 got him -- or he was released out on bond. And then he had
7 a restraining order in place when he committed this
8 kidnapping offense against his, his -- what's now his
9 former wife, Your Honor.

10 THE COURT: What did they say about the phone being on
11 and somebody...

12 MS. CAMPBELL: And, Your Honor, the other thing I
13 would note. He handed up some paperwork to you talking
14 about how, like, Maryland has a hold or wants to extradite
15 him back or refused to dismiss. I would note that we did
16 run a rap sheet today, and the charges he's talked about
17 have been dismissed as of October 24th of 2016, and that's
18 part of the paperwork I can hand up to you.

19 In addition, Your Honor, I would hand up his record.
20 I would be glad to go through it with you, but it would
21 take a while. He has seventeen felony convictions I
22 believe in Virginia alone, not to mention Maryland and New
23 York State, as well as these are his first convictions in
24 South Carolina.

25 As far as any plea bargains that were done with him,

1 Your Honor, he initially was life without parole not once,
2 not twice, but he had three different offenses which made
3 him eligible for which he had been convicted and received
4 reduced sentences in the past on this.

5 We did agree prior to getting some rather important
6 evidence in this case to allow him to plead to a cap of
7 twenty years, reducing the burglary first, which would
8 carry fifteen to life, to a burglary second, allowing him
9 to plead to kidnapping and the two gun charges, Your Honor,
10 even after we got additional evidence once we were able to
11 get a phone that had been secured.

12 Local authorities were not able to get a dump from
13 that phone, Your Honor. We were able to send it out at the
14 defendant's request to a place in Ohio where they were able
15 to extract deleted materials from that and which proved
16 very valuable to the state's case in that it talks about
17 just how he is waiting in the basement, waiting for her to
18 be asleep, how he's going to, at one point, F her up. He's
19 going to steal things from her, and I can hand up a copy of
20 the actual text messages ---

21 THE COURT: Sure.

22 MS. CAMPBELL: --- from his phone.

23 THE COURT: I'll be happy to consider everything here.

24 MS. CAMPBELL: Your Honor, I would also hand up his
25 rap sheet just so you get an idea of ---

1 THE COURT: All right.

2 MS. CAMPBELL: --- what kind of prior record he got,
3 which was what you considered at the time.

4 THE COURT: And you've seen this, have you not? You
5 have this?

6 MR. DERIEG: Yes, Your Honor.

7 THE COURT: All right.

8 MS. CAMPBELL: Additionally, Your Honor, I would note
9 that the information that has come before you today from
10 the Alvin S. Glenn Detention Center, we actually prosecuted
11 Riley Furman as well in Camden. He is an older gentleman
12 and ---

13 THE COURT: What do you mean by old? How old is he?

14 MS. CAMPBELL: He's, like ---

15 THE COURT: I fall into the category myself these
16 days.

17 MS. CAMPBELL: --- my age.

18 THE COURT: I was just curious.

19 MS. CAMPBELL: He's, like, my age or older.

20 THE COURT: Okay.

21 MS. CAMPBELL: Additionally, Your Honor, this
22 information was available to them at the last sentencing
23 hearing. We understand that, but you did take into
24 consideration any cooperation he had given to police that
25 they brought forward at that point. It wasn't until later

1 that they wanted to bring this forward.

2 Your Honor, sitting in the courtroom today is the
3 victim in the case. She is very patient, Your Honor. Part
4 of his motion, which I think Ms. McDuffie will address in a
5 minute as far as his motion to dismiss for lack of a speedy
6 trial and -- I forgot the other. He ---

7 THE COURT: A motion to enforce the plea agreement.

8 MS. CAMPBELL: He alleged there was a prior plea
9 agreement, which our office disputed. There was never a
10 plea agreement. However, that was heard not once but
11 twice, I believe, and ruled upon by Judge Hood and Judge --
12 was it Benjamin?

