

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Circuit Court Judge  
—————

**RECEIVED**

**Nov 06 2020**

**S.C. SUPREME COURT**

GENUINE TRUTH BANNER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000781  
—————

APPENDIX  
—————

SARAH E. SHIPE  
Appellate Defender

ALAN WILSON  
Attorney General

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

CHELSEY MARTO  
Assistant Attorney General  
1000 Assembly St.  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

TRANSCRIPT OF GUILTY PLEA HELD JANUARY 22-23, 2018 .....1

PCR APPLICATION.....119

MOTION TO RECONSIDER SENTENCE.....128

STATE’S RETURN TO DEFENDANT’S MOTION TO RECONSIDER  
SENTENCE AND STATE’S MOTION TO RECONSIDER SENTENCE .....130

ORDER FROM THE COURT OF APPEALS DATED APRIL 25, 2018.....133

STATE’S RETURN AND PARTIAL MOTION TO DISMISS.....135

AMENDED PCR APPLICATION.....142

TRANSCRIPT OF PCR HEARING HELD OCTOBER 10, 2019 .....144

PETITIONER’S EXHIBIT #1 (COLLINS V. VIRGINIA CASE LAW).....208

PETITIONER’S EXHIBIT #2 (NAVY ENLISTMENT PAPERS).....224

ORDER OF DISMISSAL.....225

INDICTMENTS .....246

SENTENCE SHEETS .....254

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

3 The State, )  
4 -vs- ) TRANSCRIPT OF RECORD  
5 ) 2016-GS-42-5451-5454  
6 Genuine Truth Banner, )  
7 Defendant. ) January 22 - 23, 2018  
8 ) Spartanburg, South Carolina  
9  
10

11 B E F O R E:

12 HONORABLE J. MARK HAYES, II, JUDGE  
13  
14

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

16 BARRY JOE BARNETTE, ESQUIRE  
17 Attorney for the State

18 WILLIAM J. NOWICKI, ESQUIRE  
19 Attorney for the Defendant  
20

21 Linda D. Moffitt  
22 Circuit Court Reporter  
23  
24  
25

2

1

INDEX

2

WITNESSES

PAGE

3

MARK LESTER NOTEBOOM (SW) In-camera

4

Direct examination by Mr. Barnette

12

5

Cross-examination by Mr. Nowicki

30

6

Redirect examination by Mr. Barnette

41

7

Recross-examination by Mr. Nowicki

43

8

JOSEPH W. GUFFEY (SW)

9

Direct examination by Mr. Barnette

44

10

Cross-examination by Mr. Nowicki

55

11

Redirect examination by Mr. Barnette

59

12

Recross-examination by Mr. Nowicki

60

13

GENUINE TRUTH BANNER (DW)

14

Direct examination by Mr. Nowicki

61

15

Cross-examination by Mr. Barnette

62

16

Examination by the Court

85

17

18

Guilty plea -- page 82.

19

20

21

22

23

24

25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1			
2			
3	S-1 12 gauge shotgun shell	10	
4	S-2 Video	10	
5	S-3 Map	10	
6	S-4 License plate	10	
7	S-5 ATF firearms trace summary	10	
8	S-6 12 gauge shotgun shell	10	
9	S-7 12 gauge shotgun shell	10	
10	S-8 Black mask	10	
11	S-9 Gloves	10	
12	S-10 Pair of gray pants	10	
13	S-11 12 gauge shotgun	10	
14	S-12 16 shotgun shells	10	
15	S-13 4 12 gauge shotgun shells	10	
16	S-14 Black doo rag	10	
17	S-15 Backpack	10	
18	S-16 Gloves	10	
19	S-17 Glove	10	
20	S-18 Photograph	10	
21	S-19 Photograph	10	
22	S-20 Photograph	10	
23	S-21 Photograph	10	
24	S-22 Photograph	10	
25	S-23 Photograph	10	

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EXHIBITS

2	<u>NO.</u> <u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-24 Photograph	10
4	S-25 Photograph	10
5	S-26 Photograph	10
6	S-27 Photograph	10
7	S-28 Photograph	10
8	S-29 Photograph	10
9	S-30 Photograph	10
10	S-31 Photograph	10
11	S-32 Photograph	10
12	S-33 Photograph	10
13	S-34 Photograph	10
14	S-35 Photograph	10
15	S-36 Photograph	10
16	S-37 Photograph	10
17	S-38 Photograph	10
18	S-39 Photograph	10
19	S-40 Photograph	10
20	S-41 Photograph	10
21	S-42 Photograph	10
22	S-43 Photograph	10
23	S-44 Photograph	10
24	S-45 Photograph	10
25	S-46 Photograph	10

	<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-47	Photograph	10	
4	S-48	Photograph	10	
5	S-49	Photograph	10	
6	S-50	Photograph	10	
7	S-51	Photograph	10	
8	S-52	Photograph	10	
9	S-53	Photograph	10	
10	S-54	Photograph	10	
11	S-55	Photograph	10	
12	S-56	Photograph	10	
13	S-57	Photograph	10	
14	S-58	Photograph	10	
15	S-59	Photograph	10	
16	S-60	Photograph	10	
17	S-61	Photograph	10	
18	S-62	Photograph	10	
19	S-63	Photograph	10	
20	S-64	Photograph	10	
21	S-65	Photograph	10	
22	S-66	Photograph	10	
23	S-67	Photograph	10	
24	S-68	Photograph	10	
25	S-69	Photograph	10	

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-70 Photograph		10
4	S-71 Photograph		10
5	S-72 Photograph		10
6	S-73 Photograph		10
7	S-74 Photograph		10
8	S-75 Photograph		10
9	S-76 Photograph		10
10	S-77 Photograph		10
11	S-78 Photograph		10
12	S-79 Photograph		10
13	S-80 Photograph		10
14	S-81 Photograph		10
15	S-82 Photograph		10
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25	S-92 Photograph		10

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-93	Photograph		10
S-94	Photograph		10
S-95	Photograph		10
S-96	Photograph		10
S-97	Spillman report		10

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1			
2			
3	C-1 DMH Evaluation		10
4	C-2 Search warrant		10
5	C-3 Legal opinion		10
6	C-4 S-4		15
7	C-5 S-42		19
8	C-6 S-43		19
9	C-7 S-44		19
10	C-8 S-3		19
11	C-9 S-45		23
12	C-10 S-46		23
13	C-11 S-47		23
14	C-12 S-48		23
15	C-13 S-49		23
16	C-14 S-52		27
17	C-15 S-55		49
18	C-16 S-56		49
19	C-17 S-61		49
20	C-18 S-62		49
21	C-19 S-68		49
22	C-20 S-72		49
23	C-21 S-78		49
24	C-22 S-83		49
25	C-23 S-87		49

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-24	S-88		49
C-25	ACT workkeys Skill Report		115
C-26	S-2		
C-27	S-11		64

1 (Proceedings January 22, 2018)

2 (12-gauge shotgun shell marked State's Exhibit No. 1,  
3 video marked State's Exhibit No. 2; map marked State's  
4 Exhibit No. 3; license plate marked State's Exhibit No. 4;  
5 ATF firearms trace summary marked State's Exhibit No. 5;  
6 12-gauge shotgun shell marked State's Exhibit No. 6;  
7 12-gauge shotgun shell marked State's Exhibit No. 7; black  
8 mask marked State's Exhibit No. 8; gloves marked State's  
9 Exhibit No. 9; pair of gray pants marked State's Exhibit  
10 No. 10; 12-gauge shotgun marked State's Exhibit No. 11; 16  
11 shotgun shells marked State's Exhibit No. 12; four 12-gauge  
12 shotgun shells marked State's Exhibit No. 13; black doo rag  
13 marked State's Exhibit No. 14; backpack marked State's  
14 Exhibit No. 15; gloves marked State's Exhibit No. 16; glove  
15 marked State's Exhibit No. 17; photographs marked State's  
16 Exhibit No. 18 through 96; Spillman report marked State's  
17 Exhibit No. 97.

18 DMH Evaluation marked Court's Exhibit No. 1; search  
19 warrant marked Court's Exhibit No. 2; legal opinion marked  
20 Court's Exhibit No. 3.)

21 THE COURT: we'll go on the record in the matter of  
22 the State vs. Banner.

23 I believe that we are here for some pretrial motions.  
24 Is that correct?

25 MR. NOWICKI: That's correct, Your Honor.

1 MR. BARNETTE: Yes, sir, Your Honor.

2 Just to call the case, I've handed the indictments up  
3 to the Court. It's 2016-GS-42-5451, Your Honor. Count one  
4 is for armed robbery; count two is for bank robbery. It  
5 has been true billed by the grand jury.

6 Then 16-GS-42-5452, Your Honor. Count one is for  
7 armed robbery; count two is possession of a weapon during  
8 the commission of a violent crime.

9 16-GS-42-5453, Your Honor, is two counts of  
10 kidnapping, is on that indictment.

11 Then 16-GS-42-5454, Your Honor, is kidnapping, three  
12 counts, Your Honor.

13 And all of these have been true billed by the grand  
14 jury, Your Honor, in this case. Do you want me to hold  
15 onto them until the jury gets here, Your Honor?

16 THE COURT: That'll be great.

17 MR. BARNETTE: Your Honor, I -- the state did have one  
18 pretrial motion we discussed in chambers. We'd make a  
19 motion to -- again, third-party guilt being, and Mr.  
20 Nowicki told us in chambers there would be no third-party  
21 guilt presented in this case.

22 THE COURT: All right. So we will not address -- we  
23 will not address -- we will not have to take up the issue  
24 of third-party guilt.

25 Okay. And then, Mr. Nowicki, you had pretrial motions

1 as well.

2 MR. NOWICKI: Yes, Your Honor. I know we discussed in  
3 chambers about the Jackson vs. Denno. I don't think that's  
4 going to be an issue, but if it does come up I believe we  
5 could have that at the appropriate time during the trial.  
6 And we have -- defense has a motion to suppress the  
7 evidence obtained from the search warrant.

8 THE COURT: All right. My understanding is that the  
9 state does not intend to use any statements that were  
10 gathered as part of their case. They will only use it in  
11 the event the defendant testifies and then use it for the  
12 limited purpose of impeachment. And we could take up any  
13 Jackson vs. Denno issues if, in fact, the defendant decided  
14 to testify.

15 MR. NOWICKI: That's correct, Your Honor.

16 THE COURT: Okay. All right. You're ready to proceed  
17 with the motion to suppress?

18 MR. BARNETTE: Yes, sir, just on the Jackson vs.  
19 Denno. we feel like it'd be self-serving hearsay anyway.  
20 So in this situation we're not going to present any.

21 Like I said, I'll let the Court -- obviously, if he  
22 testifies it may become an issue at that point and we may  
23 have to have a Jackson vs. Denno at that point.

24 THE COURT: Okay. And the motion to suppress, as I  
25 understand it, is related to the evidence that was gathered

1 at the time that the automobile was searched?

2 MR. NOWICKI: Yes, Your Honor.

3 THE COURT: Okay. All right.

4 MR. BARNETTE: Your Honor, I'd like to call Deputy  
5 Mark Noteboom to the stand, please.

6 MARK LESTER NOTEBOOM, having  
7 been first duly sworn, testified as follows:

8 THE COURT: Just start by giving the court reporter  
9 your full name.

10 THE WITNESS: Mark Lester Noteboom.

11 MR. BARNETTE: Thank you, Your Honor.

12 Just for the record too, Your Honor, I marked Court's  
13 Exhibit 2 as the search warrants in question that made that  
14 part of the record, Your Honor.

15 I would probably have some pictures. Would you rather  
16 me just show them to the witness and show to Your Honor  
17 instead of putting them on the ELMO in that case?

18 THE COURT: Sure.

19 MR. BARNETTE: I'm sure that'll come up at a certain  
20 point, Your Honor.

21 DIRECT EXAMINATION BY MR. BARNETTE

22 Q If you would, sir, please give your full name for the  
23 record.

24 A Mark Lester Noteboom.

25 Q And back on August 29th of 2016 where did you work at,

14

Mark Lester Noteboom (In-camera)  
Direct examination by Mr. Barnette

1 sir?

2 A Spartanburg County Sheriff's Office.

3 Q And what was your position with them?

4 A Road patrol on the central.

5 Q And how long had you been with them, sir?

6 A I had been with the sheriff's office a total of almost

7 12 years.

8 Q And after that did you leave the sheriff's department?

9 A Yes.

10 Q And where did you go, sir?

11 A To a police department in Michigan, Charlotte police  
12 department.

13 Q And you still work for law enforcement there.

14 A Yes, sir.

15 Q In essentially the same position?

16 A Yes.

17 Q Taking you back to August 29th of 2016, was you on  
18 patrol that day, sir?

19 A I was.

20 Q And was you near where the Spartan Federal Credit  
21 Union was that morning?

22 A Yes.

23 Q If you would, tell the Court what you observed and  
24 everything that morning.

25 A That morning I was on routine patrol. And there's a

1 parking lot off Charisma Drive that is known for people to  
2 go smoke drugs, use drugs and dump trash off. I usually  
3 checked that area a couple of times a day.

4 On this day when I went up there there was a gray  
5 B.M.W. sedan backed off where you couldn't see from the  
6 road behind some bushes, which is odd.

7 So I get out. Nobody's in it. I see a bunch of trash  
8 inside. Well, trash. It was filled with items. And I had  
9 to push the bushes away from the tag because it was so  
10 close to the bushes to get a tag off it. It was a Michigan  
11 tag, to which I had dispatch run it. Somehow they didn't  
12 get the tag that I gave them, so I ran the tag on my  
13 computer in my patrol car, and it came back, and the VIN  
14 numbers matched the tag. And the tag came back suspended  
15 for no -- for no insurance.

16 So at that time I took the tag off the car to take it  
17 to the sheriff's office. And there is a box where you put  
18 suspended tags which end up going ultimately -- end up  
19 going back to the D.M.V.

20 Q Let me take you -- let me show you first -- I need to  
21 probably mark this as an exhibit. It's marked as a state's  
22 exhibit, I believe.

23 (Michigan tag marked Court's Exhibit No. 4.)

24 Q I'd like to show you what's been marked as Court's  
25 Exhibit 4 for purposes of this hearing. That'll be State's

16

Mark Lester Noteboom (In-camera)  
Direct examination by Mr. Barnette

1 Exhibit 4 in the trial if we go that far if I...

2 MR. BARNETTE: Your Honor, it's closed at this point.  
3 I'd like the witness to go ahead and open it if that's  
4 okay.

5 THE COURT: Without objection?

6 MR. NOWICKI: None. No objection.

7 (Pause.)

8 A It is the tag I took off the vehicle that day.

9 Q Is that the tag you took off the B.M.W. that day?

10 A Yes, sir.

11 Q And if you could, just read the numbers and letters.

12 A D, Delta, F, Foxtrot, and Z, zoo'loo, 5407 from  
13 Michigan.

14 MR. BARNETTE: Your Honor, I'd like for purposes of  
15 this hearing to enter this as Court's Exhibit No. 4 at this  
16 point.

17 MR. NOWICKI: No objection.

18 THE COURT: Without objection.

19 Q In collecting the tags, that's common practice in the  
20 sheriff's department, is that correct?

21 A Yes, sir.

22 Q So you turn it in to the sheriff's department.

23 A Yes, sir.

24 Q And you notate. About what time of the morning was  
25 this?

1 A The time I took the jury tag off was around 8:30. It  
2 was between 8:00 and 9:00 a.m., somewhere around in there.

3 Q Like I said, you kept an eye on that area for  
4 different reasons.

5 A Yes.

6 Q For dumping.

7 A Yeah.

8 Q For drugs, different things there.

9 A And people. The abandoned building next to it, people  
10 would go there and try to sneak in there too. So we  
11 watched that also.

12 Q But you've got -- well, you've got several abandoned  
13 buildings.

14 A Correct.

15 Q You've got the -- I guess where U.S.C. Upstate dorms  
16 used to be.

17 A Yes, sir.

18 Q But they're empty now.

19 A That's what I'm speaking.

20 Q And on the other side of the bank you also have a  
21 hotel that's pretty empty, is that right --

22 A Yes.

23 Q -- where people go in and out? After you turned this  
24 in and made the call did you hear about a bank robbery at  
25 the credit union?

18

Mark Lester Noteboom (In-camera)  
Direct examination by Mr. Barnette

1 A I did.

2 Q And how far was this car from where the bank was?

3 A Give or take, 150 yards, 100 to 150 yards probably,  
4 maybe more.

5 Q But it was fairly -- at least within a tenth of a mile  
6 probably.

7 A Oh, it was walking distance, yes.

8 Q Yeah. And did you respond to the bank?

9 A I did.

10 Q And when you arrived at the bank did several other  
11 officers arrive there also?

12 A Yes.

13 Q And in the robbery money was taken. Was there also a  
14 white Chevrolet pickup truck?

15 A Chevy truck taken, yes. Belonged to one of the bank  
16 employees.

17 THE COURT: I'm sorry. I can't hear you.

18 THE WITNESS: There was a white truck taken from one  
19 of the bank employees.

20 Q Okay. If you would --

21 A I believe another customer was chasing it at the time.

22 Q A customer. After he came up and he took the truck.

23 A Yes.

24 Q An employee's truck.

25 A Yeah.

1 Q And I guess the customer came up and was chasing that  
2 car.

3 A He was.

4 Q And was it lost in that area?

5 A It was. He lost sight of it on Lone Oak Road, I  
6 believe.

7 Q Okay. And does Lone Oak Road kinda circle around back  
8 to the area where the B.M.W. was?

9 A Yes, sir.

10 Q And did y'all search for the white pickup truck?

11 A We did.

12 Q And did you find it?

13 A Deputy Soddu found it in the parking lot that I was  
14 out with the B.M.W. in.

15 Q Okay. So you went to the location where Deputy Soddu  
16 was coming from.

17 A Yes.

18 Q And was that where -- approximately the location where  
19 the B.M.W. was?

20 A Correct.

21 MR. BARNETTE: Could I get these marked, Your Honor?  
22 would you like these separate or together? I've got them  
23 separate for purposes of the trial.

24 THE COURT: I can take them together for purposes of  
25 this hearing.

1 (Photographs marked Court's Exhibits Nos. 5 through  
2 8.)

3 Q If you would, sir, please look at these three  
4 pictures. First one is State's Exhibit 42 that's been  
5 marked Court's Exhibit 5 for purposes of this hearing; the  
6 next one is Court's Exhibit 6, which is also State's  
7 Exhibit 43; and Court's Exhibit 7, which is State's Exhibit  
8 44.

9 would you take a look at those three pictures, sir? Do  
10 those pictures fairly represent the truck you saw when y'all  
11 went back to that location?

12 A Yes, sir.

13 MR. BARNETTE: Your Honor, I'd like to enter these in  
14 as part of the record for this hearing.

15 MR. NOWICKI: No objection.

16 THE COURT: without objection.

17 MR. BARNETTE: May I approach the bench, Your Honor?

18 Q Let me show you what's also been marked as a map.  
19 It's Court's Exhibit No. 8. I think defense attorney --  
20 defense has seen this. I want to make sure.

21 MR. NOWICKI: Yeah.

22 Q Showing you what's been marked Court's Exhibit 8,  
23 which is google map of the area around the bank. Does that  
24 map fairly represent the area around the bank or around the  
25 credit union?

1 A Yes, sir.

2 MR. BARNETTE: Your Honor, I'd like to enter this as  
3 part of the exhibit, Court's Exhibit 8, at this time at  
4 this hearing.

5 MR. NOWICKI: No objection.

6 THE COURT: Without objection.

7 Q If you would, step down so we can show. And the  
8 defense may want to.

9 (Whereupon, the witness left the stand.)

10 Q I'm going to let him show Judge Hayes this. If you  
11 would, show Judge Hayes where the bank is to start with.

12 A Right there.

13 Q wait until the defense gets here.

14 THE COURT: You need to speak up, sir. The court  
15 reporter can't hear you.

16 THE WITNESS: I'm sorry. That is the bank right  
17 there.

18 THE COURT: Okay.

19 Q And where did you find -- see the B.M.W. to start  
20 with?

21 A Right there in that parking lot.

22 Q And how was it parked, again?

23 A Backed up into the bushes. The back of the car was  
24 facing kinda towards the bank into the bushes and the front  
25 was facing towards the old building.

1 Q And where did you find the white truck at, sir?

2 A Towards the old building kind of face to face, nose to  
3 nose, of where the B.M.W. would have been if it was still  
4 there.

5 Q So they was parking towards each other then.

6 A Yeah.

7 Q So -- and that way you can see the -- the truck tag  
8 was actually visible on the picture where you could see it.

9 A Yes, sir.

10 Q Where on the B.M.W., it wasn't.

11 A No.

12 Q Okay. Thank you, sir. If you would please have a  
13 seat.

14 (Whereupon, the witness returned to the stand.)

15 Q Later on -- and, obviously, y'all was still looking  
16 for the person that did the bank robbery at that time.

17 A Yes, sir.

18 Q Did y'all receive information about somebody calling  
19 in about a stolen tag?

20 A We did.

21 Q And what was that information, sir?

22 A That Mr. Banner was calling trying to report his tag  
23 stolen on his -- the B.M.W.

24 Q Okay. Is that the defendant, Genuine Truth Banner,  
25 that called in the tag?

1 A Yes, sir.

2 Q And what location did he say he was at at that time?

3 A [REDACTED] Clarence Circle.

4 Q And about what -- approximately what time was this  
5 called in, do you know? was it before noon?

6 A It was before noon. It wasn't long after the robbery.

7 Q Okay. Based off that did investigators and the -- did  
8 y'all start heading toward this direction he was?

9 A Yes, yes, we did.

10 Q And what was that address, again?

11 A [REDACTED] Clarence Circle.

12 Q Is that in Moore, South Carolina?

13 A Yes.

14 Q And all of these -- all of these locations are in  
15 Spartanburg County.

16 A Yes, sir.

17 Q When you arrived on the scene at [REDACTED] Clarence Circle,  
18 what did y'all do then?

19 A As soon as we pulled up we could see the B.M.W. backed  
20 up to the house, the same one that I had saw at the parking  
21 lot.

22 Q Okay. When you pulled up on the road could you  
23 clearly see the car?

24 A Yes.

25 Q And...

Mark Lester Noteboom (In-camera)  
Direct examination by Mr. Barnette

1 (Photographs marked Court's Exhibits 9 through 13.)

2 Q Sir, I'd like to show you the five pictures. They've  
3 been marked as Court's Exhibit 9, which is also State's  
4 Exhibit 45; Court's Exhibit 10, which is also State's  
5 Exhibit 46; Court's Exhibit 11, which is State's  
6 Exhibit 47; Court's Exhibit 12, which is State's  
7 Exhibit 48; and Court's Exhibit 13 which is State's  
8 Exhibit 49.

9 If you would, sir, take a look at those pictures. Do  
10 those pictures fairly represent what you saw that day?

11 A Yes, sir.

12 MR. BARNETTE: Your Honor, I'd like to move these --  
13 Court's Exhibit 9, I believe, through 13 into evidence for  
14 purposes of this hearing at this time.

15 MR. NOWICKI: No objection.

16 THE COURT: Without objection.

17 Q If you would, come down, sir, so the judge can see  
18 what you're describing, please. Defense may want to come  
19 up.

20 (Whereupon, the witness left the stand.)

21 Q Show you Court's Exhibit No. 9. That the front of the  
22 B.M.W., sir?

23 A It is.

24 Q Is that the same car you saw earlier that day?

25 A Yes, sir.

1 Q Court's Exhibit 10. Is that the driver's side of the  
2 car that you saw that day?

3 A Yes. And it's the same items inside.

4 Q So the items in the back seat was the same ones --

5 A Yes.

6 Q -- you saw in the car earlier.

7 A Yes, sir.

8 Q Court's Exhibit No. 11. Is this the picture of the  
9 driver's side of the door -- passenger -- excuse me -- the  
10 passenger-side door?

11 A Yes, sir.

12 Q And is this the same items you saw in the back-seat  
13 area?

14 A Yes, sir.

15 Q And was there also some in the front passenger side  
16 too?

17 A Yes.

18 Q And what was in the front passenger side?

19 A I don't -- I don't remember if it was the back or the  
20 front, but there's a white basket that had the last name  
21 Spann written on it.

22 THE COURT REPORTER: Excuse me? I need for you to  
23 turn around and speak up.

24 A I don't remember what -- if it was the front or the  
25 back, but there's a white clothes basket that had the name

1 Spann written on it -- S-P-A-N-N.

2 Q Okay. On this one clearly you can see the road. You  
3 can see the road from this picture where the B.M.W. was.

4 A Yes, sir.

5 Q And so you could easily see that.

6 A Yes.

7 Q And going to the front door -- and another thing too,  
8 y'all -- the sheriff's department was called by Mr. Banner  
9 about his stolen tag.

10 A Yes.

11 Q So he notified you all.

12 A Yes.

13 Q So that was another reason to come on the property --

14 A Correct.

15 Q -- from that standpoint, to verify or see why he  
16 called a stolen tag in. And, like you said, when you go to  
17 the front door, you go by this area very closely or  
18 whatever?

19 A We did.

20 Q Okay. State -- Court's Exhibit No. 12. Is this just  
21 another picture clearly showing the passenger side of the  
22 car?

23 A Yes, sir.

24 Q The B.M.W. And do you see the items inside there that  
25 you saw earlier?

1 A Yes, sir.

2 Q And you clearly could see the road again --

3 A Yes.

4 Q -- in that picture. Actually you can see the house  
5 right across the street from it, I guess, in that picture.

6 And Court's Exhibit No. 13. Is this a picture of the  
7 back of the B.M.W.?

8 A Yes, sir.

9 Q And does it have a license plate on it?

10 A No, sir.

11 Q And shows you how close it was parked to the deck.

12 A Yes.

13 Q Now, there was a driveway. There was a carport and  
14 everything, is that right?

15 A Yes, sir.

16 Q Where it could have set somewhere else.

17 A Yes.

18 Q But it was right against the deck at the house.

19 A Yes, it was.

20 Q If you would, please, have a seat.

21 (Whereupon, the witness returned to the stand.)

22 (Photograph marked Court's Exhibit No. 14.)

23 Q Let me show you what has been marked as Court's  
24 Exhibit No. 14. It'll be State's Exhibit 52 also. If you  
25 would, do you recognize that, sir?

1 A Yes, sir.

2 Q And what is that, sir?

3 A It's the VIN number, the last four, [REDACTED].

4 Q Okay. And that was the VIN number that you saw on  
5 this B.M.W.?

6 A Yes, sir.

7 Q Was it the one that you saw earlier at the location  
8 near the Federal Credit Union?

9 A It was.

10 Q And it's the same one you saw in that -- where it was  
11 beside the deck or backed up to the deck.

12 A Correct, yes.

13 THE COURT: Your Honor, I'd like to enter Court's  
14 Exhibit 14 in for purposes of this hearing.

15 MR. NOWICKI: No objection.

16 THE COURT: Without objection.

17 MR. BARNETTE: Approach, Your Honor.

18 Q And, obviously, this is a clear view --

19 A Yes, sir.

20 Q -- from there. And, obviously, y'all can respond  
21 also. You responded for another reason, because he called.

22 A Yes. We were responding to a stolen tag.

23 Q And, obviously, you saw the car. It looked like the  
24 same car, obviously, that you saw earlier?

25 A Yes, sir.

1 Q where the white truck was parked.

2 A Yes.

3 Q And you went up, and it was the same car.

4 A Yes.

5 Q And had the same items in it that can clearly be seen.

6 A Yes, sir.

7 Q And you clearly could see the plate missing.

8 A Yes, sir.

9 Q And could you also see the VIN number on it clearly?

10 A Yes, sir.

11 Q You didn't enter the car. You didn't do anything to  
12 get inside the car.

13 A No, sir.

14 Q What did you do after y'all recognized the car?

15 A We waited for -- we secured the house, and Mr. Banner  
16 walked up. So we were talking to him and secured the house  
17 to make sure nobody went in or out and waited for  
18 Investigator Clark and others investigators to get there.

19 Q And did they execute a search warrant later?

20 A They did.

21 Q And during this time -- the car, when you checked the  
22 VIN number and the license plate, they both came back to  
23 the defendant in this case.

24 A Correct.

25 Q Mr. Banner.

30

Mark Lester Noteboom (In-camera)  
Cross-examination by Mr. Nowicki

1 A Yes, sir.

2 MR. BARNETTE: One moment, Your Honor, please.

3 (Pause.)

4 Q If you would, sir, please answer any questions the  
5 defense may have for you, or the Court.

6 A Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. NOWICKI

9 Q Officer Noteboom -- right?

10 A Yes, sir.

11 Q So on August the 29th of 2016 you were working for the  
12 Spartanburg County Sheriff's Department, correct?

13 A Yes, sir.

14 Q And normally patrol the area that you had mentioned, a  
15 parking lot?

16 A Yes.

17 Q And what's in that area, again?

18 A There's an old dorm, slash, hotel, and then there's  
19 another business kind of on the other side of the woods  
20 that's run down and boarded up. It's surrounded by a bunch  
21 of boarded-up businesses.

22 Q Okay. So but the hotel and all that's not in use any  
23 more?

24 A No, sir, no, sir.

25 Q Vacant.

1 A Yes.

2 Q Okay. And you had mentioned the reason you go over  
3 there is because of drug dealers or drug issues and stuff  
4 like that.

5 A People are known to use drugs in the area, yes, sir.

6 Q Okay. And on the 29th you had during your patrol, you  
7 see this B.M.W.

8 A Uh-huh.

9 Q And what color?

10 A Gray.

11 Q Was it gray, blue, gray?

12 A It was gray.

13 Q Gray. And you ran the tag, correct?

14 A Yes, sir.

15 Q And that's where you found that it was --

16 A Suspended.

17 Q -- suspended. And you had mentioned something about  
18 you contacted Michigan D.M.V.

19 A No.

20 Q No. You contacted which D.M.V.?

21 A Our D.M.V. --

22 Q And --

23 A -- which automatically when you run the tag,  
24 automatically checks Michigan, that tag through Michigan.

25 Q Okay. All right. And what's there it came up

1 suspended.

2 A Yeah.

3 Q Okay. The -- you mentioned that on -- so you got the  
4 VIN number during that part of it when you were looking at  
5 the vehicle in the parking lot.

6 A Correct.

7 Q And the last four digits were [REDACTED].

8 A Yes, sir.

9 Q But you didn't know what -- did you write the whole  
10 VIN number down at that time, or not?

11 A I had the whole VIN number from where I ran the tag.

12 Q Okay. Now, on -- and you testified that was about  
13 8:00 or 9:00 o'clock that that happened.

14 A Not specifically but sometime around there, yes.

15 Q Sometime around there. So it could have possibly been  
16 before 8:00 o'clock?

17 A I can't recall.

18 Q Possibly though.

19 A I can't recall.

20 Q Okay. But if you had an incident report indicating  
21 that it was before 8:00 o'clock would that be correct or  
22 incorrect?

23 A I can't recall what time it was.

24 Q Okay.

25 MR. NOWICKI: Your Honor, if I may I would like to

1 show him. This is his report.

2 (Pause.)

3 MR. BARNETTE: No objection.

4 Q So normally during an investigation you would do a  
5 report, correct?

6 A Yes, sir.

7 Q Okay. And you're telling me today you're not for sure  
8 about times and things, is that right?

9 A Correct. I can't.

10 Q If I show you something to jog your memory would that  
11 help you?

12 A Yeah, yes, sir.

13 Q Can you take a look at that and just tell me if that's  
14 something that you did?

15 A Okay.

16 Q Is that something that you would have prepared?

17 A Yes.

18 Q Okay. And the incident report, does it indicate that  
19 it was around 7:30 in the morning?

20 A I didn't see a time on there.

21 Q Can you take a look? Just look at that first, right  
22 where it starts out, right at the beginning.

23 A It says around 7:30.

24 Q 7:30. Okay. And how long were you in that -- how  
25 long were you in that area?

1 A The area I work is -- my zone is pretty small. So I'd  
2 pretty much stay in the area all the whole shift.

3 Q But as far as the parking lot goes, how long would you  
4 think you were in the parking lot?

5 A Probably 20 minutes.

6 Q Twenty minutes?

7 A Yeah.

8 Q And then shortly after that you got a call to go to  
9 the -- to the bank, to the bank robbery?

10 A Sometime after that, yeah.

11 Q Okay. And do you remember when the bank robbery was?

12 A I do not.

13 Q All right. But you did end up going to the bank  
14 robbery.

15 A Yes, sir.

16 Q Okay. So do you -- what kind of investigation, if  
17 any, did you do there?

18 A There were other officers already there. Basically, I  
19 was kind of a support role.

20 Q Support role. Did you take any statements from  
21 anybody?

22 A I don't recall.

23 Q Don't recall. Were you the one that was -- who  
24 actually found that vehicle?

25 A Yes.

1 Q The white truck?

2 A No. It was --

3 Q No. You just found -- the only thing you did on this  
4 was the B.M.W.

5 A Correct.

6 Q So everything else that involved the white truck and  
7 all of that would be secondhand knowledge, correct?

8 A As far as?

9 Q As far as if where -- who took it. I mean not who  
10 took it, but where it went.

11 A I was there in the parking lot where the white truck  
12 was, yes, when it was there.

13 Q When the white truck was there.

14 A Uh-huh.

15 Q Okay. And it's your testimony that that truck was  
16 near where the B.M.W. was.

17 A Correct.

18 Q The exhibits are marked. Looks like Court's  
19 Exhibits 5, 6 and 7. I want to show you what's been marked  
20 as No. 7.

21 A Yes, sir.

22 Q That's the white truck that y'all found, correct?

23 A Yes, sir.

24 Q All right. Can you point to where the B.M.W. was?

25 A It was off to the left right here.

1 Q It was off to the left.

2 A Yeah.

3 Q So it would have been facing --

4 A It would have been facing the truck.

5 Q Okay. Is there -- is that like a circle around there?

6 A Yes.

7 Q Okay. So it was parked. Would it be parked in the  
8 circle or parked in the bush?

9 A It was parked basically where you see that cement  
10 between the brush.

11 Q Uh-huh.

12 A It was backed up right in there.

13 Q Okay. I just want to get that clarified.

14 And when you found -- well, I don't know. Was it --  
15 you didn't find -- I mean, you weren't part of the officers  
16 who actually found the white truck, correct?

17 A No. That was Deputy Soddu.

18 Q That was somebody else.

19 Okay. All right. So about -- so then you received  
20 information about where the B.M.W. was located.

21 A Correct, correct.

22 Q Okay. And do you remember who gave you that  
23 information?

24 A Chad Springer.

25 Q Chad Springer.

1 A Deputy Springer.

2 Q And is -- he works with the sheriff's office?

3 A He does. He's a warrants officer.

4 Q All right. And was he already at the location where  
5 the B.M.W. was --

6 A He was.

7 Q -- before you got there?

8 A He was. He was sitting back watching.

9 Q Do you remember about what time that would have been?

10 A No, sir.

11 Q Okay. So you was already there and had eyes on it.

12 A Correct.

13 Q And anybody else with him?

14 A Not that I can recall.

15 Q I may have already asked that. I apologize if I did.

16 A Yeah.

17 Q So then you come, correct?

18 A Yes, sir.

19 Q Were you in a marked vehicle, or unmarked?

20 A I was.

21 Q Marked.

22 A Yeah.

23 Q And, clearly, from the picture that was shown, which  
24 was Court's Exhibit 11, that from the street it appears  
25 that you would have been able to see that there was a

1 vehicle there, correct?

2 A Yes, sir.

3 Q where did you park?

4 A Right at the end of the driveway.

5 Q So that would have been in a different picture,  
6 correct?

7 A Correct.

8 Q Different photo.

9 A I had driven by the house several times before I  
10 stopped also.

11 Q So you drove by several times?

12 A Uh-huh.

13 Q What was the reason for that?

14 A Seeing if that vehicle was there.

15 Q Okay. So when you drove by was the vehicle always  
16 there?

17 A Yes.

18 Q Didn't see anybody in it?

19 A Correct.

20 Q Stayed in the same place?

21 A Uh-huh.

22 Q How long -- how many times about did you drive by the  
23 vehicle?

24 A Twice.

25 Q So that's several times?

1 A Uh-huh.

2 Q Is that twice?

3 A More than one, twice.

4 Q More than once. Okay. If you did more than once,  
5 that's fine.

6 Okay. So you parked in the driveway. If you were  
7 standing right on the -- right from where you were --

8 A Yes, sir.

9 Q -- you would have been -- you were able to see inside  
10 the car to get a VIN number?

11 A From the road?

12 Q From where you were parked.

13 A No.

14 Q So you literally -- you physically had to walk up to  
15 the vehicle and look inside to get the VIN number, correct?

16 A Yeah.

17 Q Okay. And then you would have had to have walked  
18 around the vehicle as well to see about if it was -- had a  
19 missing tag.

20 A Yes, sir.

21 Q As well as the items that were inside the vehicle.

22 A You could see those before you got to the vehicle as  
23 you're walking up the driveway.

24 Q Well, I'm sure you could see there were things in  
25 there.

1 A Uh-huh.

2 Q But without -- I mean, right from where you were you  
3 could identify that that was the exact same stuff.

4 A For the most part, yes.

5 Q Okay. But to confirm wouldn't you have to actually go  
6 through the stuff?

7 A Go through it, no.

8 Q No. So okay. Well, once you found out that it was  
9 the -- that vehicle, what -- what did you do next?

10 A Called the investigators and let them know.

11 Q Okay. And based on that information did they tell you  
12 anything? Well, let me go back. Did anybody tell you to  
13 call them?

14 A No.

15 Q You mean, Investigator Clark or anybody didn't say,  
16 hey, go check the vehicle, is that the one, call me?

17 A I don't recall that.

18 Q You don't recall that. Okay. Had any idea whether or  
19 not a search warrant was --

20 A There was talk before I got there if that was the  
21 vehicle --

22 Q Uh-huh.

23 A -- to let them know if that's what you're asking.

24 Q To let them know.

25 A Yes.

1 Q Okay. And do you remember calling Investigator Clark  
2 and telling him about the vehicle?

3 A I don't remember who I called. I don't recall.

4 Q But you called somebody from law enforcement.

5 A Yes.

6 Q Any idea whether or not a search warrant was in place  
7 at that time?

8 A No, sir.

9 Q You did not. And at the time you went there there was  
10 no search warrant.

11 A I don't recall.

12 Q Well, you would have -- I mean, you would have had to  
13 have known.

14 A It takes a while to get search warrants if you  
15 don't -- you have to get the information first.

16 Q Right. I understand that. Okay.

17 MR. NOWICKI: No other questions at this time.

18 THE COURT: Any redirect limited to what he went into?

19 MR. BARNETTE: Just one or two things, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. BARNETTE

22 Q Obviously, you could see the car from the road.

23 A Yes.

24 Q Did it appear to be the same one --

25 A Yes, sir.

1 Q -- you saw earlier? And when you went up to examine  
2 it, you never entered the car.

3 A No.

4 Q Is that right?

5 A No, sir.

6 Q You just looked at the different locations.

7 A Correct.

8 Q The VIN number, which is clearly noticeable on the  
9 front window where you could see through it.

10 A Yes, sir.

11 Q And you saw the items in the car.

12 A Yes, sir.

13 Q And you saw the tag was not on the car.

14 A Yes, sir.

15 Q And, like you said, you examined the VIN number  
16 earlier.

17 A Yeah.

18 Q And it was the exact same car.

19 A I did.

20 Q And, obviously, y'all backed off. You notified law  
21 enforcement.

22 A Correct.

23 Q And the detectives got the search warrant.

24 A Correct.

25 MR. BARNETTE: That'll be all the questions, Your

1 Honor.

2 MR. NOWICKI: Briefly, real quick.

3 RECROSS-EXAMINATION

4 BY MR. NOWICKI

5 Q You all were investigating a robbery, correct?

6 A Yes, sir.

7 Q And the reason you went to that house was to see and  
8 look for that B.M.W. vehicle, correct?

9 A No.

10 Q What were you looking for then?

11 A The reason we went to that house is because we were  
12 called to that house in reference to a tag being stolen.

13 Q Okay. Then why did you have to contact Investigator  
14 Clark or whoever it was to say, hey, that's the vehicle?

15 A Due to it possibly being the vehicle that I was out  
16 with.

17 Q Uh-huh. And that has what to do with what?

18 MR. BARNETTE: Your Honor, I know it's pretrial. I'm  
19 going to object. I think he's outside of the scope.

20 MR. NOWICKI: That's fine. We'll leave that alone for  
21 right now.

22 I'm done. No other questions.

23 THE COURT: Okay.

24 MR. BARNETTE: Nothing further.

25 THE COURT: Thank you, sir. You may step down. Watch

Joseph W. Guffey (In-camera)  
Direct examination by Mr. Barnette

1 your step if you would.

2 MR. BARNETTE: Your Honor, if I could ask the defense,  
3 is this -- are they challenging the search warrant itself  
4 or are they just challenging the circumstances around it?

5 MR. NOWICKI: We're challenging the search warrant. I  
6 think we have to go around the circumstances to get there.

7 MR. BARNETTE: Okay. Good enough. I just wanted to  
8 make sure.

9 I'd like to call Sergeant Guffey to the stand.

10 JOSEPH W. GUFFEY, having been  
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE

13 Q If you would, sir, give your full name for the record,  
14 please.

15 A I'm Joseph W. Guffey.

16 Q And where do you work at, sir?

17 A Spartanburg County Sheriff's Office.

18 Q And what is your position there, sir?

19 A I am currently the sergeant over violent crimes.

20 Q Okay. And how long have you been in law enforcement,  
21 sir?

22 A 2001-ish, the end of 2001.

23 Q About 17 years, give or take?

24 A Yes, sir.

25 Q Back on August 29th of 2016, was you working that day,

1 sir?

2 A Yes, sir.

3 Q And did y'all -- did you receive information about the  
4 bank robbery that occurred at the Spartanburg Federal  
5 Credit Union?

6 A I did.

7 Q And if you would, tell the Court about what -- what  
8 information you received and what was your involvement in  
9 it.

10 A I was at the office, and it must have been somewhere  
11 between them finding the car and the bank robbery and then  
12 going to that home that they needed a search warrant for  
13 this location.

14 Q Okay. So it was after Officer Noteboom called  
15 investigators to tell them the information.

16 A I would assume so.

17 Q Okay. And who gave you the information for the search  
18 warrant?

19 A Detective Clark.

20 Q Okay. And what did he tell you about the information  
21 that he had?

22 A Basically, what he just testified to that the  
23 Officer/Deputy Noteboom had been out with the car  
24 previously. Then the bank robbery happened, that he  
25 removed the tag from it.

Joseph W. Guffey (In-camera)  
Direct examination by Mr. Barnette

1           A white truck was found sometime later after the  
2 burglary -- excuse me -- the armed robbery where the B.M.W.  
3 was. A 9-1-1 call came in later on that someone is calling  
4 in a stolen tag from their car that matched the description  
5 of the car that Noteboom had previously been out with.

6 Q       And when you received that information, you put that  
7 in your incident report too, is that right, sir?

8 A       Yes, sir.

9 Q       Let me show you what's been marked as Court's Exhibit  
10 No. 2. Let me show you Court's Exhibit No. 2.

11 A       Can I take this paperclip off?

12 Q       Yes, sir. Is this a copy of the search warrant that  
13 you did on this case?

14 A       Yes, sir.

15 Q       If you would -- and that's your affidavit, the items  
16 to be searched and everything, is that right, sir?

17 A       Yes, sir.

18 Q       Okay.

19           MR. BARNETTE: Your Honor, would you want him to read  
20 or would you rather just look at the search warrant itself?

21           THE COURT: I can just look at it myself unless  
22 there's a particular part you want me to pay attention.

23           MR. BARNETTE: No. Maybe we better let you read it  
24 then if there's any questions from there.

25           Any objections to that?

1 MR. NOWICKI: Can I review it?

2 MR. BARNETTE: Sure.

3 (Pause.)

4 Q Can I borrow your clip, paperclip back?

5 A Yes, sir.

6 Q Thank you.

7 MR. BARNETTE: Your Honor, I'd like to move Court's  
8 Exhibit 2 into evidence at this time for purposes of this  
9 hearing.

10 MR. NOWICKI: No objection.

11 THE COURT: Without objection.

12 Q Let the Court have a moment to read over it.

13 (Pause.)

14 THE COURT: Okay.

15 MR. BARNETTE: May I approach the bench, Your Honor?  
16 Thank you.

17 Q And in looking at Court's Exhibit No. 2 with you, sir,  
18 here, basically, you go through the probable cause for the  
19 search warrant, is that right?

20 A Yes, sir.

21 Q And I know the judge has read through there about the  
22 license plate, everything that's been testified before.  
23 And then at the end you also but the deputy that initially  
24 seized the plate responded to the addresses provided by the  
25 victim, the reported theft of the license plate from --

1 this is the same B.M.W. that he was previously out with,  
2 which he received the receipt, got the license plate.

3 A Yes, sir.

4 Q And you placed that in there, and then he goes into  
5 detail before. And you do in that detail following what he  
6 testified to earlier.

7 A Yes, sir.

8 Q And you put the premises that was searched was the  
9 car, the B.M.W. in question, as well as the residence, is  
10 that right?

11 A Yes, sir.

12 Q And the residence at [REDACTED].

13 A [REDACTED], yes, sir, [REDACTED].

14 Q Okay. Got up there from that. [REDACTED] Clarence Circle in  
15 Moore, South Carolina?

16 A Yes, sir.

17 Q Okay. And was that the search warrant given and  
18 executed by investigators from the sheriff's department?

19 A It was.

20 Q And did they find evidence of the bank robbery?

21 A Yes, sir.

22 Q Did they find the money involved in the bank robbery?

23 A Yes, sir.

24 Q Was that found in the house?

25 A Yes, sir.

1 Q Did they find a shotgun that matched -- was -- matched  
2 the description of the shotgun used in the bank robbery?

3 A Yes, sir.

4 Q Did they find unfired shell casings in the car, as  
5 well in the deck area where the gun was found underneath  
6 the deck?

7 A Underneath the deck. I don't know if there were any  
8 unfired ones. I know that there were some live rounds  
9 under the deck. And inside the car there were some spent  
10 shell -- shotgun shell casings.

11 Q You sure they was not -- they was unfired, weren't  
12 they?

13 A One way. I don't recall to be honest with you. I'd  
14 have to look at a picture.

15 Q Okay. I'll be glad to show that to you.

16 (Pause.)

17 Q I'm going to show you what's been marked as Court's  
18 Exhibit 15, State's Exhibit 55, but 15 for this hearing;  
19 Court's Exhibit 16, State's Exhibit 56; Court's Exhibit 17,  
20 which is State's Exhibit 61; Court's Exhibit 18, State's  
21 Exhibit 62; Court's Exhibit 19, State's Exhibit 68; Court's  
22 Exhibit 20, State's Exhibit 72; Court's Exhibit 21, State's  
23 Exhibit 78; Plaintiff's Exhibit 20 or Court's Exhibit 22,  
24 State's Exhibit 83; Court's Exhibit 23, State's Exhibit 87;  
25 Court's Exhibit 24, State's Exhibit 88 and let you take a

Joseph W. Guffey (In-camera)  
Direct examination by Mr. Barnette

1 look at those, sir, real quick.

2 (Pause.)

3 A Okay.

4 Q Are you fairly -- are those a fair representation of  
5 what was found as a result of the search warrant?

6 A Yes, sir.

7 MR. BARNETTE: And, Your Honor, I'd like to move these  
8 into evidence at this time. I don't know if Mr. Nowicki  
9 wants to take a look at them just for purposes of this  
10 hearing.

11 (Pause.)

12 THE COURT: without objection.

13 Q If you would, just step down for a second, sir, so the  
14 Court can see these.

15 (Whereupon, the witness left the stand.)

16 Q This is okay. Show you Court's Exhibit 15. Is that  
17 an unfired 12-gauge shotgun shell that's underneath the  
18 driver's side of the car, the B.M.W.?

19 A Yes, sir. It appears to be.

20 Q And I think Court's Exhibit 16 is just a closer  
21 picture of that shell casing.

22 A Yes, sir.

23 Q Was that a specific type of shell casing like Prairie  
24 Storm shell casing? It might be better --

25 A The brand of it, I don't recall.

1 Q Yes, sir. I'll show you some more pictures here.

2 Showing you Court's Exhibit 17. What's that a picture  
3 of, sir?

4 A That is the back driver's-side-seat floorboard with  
5 the shotgun shell underneath it similar to the rest of the  
6 ones we found.

7 Q Okay. Is that the 12-gauge shotgun shell that was  
8 found?

9 A Yes, sir.

10 Q Let me show you Court's Exhibit 18. Is that just a  
11 closer picture of the shotgun shell?

12 A Yes, sir, it appears to be, yes, sir.

13 Q And that's a different shotgun shell than the other  
14 one we saw earlier in the first two photographs.

15 A Yes, sir.

16 Q Court's Exhibit 19. Are these items that was found in  
17 trunk of the B.M.W. when it was searched -- the mask and  
18 the gloves?

19 A Yes, sir.

20 Q And did those match the description from the bank  
21 robbery, from the people there with the video tape?

22 A From what I was told, they did, yes, sir.

23 Q Right. And State's Exhibit 72. I call it a stocking  
24 cap. Some people call that a doo rag. Was that what was  
25 found in the trunk of the B.M.W. also?

Joseph W. Guffey (In-camera)  
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q Was that similar to the description that was done at  
3 the bank?

4 A Yes, sir.

5 Q State's Exhibit or Court's Exhibit 21 -- I keep --  
6 Court's Exhibit 21. Was this where the shotgun, as well as  
7 the pants, was found underneath the deck --

8 A Yes, sir.

9 Q -- there at the residence?

10 Court's Exhibit 22. Is that the pants that was from  
11 under the deck with the shell casings that was found in it?

12 A Yes, sir.

13 Q Those are 12-gauge shotgun shells.

14 A Yes, sir.

15 Q Court's Exhibit 23. Is that the gun that was found  
16 with the shotgun shells that was beside the gun?

17 A Yes, sir.

18 Q And that was found under the deck also at that  
19 residence?

20 A Yes, sir.

21 Q And Court's Exhibit 24. Was this the bag where the  
22 money was found?

23 A It was, yes, sir.

24 Q And was that amount a little bit over \$15,000 that was  
25 found in that bag?

1 A Yes, sir.

2 Q And was the bait money also found in that bag --

3 A It was, yes, sir.

4 Q -- from the bank itself? If you would, just stay  
5 right there for a second.

6 Let me show you Court's Exhibit 25. You received  
7 information about the bank, what was left there and  
8 everything, is that right?

9 A Yes, sir.

10 Q And then Court's Exhibit 26. There was a video-taped  
11 at the scene of the bank robbery, is that correct?

12 A Yes, sir.

13 MR. BARNETTE: Your Honor, I'd like to enter Court's  
14 Exhibit 25 just for purposes of this hearing, as well as  
15 Court's Exhibit 26 as part of the hearing.

16 MR. NOWICKI: No objection.

17 Q Court's Exhibit 25. Was this a fired shell casing  
18 that was found at the bank when he had fired the shot and  
19 then racked it?

20 A Yes, sir.

21 Q And was this the same ammo that was found at his  
22 residence?

23 A It was.

24 Q I know we have closer-up pictures, but I'm trying to  
25 save time here from there.

Joseph W. Guffey (In-camera)  
Direct examination by Mr. Barnette

1 State's Exhibit 2 shows the -- what the individual was  
2 wearing, as well as the gun he used and everything in the  
3 video, is that right?

4 A Yes, sir.

5 MR. BARNETTE: And, Your Honor, I'd like to move that,  
6 make that part of it too.

7 Q And in that video, obviously, the shotgun appeared to  
8 be the same shotgun that was found.

9 A It appeared to be.

10 Q And he had the mask stocking cap or doo rag on top of  
11 his head?

12 A Yes, sir.

13 Q And the pants appear to be similar.

14 A Yes, sir.

15 Q Cargo pants with the shell casings in them.

16 A Yes, sir.

17 Q Okay. Please have a seat, sir. Thank you.

18 (Whereupon, the witness returned to the stand.)

19 Q So, obviously, you'd have probable cause that was  
20 signed by Judge Paslay, which the search warrant was signed  
21 by him, is that right?

22 A Yes, sir.

23 Q And at the top of it I think there was a scrivener's  
24 error. You did not sign your name, is that right, or put  
25 your name at the top of it?

1 A It appears so.

2 Q But you signed the bottom of it and it's what you  
3 presented to Judge Paslay.

4 A Yes, sir.

5 Q And you did that under oath.

6 A Yes, sir.

7 Q Okay. Please answer any questions the Court may have  
8 for you, or Mr. Nowicki.

9 CROSS-EXAMINATION

10 BY MR. NOWICKI

11 Q Is it Sergeant Guffey?

12 A Yes, sir.

13 Q And you've -- how long have you been with the -- with  
14 the -- I don't know what I'm saying.

15 A The sheriff's.

16 Q Spartanburg County Sheriff's Office.

17 A The sheriff's office. I've been there since mid 2010.

18 Q Okay. And prior to that?

19 A Yes, sir. I worked for the Duncan Police Department  
20 from late 2001 until I came to the sheriff's office.

21 Q Okay. And that is your signature, correct?

22 A Yes, sir.

23 Q And this 12:45 p.m., what does that denote?

24 A I'm assuming the time the judge signed the warrant.

25 Q Okay. And do you remember what time you got the

1 information to get the warrant?

2 A Approximately 11:26.

3 Q 11:26?

4 A Yes, sir.

5 Q And hand you this back.

6 All right. So about 11:26. And that was from

7 Detective Clark?

8 A Yes, sir. I'd heard that there'd been a bank robbery,  
9 and I'd heard little bits and pieces of it, but as far as  
10 my involvement I was called around --

11 Q So Detective Clark is the one that contacted you in  
12 reference to getting a search warrant.

13 A Yes, sir.

14 Q And is Detective Clark the one who provided you with  
15 all of the information?

16 A Yes, sir.

17 Q And what information did he provide for you or to you?  
18 I'm sorry.

19 A Just reading from my incident report, basically, said  
20 that there'd been a bank robbery, that a deputy had been  
21 out with an abandoned vehicle described as a bluish-grayish  
22 B.M.W. just prior to the bank robbery. Stated that the  
23 deputy had run the Michigan plate and that it had come back  
24 either suspended or expired or lack of -- lack of  
25 insurance, I believe it ended up being.

1           The deputy ended up taking that tag just after the --  
2 the bank robbery. A white truck was taken from the area  
3 and ended up back where that deputy had initially found  
4 that B.M.W.

5 Q       Okay. And where did the information come from about  
6 Mr. Banner being the, or I should say the suspect, which is  
7 Mr. Banner, as being the same, having the same physical  
8 characteristics as the person?

9 A       I -- I don't recall giving any sort of --

10 Q       Is that not in the search warrant?

11 A       I'd have to look. If -- if there's physical  
12 characteristics it would have had to come from Detective  
13 Clark, because that's who I spoke to about it. But just --  
14 just has on here clothing, it looks like to me. I don't  
15 see anywhere where it gives a physical --

16 Q       Does it say anything about -- it talks about clothing.

17 A       Yes, sir.

18 Q       Okay.

19 A       Now, just to be clear, you meant like height, weight.

20 Q       Correct.

21 A       I don't recall ever mentioning that that comes to my  
22 mind or that I see here.

23           what I'm -- what I'm talking about is just the clothes  
24 that they said, you know, basic -- basic description.

25 Q       Right. Okay. But that's all the information that you

1 had, right?

2 A Yes, sir.

3 Q Clothes, car.

4 A Yes, sir.

5 Q The B.M.W., correct?

6 A Yes, sir.

7 MR. NOWICKI: One moment, Your Honor.

8 (Pause.)

9 Q On the search warrant under description of premises  
10 the -- I guess it's a catchall sentence at the -- at the  
11 very end. I guess -- I think it was a direct one. I'll  
12 check and make sure I'm not --

13 A Sure.

14 Q Yeah. Also to be searched. Also to be searched are  
15 any and all outbuildings, sheds or other structures and  
16 vehicles located in the curtilage area of premises,  
17 correct?

18 A Yes, sir.

19 Q So generally your search warrants are going to include  
20 what would be considered curtilage, correct?

21 A Yes, sir.

22 Q Which could be something that's on the property  
23 outside the home, correct?

24 A Yes, sir.

25 MR. NOWICKI: No other questions, Your Honor.

1 MR. BARNETTE: Just one followup, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BARNETTE

4 Q Do you still have the search warrant there, sir?

5 A Yes, sir.

6 Q And I'm not going to have you read it, but all of your  
7 information you put in the affidavit, is that right --

8 A Yes, sir.

9 Q -- that you received?

10 A Yes, sir.

11 Q And that developed your probable cause for this case.

12 A Yes, sir.

13 Q Thank you.

14 THE COURT: Thank you, sir. You may step down.

15 MR. BARNETTE: Your Honor, that'd be the state's  
16 showing on the search warrant.

17 MR. NOWICKI: One moment, Your Honor.

18 (Pause.)