13 THE COURT: Judge who?

14 MS. CAMPBELL: Judge Manning. I think you heard it.

15 THE COURT: Okay.

16 MS. CAMPBELL: And so that has been ruled upon.
17 Additionally, Your Honor, I think any motions he may have
18 had that may have gone up with the trial, once he pleads
19 guilty, it's my understanding that those motions -- am I
20 wrong about this? I believe we have the case law.

21 THE COURT: I think they're subsumed with the guilty
22 plea.

23 MS. CAMPBELL: Thank you.

24 THE COURT: All right.

25 MS. CAMPBELL: That's much more eloquent than I could

1 have put it.

2 Your Honor, the victim is here today. She was -- as
3 much as he -- it took a while to get him to trial. She
4 also was very, very patient with the whole system as well.
5 Even when we got this new information that actually
6 corroborated everything she said in addition to the -- you
7 know, he also ran from the police. They had to chase him.
8 There was a forty minute foot chase. They found him hiding
9 underneath the porch, which is also in his text messages,
10 how he's hiding from the police and he doesn't want to get
11 caught and if he does, he's going to F her up.

12 He -- there were a number of extenuating
13 circumstances, but once we got this additional information,
14 we didn't withdraw our guilty plea, which I think we would
15 have had a right to do at that point. We made sure we
16 honored it with the cap of twenty; we felt like that was
17 appropriate. We asked for the twenty. We felt like that
18 was appropriate at the time, and we would respectfully ask
19 that you just deny his motion to reduce his sentence.

20 We know that the Maryland charges are gone. I have
21 not had a chance today -- and I apologize, Your Honor. For
22 some reason, this wasn't on my calendar to check on whether
23 or not Virginia is still planning on doing anything.
24 They've never had a hold on him that I know of, but I
25 haven't had a chance to check on that.

1 THE COURT: Well, let me help both of y'all. This is
2 a nonjury manner. I'll wait until it's absolutely verified
3 one way or the other before I make a decision.

4 MS. CAMPBELL: Thank you.

5 THE COURT: And I don't have to make it today.

6 Yes, sir, Mr. Derieg.

7 MR. DERIEG: I do -- I would hand one other thing up
8 to the court, Your Honor, that I just got today.
9 Essentially -- and I'll show it to Your Honor after the
10 state has had a chance to look at it where Maryland has, in
11 fact, dismissed the cases but intends to bring them back if
12 Mr. Green is ever released from South Carolina prior to
13 2029.

14 Virginia is, is definitely still active, Your Honor.
15 And Ms. Campbell did bring up one point that I forgot to
16 mention to Your Honor. That Mr. Green did, in fact, help
17 the Camden Police Department do a controlled buy for some
18 ---

19 MS. CAMPBELL: Uh-uh. Never happened.

20 MR. DERIEG: --- automatic or semi-automatic machine
21 guns that were out on the street.

22 MS. CAMPBELL: That never happened. He said he was
23 going to, and that's how he got out. Your Honor, I'd hand
24 this up. I've seen it now.

25 THE COURT: Sure. Anything further?

1 Anything you'd like to tell me, Mr. Green? Anything
2 about yourself?

3 DEFENDANT: Yes, Your Honor. I just want to
4 acknowledge that I did try to get the Virginia charges
5 dismissed. Virginia did not put a hold on me. They do
6 have a warrant still pending that when it comes time to be
7 released, they're going to initiate the warrant.

8 And Maryland did dismiss the charges without
9 prejudice. Once I'm finished with here, with this state,
10 they're going to pick me up after that and still try me in
11 Maryland. So, it's actually the charges is still pending
12 without prejudice.

13 THE COURT: All right.

14 DEFENDANT: So, I would hope you would take everything
15 into consideration that Ms. Hickman said and Mr. Sligh said
16 and my attorney said.