19 MR. BARNETTE: May we approach, Your Honor?

20 THE COURT: Yes, sir.

21 (Bench conference held off the record.)

22 MR. NOWICKI: Sergeant Guffey.

23 THE COURT: Come right back up here, sir. They've got  
24 a question or two more for you. Just need to remind you  
25 that you remain under oath.

60

Joseph W. Guffey (In-camera)  
Recross-examination by Mr. Nowicki

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 RECROSS-EXAMINATION

4 BY MR. NOWICKI

5 Q As far as policy or protocol or whatever you want for  
6 getting a search warrant, do y'all have to follow -- do  
7 y'all have to follow anything, you know, like a chain of  
8 command type of thing?

9 A No, sir.

10 Q Can anybody get a search warrant?

11 A Yes, sir.

12 Q So it's just based on whatever information and whoever  
13 goes to the judge with that information, correct?

14 A Yes, sir.

15 Q Okay.

16 MR. NOWICKI: That's all.

17 MR. BARNETTE: No further questions of this witness,  
18 Your Honor.

19 THE COURT: Thank you, sir. You may step down again.  
20 Just watch your step again.

21 MR. NOWICKI: Your Honor, for purposes of the hearing  
22 the defense is going to call Mr. Banner.

23

24

25



1 A Yes, sir.

2 Q The one you're talking about today?

3 A Yes, [REDACTED] -- [REDACTED] Clarence Circle. Yes.

4 Q You didn't force your way into that residence, did  
5 you?

6 A No, sir.

7 Q I mean, you and your grandmother have a good  
8 relationship?

9 A Yes, sir.

10 Q And so basically you were a guest.

11 A Yes, sir.

12 Q Did you have any inclination of possibly staying in  
13 the area?

14 A Possibly.

15 Q Okay.

16 A Possibly.

17 Q That's all the questions.

18 MR. BARNETTE: Thank you, Your Honor. I do have a few  
19 questions.

20 CROSS-EXAMINATION

21 BY MR. BARNETTE

22 Q Mr. Banner, if I'm understanding right the B.M.W. that  
23 was found at the residence there was your car.

24 A Making payments on it, correct.

25 Q Yes, sir. And you had that car all day that day.

1 A More or less, yeah, yes.

2 Q Okay. And the items inside that car, was those all  
3 your items?

4 A More or less.

5 Q Okay. what I'm particularly talking about -- let me  
6 show you some court exhibits here.

7 MR. BARNETTE: May I approach the bench, Your Honor?  
8 I'm sorry.

9 (Pause.)

10 Q Let me show you what's been marked as Court's Exhibits  
11 No. 9, No. 10, No. 11, No. 12 and No. 13. The car in those  
12 pictures, the 2002 B.M.W., that's your car, is that right?  
13 I'll let you get a chance to look through all of them.

14 A This is the vehicle. This is the vehicle I was making  
15 payments on.

16 Q And the items inside the car, as well as the trunk,  
17 was your items, is that right?

18 A More or less.

19 Q Okay. In the trunk of the car, was those your items,  
20 sir?

21 A More or less.

22 Q Okay. The items in the floorboard of that car, in the  
23 back of the front and under the driver's seat was all your  
24 items, is that right?

25 A More or less.

1 Q The 12-gauge shotgun that was found underneath the  
2 deck --

3 MR. NOWICKI: Your Honor, I'm going to object. This  
4 was just for the purposes of ownership of the vehicle as  
5 far as having a reasonable expectation of privacy.

6 THE COURT: You called him as a witness. He's on  
7 cross-examination. So he has got some leeway.

8 MR. BARNETTE: Thank you, Your Honor.

9 Q The shotgun that was found under the deck with the  
10 shotgun shells, is that your shotgun, sir?

11 A I can't see any numbers or identification on it, so I  
12 can't say for sure whether that specific one was mine.

13 Q Okay.

14 MR. BARNETTE: Like to mark that as court's exhibit.

15 (State's Exhibit No. 11 marked Court's Exhibit No.  
16 27.)

17 MR. BARNETTE: Your Honor, I've marked the shotgun  
18 that was found from under the deck as Court's Exhibit  
19 No. 27. I'd like to enter it in at this point just for  
20 purposes of this hearing.

21 MR. NOWICKI: Your Honor, I object for the same  
22 reason.

23 THE COURT: All right. I'll allow him to proceed. He  
24 is on cross-examination. I'm not sure what the purpose is,  
25 but I'll let him go ahead.

1 MR. BARNETTE: No problem. Thank you, Your Honor.

2 Q If you want to take a look at it, sir, you can from  
3 right here. You can take it out, sir, if you want to.

4 A It appears to be a similar shotgun. Again, I don't  
5 know the numbers, so I can't say for sure.

6 Q It appears to be a similar shotgun.

7 A Again, I don't know the number, so I can't say for  
8 sure.

9 Q But if A.T.F., the background check on this, says this  
10 was the gun that you purchased at the Bass Pro Shop --

11 A Then I would suppose so.

12 Q Okay. And it appears on here that it was bought by  
13 the Bass Pro shop.

14 A Correct.

15 Q That appears to be your gun, is that right, sir?

16 A Similar, yes.

17 Q Okay. And the pants that was found under there, was  
18 those your pants also, sir?

19 A I don't recall.

20 Q Okay. The bag of money that was found in the house,  
21 was that yours?

22 A Excuse me?

23 Q The bag of money that was found inside the house in  
24 the book bag.

25 A What bag of money?

1 Q Let me show you Court's Exhibit 22. The pair of pants  
2 that was found, the shotgun shells, was those your pants,  
3 sir?

4 A I'm not entirely sure. I don't know. I don't believe  
5 so.

6 Q Let me show you Court's Exhibit 24. I think this was  
7 found in the bedroom of the residence, the gray bookbag.  
8 Was that your bookbag, sir?

9 A No, sir.

10 Q So you don't know anything about that.

11 A I don't recall ever seeing a bookbag of that nature.

12 Q Do you realize that bookbag had an I.D. with your  
13 name, social security number and blood type in the bottom  
14 of it?

15 A Does it? Oh.

16 Q Why would that be in there if that wasn't your bag?

17 A I can't say.

18 MR. BARNETTE: One moment, Your Honor, please.

19 (Pause.)

20 MR. BARNETTE: One moment, Your Honor.

21 (Pause.)

22 Q And did you park the B.M.W. where it was, sir?

23 A I did.

24 Q And was it clearly seen from the road?

25 A Yes.

1 Q Okay. So you could clearly see it from the road. No  
2 question from the pictures and everything.

3 A I could recognize it as mine, yes.

4 MR. BARNETTE: Thank you, Your Honor. That's all the  
5 questions.

6 THE COURT: Any redirect?

7 MR. NOWICKI: No. No redirect.

8 THE COURT: Thank you, sir. You may step down. Watch  
9 your step as you step down.

10 Any more witnesses for the defense?

11 MR. NOWICKI: No other witnesses, Your Honor.

12 THE COURT: Any in reply?

13 MR. BARNETTE: None in reply, Your Honor.

14 THE COURT: All right. Yes, sir. Do you want to make  
15 arguments or --

16 MR. NOWICKI: I would like to, yes.

17 THE COURT: Okay. Be more than happy to hear from  
18 you.

19 MR. NOWICKI: Your Honor, based on the testimony we  
20 definitely wouldn't be able to say that Officer Noteboom's  
21 purpose for going over to the residence was to not identify  
22 the vehicle for a tag that was taken. They already knew  
23 the tag was taken.

24 Their purpose was to go over there to see if that was  
25 the same vehicle for the purposes of a [sic] investigation

1 for a bank robbery, because that information was used in  
2 the search warrant. So therefore they needed to have a  
3 search warrant prior to the officer actually going onto the  
4 property to actually look in the vehicle.

5 Looking in the vehicle is a search. It's not like  
6 something I could see from plain view. Yes. He could see  
7 it was blue or whatever, gray, B.M.W. from the road, but  
8 they have to be other blue and gray B.M.W.s that exist.

9 To get closer he had to physically get out of the  
10 vehicle and walk on the property and look. In my eyes  
11 that's a search.

12 And there is case law as far as what curtilage is.  
13 Curtilage is -- it can be the grass on your property behind  
14 the house, even in front of the house.

15 There is a case. I believe it's the Jardines case out  
16 of Florida which is the dog sniffing case where they came  
17 up upon a dog, come up on the porch, did a sniff. There  
18 were drugs. And based on that they went in and -- and got  
19 items.

20 The Court in that case said you can't do that, that  
21 that is -- the porch is curtilage and you can't just -- you  
22 can't do that. There has to be more than that.

23 And it's similar in this case, although it's not a  
24 dog. We're not comparing a dog to an officer or anything,  
25 but, I mean, the officer basically is doing the same thing.

1 I mean, he's going up to a general vehicle that looks  
2 like or appeared to be the same vehicle and then going onto  
3 the property and then in my opinion is doing a search by  
4 looking inside the vehicle to get a VIN number, by looking  
5 inside to -- for the clothes that appeared to be the same  
6 clothes. But to actually look he's going to have to look  
7 in there to see if everything -- the same items that were  
8 in there.

9 And there is a case out there right now which, Your  
10 Honor, the Supreme Court had and just had oral argument on  
11 it -- I believe it was on January the 8th or 9th of this  
12 year -- which has to do with a motorcycle underneath a tarp  
13 that was in a driveway.

14 Law enforcement went up there, pulled the tarp and saw  
15 that it was a motorcycle. And from my understanding they  
16 took the motorcycle.

17 But, regardless, the issue that's before the Court is  
18 whether or not that's curtilage because it does not fall  
19 under the automobile exception because -- and we heard  
20 testimony about he passed by the automobile, didn't go  
21 anywhere, even though he said, so he did it two -- two  
22 times.

23 They had eyes on the vehicle from a different officer.  
24 The vehicle wasn't going anywhere. So there's no reason  
25 why they couldn't have gotten a search warrant.

1           And the information, again, they had to go onto the  
2 property to get that information regardless in the -- what  
3 the Supreme Court case -- of course they didn't get a  
4 search warrant, but what the Supreme Court, and what  
5 they're looking at is, does -- do they need to have one to  
6 do that, because it's not an automobile exception.

7           If you have eyes on it, then as soon as they take it  
8 and leave they're going to get pulled over, and then you  
9 have the automobile exception. So, you know, what I'm  
10 saying, arguing, is that everything that was found from the  
11 search should be suppressed because without that they're  
12 not getting in anywhere. They're not getting into that  
13 house but for that vehicle.

14           And then there's information too by the general  
15 description that the -- Mr. Banner who is of medium build  
16 and height and light-skin black male -- how many people are  
17 there of his -- of that build and color in Spartanburg?

18           So it all falls down to the vehicle, and without the  
19 vehicle they have nothing. There is no I.D. and the --  
20 well, we won't go into that -- but as far as the search  
21 warrant goes, there's nothing but the vehicle. And  
22 everything that was talked about about his wound and stuff,  
23 that was all found after the search.

24           So the question for me, well, for the Court is, is  
25 this vehicle curtilage, is it un-curtilage. It is. It

1 does not fall under any of the exceptions for the Fourth  
2 Amendment.

3 THE COURT: Let me take -- let me ask you a couple of  
4 questions.

5 The vehicle in the pictures, I think all of the  
6 testimony establishes that the vehicle once it was back at  
7 the residence was clearly in plain view from the road.

8 MR. NOWICKI: Correct.

9 THE COURT: All right. According to the ser -- the  
10 affidavit that led to the issuance of the search warrant,  
11 that's it -- that's it, just the -- this -- the existence  
12 of the vehicle at this location being the same vehicle that  
13 was previously seen by the same officer in close proximity  
14 to the bank that just got robbed that sat directly next to  
15 the white truck that had been taken as part of the bank  
16 robbery.

17 I mean, so what is it that piece of information that  
18 was gathered by the police that you claim was wrongfully  
19 gathered?

20 MR. NOWICKI: The VIN number.

21 THE COURT: He already had the VIN number.

22 MR. NOWICKI: Well, but he had to confirm that was  
23 that vehicle. There's a difference.

24 Just -- I mean, a blue B.M.W. So any -- so he -- he  
25 could have drove by any residence that had a blue B.M.W.

1 and he could go on that property and check that VIN number.

2 THE COURT: All right. So your contention is that his  
3 subsequent view of the VIN number through the window was --  
4 was what he did wrong.

5 MR. NOWICKI: Correct.

6 THE COURT: And that he had to actually come onto the  
7 property in order to view that VIN number.

8 MR. NOWICKI: That's right.

9 THE COURT: All right. Okay. I think I understand.  
10 Yes, sir.

11 MR. BARNETTE: Thank you, Your Honor.

12 First before I get started on everything else, the  
13 present law is -- I know he's arguing what the U.S. Supreme  
14 Court might do. And the present law is that they would  
15 allow this.

16 And the Virginia case that he's talking about, Collins  
17 vs. the Commonwealth of Virginia, I've actually made it a  
18 court's exhibit and I think I provided to the Court and Mr.  
19 Nowicki earlier.

20 Basically, the facts are different. And I know -- I  
21 know the Court can read as well as I can, but from the  
22 standpoint, this is a motorcycle that was seen twice by two  
23 different officers over a long period, over several weeks.

24 This happened on the same day. It happened  
25 approximately a little bit after 9:00 o'clock. I mean, it

1 was observed before 9:00 o'clock by Officer Noteboom. He  
2 went up. He looked at the VIN number. He saw the car, got  
3 the license plate and actually took possession of it. We  
4 have it here in evidence today.

5 Later on the tag was called in as stolen by the  
6 defendant at that residence. Officers go to there.  
7 There's, you know -- obviously, you have the stolen tag,  
8 which is not stolen because Officer Noteboom has got it.

9 Plus, they look and see the automobile is in plain  
10 view.

11 The interesting thing to me is -- and I understand  
12 Mr. Nowicki has to argue for his client. But these  
13 officers didn't do that. They say the officers did go  
14 up -- something that's mentally intrusive, very easy to  
15 see. He never entered the car. He just looked at it,  
16 looked at the VIN number, looked at the items in the car  
17 through the window. And all of this was through the  
18 window. Never opened the doors. Saw that the tag was  
19 missing. Very minimal invasion.

20 If they hadn't done this I'm sure they'd be arguing  
21 the other part, the other way. You know, they didn't  
22 verify that was the car.

23 He simply did what I think was good police work in  
24 both cases checking the car that was in the area that was  
25 strange from that standpoint that wound up being involved

1 in the bank robbery instead of something else. But then he  
2 got to verify it, because the job is to get probable cause  
3 to make sure they're doing the right thing from that  
4 standpoint.

5 A search and seizure is very important. I know the  
6 Court knows this. And they want to make sure they get it  
7 right.

8 And the reason why I entered all of the evidence in  
9 afterwards, they obviously got it right, because you look  
10 at all the evidence that matches up with what's on the  
11 video tape, what was at the scene, what was seen by  
12 witnesses from there. I could have entered a whole lot  
13 more evidence from there, the witnesses at the scene. I  
14 did enter the video tapes so the Court could see that if he  
15 wishes to from there.

16 But there's no question they had probable cause on the  
17 warrant, no question they did the right thing by backing up  
18 and getting a warrant.

19 In the Virginia case they never got a search warrant.  
20 They just went ahead and did it. They pulled up the tarp  
21 too where it was covered where it wasn't clearly seen from  
22 the road.

23 In this case, Your Honor, I think -- right now the  
24 present case law is in support of us. I think the cases --  
25 even the U.S. Supreme Court would rule the way that Mr.

1 Nowicki would like them to, I still think this case would  
2 be totally separate from that case.

3 And if you read the Virginia case -- I think it's on  
4 the descent -- it's kind of interesting to me. I think  
5 it's on page 22 of that opinion. Let me find which justice  
6 did this -- Justice Mims. It looks like -- I'm assuming  
7 this is a 6-1 decision. I'm not sure. It looks like it's  
8 a 6-1 decision, but I'm not familiar with Virginia cases.  
9 So I don't know. But I saw Justice Mims is the decenter  
10 for that.

11 But anyway on page 22 he says, "There is no question  
12 that Officer Rhodes was entitled to observe wherever he  
13 could from the street."

14 That's what Officer Noteboom did. The Fourth  
15 Amendment protection of a home is never extended to require  
16 law enforcement to show their eyes and pacify home on  
17 public -- thoroughfares.

18 He may have been even entitled to go in the driveway  
19 to get a closer look at the tarp or part of the motorcycle  
20 already exposed to public view. When asked to confirm his  
21 impression of the shape, contours and wheels matched the  
22 motorcycle alluded him.

23 Oliver vs. United States, 466 South Carolina -- not  
24 South Carolina -- U.S. 170. It's a 1984 case, Your Honor.

25 Basically, in this case it was an open view, didn't

1 have to pull up anything. I think even descent would agree  
2 that this is a case where we had probable cause as the  
3 state and then that the officers did everything right. I  
4 think they really did a good job from that standpoint -- be  
5 patient and go through and make that you get the evidence  
6 appropriately. And I think they did it this way. And,  
7 obviously, the items they found out.

8       The other problem I've got with it, the automobile's  
9 not curtilage in my opinion. It may have been on  
10 curtilage, but it's not curtilage.

11       And then you've always got the automobile exception  
12 from there because it could move at any time from that  
13 standpoint.

14       But the officers did the right thing. They put the  
15 curtilage information, as well as the home information.  
16 The shotgun shells and the pants was found underneath the  
17 deck, as well as the money was found in the bedroom -- the  
18 correct bedroom -- in the residence itself there. Thank  
19 you, Your Honor.

20       THE COURT: Any reply?

21       MR. NOWICKI: Yes, Your Honor.

22       The question that I have is why didn't they go ahead  
23 and go and get the search warrant before they walked onto  
24 the property to see if that was the vehicle or not if they  
25 had probable cause to do so. And they didn't.

1           And the other thing is, is that even though the  
2 virginia case has to deal with, you know, a tarp, but the  
3 question is it's still coming down to whether or not they  
4 needed to have a search warrant to do that.

5           So in my opinion it's the same thing. I mean, sure.  
6 The tarp from over a motorcycle, you can see it kinda torn  
7 and it wasn't -- you know, could be a motorcycle from -- so  
8 it appears to be a motorcycle.

9           It's not really the issue of searching under the tarp  
10 as there is talk about that. The issue is whether officers  
11 can just come on your property and look for stuff and  
12 whether or not that -- you know, in my opinion looking into  
13 a vehicle that -- you know, if you're in -- if you're out  
14 in public, fine, and officer looks in the vehicle and sees  
15 the VIN number, fine.

16           But if I have my car parked in my yard and an officer  
17 comes up and into my yard and wants to look in my vehicle  
18 that's a search. That's a physical intrusion. I mean, his  
19 eyes are looking and finding things.

20           I mean, there -- it's -- I guess, you know -- and I  
21 don't remember where I read this, was a comparison about a  
22 house that was -- if a house is made of glass and you can  
23 see through the house and you could see people doing drugs,  
24 you would still need to have a search warrant to go in  
25 there and search because they have a reasonable expectation

1 of privacy. I read that somewhere. It could be that  
2 I'm -- but that was one example that was given.

3 So, I mean, and it's almost the same in the same  
4 situation. I mean, everything that was done as far as for  
5 this getting a search warrant was based on the confirmation  
6 of that vehicle, that that was the vehicle. So I think  
7 there is a difference.

8 Even with the automobile exception, I don't think that  
9 applies. Automobile isn't going anywhere. It's not on a  
10 public street or a highway.

11 And, Your Honor, therefore I would ask the Court to  
12 suppress the evidence.

13 MR. BARNETTE: Briefly, Your Honor, just two points I  
14 want to make.

15 One, he called about the tag being stolen. He's the  
16 one that initiated it with the police.

17 And the second thing too which I thought was  
18 interesting here, the car was parked the same way at both  
19 locations.

20 Officer Noteboom testified that the car had been  
21 backed up to the bushes where you couldn't see the back of  
22 it, which was the license plate, and also it was backed up  
23 to the deck where you can't see the back of it, which would  
24 have been the license. So I think that adds on to it from  
25 that standpoint. Thank you, Your Honor.

1 THE COURT: Okay. All right. I'm not going to  
2 suppress the evidence.

3 The testimony that's been presented to the Court on  
4 this particular issue does indicate to the Court that the  
5 officer when he went to the residence was responding to the  
6 call that had been made about this license tag had been  
7 stolen.

8 He -- you know, very -- to the defendant's detriment,  
9 this was the same officer that had actually seen the car,  
10 physically seen the car, before close to the bank robbery.

11 And you can't -- you can't take that out of the  
12 officer's mind. He's the one responding to the report of  
13 the stolen tag, was the same officer that had seen the car  
14 earlier. So he was going out there as part of his job in  
15 that investigation.

16 Sure. He was aware that there'd been a bank robbery  
17 because he'd been out there before he received the other  
18 reports.

19 I agree with the state that I think it was good police  
20 work by the officer in the way that he handled it. If  
21 there wasn't -- the Fourth Amendment stems around an  
22 invasion of privacy, expectations of privacy.

23 I think if -- I'm not saying there wasn't -- that  
24 privacy was violated. But if it was, it was done just in a  
25 very minimal way by the police officer.

1           You know, the car was in plain view from the road. He  
2 could identify it being the same car. Anything that he  
3 examined in the car was not something that was an invasion  
4 of privacy, I think, as contemplated by the -- by the  
5 Fourth Amendment to the point that it would need to be  
6 excluded. So I'm not going to grant the present motion.

7           All right. Lawyers approach for a moment.

8           (Bench conference held off the record.)

9           THE COURT: We are going to step down for a few  
10 moments.

11           (Whereupon, a recess was taken.)

12           THE COURT: we'll go back on the record.

13           The Court has been made aware that discussions on  
14 resolving the case have been taking place. The Court is  
15 not familiar with any great detail of what you've been  
16 talking about, but I believe that we've reached the point  
17 that, you know, getting ready for trials and bringing  
18 people in and getting prepared becomes a factor, and in the  
19 negotiations and in the discussions. So I believe that the  
20 solicitor is going to place something on the record.

21           MR. BARNETTE: Yes, sir, Your Honor.

22           Your Honor, we had talked about negotiations before,  
23 and the defendant rejected those negotiations.

24           I have talked to my folks, the victims, as well as the  
25 law enforcement that's present here. And, like I said, we

1 went to great -- we had to bring one officer back from  
2 Michigan. He'd actually moved up to Michigan.

3 But Mr. Nowicki asked me if he could plead under  
4 Alford, and I said I would not object to that if the Court  
5 would be willing to take an Alford plea -- North Carolina  
6 vs. Alford plea.

7 However, the only thing I would do for him, it'd have  
8 to be straight up on all charges except I would run the  
9 bank robbery charge concurrent with the armed robbery  
10 charge involving Ms. Krystal Ortiz.

11 That would be the only thing. Everything else would  
12 have to be straight up. He'd just plead to all the  
13 kidnappings, the two armed robberies, the possession of a  
14 weapon during a violent crime, straight up, and I'd run the  
15 bank robbery concurrent with the armed robbery and to let  
16 him plead under Alford.

17 But that offer will suspend at 5:00 o'clock. The  
18 state's ready to try the case. And I appreciate the Court  
19 letting us have a chance to talk.

20 THE COURT: All right. And, Mr. Nowicki, you  
21 understand that to be the offer and when it's going to  
22 expire?

23 MR. NOWICKI: Yes, Your Honor.

24 THE COURT: All right. Then I've got other business I  
25 can attend to in the back and so we will -- I will not

Guilty plea

1 dismiss the Court staff until I hear otherwise. So we will  
2 stand ready.

3 Mr. Banner, please speak with your lawyer as much as  
4 you want and discuss with him what all is entailed with  
5 this.

6 I believe that we've discussed -- talk to your lawyer  
7 about my sentencing philosophies and what he knows about  
8 that and what factors that I might weigh positively or  
9 negatively in my consideration with sentencing. You can  
10 get a feel for that from your lawyer.

11 But I'll step down and I'll let you talk with your  
12 lawyer privately.

13 Okay. we'll step down.

14 (Whereupon, a recess was taken.)

15 MR. BARNETTE: Would you like me to announce the case,  
16 Your Honor?

17 THE COURT: Please.

18 MR. BARNETTE: Your Honor, this is the case of the  
19 State vs. Genuine Truth Banner.

20 Your Honor, he is going to plead guilty to all. I  
21 believe there's nine counts total, Your Honor, in this.  
22 It's indictment numbers -- may I borrow the indictments for  
23 a second, Your Honor?

24 Your Honor, he is pleading under North Carolina vs.  
25 Alford on all of these charges, Your Honor. All of them

1 will be straight up except for one charge. And I'll get to  
2 that point from there.

3 The first indictment, 16-GS-42-5451, Your Honor, he is  
4 pleading under state -- North Carolina vs. Alford to both  
5 counts. The first count is armed robbery, Your Honor.  
6 That's a straight-up plea on that.

7 The second count, Your Honor, is the bank robbery  
8 count. He is pleading under Alford also, Your Honor. That  
9 is to run concurrent with the armed robbery charge. That's  
10 the only one that will run concurrent. All of the rest of  
11 these are straight-up pleas.

12 The next one, Your Honor, is 16-GS-42-5452. Your  
13 Honor, armed robbery is count one. Your Honor, possession  
14 of a weapon during the commission of a violent crime is  
15 count two, Your Honor. He is pleading straight up on both  
16 of those charges, Your Honor. No recommendations in that  
17 case. And that has been true billed by the grand jury, as  
18 well as the previous indictment has been true billed by the  
19 grand jury.

20 The next indictment, Your Honor, is 16-GS-42-5453,  
21 Your Honor, kidnapping, two counts, Your Honor. Both of  
22 those are straight-up pleas, Your Honor. No negotiations  
23 or recommendations on those.

24 Then 16-GS-42-5454, Your Honor, has three counts of  
25 kidnapping. Your Honor, all of these have been true billed

Guilty plea

1 by the grand jury, and he is pleading straight up with no  
2 recommendations or negotiations on those charges also, Your  
3 Honor.

4 All of these he is pleading under North Carolina vs.  
5 Alford in this case.

6 I do want to enter all of the evidence that has been  
7 marked, Your Honor, as the State's Exhibits 1 through 96,  
8 as well as Court's Exhibits 1 through 26, I believe that  
9 is, Your Honor. Maybe 27. I'd like to move all of those  
10 as part of the facts and evidence in this case, Your Honor.

11 I've also included -- and I'll show this to Mr.  
12 Nowicki. I do have the officer's notes and reports that I  
13 want to make part of the record, Your Honor, which is going  
14 to be State's Exhibit 97, Your Honor, which is the -- it  
15 actually is two reports.

16 The first report is where the defendant reported his  
17 license plate stolen to the sheriff's department, Your  
18 Honor, the first part of it. And I think that's through  
19 the first six pages.

20 And then the rest of it, Your Honor, is the bank  
21 robbery and armed robbery and kidnapping and possession of  
22 a weapon during a violent crime that occurred, Your Honor,  
23 at the Spartanburg Federal Credit Union. I'd like to make  
24 that part of the facts of the case in this situation.

25 And I do have Court's Exhibit 1, Your Honor, which is

1 the Department of Mental Health had done an evaluation on  
2 the defendant, found him competent to stand trial, Your  
3 Honor. Make that part of the record also, Your Honor. I'd  
4 like to move all of these into evidence at this time and  
5 make them part of the facts of the case when I do my  
6 presentation too, Your Honor.

7 THE COURT: Without objection?

8 MR. NOWICKI: No objection.

9 THE COURT: All right. Thank you, sir.

10 MR. BARNETTE: May I approach the bench, Your Honor,  
11 with the indictment?

12 THE COURT: Thank you.

13 MR. BARNETTE: And, Your Honor, we'd ask for  
14 sentencing to be withheld until the morning because the  
15 victims would have to be notified to be here, Your Honor.  
16 And I know the Court understands that.

17 THE COURT: All right. Mr. Banner, I need you to  
18 please raise your right hand and let the clerk of court  
19 swear you in.

20 GENUINE TRUTH BANNER, having  
21 been first duly sworn, testified as follows: on on

22 THE COURT: Mr. Banner, I know you know this, but I'm  
23 just going to review it. We are making a recording of  
24 everything that happens here. Please speak up loud enough  
25 so that both the court reporter and I can hear you. And if

Guilty plea

1 ever during this process if you cannot hear me, immediately  
2 let me know and I'll speak up as well.

3 I now have a series of questions. These are standard  
4 questions that I ask everyone that appears in front of me.  
5 These questions help me decide whether or not I can, in  
6 fact, accept your plea.

7 Okay. How old are you?

8 THE DEFENDANT: Twenty-seven.

9 THE COURT: And, Mr. Banner, it is your intent to  
10 enter a plea to the charges that were announced by the  
11 solicitor?

12 THE DEFENDANT: Correct.

13 THE COURT: And, sir, how far did you go in school?

14 THE DEFENDANT: Junior college.

15 THE COURT: Where did you do your college?

16 THE DEFENDANT: Kettering University.

17 THE COURT: Presently are you married, single,  
18 divorced, widowed?

19 THE DEFENDANT: Divorced.

20 THE COURT: Do you have children?

21 THE DEFENDANT: No, sir.

22 THE COURT: And prior to being arrested on these  
23 charges did you have a job outside of the home?

24 THE DEFENDANT: No.

25 THE COURT: How were you supporting yourself

1 financially at the time?

2 THE DEFENDANT: It's complicated. Music.

3 THE COURT: And relatives?

4 THE DEFENDANT: Yes, sir, yeah.

5 THE COURT: Ever serve in the military?

6 THE DEFENDANT: I enlisted. I never served.

7 THE COURT: How long have you been in jail on these  
8 charges?

9 THE DEFENDANT: Seventeen months, well, 16 months,  
10 three weeks to the day.

11 THE COURT: Do you know what day it was that you got  
12 arrested?

13 THE DEFENDANT: 29th of August of 2016.

14 THE COURT: within the last 24 hours have you consumed  
15 any type of substance that's adversely or negatively  
16 affecting your ability to understand what we're doing  
17 today?

18 THE DEFENDANT: No, sir.

19 THE COURT: In the past have you ever been treated for  
20 any type of substance abuse issues or drug or alcohol  
21 problems?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you feel like you've had enough time to  
24 talk to your lawyer about the facts behind the case and the  
25 legal elements of the charges that are against you and any

## Guilty plea

1 possible defenses you might have?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And are you satisfied so far with the work  
4 that your lawyer has done for you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Beyond that which has been stated in this  
7 courtroom, has anybody perhaps come to you and threatened  
8 you in any way or have they made you any promises in order  
9 to get you to make the decision to enter the plea?

10 THE DEFENDANT: No, sir.

11 THE COURT: Am I correct in concluding your decision  
12 to enter the plea, that it is a free and voluntary decision  
13 on your part?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Banner, I need for you to understand  
16 that under the law you are presumed innocent of these  
17 charges, and you do have right to a jury trial on any and  
18 all of these charges.

19 At any jury trial that would take place it would be  
20 the state that has the burden of proof. The state would  
21 have to convince all 12 members of a jury that you are, in  
22 fact, guilty beyond a reasonable doubt.

23 Do you understand that you have a right to that jury  
24 trial?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you wish to give up your right to  
2 that jury trial on these charges?

3 (Pause.)

4 THE DEFENDANT: would you repeat the question?

5 THE COURT: Yes, sir.

6 Do you understand that you have a right to that -- to  
7 that jury trial that I just explained?

8 THE DEFENDANT: I understand that I have the right.

9 THE COURT: All right. And in order to enter these  
10 pleas you have to give up your right to that jury trial.  
11 And my question is do you wish to give up your right to  
12 that jury trial.

13 (Pause.)

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Do you want to speak with your  
16 lawyer?

17 (Pause.)

18 THE DEFENDANT: Could you repeat the question one more  
19 time?

20 THE COURT: Yes, sir.

21 Mr. Banner, do you understand that you have a right to  
22 that jury trial that I explained to you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And in order to enter these pleas you have  
25 to give up your right to that jury trial. Do you wish to

Guilty plea

1 give up your right to that jury trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, sir, do you understand that there are  
4 other very important constitutional rights that you are  
5 entitled to but that you have to give up in order to enter  
6 these pleas?

7 You have to give up your right to confront and  
8 cross-examine the state's witnesses. You also have to give  
9 up your right to present evidence which you or your lawyer  
10 might feel would establish a defense and you have to give  
11 up your right of subpoena and you have to give up your  
12 right to remain silent.

13 Do you understand all of those rights?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you wish to give up those rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Mr. Banner, if you would,  
18 please, listen to the solicitor. He's going to give us the  
19 facts.

20 MR. BARNETTE: Okay. Your Honor, as part of the  
21 facts, like I said before, I'd like to move all of the  
22 evidence in -- State's Exhibits 1 through 96, plus 97 that  
23 I've added, which is the incident report, Your Honor, as  
24 well as all of the Court Exhibits.

25 And I'd also like to move forward all of the evidence

1 during the suppression hearing by the state and by the  
2 defendant in that as part of the evidence and facts of the  
3 case also.

4 THE COURT: All right.

5 MR. BARNETTE: Your Honor, I know you've heard the  
6 facts. We can go through them again.

7 This occurred on October 29th, 2016, Your Honor. The  
8 Spartanburg Federal Credit Union, Your Honor, which is a  
9 bank, institution, under the banking statute, Your Honor,  
10 was open that day.

11 Shortly after 9:00 o'clock the defendant came into the  
12 bank, Your Honor. He was armed with a shotgun, dressed in  
13 all black.

14 We do have the video tape, Your Honor. I believe  
15 that's State's Exhibit No. 2 if the Court would like to  
16 view it from there. There's different angles there.

17 He comes in. He actually comes from the Steak and Ale  
18 side of the -- where the B.M.W. was parked, Your Honor,  
19 from that side, comes around, goes into the bank.

20 He sees Phillip Dill talking to a customer there.  
21 That customer has a 5-year-old child with them in this  
22 case, Your Honor. Phillip Dill was the bank officer there  
23 that was with them, Your Honor, in this case. The customer  
24 there has a small child with her. There's three kidnapping  
25 charges involving those three individuals, Your Honor, in

Guilty plea

1 that case.

2 Just give me one second, Your Honor.

3 (Pause.)

4 MR. BARNETTE: Your Honor, Miranda Bishop was in there  
5 with her son, C.B. [REDACTED], Your Honor with Mr. Phillip  
6 Dill. He tells them to get out at that point. The -- at  
7 the point he wants the small child to stay in the room, but  
8 the mother said I'm not going to leave the small child in  
9 the room. So they go into the lobby area outside of the  
10 room where Phillip Dill was. He goes around, Your Honor,  
11 in this case.

12 April Wood, as well as Krystal Ortiz, was the two  
13 tellers at the front counter, Your Honor. He has them come  
14 around. Ms. Wood is -- actually sits down in the floor,  
15 Your Honor. Ms. Ortiz he grabs by the arm and takes her  
16 around and has her start to emptying one of the drawers,  
17 Your Honor.

18 At that point she said that he said go faster. Then  
19 he shot his 12-gauge shotgun up into the ceiling, Your  
20 Honor. It actually went through the ceiling into the roof,  
21 outside of the roof. At that time she started working on  
22 the money.

23 April Wood came around to help unload the other  
24 drawer, Your Honor. Money was dropped. If you see some of  
25 the pictures, the money is on the floor.

1 April wood actually goes down to get it to give it to  
2 him. In that money, Your Honor, is seed money, service  
3 serial numbers they put on the money for bank cases, armed  
4 robbery cases. And part of the money that was taken is up  
5 to over \$15,000. That was taken. Part of that seed money  
6 was put into that with part of the serial numbers marked.

7 After he takes that he has them come back around to  
8 the center. He actually when he goes around near the break  
9 room around the counter, he racks the gun.

10 A shell casing goes out into the floor of the break  
11 room. I believe you saw a picture of that shell casing.  
12 In that case it was a 12-gauge Prairie. The 12-gauge  
13 shotgun, Your Honor, was a Prairie Storm 12-gauge shotgun  
14 shell that was found fired in the floor of the break room,  
15 Your Honor.

16 He went around, sat in the floor, Your Honor. After  
17 he got the money he actually put it in a backpack in the  
18 back of his back. He wanted to know where the back door  
19 was. April wood went to show him the back door.

20 Then he started asking about whose white pickup truck,  
21 Chevy pickup truck, was out in the parking lot. They found  
22 out it was Phillip Dill's. Mr. Dill gets up -- you can see  
23 it on the tape -- and goes and gets the car keys for him,  
24 or the truck keys. He gives it to him.

25 Mr. Banner goes outside, Your Honor. At that time

Guilty plea

1 Eddie Hickman is pulling up in the front -- you can see it  
2 on the video -- in his pickup truck.

3 He sees Mr. Banner, goes by him. He looks inside and  
4 realizes that at some point there's a bank robbery. He  
5 goes and moves his truck and tries to stop the defendant  
6 from taking the truck. But he goes around him.

7 He goes actually Charisma Drive towards Hearon Circle.  
8 When he gets to Hearon Circle he goes to Lone Oak Road  
9 there, Your Honor, and takes a sharp right back towards  
10 where the old U.S.C. Upstate dorms was, where they used to  
11 have that apartments there, Your Honor, as well as the old  
12 Steak and Ale.

13 While this is going on -- before that, Your Honor, and  
14 you've heard Detective -- Deputy Noteboom testify to this.  
15 Basically, before the bank robbery he saw a B.M.W. which  
16 was parked probably less than a tenth of a mile away. It  
17 was parked with the back end of the B. B.M.W., 2002,  
18 grayish/bluish type B.M.W., Your Honor. It had a Michigan  
19 license plate, which is State's Exhibit No. 4, Your Honor,  
20 and it had the license plate number DFZ [REDACTED], Michigan  
21 plate, Your Honor. The B.M.W. is a 2002 B.M.W. 325 XI,  
22 Your Honor.

23 He went to check it there because he had seen -- they  
24 had been having drug activity as well as dumping and things  
25 like that in those areas.

1 He saw the license plate, actually ran it himself,  
2 found that the insurance, it was uninsured. So he had  
3 actually taken the license plate like they -- that's  
4 standard issue for the sheriff's department. They do that  
5 on all type of those cases, Your Honor, and was going to  
6 turn it to the sheriff's department.

7 He also checked the VIN number at that time and saw it  
8 and wrote down the VIN number, Your Honor, which is one of  
9 the exhibits we entered during the suppression hearing.

10 After he collected he got a phone -- basically, got  
11 notified about the bank robbery and armed robbery that  
12 occurred at the Spartanburg Federal Credit Union. He  
13 responded there, Your Honor.

14 Then at 10:26 Sergeant David Reeves of the sheriff's  
15 department received a stolen tag report, a phone call from  
16 the defendant in this case. He stays at ■ Clarence  
17 Circle in Moore, South Carolina, in Spartanburg County, and  
18 said that his license plate had been stolen when it was  
19 actually the one Deputy Notebook had taken into custody.

20 Officers responded too. And I have the first six  
21 pages of State's Exhibit 97, Your Honor. Shows that there  
22 was actually a report taken, and basically it wound up  
23 being cleared by the responding officer, Your Honor. They  
24 went to check it out and they found that was the same car  
25 where they had later on found the pickup truck, Phillip

Guilty plea

1 Dill's pickup truck, the white Chevrolet, was actually  
2 taken the same location where the B.M.W. was. So Officer  
3 Noteboom was one of the officers that responded to ■■■  
4 Clarence Circle, Your Honor, Moore.

5 When he arrived there, Your Honor, he saw in plain  
6 view from the street, he saw the B.M.W. It looked like the  
7 same B.M.W. he had seen.

8 He actually went up and checked to make sure the VIN  
9 number. It was the exact same car that he had saw the VIN  
10 number there earlier near the bank about less than a tenth  
11 of a mile.

12 He also noticed there was not a license plate on it.  
13 And it had several items of clothing, which you can see in  
14 the pictures and the evidence that's been introduced. He  
15 recognized the clothing and several items in there, Your  
16 Honor.

17 He backed off. They secured the area. Investigators  
18 were called. A search warrant was obtained, which is  
19 Court's Exhibit 2, Your Honor, which we had the suppression  
20 hearing about.

21 He -- when the search warrant was executed, Your  
22 Honor, they went into the car. The car had the State's  
23 Exhibits 6 and 7. They found two unfired 12-gauge Prairie  
24 Storm shotgun shells, Your Honor, the same kind of shell  
25 that was used at the bank.

1           They also went into the trunk area, Your Honor. They  
2 noted that there was a black mask in the trunk that matched  
3 up with the mask that the individual was wearing on the  
4 video, Your Honor.

5           They also found two pairs of gray and black gloves  
6 located in the trunk of the B.M.W., Your Honor, that were  
7 similar to the gloves that was seen on the video, Your  
8 Honor.

9           They also found gloves in the driver's side of the  
10 car, Your Honor, that was similar to that. They also found  
11 a what I call black stocking cap. Some people call it a  
12 black doo rag, Your Honor. It was located in the trunk of  
13 the B.M.W. It was very similar to the one that was worn in  
14 the bank robbery, Your Honor.

15           They went on to check the curtilage, Your Honor. They  
16 noticed under the -- you can tell by the pictures the  
17 B.M.W. was actually parked up against the deck where you  
18 couldn't see the license plate, just like it was parked  
19 against the bushes out near the bank.

20           They checked the deck, Your Honor. They found under  
21 the lower part of the deck under there, they found a  
22 12-gauge shotgun. Appears to be the same shotgun that was  
23 in the video. It was actually I.D.ed by Phillip Dill. He  
24 was a hunter. I.D.ed what kind of gun it was.

25           A.T.F. ran a trace on that. It was done by Robert

1 Rosenberg at the sheriff's department. The gun that was  
2 found underneath the deck was sold to Mr. Banner -- that's  
3 State's Exhibit No. 5, Your Honor -- up in Michigan at a  
4 Bass Pro Shop.

5 He then -- then they found a pair of cargo pants very  
6 similar to the ones that was worn in the video. Sixteen  
7 unfired Prairie Storm shotgun shells was found in the  
8 pants. Also, four unfired Prairie Storm 12-gauge shotgun  
9 shells was found in the gun, Your Honor, from there which  
10 matched up with the fired shotgun shell that was found at  
11 the bank in the break room on the floor.

12 Then they went to the house, Your Honor, and in one of  
13 the back bedrooms, Your Honor, they found a bag. Did not  
14 appear to be the same bag that was used in the robbery.  
15 But they went inside of it and they found the \$15,000  
16 inside of it, Your Honor. It was wrapped by federal  
17 reserve wrappings that would have been I.D.ed by the  
18 tellers, Your Honor.

19 Also the seed money, the serial numbers. Some of the  
20 money had the serial numbers that was put into that that  
21 was used by the bank to be able to I.D. the money from that  
22 standpoint. The pictures was taken of that and placed into  
23 evidence too as part of the exhibits that we entered into  
24 evidence.

25 Also, in the bottom of that bag, Your Honor, once they

1 took the money out they found an I.D. in there, and the  
2 I.D. had Genuine Truth Banner on it, as well as his social  
3 security number, as well as his -- his blood type, Your  
4 Honor.

5 And I've introduced pictures as part of the exhibits  
6 and evidence in this case showing that the bag had his I.D.  
7 in the bottom of the bag where the \$15,000 or more was  
8 found in this case.

9 And, Your Honor, that would be the state's showing in  
10 this matter, and plus all of the exhibits that I've moved  
11 into evidence and made part of the facts of the case.

12 THE COURT: So, Mr. Banner, do you believe that as he  
13 stated the facts that the solicitor is substantially  
14 correct?

15 THE DEFENDANT: No.

16 MR. NOWICKI: Your Honor, I believe that if all of the  
17 evidence was -- the evidence if we had gone to trial that I  
18 believe that it would have been more likely than not there  
19 would have been a guilty, but also based on the -- on the  
20 offer that we have as being an Alford plea, it's one not  
21 agreeing with everything, but if everything did come in we  
22 believe that he could possibly be found guilty.

23 THE COURT: Do you agree with what your lawyer just  
24 stated?

25 THE DEFENDANT: I do.

100 guilty plea

1 THE COURT: And, sir, do you understand that on these  
2 charges that on the kidnapping charges I could sentence you  
3 up to --

4 MR. BARNETTE: Thirty years, Your Honor. Zero to 30.

5 THE COURT: Zero to 30 years on the kidnapping  
6 charges?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And, sir, do you understand also that the  
9 kidnapping charges are classified as both a violent and  
10 most serious offense under the law?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you've been able to talk to your  
13 lawyer as to the consequence and ramifications of those  
14 offenses being classified as violent and most serious?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Sir, do you understand that on the armed  
17 robbery charge that I could sentence you up to -- is it  
18 zero to 25?

19 MR. BARNETTE: No. It's 10 to 30, Your Honor.

20 THE COURT: That I could sentence you up to 10 to 30  
21 years on the armed robbery charge?

22 THE DEFENDANT: Yes, sir.

23 MR. BARNETTE: And, Your Honor, that's -- it's  
24 mandatory minimum of ten years.

25 THE COURT: And do you understand that the armed

1 robbery charge is also classified as violent and a most  
2 serious offense?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And, again, you've talked with your lawyer  
5 as to the consequences and ramifications of that offense  
6 being classified as both violent and most serious?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand on the possession of  
9 weapon during the commission of a violent crime that I  
10 could sentence you --

11 MR. BARNETTE: Zero to five, Your Honor. And that's  
12 day for day.

13 THE COURT: That I could sentence you up to five years  
14 on that particular offense?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you still wish to enter that plea as  
17 well?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that on the entering of  
20 bank, the bank robbery charge, I could sentence you --

21 MR. BARNETTE: Zero to 30, Your Honor.

22 THE COURT: I could sentence you up to zero to 30 on  
23 that charge as well?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that that particular

102 guilty plea

1 offense is classified as both a violent and serious offense  
2 under the law?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And, again, you've been able to talk to  
5 your lawyer as to the consequence and ramifications of that  
6 offense being classified as violent and serious?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that on the other armed  
9 robbery charge that I could also sentence you between 10 to  
10 30 years on that charge as well?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And, again, that charge is classified as a  
13 violent and most serious offense. And you've been able to  
14 talk to your lawyer as to the consequence and ramifications  
15 of that offense being classified as violent and most  
16 serious?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Sir, in regards to the five kidnapping  
19 charges do you believe that the state could produce  
20 sufficient evidence to prove your guilt of these charges  
21 beyond a reasonable doubt and that if you went to trial a  
22 jury would most probably find you guilty of those charges?

23 THE DEFENDANT: Want the truth? I'm going to say yes.

24 THE COURT: All right. And in regards to the  
25 robbery -- I'm sorry. With regards to the armed robbery

1 charge and the possession of a weapon during the commission  
2 of a violent crime as found under Indictment  
3 2016-GS-42-5452 and 5452A, do you believe that the state  
4 could produce sufficient evidence to prove your guilt of  
5 those charges beyond a reasonable doubt and that if you  
6 went to trial a jury would most probably find you guilty of  
7 those charges?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And in regards to the bank robbery charge  
10 and the armed robbery charge under Indictment  
11 2016-GS-42-5451A and 5451, do you believe that the state  
12 could produce sufficient evidence to prove your guilt of  
13 those charges beyond a reasonable doubt and that if you  
14 went to trial a jury would most probably find you guilty of  
15 those charges?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Banner, have all of your answers to my  
18 questions today been truthful and honest?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Discovery has been shared with the  
21 defense?

22 MR. BARNETTE: Yes, sir.

23 THE COURT: All right. I find that there's a  
24 substantial factual basis for the plea. Therefore I'll  
25 accept the pleas.

1           what we'll do is we will terminate the hearing today.  
2 we will continue it back tomorrow. But we'll receive any  
3 information from victims and any additional information  
4 from the state.

5           Any prior record will also be an opportunity to  
6 present anything in mitigation on behalf of the defense as  
7 well and be able to hear from Mr. Banner as well.

8           MR. BARNETTE: Your Honor, just one thing. I just  
9 wanted to make sure for the record.

10           I know that Mr. Nowicki has probably covered it. The  
11 armed robbery and the kidnapping and the bank robbery is  
12 85 percent, no parole. I just want to make sure that's on  
13 the record and make sure he's aware of that.

14           THE COURT: Okay. All right. Thank you, sir. we'll  
15 see you tomorrow morning.

16           END OF PROCEEDINGS JANUARY 22, 2018

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1 (Proceedings January 23, 2018)

2 THE COURT: All right. We'll go back on the record on  
3 the matter of State vs. Banner.

4 Mr. Banner, I need to remind you that you remain under  
5 oath. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Mr. Solicitor, was there any  
8 prior record?

9 MR. BARNETTE: No, sir.

10 THE COURT: All right. Be more than happy to hear  
11 anything else the state would like to present.

12 MR. BARNETTE: Your Honor, like I said, I moved all of  
13 the evidence in earlier. It's made part of the facts and  
14 the evidence, as well as the suppression-hearing evidence  
15 also, Your Honor.

16 I do have three victims that I would like to address  
17 the Court, Your Honor.

18 Mr. Phillip Dill will be the first victim, Your Honor.

19 All three of these folks was in the bank robbery and  
20 was present and we've been seeing in the video.

21 THE COURT: Mr. Dill, just -- you can have a -- just  
22 stand there beside the solicitor. I just need to let you  
23 know we are making a recording of everything that happens  
24 here. So please speak up loud enough so that both the  
25 court reporter and I can hear you. And just start by

1 giving us your full name.

2 PHILLIP BRIAN DILL: My name is Phillip Brian Dill.

3 THE COURT: Yes, sir, Mr. Dill. I'll be more than  
4 happy to hear from you.

5 Yes, sir.

6 PHILLIP BRIAN DILL: Okay. I would just like to  
7 express the aftereffects of the robbery, because it wasn't  
8 just what I would look at as a regular robbery. It was  
9 actually a firing of a gun, which is intense when you're at  
10 work.

11 Things that have affected me would be -- probably one  
12 of the following is immediately when it occurred -- I'm a  
13 loan officer and have a separate office, but it is open to  
14 the lobby.

15 And when he came in he had on a Ninja suit. I'll  
16 refer to it as a Ninja suit, a black suit. And told us  
17 what was going on.

18 And the young lady, which was our member, was in front  
19 of me, and we were doing business. And she happened to  
20 have her small child with her.

21 well, I immediately told her what she needed to do and  
22 that everything would be all right, but she somewhat  
23 panicked and said the words we're all going to die.

24 well, the small child heard that, and the small child  
25 was in her arms and was looking straight at me because I

1 was the only one that the child could look at. I'll never  
2 forget the look on that child's face. I mean, I'm not  
3 trying to be dramatic. I'm just being honest with you as  
4 to how it has affected me.

5 Things like that are not something that I would  
6 normally run into, and I guess I've handled it okay, but I  
7 carry it with me.

8 Other things that I carry with me in that was when we  
9 were actually in the floor and the robbery was taking place  
10 he wanted to know whose truck it was, and it was my truck,  
11 the vehicle that we used in the getaway, the white truck  
12 that y'all may have seen, I assume.

13 Well, they cleaned up my truck. I got it all nice and  
14 all and -- and my truck don't mean to me like it was  
15 because he -- he was in my truck. And even though it's not  
16 my house, my so-called personal space, when I'm in my truck  
17 it is my personal space to me and it means something to me.

18 I'm an outdoors person. I do a lot of things  
19 outdoors. So I use the truck on a daily basis for  
20 activities. And my truck will never be the same. And I  
21 can't just go buy a truck because they're not cheap. So he  
22 messed up my truck. I don't know how else to put it. He  
23 messed up my truck, and I will never forget that until I  
24 get rid of the truck. And I may get rid of the truck  
25 because he messed up my truck.

1 I work hard. I don't have no criminal record. I  
2 don't do anything bad. I raised two good kids. I've got a  
3 wife of 40 years. I really don't feel like I deserved to  
4 have my truck messed up.

5 Other than that, those are the two things that affect  
6 me that I think that I have carried with me, I think I will  
7 continue to carry with me. And I want you to consider what  
8 I'm telling you when it comes to sentencing because that  
9 was not just a hand-a-note and give-me-the-money and run  
10 out the door. This was intense.

11 When the gun was fired these young ladies that I work  
12 with, I worked with for a long time, and we're not family,  
13 but I care about them and I couldn't see. I didn't know if  
14 they had been killed or what the deal was.

15 That's a traumatic experience for anybody, and I'll  
16 leave it at that, because I think I've expressed my  
17 feelings, and I, Your Honor, have expressed my feelings  
18 honestly. And I wanted to give you a true picture of how  
19 this has affected me and how it continues to affect me.  
20 And I care about my work people, and we stick together and  
21 we're tight. And I just -- it's hard to deal with  
22 something like that. And I am going to close with that  
23 unless I need to do something different. Thank you.

24 MR. BARNETTE: You're good. Thank you.

25 THE COURT: Thank you, sir.

1 MR. BARNETTE: Your Honor, just to let you know just  
2 for the background information, Mr. Dill I think worked  
3 there for 18 years. I think April's worked there for 20  
4 and Krystal's worked there for eight. So it's kinda --  
5 they worked together for a long time. And, unfortunately,  
6 this hasn't been their first bank robbery from that  
7 standpoint either.

8 So I think April would like to address the Court next,  
9 Your Honor.

10 THE COURT: Ma'am, again, we are making a recording of  
11 everything that happens here. So please speak up loud  
12 enough so that both the court reporter and I can hear you.  
13 And just start by giving us your full name if you would.

14 APRIL DAWN WOOD: April Dawn Wood.

15 THE COURT: Yes, ma'am.

16 APRIL DAWN WOOD: well, it's affected me in many ways.  
17 Usually I'm the strong one who, you know, every other time  
18 this happened to us that I've been okay afterwards. And, I  
19 mean, I'm still okay to an extent, but for weeks and months  
20 afterwards I could sit at my desk and still see him coming  
21 around the bush.

22 I could see that gun swinging when he came in the  
23 door. I can hear that little boy crying. I can remember  
24 sitting in the floor when the gun went off. And Krystal is  
25 one of my best friends. We're friends outside of work. We

1 do a lot of things together. And I didn't know if she was  
2 shot or not. I mean, I can still hear him yelling.

3 And, I mean, I have a 13-year-old daughter. And had  
4 that bullet ricocheted and hit me, she would be living  
5 without a mother. And I, basically, raised her by myself.  
6 And, I mean, what -- what is she going to do?

7 And I understand that he's somebody's kid, but I'm  
8 somebody's kid too. And I didn't deserve, like Phillip  
9 said, to be in my place of work to have the life scared out  
10 of me because somebody wanted a little bit of money, which  
11 is basically what it ended up being, was a little bit of  
12 money that he got, because, obviously, you know, the  
13 scenario, he was caught and it was returned or whatever  
14 except what was spent, and, I mean, nobody really deserves  
15 to go through that.

16 And like Barry said, I've been there 20 years. This  
17 wasn't my first time, but this one, I think, affected me  
18 more than most because I saw him come in the door. I was  
19 the first one to see him. And you just don't know what's  
20 going to happen to you at that point. You don't know if he  
21 came in there with the intent to kill us.

22 So, I mean, I don't know how else to express it. Like  
23 Phillip said, I'm just being honest, and, I mean, like I  
24 said too, I think of my child. I'm somebody's child; I'm  
25 somebody's mama; I'm somebody's girlfriend. I mean, you

1 know, that they didn't deserve to be in fear of not knowing  
2 what happened to me for the time that we were having to be  
3 locked down after it was out that we had been robbed. You  
4 know, my mama was going crazy. I'm her only child.

5 And it was all for a little bit of money. And, I  
6 mean, I know that you can get robbed anywhere. That's why  
7 I still work there, because, I mean, I can walk out to the  
8 car now and somebody rob me. It's not so much of because  
9 of the business we're in.

10 And I just don't understand what makes people think  
11 that that's okay or that they can do that and what  
12 motivates them to do it. And I just, like I said, I want  
13 you to take that into consideration too. I know he's  
14 somebody's kid. He has a mom; he has a grandmother; he has  
15 a dad. But so do we.

16 THE COURT: Thank you, ma'am.

17 MR. BARNETTE: Krystal.

18 THE COURT: Ma'am, again, we are making a recording of  
19 everything that happens, so please speak up loud enough so  
20 that both the court reporter and I can hear you. Just  
21 start by giving us your full name.

22 KRYSTAL MARIE ORTIZ: Krystal Marie Ortiz.

23 THE COURT: Yes, ma'am.

24 KRYSTAL MARIE ORTIZ: I just want to say this was  
25 actually my first robbery. Also, I have never in my life

1 been anywhere near a gunshot ever until this day. That  
2 still haunts me.