17 THE COURT: I will.

18 Yes, ma'am.

19 MS. CAMPBELL: Your Honor, the victim is here. Would
20 you be able to hear from her today as well?

21 THE COURT: Sure.

22 MS. CAMPBELL: And can I approach with the life
23 without parole notice just so you'll have it?

24 Can you speak really loudly for me?

25 MS. WILLIAMS: Your Honor, my name is Requita

1 Williams. I'm the ex-wife of Sherwin.

2 THE COURT: I'll ask you to speak up a little bit,
3 please.

4 MS. WILLIAMS: My name is Requita Williams, and I'm,
5 I'm the ex-wife of Sherwin Green. And, Your Honor, I'm
6 here today because I know that my life will never be normal
7 if he is not in prison. I know that he will come back for
8 me and my children. I don't feel safe.

9 I've been dealing with this case since the day after
10 my birthday, my thirty-fifth birthday; I'm about to be
11 forty this year. Not a day goes by that I don't think
12 about what he did to me. I still have trouble sleeping
13 and, you know, and with social media and everything out
14 there in world.

15 He's in prison and he's concerned about people harming
16 him. After what he did to me, you know, why should, why
17 should even be a thought or consideration when he tried to
18 take my life? And that was my husband.

19 I have not talked to him; I have not laid eyes on him
20 except inside the courtroom since the day that he tried to
21 kill me. And on behalf of me and my children -- we are
22 moving forward in life. My kids were very successful.
23 They are straight A students in school. I'm a single
24 mother doing the best that I can, but I know that if Mr.
25 Green's sentence is reduced and he gets out in the near

1 future, that he is going to come after me. And another
2 court is going to be dealing with him and another person is
3 going to be dealing with him snitching and everything
4 because that's just what he does. And I plead with you,
5 Your Honor, that you please don't let him go.

6 THE COURT: Thank you, ma'am. My job is hear from
7 both sides, weigh what I've heard, and make a decision. I
8 will do that in due course.

9 Thank you all for your presentation.

10 --- END OF TRANSCRIPT OF RECORD ---

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

The State of South Carolina,

vs.

Sherwin A. Green,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) Indictment Numbers: 2013-GS-28-0455,
) 0456, 0457, 0458

ORDER

On Monday, September 28, 2015, Mr. Green entered a plea of guilty to charges of Burglary 2nd Degree (Violent), Kidnapping, Possession of a Stolen Pistol, and Possession of a Firearm by a Person Convicted of a Violent Felony. The Honorable Casey Manning sentenced Mr. Green to twenty (20) years in the South Carolina Department of Corrections. Within the required period of time, on October 7, 2015, Defendant submitted his initial Notice of Motion and Motion for Reconsideration.

On August 15, 2017, the reconsideration motion was heard before The Honorable L. Casey Manning. Present were the Defendant, Lir P. Derieg as counsel for Defendant, and Luck Campbell, Joanna McDuffie and Meghan Walker, all on behalf of the State.

During the reconsideration hearing, correctional officers Lt. Sligh and C/O Hickman, both of Alvin S. Glen Detention Center, testified on behalf of Mr. Green to several instances of help provided to the State, of which prosecutors at his sentencing were previously unaware of prior to sentencing.

Specifically, after arriving at RCDC, Green warned Lt. Sligh, supervisor at ASGDC, that Furman had a long shank and that the shank was intended to kill another officer named C/O Hickman. Furman's cell was shaken down, and the shank was found. C/O Hickman credits Green with saving her life.

Also while at RCDC, Green approached Lt. Sligh and C/O Starling about fellow correctional officers bringing in contraband into the jail. Based on information provided by Green, one correctional officer was fired for bringing crack cocaine and tobacco into the jail. Another correctional officer was fired for bringing marijuana and tobacco into the jail. A third correctional officer was fired for bringing tobacco and marijuana into the jail.

Finally, Defendant argued that his motion to dismiss for lack of speedy trial was not specifically ruled upon prior to him entering his guilty plea.

NOW THEREFORE, IT IS ORDERED

1. Defendant's Motion to Dismiss for Lack of Speedy Trial is **DENIED**;
2. Defendant's Motion to Reconsider Sentence is **GRANTED**;
3. Defendant's new sentence is that he shall be committed to the South Carolina Department of Corrections for twelve (12) years; AND
4. Defendant shall be given credit for all time served.

AND IT IS SO ORDERED.