3 And I'm usually not emotional. You can ask April.  
4 She can tell you. But this took away my sense of security.  
5 I don't feel safe at work, and for a long time I didn't  
6 feel safe at home. And I still, honestly, don't feel safe  
7 at work, you know, because I don't know if the next person  
8 walking in is going to have a gun and do the same things.

9 I just don't -- it's a senseless crime. It's  
10 pointless. I mean, it's bad enough. If someone come in  
11 and asked for the money, I would give it to you. You don't  
12 have to have a gun. And I think that's what tears me up  
13 the most, is when I heard that gunshot.

14 I didn't know what was going to happen next. When I  
15 heard that shell shot out of the gun, I thought me and  
16 April were going to get shot. I thought that was it,  
17 because we were in front of him. So, you know, we didn't  
18 know what was going to happen next. The gun was ready to  
19 shoot another bullet, so we didn't know.

20 That's something that's going to be with me and my  
21 family, because my husband, he didn't know what was going  
22 on. And I've got three kids. So that's just something I  
23 really want to be taken into consideration.

24 THE COURT: Thank you, ma'am.

25 MR. BARNETTE: Your Honor, just for clarification, she

1 was the one he actually took by the arm, and she was the  
2 closest to him when he fired the shot off. Thank you, Your  
3 Honor. That'd be our presentation.

4 THE COURT: Thank you, sir.

5 Yes, sir.

6 MR. NOWICKI: May it please the Court.

7 Your Honor, Mr. Banner is 27 years old. He is  
8 divorced. He doesn't have any children.

9 He graduated high school with honors. At the time he  
10 was a junior at Kettering University in Flint, Michigan,  
11 and he had also recently enlisted into the Navy.

12 In between this time about June where he and -- he had  
13 an appendicitis and had to have surgery, and he was given  
14 pain pills. And, you know, since that surgery happened it  
15 seemed like things started to go downwards for Mr. Banner.  
16 But Mr. Banner is a smart guy. He's been a really -- he's  
17 been a good client. And I don't know how -- I mean, being  
18 that he's been in jail all of this time, you know, all of  
19 our visits, always, you know, added to the case and what  
20 not. And he's a intelligent and well-spoken individual.

21 And I know Mr. Banner would like to address the Court  
22 at the appropriate time.

23 His mom is here. Ms. Banner is here. She had  
24 indicated she does not want to address the Court but is  
25 here for support.

114 Guilty plea

1 And, Your Honor, we're asking for leniency, mercy upon  
2 the Court.

3 Mr. Banner does not have a record, and he has gone  
4 through some things in life that have been difficult. But  
5 we would just ask for leniency in that everything -- his  
6 charges be run concurrent and to give him another -- a  
7 second chance.

8 And even, if possible, if the Court is inclined to do  
9 some sort of a sentence to where he can do some time and  
10 then run something consecutive to the point where he could  
11 come out on probation, because Mr. Banner is not somebody  
12 we need to give up on. And he, I believe, can really be a  
13 productive member of society.

14 So, Your Honor, we'd ask for as much leniency and  
15 mercy from the Court as deemed appropriate.

16 And I believe Mr. Banner would like to address the  
17 Court.

18 Oh, one thing I do want to show the Court. He did  
19 recently take a test. This was in the detention center, I  
20 believe, where he scored very high, I mean, extremely high.

21 MR. BARNETTE: Your Honor, may I take a look at it for  
22 a second, Your Honor?

23 (Pause.)

24 MR. BARNETTE: Your Honor, could we make this a court  
25 exhibit?

1 THE COURT: Yes, sir.

2 MR. BARNETTE: Any objection?

3 (ACT workkeys skill report marked Court's Exhibit No.  
4 25).

5 THE COURT: Mr. Banner, do you agree with the  
6 statements made by your lawyer?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Sir, is there anything else that you would  
9 like to say or want me to know or consider?

10 THE DEFENDANT: Yes, sir. I'd like to say something.

11 THE COURT: Be more than happy to hear from you.

12 THE DEFENDANT: The first I'd like to say it's  
13 extremely difficult to express -- extremely difficult to  
14 express, I guess, for the victims what they've been  
15 through.

16 So to Phillip Dill, April and Krystal, I -- I would  
17 like to say that it was truly unfortunate event. No one  
18 deserves to be in a situation like that. All said and  
19 done, it wasn't fair to the victims, to April, to both. I  
20 would like to say that, like I said, it's unfortunate for  
21 them as well as myself in this situation.

22 It's hard to really explain my role or rather non-role  
23 in this situation, but at the end of the day someone has to  
24 take responsibility, and I'm man enough at this point to  
25 take responsibility for that transgression.

1           Nothing can ever take away you guys' experiences, so  
2 at the very least I just offer my apologies.

3           To my mother, thank you for being here. Life wasn't  
4 particularly easy for myself and my mother growing up. And  
5 I made great strides in order of academics to relinquish  
6 myself of systematic injustices through education.

7           It's not fair to her to see, I think, everything that  
8 I had accomplished and was striving to accomplish, to see  
9 myself caught up in this situation. Nonetheless, here we  
10 are, and I accept responsibility. My deepest apologies are  
11 involved. Thank you.

12           THE COURT: Thank you, Mr. Banner.

13           I find -- I've already found that there's a  
14 substantial factual basis for the plea. I also find that  
15 the defendant's decision to enter the plea has been made  
16 freely, voluntarily, knowingly, intellectually by him.  
17 Therefore I will accept the pleas.

18           On these cases, these will be concurrent sentences and  
19 a like sentence under each, will be 20-year sentence at the  
20 state department of corrections.

21           I've calculated that you get credit for 512 days.

22           There's not to be any contact with the victims.

23           On the possession of weapon during the commission of a  
24 violent crime, that'll be a 5-year sentence. That'll also  
25 run concurrent with the other charges, which you receive

1 credit for 512 days.

2 Good luck to you, sir.

3 MR. BARNETTE: Your Honor, may we approach for one  
4 second?

5 (Bench conference held off the record.)

6 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 21st and 22nd days of January 2018.

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

June 20, 2018

*Linda D. Moffitt*

---

Linda D. Moffitt  
Circuit Court Reporter

2018 CP 112119/206

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
County of Spartanburg )  
 )  
Genuine Truth Banner 375165 )  
Full name and prison number (if any) of Applicant )  
 )  
v. )  
 )  
State of South Carolina )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

CLERK OF COURT  
SPARTANBURG COUNTY  
2018 APR 10 AM 8:33  
M. HOPE BLACKLEY

APPLICATION FOR  
POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee Correctional Institution 490 wisacky Highway, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Spartanburg County Court of General Sessions, 180 Magnolia St Po box 5483 Spartanburg, SC 29304
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2016GS4205453A, 2016GS4205454, 2016GS4205454B, 2016GS4205451, 2016GS4205452A
  - (b) 2016GS4205452, 2016GS4205453, 2016GS4205451A

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) January 23rd 2018
  - (b) 20 years at 85%
  - (c) No parole
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty N/A
  - (b) after a plea of not guilty N/A
  - (c) after a plea of nolo contendere No contest under Alford rules
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes. I personally filed for an appeal myself.
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. Court of Appeals
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. No result as of yet. I'm still awaiting a response.
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. N/A No result yet.
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) N/A
  - (b) N/A

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 M. HOPE BLACKLEY  
 CLERK OF SUPERIOR COURT

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of Counsel.

(b) Illegal Search and seizure

(c) Miranda rights violation by arresting officer

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Additional page 1

(b) See Additional page 1 B 2

(c) See Additional page 3

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Petition For Appeal due to illegal search & seizure

ii. Petition For Appeal due to Miranda rights violation

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. Court of Appeals P.O. Box 11629 Columbia, SC 29211

ii. Court of Appeals P.O. Box 11629 Columbia, SC 29211

iii. \_\_\_\_\_

iv. \_\_\_\_\_

2018 APR 10 AM 8:33  
M. HOPE BLACKLEY

(c) the disposition thereof:

- i. No result as of yet
- ii. No result as of yet
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. N/A
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

Yes. The grounds of illegal search and seizure and the miranda rights violation have both been brought up.

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

(a) which grounds have been presented:

- i. Illegal Search & Seizure
- ii. Miranda Rights Violation
- iii. \_\_\_\_\_

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

- i. Petition for Appeal
- ii. Petition for Appeal
- iii. \_\_\_\_\_

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

- (a) Ineffective assistance of Counsel
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
Yes

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 M. HOPE BLACKLEY

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

- (a) the name and address of each attorney who represented you:
  - i. William J. Nowicki  
331 E. Main St, Suite 200 Rock Hill, SC 29730
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea, Sentencing, Motion to suppress evidence
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

I am seeking for my conviction to be overturned on the grounds of illegal search & seizure and the miranda rights violation. Or vacated on the grounds of Ineffective assistance of counsel

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

NO

STATE OF SOUTH CAROLINA )  
County of Spartanburg )

VERIFICATION

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

[Signature]

SWORN to and subscribed before me this 2 day of April, 2018.

[Signature] (L.S.)  
Notary Public

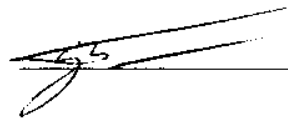
My Commission Expires: 3/3/2024

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M. HOPE BLACKLEY

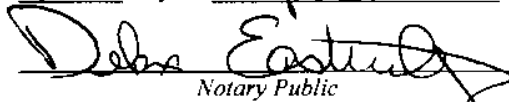
**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

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

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

  
 \_\_\_\_\_  
*Applicant*

SWORN or affirmed to and subscribed before me this  
2 day of April, 2018.

  
 \_\_\_\_\_  
*Notary Public*

My Commission Expires: 3/3/2026

2018 APR 10 AM 8:33  
 M. HOPE BLACKLEY

11.

(a) Mr. Nowicki never delivered my motion of discovery. While I did see a few pages of my motion and search warrant when Mr. Nowicki came to visit me, my motion of discovery was never viewed in its entirety by myself because I was never afforded the opportunity by my counselor.

There was a video that was apparently, part of the motion of discovery, I was never afforded the opportunity to view it thanks to my counselor's lack of diligence.

During the motion to suppress evidence, Mr. Nowicki never subpoenaed my witnesses to court so that the judge could evaluate their input into my argument that the Arresting officer committed an illegal search prior to obtaining a search warrant.

Combined, all of these facts display gross negligence and therefore ineffective assistance by my counselor, William J. Nowicki. Furthermore, Mr. Nowicki never appealed the outcome of the motion to suppress.

(b) Arresting officer Notebaum's incident report outlines his stepping foot onto the property to "verify" things and then calling and requesting a search warrant based on what he found. My witnesses testimony would have revealed more than just a verification of things.

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M. HOPE BLACKLEY

11.

(b) <sup>Continued</sup> Furthermore, the reason why the Spartanburg County police even knew of the location to go to, was due to a 911 call reporting a separate incident that detailed the information that Mr. Notebaum claims to have been "verifying" prior to obtaining a search warrant. That said, there was absolutely no reason for Mr. Notebaum to step onto the property without a warrant especially when there was no one home, no drivers in the vehicles at the home and the home already had been being watched by officers. To add insult to injury, the vehicle that was "verified" was not within curtilage of the house. It was parked on the grass on the side of the house. The driver means it did not fall under the Automobile exception. The vehicle being parked on the grass means it was not within curtilage. The fact that the location, vin, make, model and color of the vehicle was detailed to the 911 response and officers already was reason for a warrant to be obtained and a search to ensure if it indeed was the vehicle they were looking for. Why then, did Mr. Notebaum see the need to search outside of curtilage and "verify" what was already made known to officers without a warrant? This was an illegal search. As verified by court transcripts, even the judge admitted there was a violation but called it "minimal".

2018 APR 10 AM 8:33  
 M. JOPE BLANKLEDGE  
 Sheriff's Office

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	Indictments: 2016GS4205451, 51A, 2016GS4205452
	)	52A, 2016GS4205453, 53A, 2016GS4205454, 54A, 54B
STATE OF SOUTH CAROLINA	)	
	)	
v.	)	
	)	<b><u>MOTION TO RECONSIDER SENTENCE</u></b>
GENUINE TRUTH BANNER,	)	
	)	
Defendant.	)	
_____	)	

TO: THE HONORABLE J. MARK HAYES, II, PRESIDING JUDGE FOR THE SEVENTH JUDICIAL CIRCUIT and SOLICITOR BARRY BARNETTE OF THE SPARTANBURG COUNTY SOLICITOR'S OFFICE

NOW COMES the Defendant, by and through his undersigned attorney, who hereby moves this Honorable Court for reconsideration of sentence.

The Defendant entered a guilty plea pursuant to N.C. v. Alford to Robbery/Entering a bank with intent to steal; two counts of Armed Robbery; Possession of a weapon during a violent crime; and five counts of kidnapping on or about January 23, 2018. The Court sentenced the Defendant to 20 years, concurrent on indictments for the Robbery/Entering a bank with intent to steal; two counts of Armed Robbery and 5 counts of Kidnapping. The Court sentenced the Defendant to 5 years, concurrent with the aforementioned indictments on indictment for Possession of a weapon during a violent crime.

The Defendant contends this sentence was excessive in light of the particular circumstances involved in this case and due to the fact that he did not have a criminal record at the time of sentencing and respectfully requests the Court reconsider the sentence imposed.

Respectfully submitted this 25<sup>th</sup> day of January, 2018.

*Signature Page Follows*

AXELROD & ASSOCIATES, P.A

---

William J. Nowicki, Esq.  
AXELROD & ASSOCIATES, P.A.  
331 E. Main Street, Suite 200  
Rock Hill, SC 29730  
(803) 909-9334 Phone  
(803) 909-9301 Fax

Rock Hill, South Carolina

January 25, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	INDICTMENT NOS.: 2016-GS-42-5451 through 5454
	)	
STATE OF SOUTH CAROLINA	)	
	)	
VS.	)	<b>State's Return to Defendant's Motion</b>
	)	<b>to Reconsider Sentence and</b>
Genuine Truth Banner,	)	<b>State's Motion to Reconsider Sentence</b>
	)	
Defendant.	)	

2018 JAN 31 PM 3:44  
 J. HOPE BLANCHLEY  
 CLERK OF COURT  
 SPARTANBURG COUNTY

TO: The Honorable J. Mark Hayes, II, Presiding Judge for the Seventh Judicial Circuit and the Defendant, Genuine Truth Banner, and his attorney, William J. Nowicki, Esq.

The State, by way of this Return to Defendant's Motion to Reconsider his sentence, is opposed to Defendant's Motion to Reconsider his sentence and to fully develop the record of the proceedings in this case, should there be an appeal from Defendant's convictions and sentence, submits the following:

1. The Defendant received the following sentences on each charge: for an Armed Robbery, Count One on Indictment No.: 2016-GS-42-5451, the Defendant received twenty (20) years with credit for 512 days for time served concurrent with all other sentences; for the Bank Robbery, Count Two on Indictment No.: 2016-GS-42-5451, the Defendant received twenty (20) years with credit for 512 days for time served concurrent with all other sentences; for another Armed Robbery, Count One on Indictment No.: 2016-GS-42-5452, the Defendant received twenty (20) years with credit for 512 days for time served concurrent with all other sentences; for the Possession of a Weapon during the Commission of a Violent Crime, Count Two on Indictment No.: 2016-GS-42-5452, the Defendant received five (5) years with credit for 512 days for time served concurrent with all other sentences; for two counts of Kidnapping, Count One and Count Two on Indictment No.: 2016-GS-42-5453, the Defendant received twenty (20) years with credit for 512 days for time served concurrent with all other sentences; for another three counts of Kidnapping, Count One and Count Two and Count Three on Indictment No.: 2016-GS-42-5454, the Defendant received twenty (20) years with credit for 512 days for time served concurrent with all other sentences.
  
2. The State would move all of the evidence and exhibits (State's Exhibits 1 through 97 and Court Exhibits 1 through 27) that were made part of the facts in the guilty plea into this return as well as the testimony presented in the January 22, 2018 suppression hearing concerning the search warrant.
  
3. The State would argue several reasons for denial of the Defendant's Motion to Reconsider Sentence.

- A. First, the Defendant kidnapped five (5) different people in the bank during this event, including a four (4) year-old child, as shown by the bank video marked as State's Exhibit #2.
- B. Second, the Defendant was armed with a .12 gauge shotgun and was dressed in an outfit that showed his intent to rob the bank; the Defendant was dressed in what was called a "Ninja" outfit by witnesses in the bank.
- C. Third, the Defendant discharged the weapon in the bank showing both that the weapon was loaded and that he intended to use the weapon if needed.
- D. Fourth, the Defendant stole over fifteen (\$15,000.00) thousand dollars in the robbery.
- E. Fifth, the Defendant took Phillip Dill's Chevy truck as the "get away" vehicle after the robbery.
4. In the State's Motion to Reconsider Sentence, the State would argue that the Defendant should be sentenced to a greater sentence for the following reasons:
- A. First, these events directly affected five (5) kidnapped individuals including a four-year-old child. These events also affected at least three (3) other individuals who were witnesses in this case; two additional workers (Isaileen Rankin and Mary Elizabeth Gist) hid in an office during the robbery and Eddie Lamar Hickman saw the Defendant as he walked out of the bank and by Mr. Hickman before getting into Phillip Dill's Chevy truck after the robbery.
- B. Second, the Defendant's dangerous act of arming himself with the .12 gauge shotgun and using the shotgun in the robbery itself shows his absolute disregard for the safety of others. After the Defendant discharged the shotgun he "pumped" it to reload the weapon during the event. This robbery was very dangerous and could have easily led to injuries or the death of one or more individuals in and outside of the bank. Furthermore, the Defendant had at least four (4) live rounds in the shotgun when the Spartanburg County Sheriff's Office found the shotgun under a deck during their investigation immediately following the event. There were also sixteen (16) unfired rounds in a pair of pants found with the weapon. Two other unfired rounds were also located in the Defendant's 2002 BMW vehicle. It appears the Defendant was ready to shoot at any and every thing he needed to during these robberies and kidnappings.
- C. Third, the Defendant's actions in this case were planned as shown by his decisions to arm and dress himself for a robbery. His decisions show he was resolved to committing these crimes.
- D. Fourth, the State will have additional individuals address the Court that could not appear at the previous sentencing hearing.

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 M. J. P. B. C. O. R. E.  
 SPARTANBURG COUNTY COURT

E. Fifth, the State would also ask the Court to consider making the sentence for Possession of a Weapon during the Commission of a Violent Crime run consecutive instead of concurrent under Section 16-23-490. The State would argue that the legislature included this statute to deter the use of a weapon, such as the .12 gauge shotgun used by the Defendant, during a violent crime.

The State would ask the Court to deny the Defendant's Motion to Reconsider his sentence based on the facts, evidence, and testimony in this case. The State would further ask the Court to increase the sentences of the Defendant and amend the sentence for Possession of a Weapon During a Violent Crime from a concurrent sentence to a consecutive sentence based on the facts, evidence, and testimony in this case as well as the prior sentencing hearing and the additional information at the reconsideration hearing in this matter.



Barry J. Barnette  
Solicitor for the Seventh Judicial Circuit  
Attorney for the State

January 30, 2018  
Spartanburg, South Carolina

2018 JAN 31 PM 3:44  
M. HOPE BLACKLEY  
COURT

# The South Carolina Court of Appeals

The State, Respondent,

v.

Genuine Truth Banner, Appellant.

Appellate Case No. 2018-000536

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## ORDER

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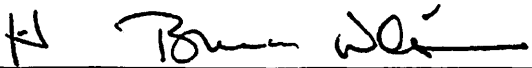
The appellant filed a pro se notice of appeal from his conviction and sentence following a guilty plea<sup>1</sup> on January 23, 2018. The notice of appeal was received by the Court on March 27, 2018. Our review of the public index revealed the appellant was represented by counsel, so we directed our correspondence to the appellant's attorney pursuant to Rule 264 of the South Carolina Appellate Court Rules (SCACR). Rule 264(a), SCACR (setting forth the rule of continued representation from the circuit court to the appellate court until withdrawal is approved and notice is given). Counsel notified the Court that a timely motion to reconsider sentence was filed with the plea court. Prior to the February 9, 2018 hearing on the motion to reconsider sentence, the appellant asked his attorney to withdraw the motion.

"The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *State v. Devore*, 416 S.C. 115, 784 S.E.2d 690 (Ct. App. 2016) (quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-

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<sup>1</sup> In his pro se filing, the appellant asserts his plea was made pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970). Whether this appeal arises out of a guilty plea or an *Alford* plea does not change the application of the law herein. See *State v. Herndon*, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013) ("The *Alford* plea is, in essence, a guilty plea and carries with it the same penalties and punishments.").

15, 602 S.E.2d 772, 775 (2004)). "After a plea or trial resulting in a conviction . . . a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed." Rule 203(b)(2), SCACR. "When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion." Rule 203(b)(2), SCACR. Because the appellant's timely motion to reconsider sentence was withdrawn, and because the notice of appeal was not served within ten days of imposition of the sentence, this appeal is dismissed. The remittitur will be sent pursuant to Rule 221(b), SCACR.

 , J.  
FOR THE COURT

Columbia, South Carolina

cc:

Genuine Truth Banner, 375165  
William J. Nowicki, Esquire  
Robert Michael Dudek, Esquire  
Barry Joe Barnette, Esquire  
John Benjamin Aplin, Esquire  
Alan McCrory Wilson, Esquire

**FILED**

April 25, 2018

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 )  
 Genuine Truth Banner, #375165 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-42-1206

**RETURN AND PARTIAL  
 MOTION TO DISMISS**

FILED  
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 SPARTANBURG COUNTY  
 2018 JUL 30 AM 11:04  
 M. HOPE BLACKLETT

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on April 10, 2018, would respectfully show this Court:

**I. Procedural History**

Genuine Truth Banner (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In October 2016, the Spartanburg County Grand Jury indicted Applicant for two counts of armed robbery, one count of bank robbery, and one count of possession of a weapon during the commission of a violent crime (2016-GS-42-5451, -5452), and five counts of kidnapping (2016-GS-42-5453, -5454). The charges stem from an October 29, 2016, incident in which Applicant, while armed with a shotgun, robbed Spartan Federal Credit Union. Applicant held bank customers, including a minor, hostage while the bank tellers collected the money for him. Applicant then stole one of the victims' car to get away from the crime scene.

William J. Nowicki, Esquire, represented Applicant. Assistant Solicitor Barry Barnette, Esquire, prosecuted the case on behalf of the State. On January 22, 2018, at the conclusion of pre-trial motions, Applicant pleaded guilty as indicted to all charges before the Honorable J. Mark Hayes, II. On January 23, 2018, Judge Hayes sentenced Applicant to imprisonment for

concurrent terms of twenty years each for kidnapping, armed robbery, bank robbery, and possession of a weapon during commission of a violent crime. Applicant filed a *pro se* notice of appeal, which was ultimately dismissed as untimely by Order filed April 25, 2018.

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II. Allegations Raised and Relief Sought

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
  - a. "My motion of discovery was never viewed in its entirety by myself because I was not afforded the opportunity by my counselor."
  - b. "During the motion to suppress evidence, Mr. Nowicki never subpoenaed my witnesses to court so that the judge could evaluate their input into my argument that the arresting officer committed an illegal search prior to obtaining a search warrant."
2. "Illegal search and seizure"
  - a. "This was an illegal search as verified by court transcripts, even the judge admitted there was a violation but called it minimal."
3. "Miranda rights violation by arresting officer"

As requested relief, Applicant states he is seeking "for [his] conviction to be overturned on the grounds of illegal search and seizure and the Miranda rights violation or vacated on the grounds of ineffective assistance of counsel".

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### **III. Response to Allegations of Ineffective Assistance of Counsel**

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel's

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alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### **IV. Failure to State a Cognizable Claim**

Respondent submits Applicant's remaining allegations for post-conviction relief should be summarily dismissed for failing to state claims cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. Aside from the allegation of ineffective assistance of counsel, Applicant raises various allegations pertaining to search and seizure and Miranda violations. These are not proper issues for post-conviction relief. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

S.C. Code Ann. § 17-27-20. Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the

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conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Rather, these allegations constitute direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The failure to do so has waived this allegation as grounds for relief. Therefore, Respondent submits that all allegations, with the exception of ineffective assistance of counsel, should be summarily dismissed.

#### **V. Any Future Amendments**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

#### **VI. Response to Any and All Other Allegations**

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

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SPARTANBURG COUNTY  
2018 JUL 30 AM 11:07  
M. HOPE BLACKLEY

**VII. Request for an Evidentiary Hearing**

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JORDAN COX  
Assistant Attorney General

By: *[Handwritten Signature]*  
ATTORNEYS FOR RESPONDENT *[Handwritten Initials]*

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

7/28, 2018

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SPARTANBURG COUNTY  
2018 JUL 30 AM 11:08  
M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS  
) SEVENTH JUDICIAL CIRCUIT  
)  
)  
)

GENUINE TRUTH BANNER,  
APPLICANT.

) AMENDED APPLICATION  
)  
)  
)

v.

THE STATE OF SOUTH CAROLINA,  
RESPONDENT.

) CASE # 2018-CP-42-1206  
)  
)  
)  

---

This matter comes before the Court by way of application of post conviction relief filed April 10, 2018, alleging ineffective assistance of counsel. A Return and Partial Motion to Dismiss was made on May 25, 2018. This application is intended to incorporate the allegations of the original application and add the following allegations:

1. Ineffective assistance of trial counsel for

(a) failure to investigate and prepare for trial;

(b) advising him to plea under Alford without a proper inducement or benefit;

(c) failing to request a continuance to wait for ruling in Collins v. Virginia which

was argued before the Supreme Court January 9, 2018; Collins v. Virginia 584 U.S. \_\_\_, (May 29, 2018)

(d) failing to challenge jurisdiction as the Applicant was enlisted in the U.S. Navy at the time of the plea;

(e) failure to advise Applicant that his right to appeal the ruling on his pretrial motion to suppress would be waived if he plead guilty and/or advising Applicant that his right to appeal the ruling on his pretrial motion to suppress would not be waived if he plead guilty; and

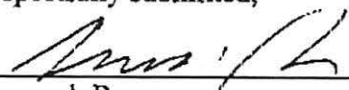
(f) failing to appeal the plea and sentence on behalf of the Applicant.

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SPARTANBURG COUNTY  
AMY W. COOPER

KOLLE

2. Due Process violations because the plea was not knowingly and voluntarily made because the Applicant was not advised that the guilty plea would waive his right to appellate review of the court's ruling on his pretrial motion to suppress.

Respectfully submitted,

  
Susannah Ross  
Attorney for the Applicant  
330 E. Coffee St,  
Greenville, SC 29601  
(864) 242-0029

This 19 day of Sept, 2019

**FILED**  
2019 SEP 23 AM 10:21  
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APPELLATE DEFENSE

1 STATE OF SOUTH CAROLINA ) IN THE COURT OF  
2 ) COMMON PLEAS  
3 COUNTY OF SPARTANBURG ) OF THE SEVENTH  
4 ) JUDICIAL CIRCUIT  
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GENUINE TRUTH BANNER,  
The Applicant,  
vs.  
THE STATE OF SOUTH CAROLINA,  
The State,

TRANSCRIPT OF RECORD  
2018-CP-42-01206

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October 10, 2019  
Spartanburg, South Carolina

B E F O R E :

HONORABLE G. THOMAS COOPER, Judge.

A P P E A R A N C E S

SUSANNAH C. ROSS, ESQUIRE  
For The Applicant

JACOB A. ISENBERG, ESQUIRE  
For The State

Julie A. Cendroski,  
Circuit Court Reporter  
Seventh Judicial Circuit

## I N D E X

	<u>WITNESS</u>	<u>PAGE</u>
1		
2		
3		
4	ANNOUNCEMENT OF CASE By Ms. Isenberg	4
5	ALLEGATIONS OF APPLICANT By Ms. Ross	5
6		
7	<u>GENUINE TRUTH BANNER</u>	
8	DIRECT EXAMINATION By Ms. Ross	7
9	CROSS-EXAMINATION By Mr. Isenberg	21
10		
11	REDIRECT EXAMINATION By Ms. Ross	35
12	<u>WILLIAM J. NOWICKI</u>	
13	DIRECT EXAMINATION By Mr. Isenberg	38
14		
15	CROSS-EXAMINATION By Ms. Ross	54
16	FINAL ARGUMENT By Ms. Hernandez	57
17		
18	FINAL ARGUMENT By Mr. Isenberg	59
19	CERTIFICATE OF COURT REPORTER	64
20		
21		
22		
23		
24		
25		

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EXHIBITS

MARKED

ENTERED

APPLICANT'S EXHIBIT NUMBER 1,  
Order of Dismissal

13

14

APPLICANT'S EXHIBIT NUMBER 2,  
Navy Enlistment Papers

16

16

1           GENUINE TRUTH BANNER VS. STATE OF SOUTH CAROLINA

2           MR. ISENBERG: Thank you, Your Honor. The next  
3 case is Genuine Truth Banner versus The State of South  
4 Carolina. It's case number 2018-CP-42-1206. This case  
5 is based upon the application filed by Mr. Banner on  
6 April 10th, 2019. He's presently confined in the South  
7 Carolina Department of Corrections pursuant to orders of  
8 incriminate from the Spartanburg County clerk of court.

9           In October of 2016, the Spartanburg County grand  
10 jury indicted him for two counts of armed robbery, one  
11 count of bank robbery, and one count of possession of a  
12 weapon during the commission of a violent crime, and  
13 five counts of kidnapping. The charges stem from an  
14 October 29th, 2016, incident in which he -- in which  
15 applicant, while armed with a shotgun, robbed  
16 Spartanburg Federal Credit Union.

17           William J. Newicki represented him. Assistant  
18 solicitor -- I'm sorry, the solicitor Barry Barnette  
19 prosecuted the case on behalf of the State. On January  
20 22nd, 2018, at the conclusion of pretrial motions, he  
21 pled guilty as indicted to all charges before the  
22 Honorable J. Mark Hayes, II.

23           On January the 23rd, 2018, Judge Hayes sentenced  
24 him to imprisonment for concurrent terms of 20 years  
25 each for kidnapping, armed robbery, bank robbery, and

1 possession of a weapon during the commission of a  
2 violent crime. Applicant filed a pro se Notice of  
3 Appeal, which was ultimately dismissed as untimely filed  
4 by order on April 25th, 2018.

5 And with that I will allow opposing counsel to  
6 proceed forward with her case.

7 THE COURT: Ms. Ross?

8 MS. ROSS: Thank you, Your Honor. May it please  
9 the Court. I filed an amended application, I believe,  
10 around September 23rd. Is there a copy --

11 THE COURT: I do.

12 MS. ROSS: -- up there with you? That's sort of  
13 presents the arguments I intend to go forward with, but  
14 I also state that it incorporates his own allegations as  
15 well.

16 This was a case where he alleges failed to  
17 investigate to prepare for trial; advised him to plea  
18 under Alford without proper inducement or benefit; and  
19 by doing so, he gave up his right, essentially, to  
20 appeal a strong search and seizure argument that we feel  
21 would have been prevailed upon had the Appellate Court  
22 had a chance to review. He's also alleged he was  
23 enlisted in the U.S. Navy and he didn't -- there was no  
24 challenge to jurisdiction or argument in mitigation  
25 based upon that Navy service.

1 THE COURT: Say that again.

2 MS. ROSS: Well, he has alleged that there should  
3 be some jurisdictional issues because Mr. Banner was an  
4 active member of the U.S. Navy --

5 THE COURT: Oh, okay.

6 MS. ROSS: -- when this charge came about so the  
7 proper jurisdiction would be a military tribunal.

8 THE COURT: Okay.

9 MS. ROSS: And then the failure to advise the  
10 applicant of his right to appeal. He didn't realize  
11 that he was waiving his right to appeal the suppression  
12 hearing by pleading guilty under *Alford* and that's an  
13 allegation. And there was a failure to perfect the  
14 appeal, really due to some confusion about pulling out  
15 -- there was a motion to reconsider the sentence. That  
16 was withdrawn. And then Mr. Banner had filed an appeal,  
17 but that was dismissed because it wasn't timely filed  
18 because of the timeline issues due to the Motion to  
19 Reconsider.

20 THE COURT: Okay.

21 MS. ROSS: And then I could allege ---

22 THE COURT: Reconsideration was withdrawn?

23 MS. ROSS: It was.

24 THE COURT: And that didn't toll time.

25 MS. ROSS: Yeah, exactly. So at this point I

1 call Mr. Genuine Truth Banner to the stand.

2 (Witness comes forward.)

3 THE COURT: Place your left hand on the Bible,  
4 raise your right hand as much as you can. (Complies.)

5 Do you solemnly swear or affirm the testimony  
6 you're about to give, this testimony you're about to  
7 give in this hearing be the truth, the whole truth, and  
8 nothing but the truth?

9 THE WITNESS: I do.

10 THE COURT: All right, thank you. Have a seat.

11 GENUINE TRUTH BANNER,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. ROSS:

15 Q. Hey, Mr. Banner. I always have to ask you this  
16 on a PCR. You understand the remedy in a PCR is you're  
17 back in the position you were in before the plea facing  
18 potentially more time?

19 A. Yes, ma'am, I do.

20 Q. And do you still wish to go forward?

21 A. Yes, ma'am, I do.

22 Q. Now, why do you allege ineffective assistance of  
23 counsel?

24 A. Well, for several reasons. One being I was never  
25 afforded the opportunity to view my whole discovery. I

1 did see a few pages, that being the search warrant and  
2 the officer's incident report, but I didn't get to  
3 review anything. I think a total, maybe, six or seven  
4 pages out of however long the motion was over 30 pages  
5 or so out of the ---

6 THE COURT: Step back from the microphone just a  
7 little bit.

8 THE WITNESS: Sorry.

9 BY MS. ROSS:

10 Q. Yes. It's kind of popping. Okay.

11 A. Okay.

12 Q. How many times did you meet with your lawyer?

13 A. If I would have to estimate, I would say five or  
14 six times.

15 Q. All right. And during those times he didn't  
16 bring all that discovery to review with you?

17 A. I recall him bringing the discovery once, but we  
18 only went through the search warrant and the officer's  
19 incident report.

20 Q. And your understanding was that you were going to  
21 trial at this point?

22 A. That was always my intention.

23 Q. Okay. And did you have a full copy of the  
24 discovery?

25 A. Never.

1 Q. Now, you said it was all the intention to go to  
2 trial. Give a brief -- what did you feel were strong  
3 issues at trial for you?

4 A. Well, my biggest thing was the illegal search and  
5 seizure.

6 Q. Can you briefly summarize what happened?

7 A. Yes. Well, should I speak on the Motion to  
8 Suppress or just as far as the case itself?

9 Q. How about the Motion to Suppress.

10 A. Okay.

11 Q. Just the search that you intend to ---

12 THE COURT: Tell me ---

13 THE WITNESS: Well...

14 THE COURT: See, I don't know anything about your  
15 case.

16 THE WITNESS: Okay.

17 THE COURT: So I don't understand what you ---

18 THE WITNESS: So I'll give a little bit of  
19 background then.

20 THE COURT: All right.

21 THE WITNESS: So, according to the officer's  
22 incident report he came to the property to search and to  
23 verify a few things. And then based on what he found he  
24 said he called and requested a search warrant. And the  
25 case that we ---

1 BY MS. ROSS:

2 Q. And the charge was there had been a bank robbery  
3 and the person ran away and then the police officer  
4 ended up getting items out of the car.

5 A. Well, he suspected. Well, yes. He suspected  
6 that -- okay. So the whole background story is there  
7 was the officer, prior to the bank robbery, saw a car, a  
8 BMW, and took the license plate off of it because of an  
9 uninsured issue or something like that. And then after  
10 that a call was -- after the bank robbery actually a  
11 call was made reporting a stolen license plate.

12 The officer came to the address, I guess, that  
13 the stolen license plate was called in at and he says  
14 they had eyes on the vehicle. There was no one at the  
15 house or in the car at the time. The vehicle was on  
16 curtilage.

17 So if -- and under my understanding, if he were  
18 to be coming to the house to investigate a missing  
19 license plate or anything of that nature, he would go to  
20 the front door, not necessarily curtilage to view  
21 anything else other than the front door to talk to, you  
22 know what I'm saying, to witnesses or whoever it may be.  
23 But his incident report states that he came onto the  
24 property to search and to verify. And I think the  
25 transcript actually -- let me see if I can find it. He

1 states ---

2 Q. On page 23 of the transcript possibly. Somewhere  
3 around there.

4 A. Twenty-three?

5 Q. And 26, line 17. He walks up to the front door  
6 and then walks over into the driveway, something like  
7 that?

8 A. Correct. Correct.

9 Q. He, he comes onto the property. Onto Curtilage,  
10 not the front door, to verify and to -- yeah, well, to  
11 verify the VIN number. He had the VIN number before, he  
12 says of a, of a vehicle that was -- that he took the  
13 license plate off of, but he wasn't entirely sure.

14 THE COURT: Is this a suppression hearing --

15 MS. ROSS: Yes. So...

16 THE COURT: -- that's taking place prior to the  
17 plea?

18 MS. ROSS: Correct.

19 THE WITNESS: Correct.

20 BY MS. ROSS:

21 Q. And, um...

22 A. So based off the information that he found, more  
23 or less, based off the information that he found, he  
24 came on to the property without a search warrant to  
25 search and to verify, he says in his incident report.

1 And then based on what he found, then he called and  
2 requested a search warrant.

3 My understanding of Jordan's Supreme Court case  
4 133 S.C. 1409 held that when an officer physically  
5 intrudes once at curtilage to gather evidence, a Fourth  
6 Amendment search has occurred and is presumptively  
7 unreasonable as to the warrant. That's, that's current  
8 law. Again, *Collins* speaks on this. This is  
9 138 S.C. 1663. It kind of reiterates that fact. So,  
10 yeah, he came to the property without a warrant, and...

11 Q. And the ruling, do you recall where the ruling is  
12 that the judge said, well, there was some --

13 A. So --

14 Q. -- invasion of property? Can you just ---

15 A. -- the interesting part is that the argument that  
16 we made for the motion, the judge actually agreed with  
17 us.

18 Q. Okay.

19 A. He agreed that it was an invasion of privacy, but  
20 he ruled negatively against it. Page 79, lines 19  
21 through 25 of the transcript of record says:

22 I agree with the statement. I think it was good  
23 police work by the officer and the way that he handled  
24 it. If there wasn't, the Fourth Amendment stands around  
25 an invasion of privacy, expectations of privacy. I

1 think that if -- I'm not saying there wasn't, that  
2 privacy was violated, but if it was, it was just done in  
3 a very minimal way by the officer.

4 Q. Now, I'm showing you this case,  
5 Collins v. Virginia. Is this the case you were  
6 referring to?

7 A. Yes, ma'am.

8 Q. And when was that decided?

9 A. It was decided May 29th of 2018.

10 Q. Okay. And that was after your trial. But what  
11 did you ask your lawyer to wait for at your trial?

12 A. Yes. I did request that we have a continuance  
13 based on the decision for the *Collins* case because the  
14 *Collins* case dealt with the same exact thing precisely.

15 Q. And when was the date that it was argued?

16 A. It was argued January 9th, 2018.

17 Q. And how much prior to your trial was that?

18 A. At least two weeks.

19 Q. All right. I'd ask this to be marked as  
20 Applicant's Exhibit 1 and I'd offer it into evidence at  
21 this time.

22 A. But I brought attention.

23 COURT REPORTER: Just one second, sir.

24 THE WITNESS: Sorry.

25 (Applicant's Exhibit Number 1, *Collins v.*

1 Virginia Case Law, was marked for identification.)

2 MR. ISENBERG: You're offering just the brief to  
3 the case, I guess?

4 MS. ROSS: Yeah, just the case for now. I don't  
5 think it would even have to be marked, but you did say  
6 this was what you were waiting for?

7 A. Yeah, I'm under the impression.

8 (Applicant's Exhibit Number 1 was entered into  
9 the record.)

10 BY MS. ROSS:

11 Q. Okay. Now ---

12 THE COURT: Give me those dates again. His plea  
13 is January 2018?

14 MR. ROSS: 20-something, so it's a couple weeks  
15 after ---

16 THE WITNESS: The 22nd.

17 MS. ROSS: -- prior to the published opinion.

18 THE COURT: Yeah. Signed it May 29th of 2018.

19 MS. ROSS: Correct.

20 THE COURT: Okay.

21 BY MS. ROSS:

22 Q. Now, Why did you want to wait for the outcome of  
23 this opinion?

24 A. Well, because it dealt with exactly, precisely  
25 the thing that I had dealt with as far as the physical

1 intrusion onto private property prior to a search  
2 warrant. When I ---

3 Q. So you felt it was a case parallel to you or  
4 directly on point?

5 A. Correct. Or what I had said, had counsel meet  
6 with, you know, I just ----

7 Q. And you knew that this was important, yet you  
8 pled under Alford that day. Why?

9 A. Yes. Well, I pled under Alford thinking -- well,  
10 first I wasn't informed that Alford was actually a  
11 guilty plea, let's just start there. But I pled  
12 thinking that I could still appeal or, you know, the  
13 decision of their Motion to Suppress. I was never ---

14 Q. Now, that's true in federal court, isn't it, that  
15 you can appeal?

16 A. I would supposed so.

17 Q. And you are not from South Carolina, are you?

18 A. No, ma'am.

19 Q. Where are you from?

20 A. Michigan.

21 Q. Okay. Now, and you were here why?

22 A. I came to really visit family before my  
23 deployment for military.

24 THE COURT: Visit what, family did you say?

25 THE WITNESS: Oh, I came to visit family before

1 my deployment for the military.

2 BY MS. ROSS:

3 Q. So you were, in fact, in what branch of the  
4 services at that time?

5 A. Navy.

6 Q. And I'm showing counsel -- do you know what this  
7 is? Did you recognize this? I think you provided it to  
8 me.

9 A. Yes. This is a -- this is basically just a copy  
10 of the contract, more or less. Confirmation of  
11 enlistment.

12 Q. And so that's what it is?

13 A. Yes.

14 MS. ROSS: We'd offer this as Applicant's Exhibit  
15 2 at this time.

16 (Applicant's Exhibit Number 2, Navy Enlistment  
17 Papers, was marked for identification.)

18 (Applicant's Exhibit Number 2 was entered into  
19 the record.)

20 BY MS. ROSS:

21 Q. Now, was this presented in mitigation during your  
22 plea?

23 A. No, ma'am, it wasn't.

24 Q. Did your attorney ever argue that possibly a  
25 different tribunal would be better suited for this since

1 you were in the military?

2 A. No. The -- the fact that I was enlisted, I  
3 believe they did make mention to in the transcript, but  
4 the actual evidence to prove that I was enlisted was  
5 never offered as mitigation or, or anything like that.

6 Q. Okay. And do you think it would have helped your  
7 case?

8 A. Substantially, yes.

9 Q. Now, you had also -- had you been having and  
10 taking any medications or under any mental health  
11 treatment during this period of time?

12 A. No mental health treatment. Medications, yes.  
13 I, I had just recently had a major surgery in the  
14 hospital and they gave me -- well, first of all, I was  
15 on morphine in the hospital, but they gave me percocet,  
16 percocet as a, as a pain killer.

17 Q. Okay. And those meds, were you on them when you  
18 pled guilty or was this prior to the incident you were  
19 accused of?

20 A. This was prior to the incident that I was accused  
21 of.

22 Q. Prior to the incident? So was that argued during  
23 your guilty plea that you'd been on extreme meds during  
24 this period that the incident allegedly occurred?

25 A. Not that I recall. Not that I recall.

1 Q. But you were found to be confident?

2 A. Yes, ma'am.

3 Q. Now, You had pointed out a site to me,  
4 Williams v. Taylor, 120 S.C. 1495. A 2000 decision. Do  
5 you recall why you pointed that out to me or did you  
6 want to testify about it?

7 A. I have it here. Oh, yeah. Well, it says: My  
8 counsel failed to make the court aware of the fact that  
9 I had listed and already sworn an oath of office in the  
10 Navy prior to my arrest. This would have been a  
11 substantial reason of mitigating evidence that  
12 unfortunately the court was never made aware of.

13 Williams v. Taylor, 120 S.C. 1495 held that the  
14 petitioner was denied his constitutional right to  
15 effective assistance of counsel when his attorneys  
16 failed to investigate and present substantial mitigating  
17 evidence during his sentencing. There is reasonable  
18 probability that sentencing would have been different  
19 had counsel presented this information as mitigation.

20 Q. All right. And when you filed an appeal, why did  
21 you file an appeal?

22 A. Well, I thought that I had appeal rights at that  
23 time.

24 Q. And what did you think the court would review in  
25 that appeal?

1 A. The Motion to Suppress.

2 Q. And, and why did you think that?

3 A. That was my, that was my preparatory argument.  
4 That was my primary argument for a former case actually,  
5 and I didn't, didn't really want to give that argument  
6 up until it was fought all the way through.

7 Q. Did you realize you had waived that argument with  
8 your plea?

9 A. No.

10 Q. If you had known that, would you have pled?

11 A. No, ma'am.

12 Q. I also have a note, Miranda issues. Did you want  
13 to address Miranda issues?

14 A. I don't really think it's necessary, but I mean  
15 just to get it on the record, yeah, there was -- I was  
16 never Mirandized during the arrest, the whole arrest  
17 process, and I don't think that was brought up in court  
18 either.

19 Q. Now, going back to a suppression hearing, your  
20 lawyer argued that it, that it violated your Fourth  
21 Amendment rights to privacy. Did he ever argue it  
22 violated your Article 1, Section 10, South Carolina  
23 constitution rights to privacy, which are actually more  
24 extensive than those conferred by the U.S. Constitution?

25 A. No, not that I recall. And reviewing the

1 transcript it's not in there.

2 Q. Okay. And I have a question, do you feel like it  
3 violated due process that you gave up an appellate  
4 review without knowing what you got?

5 A. Well, I think due process was violated in  
6 multiple ways. In that way that you just mentioned and,  
7 also, just the judge making the statement that he made  
8 that he was aware of a constitutional violation, but he  
9 just altogether denied to rule in that light.

10 Q. Okay. That's all the questions that I had  
11 written down. Is there anything else that you would  
12 like to add?

13 A. I mean, that's -- I think we've covered pretty  
14 much everything. Just the fact that I wasn't informed  
15 an Alford plea actually was a guilty plea. I was never  
16 informed that by taking that plea I wouldn't be allowed  
17 to appeal the Motion to Suppress and the fact that no  
18 condition, no condition was made at all to preserve the  
19 opportunity to, to appeal that. I think that, that  
20 would be ineffective or that's the primary  
21 constitutional argument that we had and no condition was  
22 made to protect that argument.

23 Q. And you felt that that was a winning search and  
24 seizure argument?

25 A. Oh, definitely. Definitely.

1 Q. That would have resulted in the suppression of  
2 the evidence against you?

3 A. Correct.

4 Q. And do you believe that would change the outcome  
5 of the case?

6 A. Yes, ma'am.

7 Q. All right. I've got no further questions.

8 CROSS-EXAMINATION

9 BY MR. ISENBERG:

10 Q. Good afternoon, Mr. Banner.

11 A. Good afternoon.

12 MR. ISENBERG: May it please the Court?

13 THE COURT: Yes, sir.

14 BY MR. ISENBERG:

15 Q. Now, you just testified that you wish your  
16 attorney had preserved one argument for appeal, correct?

17 A. Correct.

18 Q. And you said that he did not preserve that  
19 argument for appeal, correct?

20 A. Correct.

21 Q. Because he proposed another argument?

22 A. I don't know why. I don't know what his reasons  
23 were for not protecting that argument.

24 Q. Okay. Now, can you explain a little bit what  
25 that argument is?

1           A. Well, the primary argument for me was just the  
2 Fourth Amendment constitutional issue, like I said, I  
3 previously stated before.

4           Q. Right.

5           A. Officer came to the property to search and he  
6 says in his incident report that he came to search and  
7 to verify things. And then based on what he found, then  
8 he called and requested a search warrant.

9           Q. Okay. And your, your lawyer went with an  
10 invasion of privacy, correct?

11          A. Say that again.

12          Q. Your lawyer went with another argument for  
13 invasion of privacy, correct?

14          A. I mean, that's, that's the general argument  
15 behind the suppression, suppression hearing.

16          Q. Right. Okay. Yeah, that -- I'm just kind of  
17 confused how your lawyer's argument differed from the  
18 one that you wished was preserved. That's sort of the  
19 confusion that I have.

20          A. Well, I mean, yes, he made the argument for the  
21 Motion to Suppress for the Fourth Amendment argument but  
22 he -- but once the decision was made, the decision was  
23 had, he didn't make it a condition to even to appeal and  
24 it was a primary argument in the first place. He made  
25 no condition to appeal that, the decision that the judge

1 had on that.

2 Q. And you're aware that when you decided -- when a  
3 judge decides something of that nature, that the  
4 decision itself is appealable, correct?

5 A. I assume so, which is the reason why I filed for  
6 appeal.

7 Q. Okay.

8 A. Or tried to file for appeal for my, for myself.

9 Q. And why was your appeal declined?

10 A. Because it was ruled untimely.

11 Q. Okay. So untimely does not mean unpreserved,  
12 correct?

13 A. Untimely does not mean unpreserved.

14 Q. Okay. So you're testifying today that you're mad  
15 that your lawyer didn't preserve your argument, but you  
16 lost your appeal because your appeal was untimely,  
17 correct?

18 A. I was not even aware -- well, my lawyer never  
19 made me aware that I could appeal. I found out from  
20 inmates at Kirkland that I could actually still file an  
21 appeal during the plea.

22 THE COURT: Say that again, appeal what?

23 THE WITNESS: Appeal the Motion to Suppress. I  
24 never was informed from previous counsel that if you --  
25 if you -- that I had the right to appeal a plea. I was

1 thinking -- honestly, I was thinking it was a  
2 conditional plea and we were gonna appeal the decision  
3 altogether. I mean the -- yeah, the decision  
4 altogether.

5 BY MR. ISENBERG:

6 Q. Right. But ---

7 A. But I, I never -- yeah.

8 Q. You would agree that the ultimate issue was  
9 timeliness not preservation, right?

10 A. That's what they wrote back and said.

11 Q. Okay. And what they wrote back is the  
12 affirmative decision of the court, correct?

13 A. What they wrote back and said was that the, the  
14 Motion to Suppress, my appeal for the Motion to Suppress  
15 was untimely.

16 Q. Okay. And you also allege that your lawyer  
17 failed to investigate, correct?

18 A. Yes.

19 Q. Okay. What exactly did your lawyer fail to  
20 investigate?

21 A. Under that allegation my military background is  
22 what I was speaking on.

23 Q. Okay.

24 A. Also, we didn't really -- honestly, I don't think  
25 either one of us thought we would have to make it to

1 trial, to be perfectly honest. So I don't think he  
2 investigated or prepared for trial because we were  
3 thinking we were gonna win that motion. That motion  
4 was, to me in my mind, very clear cut and dry and ---

5 Q. So your issue isn't with your lawyer, it's with  
6 the motion hearing, correct?

7 A. It's with both. The motion hearing, the decision  
8 of what was had. And my lawyer, previous lawyer,  
9 because I feel like we just -- him advising me to take  
10 that plea and not advising me that I would give up my  
11 right to appeal that he made no condition otherwise for  
12 me to keep that argument. Do you see what I'm saying?

13 Q. Yeah. I can understand what you're saying. I'm  
14 just curious, you believe you should have won that  
15 suppression hearing, correct?

16 A. Correct.

17 Q. But your lawyer argued meritoriously at that  
18 discretion hearing, didn't he?

19 A. I thought he did well, honestly. I thought he  
20 did a great job at that argument, but once the decision  
21 was had it was like that argument it was like okay --  
22 okay, if he would have told me to take a -- to advise me  
23 to go to trial so I could preserve that, I would have  
24 taken it to trial so I could preserve that specifically  
25 so I can preserve that right. Instead he told me to

1 take a plea, which it gave up that argument altogether.

2 Q. Right. And after that suppression hearing there  
3 was a great deal of evidence that was going to be  
4 admissible against you at trial, correct?

5 A. Yes.

6 Q. And that evidence directly connected with you to  
7 that bank robbery, correct?

8 A. Um, I wouldn't say that. I wouldn't say that,  
9 but it would look as if that way, yes.

10 Q. Okay. Because the evidence that again was  
11 admissible was the evidence found in that vehicle,  
12 correct?

13 A. In and around the house and the vehicle, then  
14 with the vehicle, correct.

15 Q. Right. And they found clothing and shotgun  
16 shells and stuff of that nature that they directly  
17 identified to be at the scene of the bank robbery,  
18 correct?

19 A. More or less.

20 Q. Okay. And so did your feeling about your case  
21 change after you lost that suppression hearing?

22 A. Honestly, it did.

23 Q. Okay.

24 A. Honestly.

25 Q. Did you feel like you had less of a chance to win

1 at trial?

2 A. I mean I certainly did.

3 Q. And at that point, that's when your lawyer  
4 probably advised you to plead guilty, correct?

5 A. Yes. But...

6 Q. And did he advise you that you had a less of a  
7 chance to win at trial based upon the suppression  
8 hearing?

9 A. Say that again.

10 Q. Did he also advise you that you did, in fact,  
11 have less of a chance to win at trial based upon the  
12 result of the suppression hearing?

13 A. Well, he didn't advise me of that. That was  
14 already inferred. But the problem again being, okay, if  
15 that's gonna give up our primary argument for trial,  
16 move the trial, but still preserve -- or take a  
17 conditional plea. Still preserve the right to go back  
18 on that argument. Don't just give up that  
19 constitutional argument willy nilly.

20 Q. Right. Beg the Court's indulgence for just one  
21 moment, Your Honor.

22 And I just have a couple more questions. You  
23 testified that you requested a continuance based upon  
24 *Collins*, correct?

25 A. Correct.

1 Q. Do you now understand that *Collins* came out  
2 several months after your hearing, correct?

3 A. Correct.

4 Q. Okay. So you're saying here today that you had  
5 prior knowledge that *Collins* would be decided in the way  
6 that it was?

7 A. I had no knowledge of how, how it would be  
8 decided, but I spoke with counsel and I thought it would  
9 be wise to file a continuance. And based on how the  
10 decision turned out that I would know what to do. I  
11 would know, okay, well, it doesn't look so good for your  
12 Motion to Suppress argument typically or a while. It  
13 turned out great as it did, actually did and you go  
14 home.

15 Q. And how did you come to find out about the  
16 *Collins* case before your trial?

17 A. Actually, I first found out about it I woke up  
18 early one morning and seen it in the newspaper and it  
19 just, it stuck with me. So I researched it and found  
20 that it was my primary argument almost to the letter.

21 Q. Okay. And so you notified counsel of this case  
22 and you notified him that you wanted to wait until this  
23 case was decided to try your case, correct?

24 A. Yes, correct.

25 Q. Okay. So you, you essentially wanted an

1 indefinite continuance until the case was decided?

2 A. Yes.

3 Q. Okay. But can you sit here today and tell me  
4 that an indefinite continuance on your case would have  
5 been appropriate?

6 A. Well, it was being argued already. My thing is,  
7 and what I was trying to make him aware of was the fact  
8 that at time that I was -- around the time that I was  
9 going to court, scheduled to go to court rather, this  
10 case was in Supreme Court, it was being argued in  
11 Supreme Court. And the fact that that argument was  
12 being brought up to Supreme Court to me was red flag  
13 enough to say, okay, hold on, we need to slow down and  
14 see what happens with this.

15 Q. Okay. And how much -- how long had you been in  
16 the Navy before you were arrested?

17 A. I enlisted in June, I believe.

18 Q. Okay. And when did you go to basic training?

19 A. I never went to basic training. I -- my appendix  
20 -- it's complicated. I enlisted in June. I think June  
21 2nd or June 4th, something of that nature. I could have  
22 shipped and went to basic training immediately, but I  
23 went delayed entry for special forces. And my appendix  
24 ruptured, I ended up in the hospital. And in the  
25 process of me getting back healthy, I came back down --

1 I came down here to be, be with family.

2 Q. Okay. So your testimony here today is that you  
3 never went to basic training, correct?

4 A. That is correct.

5 Q. Okay. Did you give your attorney that document  
6 that you presented to the Court?

7 A. I personally did not. I was told, I was informed  
8 by my family who wanted to give it to me that they gave  
9 it to him.

10 Q. Okay. So you never personally gave it to him,  
11 correct?

12 A. Personally no.

13 Q. Did you advise him that it existed?

14 A. Yes.

15 Q. Okay. And did you request that he get you  
16 prosecuted under the U.S. military instead of the  
17 Spartanburg County? Is that what you're saying?

18 A. It was more or less inferred. That was the  
19 reason I brought it up.

20 Q. I'm asking if you directly said -- requested him  
21 to get you prosecuted by the military instead of  
22 Spartanburg County.