FILED FOR RECORD
2019 MAR -8 AM 9:17
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.


The Honorable L. Casey Manning
Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina

March 7, 2019

COUNTY OF
STATE

Kershaw

VS.

Sherwin Alfonzo Green

AKA:

Race: BLACK Sex: M Age: 49

DOB: SS#:

Address: 905 Kirkwood Circle

City, State, Zip: Camden, SC 29020

DL#: SID#:

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

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

☐ CONVICTED OF or ☒ PLEADS

TO: Weapons / Possession of Firearm or Ammunition by person convicted of violent felony

in violation of § 16-23-0500 (B) of the S.C. Code of Laws, bearing CDR Code # 3434

☒ 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:

Campbell, Luck SC Bar# 13009 Defendant x John A. Green Attorney for Defendant P. B. 76135 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:☒ 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. 1059 days☐ 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(I) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA 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

\$ paid to Public Defender Fund

Other:

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

239

COUNTY OF Kershaw
 STATE VS.
Sherwin Alfonzo Green
 AKA: _____
 Race: BLACK Sex: M Age: 49
 DOB: [REDACTED] SS# [REDACTED]
 Address: 905 Kirkwood Circle
 City, State, Zip: Camden, SC 29020
 DL#: _____ SID#: _____

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

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

TO: Weapons / Sale or delivery of pistol to, and possession by, certain persons unlawful, stolen pistol

in violation of § 16-23-0030 of the S.C. Code of Laws, bearing CDR Code # 2364

☒ 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 pleas is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Campbell, Luck 1300x SC Bar# Defendant Attorney for Defendant 76135 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:

☒ 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. 1059 DAYS

☐ 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 \$ 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 [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013GS280456

A/W#: 2012A2820200176

Date of Offense: 11/25/2012

S.C. Code § : 16-23-0030

CDR Code #: 2364

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-23-0030 of the S.C. Code of Laws, bearing CDR Code # 2364

☒ 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 pleas is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Campbell, Luck 1300x SC Bar# Defendant Attorney for Defendant 76135 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:

☒ 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. 1059 DAYS

☐ 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 \$ 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 [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011)

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: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]

Judge Code: 2061

Sentence Date: 9/29/13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Kershaw

STATE VS.

Sherwin Alfonzo Green

AKA:

Race: BLACK Sex: M Age: 49

DOB: SS#:

Address: 905 Kirkwood Circle

City, State, Zip: Camden, SC 29020

DL#: SID#:

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

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

TO: Kidnapping / Kidnapping

in violation of § 16-03-0910

of the S.C. Code of Laws, bearing CDR Code # 0095

☐ 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:

Campbell, Luck

13089
SC Bar#x *James A. Green*
Defendant*L. P. Q.*
Attorney for Defendant76135
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

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

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

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013GS280457

A/W#: 2012A2820200181

Date of Offense: 12/3/2012

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

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

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

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

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: *THE KIDNAPPING did not INVOLVE ABUSE or ASSAULT*☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2001

Sentence Date: 9/29/10

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

241

COUNTY OF Kershaw
 STATE VS.
Sherwin Alfonzo Green

AKA:

Race: BLACK Sex: M Age: 49DOB: [REDACTED] SS#: [REDACTED]Address: 905 Kirkwood CircleCity, State, Zip: Camden, SC 29020DL#: [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: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

☐ 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:

[Signature] 13005 x Sherwin [Signature] 76135
 Campbell, Luck 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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 1059 DAYS

☐ 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	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 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	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013GS280458A/W#: 2012A2820200183Date of Offense: 12/3/2012S.C. Code § : 16-11-0311CDR Code #: 0079

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: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 206Sentence Date: 9/29/15

WITNESSES

(S) Damien Burris – Camden Police
Department

ARREST WARRANT NUMBER

2012A2820200175

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAY 15 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-28-0455

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

MAY TERM 2013

K96

THE STATE
vs.

Sherwin Alfonzo Green

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 RECORD
2013 MAY 15 PM 3:54
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Indictment for
POSS OF FIREARM/AMMUNITION BY
PERSON CONVICT OF VIOLENT FEL

SC Code: 16-23-0500 (B)
CDR Code: 3434

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on MAY 15, 2013, the
Grand Jurors of Kershaw County present upon their oath:

POSSESSION OF FIREARM OR AMMUNITION BY PERSON

CONVICTED OF VIOLENT FELONY

That Sherwin Alfonzo Green did in Kershaw County on or about November 25, 2012, unlawfully possess a firearm or ammunition and has been convicted of a violent crime as defined under Section 16-1-60 that is classified as a felony offense. To wit: BURGLARY. In violation of Section 16-23-500(A), S. C. Code of Laws, 1976, as amended.

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


DAN JOHNSON, SOLICITOR



WITNESSES

Name: _____	Name: _____	Name: _____	Name: _____	Name: _____	Name: _____	Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____	Address: _____	Address: _____	Address: _____	Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____

CODEFENDANTS

BAIL set by

Judge Richard Stynes

on 12/1/12

Type and Amount: jury 1,550

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

(S) Damien Burris – Camden Police
Department

ARREST WARRANT NUMBER

2012A2820200176

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: **MAY 15 2013**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-28-0456

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

MAY TERM 2013

K96

**THE STATE
vs.**

Sherwin Alfonzo Green

**Indictment for
POSSESSION OF A STOLEN PISTOL**

SC Code: 16-23-0030
CDR Code: 2364

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 RECORD
2013 MAY 15 PM 3:54
JOYCE MCDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on MAY 15, 2013, the
Grand Jurors of Kershaw County present upon their oath:

POSSESSION OF A STOLEN PISTOL

That Sherwin Alfonzo Green did in Kershaw County on or about November 25, 2012, knowingly buy, sell, transport, pawn, receive or possess a stolen pistol, in violation of Section 16-23-0030, S. C. Code of Laws, 1976, as amended

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



DAN JOHNSON, SOLICITOR

BAIL set by

Judge

Michael Stepan

on

12/1/12

Type and Amount:

jury 12500

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

CODEFENDANTS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

RECEIVED
RECORDS DEPT.

DEC 03 2012

CAMDEN
POLICE DEPT.

WITNESSES

(S) Tyrrell Coleman – Camden Police
Department

DOCKET NO. 2013-GS-28-0457

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

Defendant

County of

Kershaw

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

COURT OF GENERAL SESSIONS

MAY TERM 2013

K96

Defendant

2012A2820200181

THE STATE
vs.

Sherwin Alfonzo Green

Witness:

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

FILED FOR RECORD
2013 MAY 15 PM 3:54
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

ARREST WARRANT NUMBER

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAY 15 2013

VERDICT

Indictment for
KIDNAPPING

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

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on MAY 15, 2013, the
Grand Jurors of Kershaw County present upon their oath:

KIDNAPPING

That Sherwin Alfonzo Green did in Kershaw County on or about December 3, 2012, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one RAKETIA GREEN, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended

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



DAN JOHNSON, SOLICITOR



WITNESSES

Name: _____	_____
Address: _____	_____
Telephone: _____	_____
Name: _____	_____
Address: _____	_____
Telephone: _____	_____
Name: _____	_____
Address: _____	_____
Telephone: _____	_____
Name: _____	_____
Address: _____	_____
Telephone: _____	_____
Name: _____	_____
Address: _____	_____
Telephone: _____	_____
Name: _____	_____
Address: _____	_____
Telephone: _____	_____
Name: _____	_____
Address: _____	_____
Telephone: _____	_____
Name: _____	_____
Address: _____	_____
Telephone: _____	_____

CODEFENDANTS

BAIL set by

Judge RT

on 12-5-12

Type and Amount: Bond Dev. 12.5.12 RT

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

(S) Tyrrell Coleman – Camden Police
Department

ARREST WARRANT NUMBER

2012A2820200183

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 19 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-28-0458

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

AUGUST TERM 2015

42

THE STATE
vs.