23 A. No, I did not directly ask that.

24 Q. Okay. Did you understand what *Alford* meant when  
25 he explained it to you?

1 A. Well, not fully. His ---

2 Q. So you understood *Collins* but not *Alford*?

3 A. Yes.

4 Q. Okay. So you understood one legal case but not  
5 the other?

6 A. I think that's pretty reasonable.

7 Q. Yeah, I know, I'm just asking.

8 A. Yeah.

9 Q. Okay. What didn't you understand about *Alford*?

10 A. I actually had never heard of *Alford* prior to  
11 that court date, the plea hearing. So I didn't know,  
12 first of all, that was a guilty plea.

13 Q. Okay.

14 A. So here's the thing.

15 Q. Did anyone know it was gonna be a guilty plea?

16 A. What do you mean?

17 Q. Well, there was a motion hearing based upon the  
18 trial, correct?

19 A. Correct.

20 Q. So did anybody know going into court that day  
21 that it was gonna turn into a guilty plea?

22 A. No. When it -- when *Alford* did come up, it is  
23 actually a guilty plea.

24 Q. Uh-huh.

25 A. I was never actually informed that it was guilty.

1 This is how it played out. So I asked, you know, the  
2 motion itself. We got denied it. And we were  
3 discussing our options and I asked if I could have a  
4 conditional plea or if I could plead no contest since he  
5 had already told me that the continuance was not, was  
6 not an option. And he was already advising me that  
7 trial was not wise.

8 Q. Right.

9 A. So I asked for a no contest plea. He informed me  
10 that there was no such thing as a no contest plea. And  
11 he went back to the back and spoke to the solicitor. He  
12 came back and said, well, the best that we can do is  
13 give you what's called an *Alford* plea. And my first and  
14 only question is there an admission of guilt. He said  
15 there's no admission of guilt and that was it.

16 Q. Okay. Do you remember him explaining it at the  
17 hearing?

18 A. Personal -- currently right now I do not.

19 Q. Okay. So if I told you that he explained it  
20 thoroughly on the record at the hearing, you  
21 wouldn't ---

22 A. Do you have ---

23 Q. Page 99. Go to line 16.

24 A. Oh, okay. I understand what you're saying.  
25 That's not an -- well, can I read it?

1 THE COURT: Sure.

2 BY MR. ISENBERG:

3 Q. Do you want to read it aloud?

4 A. Yeah.

5 Q. Go ahead.

6 A. (Reading.) Your Honor, I believe that all the  
7 evidence was the evidence that had we gone to trial that  
8 I believe it would have been more than likely that there  
9 would have been a guilty plea -- I mean a guilty. But  
10 also based on the *Alford* that we had as being an *Alford*  
11 plea, is not one agreeing with everything, but if  
12 everything did come in we believe that he could possibly  
13 be found guilty. (Ends reading.)

14 That was the definition. There was no, no  
15 explanation as to saying okay, well, this is actually  
16 considered a guilty plea or you're gonna give up your  
17 rights to appellate review of this issue. You see what  
18 I'm saying? That was, what he said was literally only  
19 -- that was the only thing I understood about it at that  
20 point. It was ---

21 Q. But you told me that he talked to you about it  
22 before the hearing.

23 A. The ---

24 Q. You just said that that was the only time he  
25 talked about the *Alford* plea, but you testified a minute

1 ago that he talked to you about it before the plea  
2 hearing.

3 A. This is all the, all the information that I was  
4 aware of at the time.

5 Q. Okay. All right. Well, without the continuance  
6 you decided to plead guilty under *Alford*, correct?

7 A. That was the decision that was made.

8 Q. Okay. And you're testifying here today that you  
9 now don't believe that all the evidence the State had  
10 against you would have been enough to convict you in  
11 trial, correct?

12 A. That's not necessarily true. I do believe more  
13 than likely there probably would have been a guilty ---

14 Q. Verdict?

15 A. Yes.

16 Q. Okay. But you still want to go back to trial?

17 A. If I can get, now that the decision of *Collins*  
18 has come out and I can get the Motion to Suppress and I  
19 can get my constitutional argument my due process, yeah,  
20 I believe it would be wise to go to trial. They can't  
21 try me without evidence.

22 Q. I see. So your whole issue here is that if you  
23 can get back and do a trial now, having that *Collins*  
24 case on your side, you believe you have more of a chance  
25 to win?

1 A. Certainly.

2 MR. ISENBERG: No further questions.

3 THE COURT: Any redirect?

4 MS. ROSS: Redirect.

5 REDIRECT EXAMINATION

6 BY MS. ROSS:

7 Q. On page 90, line 13, you've been told your rights  
8 and you understand your rights, but you're not  
9 specifically told about your right to appeal the  
10 ruling --

11 A. Correct.

12 Q. -- being waived, correct?

13 A. Correct.

14 Q. So you thought that while I know that there are  
15 no conditional pleas in South Carolina, you did not know  
16 that?

17 A. Correct.

18 Q. And so you thought that you were still preserving  
19 that suppression issue for appeal?

20 A. Correct.

21 Q. And your intent was to appeal the case?

22 A. Correct.

23 Q. And you made efforts to do that yourself?

24 A. Correct, yes.

25 Q. And they were dismissed, or the appeal was

1 dismissed because due to a post-hearing motion made by  
2 your counsel your appeal was not timely. Is that close  
3 to what happened?

4 A. Close.

5 Q. Okay.

6 A. Close to it.

7 Q. Okay. All right. I've got no further questions.

8 THE COURT: No further questions of this witness?

9 MR. ISENBERG: No, Your Honor.

10 THE COURT: All right. You may come down, sir.  
11 Thank you very much.

12 THE WITNESS: Thank you.

13 MS. ROSS: That's the Applicant's case, Your  
14 Honor.

15 THE COURT: Any witnesses for the State?

16 MR. ISENBERG: Your Honor, I don't normally do  
17 this but I'm gonna have to make this request in this  
18 case. The State's gonna have to request a motion for a  
19 judgment as a matter of law. The Applicant has  
20 essentially admitted that he wants to go back to trial  
21 based upon the Collins case that came out after, after  
22 his plea hearing. That admission alone states that,  
23 that that's the sole purpose for him going back to  
24 trial. He wants to go back to trial based upon a case  
25 that came out months after his plea hearing.

1           With that admission alone being his motivation to  
2 go back to trial, that would be conceding the fact that  
3 it has nothing to do with the involuntary nature of his  
4 counsel or of his plea and ineffective assistance of his  
5 counsel. And so with that being said, I'd have to make  
6 a judgment as a matter of law motion in this case.

7           THE COURT: Ms. Ross?

8           MS. ROSS: And I'd object. I don't think that  
9 fairly portrayed what he's put forward as, again, the  
10 amended application. I've put a number of issues  
11 forward. The main one being that he was not allowed to  
12 -- his appeal issues were not preserved for review and  
13 he feels that if they had been, the outcome would have  
14 been different. And that would be a cognizable claim  
15 under post-conviction relief and ineffective assistance  
16 of counsel because his counsel didn't inform him that  
17 the plea would waive his right to appeal. And I've got  
18 Colby/State, South Carolina case 690 SC 73 ---

19           THE COURT: Slow down.

20           MS. ROSS: Sorry. 690 S.C. 2d. 73. It's a 2010  
21 case where it -- plea counsel truly believed the  
22 suppression issue was meritorious, that he should have  
23 advised the court to protect that argument and proceed  
24 to trial. And then also the attorney would have a duty  
25 to ensure the plea was knowingly and voluntarily made

1 under Dover v. State, 405 S.C. 2d. 391, a 1991 case.  
2 And I'd just argue that these go to issues of  
3 ineffective assistance of counsel well beyond the Dover  
4 -- I mean, the, excuse me, the Collin v. Virginia State.

5 THE COURT: All right. The motion's overruled.

6 MR. ISENBERG: Thank you, Your Honor.

7 THE COURT: You may call your first witness.

8 MR. ISENBERG: The State would call William J.  
9 Nowicki.

10 (Witness comes forward.)

11 THE COURT: Left hand on the Bible, raise your  
12 right hand. (Complies.)

13 Solemnly swear or affirm the testimony you're  
14 about to give in this hearing will be the truth, the  
15 whole truth, and nothing but the truth so help you God?

16 THE WITNESS: I do.

17 THE COURT: Have a seat in the witness box.

18 WILLIAM J. NOWICKI,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ISENBERG:

22 Q. Good morning, Mr. Nowicki.

23 A. Good morning.

24 Q. Good afternoon, I apologize.

25 A. Afternoon.

1 Q. How long have you been practicing law?

2 A. I've been practicing since 2001.

3 Q. Okay.

4 A. So that's 18 years.

5 Q. In that 18 years how long have you been doing  
6 criminal law?

7 A. I've been doing criminal law pretty much for that  
8 entire time.

9 Q. And is criminal law the only type of law that you  
10 do?

11 A. No. I do civil, do personal injury, a little bit  
12 of family and probate. Just kind of a little bit of  
13 everything.

14 Q. Okay. And so if we threw up a pie chart on the  
15 wall, what percentage of cases would be criminal law?

16 A. 90 percent.

17 Q. Okay. So that's largely how you make your -- how  
18 you put food on the table by doing criminal law cases?

19 A. That's correct.

20 Q. Okay. And have you ever done cases where you  
21 represented a client being accused of armed robbery,  
22 bank robbery and stuff like that before you represented  
23 Mr. Banner?

24 A. Yes, I have.

25 Q. Okay. And have you ever taken any of those cases

1 to trial?

2 A. I'm trying to think of armed robbery. I had a  
3 kidnapping that had to deal with domestic violence, but  
4 I've never done an armed robbery at a trial.

5 Q. Right. But would you say you were well rehearsed  
6 on the statutes and law of armed robbery and bank  
7 robbery on the crimes in his case before you represented  
8 him?

9 A. Oh, yes.

10 Q. Okay.

11 A. Yes.

12 Q. How did, how did you come about representing Mr.  
13 Banner?

14 A. Mr. Banner was incarcerated. His mom and dad  
15 came to my office --

16 Q. Uh-huh.

17 A. -- and wanted me to go talk to him and they ended  
18 up retaining me or my firm.

19 Q. Okay. And about how long after that did it take  
20 for you to go see him?

21 A. Just about maybe a week or so, if I remember  
22 right.

23 Q. And do you remember what you all went over in  
24 that first meeting?

25 A. If I'm not mistaken, we did go just generalities

1 as far as about the case just to get his point of view  
2 and just discussed in general terms, you know, about  
3 armed robbery, what it -- as far as what it carries as  
4 far as time goes. The same with kidnapping. That's  
5 what I usually do for -- when I first meet with somebody  
6 just to make sure they understand what, you know, what  
7 they're charged with and what they're facing.

8 Q. And at that point did he make you aware that he  
9 was enlisted in the military?

10 A. I don't know if it was then. He did let me know  
11 that he did enlist into the, into the Navy, but that was  
12 really the extent. He did give me the name of an  
13 individual that, I believe, enlisted or would have been  
14 involved in any enlistment on, I can't pronounce, it's a  
15 -- it's like Usavio (phonetic) or something like that,  
16 but I believe it ended up being a last name being a  
17 Rodriguez who was up in Michigan in the Ann Arbor area  
18 where Mr. -- sorry, Mr. Banner's from. Was never able  
19 to get in contact with him. Contact with the, I guess,  
20 the recruitment place and they were not aware of anybody  
21 by that name.

22 Q. So you followed up on his sort of discussion with  
23 you about the military and you couldn't find anything?

24 A. That's correct.

25 Q. Okay. And you couldn't find the document that

1 opposing counsel presented to the Court today, correct?

2 A. Right. I was never presented with any document  
3 of that nature.

4 Q. Okay. I'm gonna give you an opportunity just to  
5 review it.

6 A. Okay.

7 Q. Just to make sure. There you go. Look up at me  
8 whenever you're ready.

9 A. I was never provided this document.

10 Q. You can hand it back to the judge. Thank you.  
11 Appreciate it. Okay. And so at the initial meeting or  
12 any of the subsequent meetings, did your client tell you  
13 about the search they conducted in his car?

14 A. Yes, we talked about that.

15 Q. Okay. And what was his version of events?

16 A. His version of the events was that he had been  
17 out. Are you talking like right from the beginning or  
18 what?

19 Q. Just, yeah, in regards to the search.

20 A. How they got the search?

21 Q. Yeah, how the search came about.

22 A. Okay. Informed me that he had been out that  
23 night. He was headed to the beach. And when he got to  
24 his residence that he noticed that his license plate was  
25 missing. And he called law enforcement or called the

1 police to let them know that his license plate was  
2 missing.

3 Q. Okay.

4 A. He then went to the, I guess, insurance company  
5 because his, I'm not quite sure, went to the insurance  
6 company to try to get insurance so he could get another  
7 license plate. In the meantime I believe law  
8 enforcement had located or actually taken the license  
9 plate off of his vehicle because the vehicle was parked.  
10 They found an abandoned vehicle. Like I said, it was  
11 abandoned. And they took the license plate.

12 There was the bank robbery. And then after that  
13 happened they noticed that his vehicle was gone. And  
14 then when they got the call, then the police went over,  
15 were going to the residence. Cause when Mr. Banner got  
16 back to the residence the police were already there.

17 Somewhere in between that time law enforcement  
18 went over to the house to look at the vehicle to, I  
19 guess, confirm that that's what they were looking for.  
20 And so that's generally how the police got there and got  
21 Mr. Banner.

22 Q. Okay.

23 A. Does that make sense?

24 Q. What -- yeah, that's fine. That's perfectly  
25 fine. What, if any, inconsistencies did you find with

1 this statement after that? The statement that Mr.  
2 Banner gave you.

3 A. Well, one of the inconsistencies would have been  
4 going to the beach and having a license plate stolen  
5 because it was in the hands of the police.

6 Q. Okay. Did he specify which beach he had been to?

7 A. I believe he had indicated he was going to Myrtle  
8 Beach, but I don't know. And he was just headed there,  
9 not that he actually made it.

10 Q. Right. Okay. So you said that you found it was  
11 inconsistent that he said he -- it had gone missing  
12 during a trip to the beach, when in reality the law  
13 enforcement had the license plate?

14 A. That's correct.

15 Q. Okay. And despite the inconsistencies, how did  
16 you approach challenging their search of this vehicle?

17 A. Well, the way the vehicle is parked against the  
18 house, it was backed in so you wouldn't be able to tell  
19 if there was a license plate on it or not. All the  
20 police had at the time was a make -- not a make, but I  
21 mean the kind of vehicle, being a blue BMW.

22 And so an officer went over to the residence  
23 beforehand -- this is from my understanding of looking  
24 through all the evidence and so forth, discovery -- and  
25 got information from the vehicle. And that's when they

1 got a search warrant. And that's where, you know, the  
2 issue rose of invasion of privacy, Fourth Amendment, and  
3 that it was an illegal search.

4 Q. Did you discuss this strategy and approach with  
5 your client?

6 A. Yes, I did.

7 Q. And how did you feel about your approach to  
8 challenging a search?

9 A. Well, he let him, he liked that approach.

10 Q. Okay. So you all were in agreement this was the  
11 approach going into the motion hearing, correct?

12 A. That is correct.

13 Q. And that's the way you argued it at the motion  
14 hearing, correct?

15 A. That's correct.

16 Q. Okay. And why did you -- why do you feel that  
17 the motion hearing did not turn out in your client's  
18 favor?

19 A. Well, I guess one of the reasons was that the  
20 decision on Collins wasn't made yet, but there was other  
21 law out there that would indicate, you know, case law  
22 that was an invasion of privacy. But the judge didn't  
23 look at it that way. He just said that if there was any  
24 invasion it was minimum at most or minimal, whatever his  
25 exact words were. Which, again, I couldn't quite

1 understand that either because it still was an invasion  
2 of privacy. But that's the way the judge ruled and  
3 there was a lot of evidence that would be coming into  
4 the trial that would be against Mr. Banner. And that's  
5 why we then had our discussions afterwards.

6 Q. And I'm glad you brought it up. Did you ever  
7 have any discussions with your client about *Collins*  
8 before the motion hearing?

9 A. Yes.

10 Q. Okay. What were the discussions?

11 A. Well, that the discussions were that it hadn't  
12 been decided but that the facts are very similar and  
13 that it would be a good case to argue because it was  
14 going from the Supreme Court. But even with it not  
15 being decided, at that time I thought I would give a  
16 heads up to the court that, hey, you know, this is a big  
17 issue and, you know, we really need to look at this.

18 And, again, there was other case law out there,  
19 maybe not on point, but that would go along, you know,  
20 with the *Collins* case to say, okay, this is an invasion  
21 of privacy, you know, all this stuff needs to be  
22 suppressed. But, again, the judge didn't rule that way  
23 and so that's why, I guess, we're here.

24 Q. Right.

25 A. Yeah.

1 Q. Did your client request a continuance from you  
2 until that case was decided?

3 A. No. That was -- we did not have that same type  
4 of discussion that way. I mean, the case was already up  
5 for trial. There was already one continuance that was  
6 granted. And, you know, when there was no idea that  
7 decision was ---

8 Q. Right.

9 A. And no idea when and if any of that decision  
10 would have been out. But we did feel that, you know, it  
11 would have been supportive, you know, for the motion.

12 Q. Right. And what you're saying is you had  
13 sufficient case law to make your argument. And being  
14 that *Collins* was going to be decided at some point in  
15 the uncertain future you had to go forward with your  
16 argument, correct?

17 A. Right. That's correct.

18 Q. And you probably, even if he had requested it,  
19 would not have made a continuance request based upon  
20 letting *Collins* being decided, correct?

21 A. Correct.

22 Q. Okay. So did you feel like you needed more time  
23 to prepare for the motion hearing?

24 A. No. I was plenty prepared.

25 Q. Okay. And had you had more time given the

1 standard continuance of a motion hearing, do you feel  
2 that anything would have changed in your preparation?

3 A. No. Just, I guess, the only thing would have  
4 been the hope that there would have been a decision in  
5 *Collins* but, I mean, obviously --

6 Q. Right.

7 A. -- we didn't know that at the time.

8 Q. Right. You would have ---

9 A. And I wouldn't have even ---

10 Q. I'm sorry.

11 A. I'm sorry. Even if there was, I mean at the time  
12 we wouldn't know, I mean the decision that *Collins* could  
13 have been favorable --

14 Q. Uh-huh.

15 A. -- or if it went the other way.

16 Q. Right.

17 A. You know, so there really was nothing else. I  
18 mean, I was prepared, and I don't think there would have  
19 been any more -- any difference.

20 Q. Okay. And did you have any discussions with your  
21 client about going to trial as opposed to pleading  
22 guilty after you lost the motion hearing?

23 A. Yes.

24 Q. Okay. What were those discussions?

25 A. Well, and which is normal discussions for

1 something like this for what I do is -- now, it's up to  
2 the client. It's their decision. All I can do is  
3 advise them of what I think based on, you know, the  
4 evidence. In this case there was a lot of evidence that  
5 was against him that, you know, by pleading you probably  
6 would get something a lot better as far as going to  
7 trial and losing. You know, there's a good likelihood  
8 that instead of the, you know, the cases or the -- his,  
9 yeah, his cases are gonna run concurrent that something  
10 could have ran consecutive.

11 Q. Right.

12 A. And it's not -- and he was facing a lot of time.

13 Q. What was his response to you when you advised him  
14 of all of that?

15 A. Well, he was hesitant. But, you know, as usual,  
16 you know, this is a big decision. But he decided that  
17 that's what he wanted to do was he wanted to plead.

18 Q. And at any point during this conversation did you  
19 all discuss *Alford*?

20 A. Yes. Uh-huh. I discussed, I always discussed  
21 the difference between, you know, an *Alford* plea, no  
22 contest and the regular guilty plea.

23 Q. So it's your common practice to discuss the  
24 difference between *Alford*, no contest, and guilty?

25 A. That's correct.

1 Q. Can you -- can you tell the Court a little bit  
2 about your discussion, your advice to clients about the  
3 difference between those?

4 A. Well, basically, you know, a guilty plea is  
5 you're -- I'm guilty. You know, but I'm accepting  
6 responsibility I did it. No contest is really not  
7 saying anything but, you know, if the evidence comes in  
8 then there's a good likelihood that, you know, I'm gonna  
9 be found guilty that's why I'm doing this.

10 Q. Right.

11 A. And an *Alford* plea is similar to a no contest  
12 plea except there's some sort of generally a benefit  
13 that's involved with the *Alford* plea, as in this is a  
14 good deal and I'm gonna take it.

15 Q. Right.

16 A. And that's generally how I explain it to them,  
17 but I do always tell them that, you know, in regards to  
18 a no contest plea or an *Alford* plea that it's still  
19 being treated as a, as a guilty plea.

20 Q. Okay. So he knew it was going to be treated as a  
21 guilty plea if he entered it under *Alford*?

22 A. That's what I told him. That's what I told him.  
23 Now, whether or not, you know, he fully understood, I  
24 mean, is my -- I thought at the time that he understood.

25 Q. Right. And in regards to the benefit you

1 discussed under the terms of *Alford*, what did you talk  
2 to him about in regards to the benefit in this case in  
3 pleading under that?

4 A. If I'm not mistaken, I believe the bank robbery  
5 charge and the armed robbery, they -- that they were to  
6 run concurrent.

7 Q. Right.

8 A. They know it was it. I'm not 100 percent sure,  
9 but I know some of the charges or one of the charges  
10 that was indicated that Solicitor Barnette had mentioned  
11 or had put in there about running concurrent. So that  
12 way it took out the possibility of something being run  
13 consecutive.

14 Q. And after your discussion with him you believed  
15 he understood what *Alford* was, correct?

16 A. Yes, I believe so.

17 Q. Okay. And during the plea hearing did he ever  
18 indicate to you all for the record that he didn't  
19 understand what *Alford* was?

20 A. No.

21 Q. Okay. And so throughout the course of the plea  
22 hearing after you discussed it on the record you  
23 believed he knew what *Alford* was, correct?

24 A. Correct.

25 Q. Okay. And after he ended up pleading guilty

1 under *Alford*, he has alleged that there was no advice  
2 about the right to appeal. Did you just have any  
3 discussions with him about the right to appeal?

4 A. I did.

5 Q. Okay.

6 A. And I -- that is normal practice as well. As I  
7 told the client that he did have the right to appeal  
8 and in this situation. And also could do a Motion to  
9 Reconsider, which that's what he wanted me to do was a  
10 Motion to Reconsider, and I did.

11 Q. You can -- and we can go ahead and talk about  
12 that Motion to Reconsider. What, what motivated you all  
13 to file that initially?

14 A. Well, initially it was because of the amount of  
15 time and just to -- that was really about it, and plus  
16 what we had already argued before during the motion.  
17 But -- cause we filed a motion to, you know, to  
18 reconsider. But after the fact, after that, from  
19 discussions with Solicitor Barnette and his reply that  
20 he was bringing all the witnesses back -- well, the  
21 victims and was gonna be asking for more time. And we  
22 had the discussion. I discussed that with my client.  
23 And at that point decided to withdraw.

24 Q. So you all withdraw based upon the solicitor  
25 saying he was gonna ask for more time and directing to

1 bring in more witnesses to testify, correct?

2 A. Correct. I mean, the solicitor -- I mean, I  
3 don't know if I need to say this or not, but you could  
4 tell he was not real happy with the sentence that was  
5 given. He was, he was mad.

6 Q. So to the best of your knowledge, he was upset  
7 the sentence given was a little bit too light?

8 A. Yes.

9 Q. Okay. And in the course of your discussions  
10 about pleading -- I think we've covered Motion to  
11 Reconsider -- you advise your clients that they have the  
12 right to appeal based upon the issues that have already  
13 occurred, correct?

14 A. Correct.

15 Q. So did you talk to your client about the fact  
16 that he could appeal based upon the plea and the motion  
17 or anything of that nature?

18 A. I just, I just told him he had ten days to  
19 appeal.

20 Q. Okay. And that's your standard practice,  
21 correct?

22 A. That's correct.

23 Q. Did he ever follow up with you about, you know,  
24 about appealing his case?

25 A. No.

1 Q. Okay. So in those ten days he never contacted  
2 you, correct?

3 A. No, he did not.

4 Q. And to the best of your knowledge, the reason his  
5 appeal was denied was based upon untimeliness, correct?

6 A. That's been my understanding, correct.

7 Q. Right. And you would have appealed, had him come  
8 back even in those ten days, correct?

9 A. Yes. Yes. Definitely.

10 Q. Okay. I have no further questions. Please  
11 answer anything from opposing counsel. I appreciate it.

12 THE COURT: Ms. Ross?

13 CROSS-EXAMINATION

14 BY MS. ROSS:

15 Q. Okay. I just had one question. On the Motion to  
16 Reconsider, Barnette made it clear that 20 years was too  
17 light for someone with no prior record and no one was  
18 injured in the incident?

19 A. Well, he didn't come around and say that. But  
20 when he ran -- I'll say ran. He kind of walked really  
21 fast out of the courtroom and some of the victims were  
22 upset. And his response to the Motion to Reconsider, he  
23 definitely wanted to have -- he wanted more time.

24 Q. So when you told Mr. Banner that, he chose to  
25 withdraw the Motion to Reconsider?

1 A. That's our discussions, yes.

2 Q. Now, as far as the pro se appeal being untimely,  
3 do you know whether the Motion to Reconsider interfered  
4 at all with that timing one way or the other?

5 A. I don't know.

6 Q. Now, just going to you said you did discuss with  
7 Mr. Banner his right to appeal. When he pled, did you  
8 discuss whether he was waiving that right by his guilty  
9 plea to appeal the ruling on the pretrial Motion to  
10 Suppress the evidence?

11 A. Well, when I did tell him -- I mean, when you go  
12 through everything about pleading is that you're giving  
13 up your rights. And, you know, when you plead guilty,  
14 you know, you give up all your rights. There's no  
15 rights. We go through that. And then I don't think we  
16 ever really -- I don't think I had a specific discussion  
17 with him about waiving his rights to appeal --

18 Q. Okay.

19 A. -- the pretrial motion.

20 Q. Now, did you think the pretrial motion was a  
21 strong one? Did you think you had a good argument?

22 A. I did, yes.

23 Q. And just, I know -- I believe you couched it on a  
24 Fourth Amendment U.S. Constitutional claim, but you  
25 didn't mention South Carolina Article ---

1 A. No, I did not bring that up.

2 Q. Okay. And just going back, you were retained,  
3 correct?

4 A. Correct.

5 Q. And were there any plea offers given in the case?

6 A. Yeah, there was a plea offer. It was basically a  
7 straight-up plea. I have it in my notes, but it was --  
8 I think the only thing that was being offered was there  
9 was a bank robbery and another charge were gonna be run  
10 concurrent, but everything else to plead straight up.

11 Q. Okay. So it was no better than what --

12 A. There wasn't ---

13 Q. -- he ended up getting.

14 A. There wasn't, to me it wasn't like really no plea  
15 offer at all.

16 Q. Okay. Okay, I have no further questions.

17 MR. ISENBERG: I have nothing.

18 MS. ROSS: Beg the Court's indulgence. Let me  
19 just ask Mr. Banner. Okay, nothing further.

20 THE COURT: All right. You may come down. Thank  
21 you.

22 THE WITNESS: Thank you.

23 (Witness leaves witness stand.)

24 MR. ISENBERG: We'd just ask that the witness be  
25 excused, Your Honor.

1 MS. ROSS: No objection.

2 THE COURT: Without objection, you're excused.

3 THE WITNESS: Thank you.

4 (Witness leaves courtroom.)

5 THE COURT: Any argument?

6 MR. ISENBERG: Yes, Your Honor. And as I've been  
7 doing all week, I'll let Ms. Ross go first if she wishes  
8 or...

9 FINAL ARGUMENT

10 MS. ROSS: Judge, I'd just ask that we just  
11 printed out these copies and it's got some notes that  
12 you're welcome to ignore or you can look up the cases  
13 yourself. This is the Dover v. State and Cole v. State  
14 that I mentioned earlier.

15 THE COURT: Okay.

16 MS. ROSS: Cole v. State goes to the issue it is  
17 a strong suppression argument. Counsel believes that's  
18 strong, it needs to be preserved for appeal in the best  
19 interest of the client. And I'll just let you take a  
20 look at that case for what it's worth. And then, again,  
21 I'd argue that it needs to be brought out there in the  
22 hearing, the getting up appealed rights.