Sherwin Alfonzo Green

AMENDED INDICTMENT

Indictment for
BURGLARY 1ST DEGREE

SC Code: 16-11-0311

CDR Code: 0079

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 RECORD
2015 AUG 19 PM 2: 58
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

AMENDED INDICTMENT

At a Court of General Sessions, convened on AUGUST 19, 2015,
 the Grand Jurors of Kershaw County present upon their oath:

BURGLARY, 1ST DEGREE

That Sherwin Alfonzo Green did in Kershaw County on or about December 3, 2012, enter the dwelling of RAKETIA GREEN located at 905 KIRKWOOD CIRCLE, CAMDEN SC, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant did enter dwelling in the night time hours, and/or was armed with a deadly weapon, and/or threatened the use of a dangerous instrument, and/or displayed what is or appears to be a knife, and/or has two or more prior convictions for burglary or house breakings in violation of Section 16-11-0311(A), 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.



DAN JOHNSON, SOLICITOR



BAIL set by

Judge RS
on 12-5-12
Type and Amount: Bond Dev. 12.5.12
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defense Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____
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Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

ARREST WARRANT

2012A2820200175

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

THE STATE

against

SHERWIN ALFONZO GREEN

Address: 903 KIRKWOOD CR

CAMDEN SC 29020

Phone: _____ SSN: _____

Sex: M Race: B Height: 6-2 Weight: 180

DL State: _____ DL#: _____

DOB: _____ Agency ORI#: SC0280100

Prosecuting Agency: CAMDEN POLICE DEPARTMENT

Prosecuting Officer: DAMIAN BURRIS

Offense: POSSESSION OF FIREARM BY

CONVICTED FELON Offense Code: 3434

Code/Ordinance Sec. 16-23-0500 (A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be dealt with according to law. The accused _____

Date: _____ Signature of Judge _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant SHERWIN ALFONZO GREEN

on 12-1-12 0100 hrs

Det. Patti 1435

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CAMDEN MUNICIPAL COURT

1000 LYTTLETON STREET

CAMDEN, SC 29020

(803) 425-6025

ORIGINAL DOCUMENT

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

AFFIDAVIT

Personally appeared before me the affiant DET DAMIAN BURRIS

being duly sworn deposes and says that defendant SHERWIN ALFONZO GREEN

did within this county and state on 11/25/2012

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CAMDEN

in the following particulars:

DESCRIPTION OF OFFENSE: 16-23-0500 (A) / POSSESSION OF FIREARM BY CONVICTED FELON

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT THE DEFENDANT(SHERWIN GREEN) DID COMMIT THE ABOVE STATED OFFENSE IN THAT HE DID HAVE IN HIS POSSESSION A KEL-TEC .9MM PISTOL THAT WAS FOUND IN HIS HOME. OFFICERS RESPONDED TO THE HOME OF GREENS INVOLVING AN INCIDENT IN WHICH HE HAD PULLED THIS SAME PISTOL ON HIS WIFE DURING AN ALTERCATION. THIS SAID OFFENSE OCCURRED IN THE CITY LIMITS OF CAMDEN, SC. INVESTIGATION TO PROVE THE SAME.



Signature of Affiant

Affiant's Address

816 W DEKALB ST

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

CAMDEN SC 29020

Affiant's Telephone

803-425-6025

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that defendant SHERWIN ALFONZO GREEN

on 11/25/2012 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CAMDEN) as set forth below:

DESCRIPTION OF OFFENSE: WEAPONS / POSSESSION OF FIREARM OR AMMUNITION BY PERSON

CONVICTED OF VIOLENT FELONY

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 12-1-12 0100 hrs)

MICHAEL STEGNER (L.S.))

Judge's Address 1000 LYTTLETON STREET

CAMDEN SC 29020

Judge's Telephone 803-425-6025

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Judge Code: STEGNER

ORIGINAL

Case: 2012-2150

ARREST WARRANT

2012A2820200176

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

THE STATE

against

SHERWIN ALFONZO GREEN

Address: 903 KIRKWOOD CR

CAMDEN SC 29020

Phone: _____ SSN: _____

Sex: M Race: B Height: 6-2 Weight: 180

DL State: _____ DL#: _____

DOB: _____ Agency ORI#: SC0280100

Prosecuting Agency: CAMDEN POLICE DEPARTMENT

Prosecuting Officer: DAMIAN BURRIS

Offense: POSSESSION OF STOLEN PISTOL

Offense Code: 2364

Code/Ordinance Sec. 16-23-0030

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be

dealt with according to law.

The accused

Date: _____

Signature of Judge _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant SHERWIN ALFONZO GREEN

on 12-20-12 2:00

Signature of Constable/Law Enforcement Officer

1435

RETURN WARRANT TO:

CAMDEN MUNICIPAL COURT

1000 LYTTLETON STREET

CAMDEN, SC 29020

(803) 425-6025

ORIGINAL DOCUMENT

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

Personally appeared before me the affiant DET DAMIAN BURRIS

being duly sworn deposes and says that defendant SHERWIN ALFONZO GREEN

did within this county and state on 11/25/2012

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CAMDEN)

in the following particulars:

DESCRIPTION OF OFFENSE: 16-23-0030 / POSSESSION OF STOLEN PISTOL

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT THE DEFENDANT(SHERWIN GREEN) DID COMMIT THE ABOVE STATED OFFENSE IN THAT HE DID HAVE IN HIS POSSESSION A KEL-TEC .9MM PISTOL THAT WAS FOUND IN HIS HOME. OFFICERS RESPONDED TO THE HOME OF GREEN INVOLVING AN INCIDENT IN WHICH HE HAD PULLED THIS SAME PISTOL ON HIS WIFE DURING AN ALTERCATION. GREEN HAS AN ASSORTMENT OF FELONY CONVICTIONS IN HIS CRIMINAL HISTORY REPORT THAT RESTRICT HIM BOTH FEDERAL AND IN THE STATE OF SOUTH CAROLINA TO POSSESS A HANDGUN. THIS SAID OFFENSE OCCURRED IN THE CITY LIMITS OF CAMDEN, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

Affiant's Address 816 W DEKALB ST

CAMDEN SC 29020

Affiant's Telephone 803-425-6025

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 11/25/2012 defendant SHERWIN ALFONZO GREEN

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CAMDEN

) as set forth below:

DESCRIPTION OF OFFENSE: WEAPONS / SALE OR DELIVERY OF PISTOL TO, AND POSSESSION BY,

CERTAIN PERSONS UNLAWFUL; STOLEN PISTOL

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said

defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered

to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/25/2012

MICHAEL STEGNER (L.S.)

Judge Code: STEGNER

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Judge's Address 1000 LYTTLETON STREET

CAMDEN SC 29020

Judge's Telephone 803-425-6025

Case: 2012-2146

255

AFFIDAVIT

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ARREST WARRANT

2012A2820200181

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CAMDEN

THE STATE

against

SHERWIN ALFONZO GREEN

Address: 903 KIRKWOOD CR

CAMDEN SC 29020

Phone:

Sex: M Race: B Height: 6-2 SSN: 180

Weight: 180

DL State:

DOB: [REDACTED] Agency OR#: SC0280100

Prosecuting Agency: CAMDEN POLICE DEPARTMENT

Prosecuting Officer: T. COLEMAN

Offense: KIDNAPPING

Offense Code: 0095

Code/Ordinance Sec. 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

Date:

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant SHERWIN ALFONZO GREEN

on 12/5/12

Lee Board #1170
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CAMDEN MUNICIPAL COURT

1000 LYTTLETON STREET

CAMDEN, SC 29020

(803) 425-6025

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

Personally appeared before me the affiant DET TYRRELL COLEMAN

being duly sworn deposes and says that defendant SHERWIN ALFONZO GREEN

did within this county and state on 12/03/2012 to 12/04/2012

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CAMDEN

in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0910 / KIDNAPPING

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON DECEMBER 03, 2012 AT APPROXIMATELY 10:55 PM THE DEFENDANT, (SHERWIN ALFONZO GREEN), DID HOLD
THE VICTIM HIS WIFE AT KNIFE POINT WHILE AT THEIR HOME LOCATED AT 905 KIRKWOOD CIRCLE IN THE CITY LIMITS OF
CAMDEN, SC. SHE WAS HELD AGAINST HER WILL AND WAS NOT FREE TO LEAVE DO TO (SHERWIN ALFONZO GREEN)
ORDERING HER TO AT KNIFE POINT. WITNESSES AND STATEMENTS TO PROVE THE SAME.

FILED FOR RECORD
2012 DEC 18 AM 1:50

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CAMDEN

Affiant's Address

816 W DEKALB ST

CAMDEN SC 29020

Affiant's Telephone

803-425-6025

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/03/2012 defendant SHERWIN ALFONZO GREEN

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CAMDEN

) as set forth below:

DESCRIPTION OF OFFENSE: KIDNAPPING / KIDNAPPING

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12-5-12

RODERICK TODD (L.S.)

Judge's Address

1000 LYTTLETON STREET

CAMDEN SC 29020

Judge's Telephone

803-425-6025

Issuing Court:

☐ Magistrate

☒ Municipal

☐ Circuit

Judge Code: TODD

ORIGINAL

Case: 2012-2173

ARREST WARRANT

2012A2820200183

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CAMDEN

THE STATE

against

SHERWIN ALFONZO GREEN

Address: 905 KIRKWOOD CR

CAMDEN SC 29020

Phone: _____ SSN: _____

Sex: M Race: B Height: 6-2 Weight: 180

DL State: _____ DL #: _____

DOB: _____ Agency ORI#: SC0280100

Prosecuting Agency: CAMDEN POLICE DEPARTMENT

Prosecuting Officer: T. COLEMAN

Offense: BURGLARY 1ST

Offense Code: 0079

Code/Ordinance Sec. 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofis to be arrested and brought before me to be
dealt with according to law.

The accused

Date: _____ (L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to
defendant SHERWIN ALFONZO GREEN

on 12/15/12

Signature of Constable/Law Enforcement Officer
#1170

RETURN WARRANT TO:

CAMDEN MUNICIPAL COURT

1000 LYTTLETON STREET

CAMDEN, SC 29020

(803) 425-6025

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CAMDEN

Personally appeared before me the affiant DET TYRRELL COLEMAN

being duly sworn deposes and says that defendant SHERWIN ALFONZO GREEN

did within this county and state on 12/03/2012 to 12/04/2012 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CAMDEN

in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-0311 / BURGLARY 1ST

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THAT ON 12/03/2012 THE DEFENDANT(SHERWIN ALFONZO GREEN) DID COMMIT THE ABOVE STATED OFFENSE IN THAT HE
DID IN THE NIGHT TIME HOURS ENTER THE HOME OF 905 KIRKWOOD CIRCLE ONCE INSIDE (SHERWIN ALFONZO GREEN)
DID TAKE A KNIFE HELD THE VICTIM IN THE HOUSE AGAINST HER WILL REFUSING TO LET HER LEAVE. DURING THE
COMMISSION OF THIS CRIME. THIS SAID OFFENSE OCCURRED IN THE CITY LIMITS OF CAMDEN, SC. STATEMENTS TO
PROVE THE SAME.FILED FOR RECORD
2012 DEC 18 PM 1:50JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CAMDEN

Affiant's Address

816 W DEKALB ST
CAMDEN SC 29020

Affiant's Telephone

803-425-6025

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/03/2012 defendant SHERWIN ALFONZO GREEN

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CAMDEN) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12-5-12

RODERICK TODD

Judge Code: TODD

Judge's Address 1000 LYTTLETON STREET

CAMDEN SC 29020

Judge's Telephone 803-425-6025

Issuing Court: ☐ Magistrate☒ Municipal☐ Circuit

Case: 2012-2173

ORIGINAL

257

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,

s/ Victor R. Seeger

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

RECEIVED
May 28 2020
SC Court of Appeals

This 28th day of May, 2020.