23 The judge did not specifically state that in the  
24 plea colloquy, that he would be, Genuine Truth Banner,  
25 would be essentially giving up that right to appeal the

1 suppression hearing ruling if he pled. And here the  
2 testimony of the trial attorney was he didn't recall  
3 specifically addressing that issue either, though he did  
4 say that he said he'd give up his rights, he didn't  
5 specifically say his right to appeal, especially given,  
6 while Mr. Banner had shown a good legal mind, he's from  
7 another state where conditional pleas exist. So it  
8 would not be unreasonable for him to believe that there  
9 could be a conditional plea, like in the federal system  
10 where you have a suppression hearing and then that's  
11 preserved and then you plead and then you can go ahead  
12 and appeal that issue.

13 As far as not appealing in a timely manner, he's  
14 addressed that, that he ---

15 THE COURT: He didn't know that at the time, did  
16 he?

17 MS. ROSS: What?

18 THE COURT: That he could enter into a condition  
19 -- or he didn't believe at the time he could enter into  
20 a conditional plea.

21 MS. ROSS: Well, I think his testimony during the  
22 hearing ---

23 THE COURT: He knows it now.

24 MS. ROSS: Right. I thought his testimony was  
25 that he didn't understand that he was waiving his right

1 to preserve the issues for appeal when he pled. That  
2 was my understanding.

3 THE COURT: I wonder where he would have gotten  
4 that knowledge at the time he made the decision? It's  
5 not in the record.

6 MS. ROSS: Okay. I guess I didn't. My  
7 understanding of what is in the record is that Mr.  
8 Banner felt that he did not realize that his plea of  
9 guilty was waiving his right to appeal the issue of the  
10 suppression hearing.

11 THE COURT: The decision of the --

12 MS. ROSS: Right.

13 THE COURT: -- suppression hearing.

14 MS. ROSS: Yes.

15 THE COURT: Okay.

16 MS. ROSS: And then I'd go back to what I put in  
17 the amended application as far as argument, and that  
18 would be our argument in the case.

19 THE COURT: All right. The State's position, Mr.  
20 Isenberg?

21 FINAL ARGUMENT

22 MR. ISENBERG: Your Honor, the State's position  
23 is essentially that you can tell from the testimony from  
24 the applicant, Mr. Banner, that he's an extremely  
25 intelligent individual. I will not go through every

1 single argument. And I will be blunt in the fact that I  
2 believe that his intention is to go back to trial based  
3 upon the decision that came out after the fact in  
4 *Collins*.

5 He testified to that during cross-examination  
6 that he wanted to go back to trial because he felt very  
7 positive about the decision in *Collins* and how it was  
8 similar to his case and how it would be beneficial to  
9 his case. And for that reason I do think that he  
10 obviously ---

11 THE COURT: Wouldn't that be an ineffective  
12 assistance of counsel claim that his attorney didn't  
13 bring that to the Court's attention and request some  
14 sort of a continuance based on the pending *Collins*  
15 decision? Couldn't that be an ineffective claim?  
16 Whether it's viable or not, I don't know.

17 MR. ISENBERG: Your Honor, he has alleged a  
18 failure to request a continuance to wait for the ruling  
19 in *Collins*.

20 THE COURT: Oh, he has?

21 MR. ISENBERG: His attorney testified that he --  
22 they'd already gotten a continuance. I'll try to speak  
23 slow, I'm sorry.

24 THE COURT: No, you did. You did.

25 MR. ISENBERG: He had already got a continuance.

1 He already ---

2 THE COURT: And stated he could move forward.

3 MR. ISENBERG: Correct. And he felt he had  
4 sufficient case law. And he didn't feel like he could  
5 make an argument to the court to wait for an indefinite,  
6 you know, ruling on a Supreme Court case. And obviously  
7 this case was decided by four or five months after the  
8 plea hearing --

9 THE COURT: Right.

10 MR. ISENBERG: -- I believe. And, as I said, I  
11 think that's the heart of the issue in all of this. And  
12 as I said, the attorney doesn't have a crystal ball. He  
13 doesn't have an outcome in what's gonna be decided. He  
14 doesn't know whether it's gonna go one way or the other.

15 And I don't believe it would be appropriate, and  
16 I don't believe it's sufficient to argue for ineffective  
17 assistance of counsel or involuntary plea because you  
18 found out a case that would have been favorable to you  
19 came out after, far after you decide to plead guilty.

20 And for that, and for that reason we would ask  
21 that this application be dismissed with prejudiced.

22 THE COURT: All right, thank you. Any special  
23 requests about this?

24 MR. ISENBERG: Just, please let me get the  
25 transcript and I'll e-mail you.

1 THE COURT: Same thing?

2 MR. ISENBERG: Yes, Your Honor.

3 THE COURT: All right.

4 MS. ROSS: Can I ask, if you get it ---

5 MR. ISENBERG: I'll send it to you.

6 MS. ROSS: That would be perfect. Thank you.

7 MR. ISENBERG: Yeah, no problem.

8 THE COURT: All right. Let me make a note of  
9 that.

10 MR. ISENBERG: Your Honor, I can e-mail you a  
11 summarization of all the dates of the decisions of the  
12 requests for proposed orders and these ---

13 THE COURT: These are the first two that you  
14 requested a transcript?

15 MR. ISENBERG: Yes, Your Honor. And I've got for  
16 yesterday's decisions, I've got they were viewed  
17 November the 8th.

18 THE COURT: We've got them?

19 MR. ISENBERG: Your Honor?

20 THE COURT: We're keeping up with it.

21 MR. ISENBERG: Okay.

22 MS. ROSS: Judge, I have a murder trial November  
23 4th, that week. I'm gonna try to get them all done  
24 before then but I might be -- I'm gonna do my best. And  
25 I'll write everybody if something comes up.

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(Hearing concluded at 2:07 p.m.)

--- THIS ENDS REQUESTED TRANSCRIPT ---

## 1 COURT REPORTER CERTIFICATE

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I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 10th day of October, 2019.

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

s/Julie A. Cendroski  
Julie A. Cendroski  
Circuit Court Reporter  
Seventh Judicial Circuit

**138 S.Ct. 1663  
201 L.Ed.2d 9**

**Ryan Austin COLLINS, Petitioner  
v.  
VIRGINIA.**

**No. 16-1027.**

**Supreme Court of the United States**

**Argued Jan. 9, 2018.  
Decided May 29, 2018.**

**Summaries:Source: Justia**

While investigating traffic incidents involving an orange and black motorcycle with an extended frame, Officer Rhodes learned that the motorcycle likely was stolen and in Collins' possession. On Collins' Facebook profile, Rhodes discovered photographs of an orange and black motorcycle parked in the driveway of a house. From the street, Rhodes could see what appeared to be the motorcycle under a tarp, in the location shown in the photograph. Without a search warrant, Rhodes walked up the driveway, removed the tarp, confirmed that the motorcycle was stolen by running the license plate and vehicle identification numbers, replaced the tarp, and returned to his car to wait. When Collins returned, Rhodes arrested him. The Virginia Supreme Court affirmed the denial of a motion to suppress, citing the Fourth Amendment's automobile exception. The Supreme Court reversed. The automobile exception does not permit the warrantless entry of a home or its curtilage to search a vehicle therein. Curtilage, the area immediately surrounding and associated with the home, is part of the home for Fourth Amendment purposes. When an officer physically intrudes on the curtilage to gather evidence, a Fourth Amendment search has occurred and is presumptively unreasonable absent a warrant. The part of the driveway where the motorcycle was parked is curtilage. The scope of the automobile exception extends no further than the automobile itself; its proposed expansion would undervalue the core Fourth Amendment protection afforded to the home and its curtilage and untether the exception from its justifications.

Matthew A. Fitzgerald, Richmond, VA, for Petitioner.

[138 S.Ct. 1668]

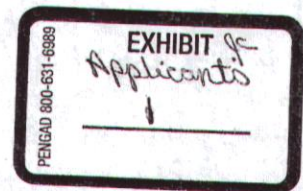
Trevor S. Cox, Acting Solicitor General, for Respondent.

Charles L. Weber, Jr., Attorney at Law, Charlottesville, VA, Matthew A. Fitzgerald, Brian D. Schmalzbach, Travis C. Gunn, McGuireWoods LLP, Richmond, VA, for Petitioner.

Mark R. Herring, Attorney General of Virginia, Matthew R. McGuire, Acting Deputy Solicitor General, Christopher P. Schandavel, Assistant Attorney General, Trevor S. Cox, Acting Solicitor General, Office of the Virginia Attorney General, Richmond, VA, for Respondent.

Justice SOTOMAYOR delivered the opinion of the Court.

This case presents the question whether the automobile exception to the Fourth Amendment permits a police officer, uninvited and without a warrant, to enter the curtilage



of a home in order to search a vehicle parked therein. It does not.

I

Officer Matthew McCall of the Albemarle County Police Department in Virginia saw the driver of an orange and black motorcycle with an extended frame commit a traffic infraction. The driver eluded Officer McCall's attempt to stop the motorcycle. A few weeks later, Officer David Rhodes of the same department saw an orange and black motorcycle traveling well over the speed limit, but the driver got away from him, too. The officers compared notes and concluded that the two incidents involved the same motorcyclist.

Upon further investigation, the officers learned that the motorcycle likely was stolen and in the possession of petitioner Ryan Collins. After discovering photographs on Collins' Facebook profile that featured an orange and black motorcycle parked at the top of the driveway of a house, Officer Rhodes tracked down the address of the house, drove there, and parked on the street. It was later established that Collins' girlfriend lived in the house and that Collins stayed there a few nights per week.<sup>1</sup>

From his parked position on the street, Officer Rhodes saw what appeared to be a motorcycle with an extended frame covered with a white tarp, parked at the same angle and in the same location on the driveway as in the Facebook photograph. Officer Rhodes, who did not have a warrant, exited his car and walked toward the house. He stopped to take a photograph of the covered motorcycle from the sidewalk, and then walked onto the residential property and up to the top of the driveway to where the motorcycle was parked. In order "to investigate further," App. 80, Officer Rhodes pulled off the tarp, revealing a motorcycle that looked like the one from the speeding incident. He then ran a search of the license plate and vehicle identification numbers, which confirmed that the motorcycle was stolen. After gathering this information, Officer Rhodes took a photograph of the uncovered motorcycle, put the tarp back on, left the property, and returned to his car to wait for Collins.

Shortly thereafter, Collins returned home. Officer Rhodes walked up to the front door of the house and knocked. Collins answered, agreed to speak with Officer Rhodes, and admitted that the motorcycle

[138 S.Ct. 1669]

was his and that he had bought it without title. Officer Rhodes then arrested Collins.

Collins was indicted by a Virginia grand jury for receiving stolen property. He filed a pretrial motion to suppress the evidence that Officer Rhodes had obtained as a result of the warrantless search of the motorcycle. Collins argued that Officer Rhodes had trespassed on the curtilage of the house to conduct an investigation in violation of the Fourth Amendment. The trial court denied the motion and Collins was convicted.

The Court of Appeals of Virginia affirmed. It assumed that the motorcycle was parked in the curtilage of the home and held that Officer Rhodes had probable cause to believe that the motorcycle under the tarp was the same motorcycle that had evaded him in the past. It further concluded that Officer Rhodes' actions were lawful under the Fourth Amendment even absent a warrant because "numerous exigencies justified both his entry onto the property and his moving the tarp to view the motorcycle and record its identification number." 65 Va.App. 37, 46, 773 S.E.2d 618, 623 (2015).

The Supreme Court of Virginia affirmed on different reasoning. It explained that the case was most properly resolved with reference to the Fourth Amendment's automobile

210  
 exception. 292 Va. 486, 496–501, 790 S.E.2d 611, 616–618 (2016). Under that framework, it held that Officer Rhodes had probable cause to believe that the motorcycle was contraband, and that the warrantless search therefore was justified. *Id.*, at 498–499, 790 S.E.2d, at 617.

We granted certiorari, 582 U.S. ----, 138 S.Ct. 53, 198 L.Ed.2d 780 (2017), and now reverse.

## II

The Fourth Amendment provides in relevant part that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." This case arises at the intersection of two components of the Court's Fourth Amendment jurisprudence: the automobile exception to the warrant requirement and the protection extended to the curtilage of a home.

### A

#### 1

The Court has held that the search of an automobile can be reasonable without a warrant. The Court first articulated the so-called automobile exception in *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). In that case, law enforcement officers had probable cause to believe that a car they observed traveling on the road contained illegal liquor. They stopped and searched the car, discovered and seized the illegal liquor, and arrested the occupants. *Id.*, at 134–136, 45 S.Ct. 280. The Court upheld the warrantless search and seizure, explaining that a "necessary difference" exists between searching "a store, dwelling house or other structure" and searching "a ship, motor boat, wagon or automobile" because a "vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.*, at 153, 45 S.Ct. 280.

The "ready mobility" of vehicles served as the core justification for the automobile exception for many years. *California v. Carney*, 471 U.S. 386, 390, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985) (citing, e.g., *Cooper v. California*, 386 U.S. 58, 59, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967); *Chambers v. Maroney*, 399 U.S. 42, 51–52, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970)). Later

[138 S.Ct. 1670]

cases then introduced an additional rationale based on "the pervasive regulation of vehicles capable of traveling on the public highways." *Carney*, 471 U.S., at 392, 105 S.Ct. 2066. As the Court explained in *South Dakota v. Opperman*, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976) :

"Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order." *Id.*, at 368, 96 S.Ct. 3092.

In announcing each of these two justifications, the Court took care to emphasize that the rationales applied only to automobiles and not to houses, and therefore supported "treating automobiles differently from houses" as a constitutional matter. *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973).

When these justifications for the automobile exception "come into play," officers may search an automobile without having obtained a warrant so long as they have probable cause to do so. *Carney*, 471 U.S., at 392-393, 105 S.Ct. 2066.

2

Like the automobile exception, the Fourth Amendment's protection of curtilage has long been black letter law. "[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013). "At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Ibid.* (quoting *Silverman v. United States*, 365 U.S. 505, 511, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961)). To give full practical effect to that right, the Court considers curtilage—"the area 'immediately surrounding and associated with the home'"—to be "'part of the home itself for Fourth Amendment purposes.'" *Jardines*, 569 U.S., at 6, 133 S.Ct. 1409 (quoting *Oliver v. United States*, 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984)). "The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened." *California v. Ciraolo*, 476 U.S. 207, 212-213, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986).

When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. *Jardines*, 569 U.S., at 11, 133 S.Ct. 1409. Such conduct thus is presumptively unreasonable absent a warrant.

B

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With this background in mind, we turn to the application of these doctrines in the instant case. As an initial matter, we decide whether the part of the driveway where Collins' motorcycle was parked and subsequently searched is curtilage.

According to photographs in the record, the driveway runs alongside the front lawn and up a few yards past the front perimeter of the house. The top portion of the driveway that sits behind the front perimeter of the house is enclosed on two sides by a brick wall about the height of a car and on a third side by the house. A side

[138 S.Ct. 1671]

door provides direct access between this partially enclosed section of the driveway and the house. A visitor endeavoring to reach the front door of the house would have to walk partway up the driveway, but would turn off before entering the enclosure and instead proceed up a set of steps leading to the front porch. When Officer Rhodes searched the motorcycle, it was parked inside this partially enclosed top portion of the driveway that abuts the house.

The "'conception defining the curtilage' is ... familiar enough that it is 'easily understood from our daily experience.'" *Jardines*, 569 U.S., at 7, 133 S.Ct. 1409 (quoting *Oliver*, 466 U.S., at 182, n. 12, 104 S.Ct. 1735). Just like the front porch, side garden, or area "outside the front window," *Jardines*, 569 U.S., at 6, 133 S.Ct. 1409, the driveway enclosure where Officer Rhodes searched the motorcycle constitutes "an area adjacent to the home and 'to which the activity of home life extends,'" and so is properly considered curtilage, *id.*, at 7, 133 S.Ct. 1409 (quoting *Oliver*, 466 U.S., at 182, n. 12, 104 S.Ct. 1735).

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States v. Reed, 572 F.2d 412, 423 (C.A.2 1978) ). Likewise, searching a vehicle parked in the curtilage involves not only the invasion of the Fourth Amendment interest in the vehicle but also an invasion of the sanctity of the curtilage.

Just as an officer must have a lawful right of access to any contraband he discovers in plain view in order to seize it without a warrant, and just as an officer must have a lawful right of access in order to arrest a person in his home, so, too, an officer must have a lawful right of access to a vehicle in order to search it pursuant to the automobile exception. The automobile exception does not afford the necessary lawful right of access to search a vehicle parked within a home or its curtilage because it does not justify an intrusion on a person's separate and substantial Fourth Amendment interest in his home and curtilage.

As noted, the rationales underlying the automobile exception are specific to the nature of a vehicle and the ways in which it is distinct from a house. See Part II-A-1, *supra* . The rationales thus take account only of the balance between the intrusion on an individual's Fourth Amendment interest in his vehicle and the governmental interests in an expedient search of that vehicle; they do not account for the distinct privacy interest in one's home or curtilage. To allow an officer to rely on the automobile exception to gain entry into a house or its curtilage for the purpose of conducting a vehicle search would unmoor the exception from its justifications, render hollow the core Fourth Amendment protection the Constitution extends to the house and its curtilage, and transform

[138 S.Ct. 1673]

what was meant to be an exception into a tool with far broader application. Indeed, its name alone should make all this clear enough: It is, after all, an exception for automobiles.<sup>3</sup>

Given the centrality of the Fourth Amendment interest in the home and its curtilage and the disconnect between that interest and the justifications behind the automobile exception, we decline Virginia's invitation to extend the automobile exception to permit a warrantless intrusion on a home or its curtilage.

### III

#### A

Virginia argues that this Court's precedent indicates that the automobile exception is a categorical one that permits the warrantless search of a vehicle anytime, anywhere, including in a home or curtilage. Specifically, Virginia points to two decisions that it contends resolve this case in its favor. Neither is dispositive or persuasive.

First, Virginia invokes Scher v. United States, 305 U.S. 251, 59 S.Ct. 174, 83 L.Ed. 151 (1938). In that case, federal officers received a confidential tip that a particular car would be transporting bootleg liquor at a specified time and place. The officers identified and followed the car until the driver "turned into a garage a few feet back of his residence and within the curtilage." *Id.*, at 253, 59 S.Ct. 174. As the driver exited his car, an officer approached

[138 S.Ct. 1674]

and stated that he had been informed that the car was carrying contraband. The driver acknowledged that there was liquor in the trunk, and the officer proceeded to open the trunk, find the liquor, arrest the driver, and seize both the car and the liquor. *Id.*, at 253-254, 59 S.Ct. 174. Although the officer did not have a search warrant, the Court upheld the officer's actions as reasonable. *Id.*, at 255, 59 S.Ct. 174.

214  
*Scher* is inapposite. Whereas Collins' motorcycle was parked and unattended when Officer Rhodes intruded on the curtilage to search it, the officers in *Scher* first encountered the vehicle when it was being driven on public streets, approached the curtilage of the home only when the driver turned into the garage, and searched the vehicle only after the driver admitted that it contained contraband. *Scher* by no means established a general rule that the automobile exception permits officers to enter a home or its curtilage absent a warrant. The Court's brief analysis referenced *Carroll*, but only in the context of observing that, consistent with that case, the "officers properly could have stopped" and searched the car "just before [petitioner] entered the garage," a proposition the petitioner did "not seriously controvert." *Scher*, 305 U.S., at 254-255, 59 S.Ct. 174. The Court then explained that the officers did not lose their ability to stop and search the car when it entered "the open garage closely followed by the observing officer" because "[n]o search was made of the garage." *Id.*, at 255, 59 S.Ct. 174. It emphasized that "[e]xamination of the automobile accompanied an arrest, without objection and upon admission of probable guilt," and cited two search-incident-to-arrest cases. *Ibid.* (citing *Agnello v. United States*, 269 U.S. 20, 30, 46 S.Ct. 4, 70 L.Ed. 145 (1925); *Wisniewski v. United States*, 47 F.2d 825, 826 (C.A.6 1931)). *Scher*'s reasoning thus was both case specific and imprecise, sounding in multiple doctrines, particularly, and perhaps most appropriately, hot pursuit. The decision is best regarded as a factbound one, and it certainly does not control this case.

Second, Virginia points to *Labron*, 518 U.S. 938, 116 S.Ct. 2485, where the Court upheld under the automobile exception the warrantless search of an individual's pickup truck that was parked in the driveway of his father-in-law's farmhouse. *Id.*, at 939-940, 116 S.Ct. 2485; *Commonwealth v. Kilgore*, 544 Pa. 439, 444, 677 A.2d 311, 313 (1995). But *Labron* provides scant support for Virginia's position. Unlike in this case, there was no indication that the individual who owned the truck in *Labron* had any Fourth Amendment interest in the farmhouse or its driveway, nor was there a determination that the driveway was curtilage.

## B

Alternatively, Virginia urges the Court to adopt a more limited rule regarding the intersection of the automobile exception and the protection afforded to curtilage. Virginia would prefer that the Court draw a bright line and hold that the automobile exception does not permit warrantless entry into "the physical threshold of a house or a similar fixed, enclosed structure inside the curtilage like a garage." Brief for Respondent 46. Requiring officers to make "case-by-case curtilage determinations," Virginia reasons, unnecessarily complicates matters and "raises the potential for confusion and ... error." *Id.*, at 46-47 (internal quotation marks omitted).

The Court, though, has long been clear that curtilage is afforded constitutional protection. See *Oliver*, 466 U.S., at 180, 104 S.Ct. 1735. As a result, officers regularly assess whether an area is curtilage

[138 S.Ct. 1675]

before executing a search. Virginia provides no reason to conclude that this practice has proved to be unadministrable, either generally or in this context. Moreover, creating a carveout to the general rule that curtilage receives Fourth Amendment protection, such that certain types of curtilage would receive Fourth Amendment protection only for some purposes but not for others, seems far more likely to create confusion than does uniform application of the Court's doctrine.

In addition, Virginia's proposed rule rests on a mistaken premise about the constitutional significance of visibility. The ability to observe inside curtilage from a lawful vantage point is

not the same as the right to enter curtilage without a warrant for the purpose of conducting a search to obtain information not otherwise accessible. Cf. *Ciraolo*, 476 U.S., at 213–214, 106 S.Ct. 1809 (holding that "physically nonintrusive" warrantless aerial observation of the curtilage of a home did not violate the Fourth Amendment, and could form the basis for probable cause to support a warrant to search the curtilage). So long as it is curtilage, a parking patio or carport into which an officer can see from the street is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage.

Finally, Virginia's proposed bright-line rule automatically would grant constitutional rights to those persons with the financial means to afford residences with garages in which to store their vehicles but deprive those persons without such resources of any individualized consideration as to whether the areas in which they store their vehicles qualify as curtilage. See *United States v. Ross*, 456 U.S. 798, 822, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982). ("[T]he most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion").

#### IV

For the foregoing reasons, we conclude that the automobile exception does not permit an officer without a warrant to enter a home or its curtilage in order to search a vehicle therein. We leave for resolution on remand whether Officer Rhodes' warrantless intrusion on the curtilage of Collins' house may have been reasonable on a different basis, such as the exigent circumstances exception to the warrant requirement. The judgment of the Supreme Court of Virginia is therefore reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*

Justice THOMAS, concurring.

I join the Court's opinion because it correctly resolves the Fourth Amendment question in this case. Notably, the only reason that Collins asked us to review this question is because, if he can prove a violation of the Fourth Amendment, our precedents require the Virginia courts to apply the exclusionary rule and potentially suppress the incriminating evidence against him. I write separately because I have serious doubts about this Court's authority to impose that rule on the States. The assumption that state courts must apply the federal exclusionary rule is legally dubious, and many jurists have complained that it encourages "distort[ions]" in substantive Fourth Amendment law, *Rakas v. Illinois*, 439 U.S. 128, 157, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978) (White, J., dissenting); see also *Coolidge v. New Hampshire*, 403 U.S. 443, 490, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) (Harlan, J., concurring); Calabresi, *The Exclusionary Rule*, 26 Harv. J.L. & Pub. Pol'y 111, 112 (2003).

[138 S.Ct. 1676]

The Fourth Amendment, as relevant here, protects the people from "unreasonable searches" of "their ... houses." As a general rule, warrantless searches of the curtilage violate this command. At the founding, curtilage was considered part of the "hous[e]" itself. See 4 W. Blackstone, *Commentaries on the Laws of England* 225 (1769) ("[T]he capital house protects and privileges all its branches and appurtenants, if within the curtilage"). And except in circumstances not present here, house searches required a specific warrant. See W. Cuddihy, *The Fourth Amendment: Origins and Original Meaning* 602–1791, p. 743 (2009) (Cuddihy); Donahue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1237–1240 (2016); Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 643–646 (1999). A warrant was required even if the house was being searched for stolen goods or contraband—objects that, unlike cars, are not protected by the Fourth Amendment at all.

*Id.*, at 647-650; see also Carroll v. United States, 267 U.S. 132, 150-152, 45 S.Ct. 280, 69 L.Ed. 543 (1925) (Taft, C.J.) (discussing founding-era evidence that a search warrant was required when stolen goods and contraband were "concealed in a dwelling house" but not when they were "in course of transportation and concealed in a movable vessel"). Accordingly, the police acted "unreasonabl [y]" when they searched the curtilage of Collins' house without a warrant.<sup>1</sup>

While those who ratified the Fourth and Fourteenth Amendments would agree that a constitutional violation occurred here, they would be deeply confused about the posture of this case and the remedy that Collins is seeking. Historically, the only remedies for unconstitutional searches and seizures were "tort suits" and "self-help." Utah v. Strieff, 579 U.S. ----, ----, 136 S.Ct. 2056 2061, 195 L.Ed.2d 400 (2016). The exclusionary rule—the practice of deterring illegal searches and seizures by suppressing evidence at criminal trials—did not exist. No such rule existed in "Roman Law, Napoleonic Law or even the Common Law of England." Burger, Who Will Watch the Watchman? 14 Am. U.L. Rev. 1 (1964). And this Court did not adopt the federal exclusionary rule until the 20th century. See Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914). As late as 1949, nearly two-thirds of the States did not have an exclusionary rule. See Wolf v. Colorado, 338 U.S. 25, 29, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949). Those States, as then-Judge Cardozo famously explained, did not understand the logic of a rule that allowed "[t]he criminal ... to go free because the constable has blundered." People v. Defore, 242 N.Y. 13, 21, 150 N.E. 585, 587 (1926).

The Founders would not have understood the logic of the exclusionary rule either. Historically, if evidence was relevant and reliable, its admissibility did not "depend upon the lawfulness or unlawfulness of the mode, by which it [was] obtained." United States v. The La Jeune Eugenie, 26 F.Cas. 832, 843 (No. 15, 551) (C.C.D.Mass.1822) (Story, J.); accord, 1 S. Greenleaf, Evidence § 254a, pp. 825-826 (14th ed. 1883) ("[T]hat ... subjects of evidence may have been ... unlawfully obtained ... is no valid objection to their admissibility if they are pertinent to the issue"); 4 J. Wigmore, Evidence § 2183, p. 626 (2d ed. 1923) ("[I]t has long been established that the admissibility of evidence is not affected by the illegality of the

[138 S.Ct. 1677]

means through which the party has been enabled to obtain the evidence" (emphasis deleted)). And the common law sometimes reflected the inverse of the exclusionary rule: The fact that someone turned out to be guilty could justify an illegal seizure. See Gelston v. Hoyt, 3 Wheat. 246, 310, 4 L.Ed. 381 (1818) (Story, J.) ("At common law, any person may at his peril, seize for a forfeiture to the government; and if the government adopt his seizure, and the property is condemned, he will be completely justified"); 2 W. Hawkins, Pleas of the Crown 77 (1721) ("And where a Man arrests another, who is actually guilty of the Crime for which he is arrested, ... he needs not in justifying it, set forth any special Cause of his Suspicion").

Despite this history, the Court concluded in Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), that the States must apply the federal exclusionary rule in their own courts. *Id.*, at 655, 81 S.Ct. 1684.<sup>2</sup> Mapp suggested that the exclusionary rule was required by the Constitution itself. See, e.g., *id.*, at 657, 81 S.Ct. 1684 ("[T]he exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments"); *id.*, at 655, 81 S.Ct. 1684 ("[E]vidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court"); *id.*, at 655-656, 81 S.Ct. 1684 ("[I]t was ... constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon").<sup>3</sup> But that suggestion could not withstand even the slightest scrutiny. The exclusionary rule appears nowhere in the Constitution, postdates the

217  
 founding by more than a century, and contradicts several longstanding principles of the common law. See *supra*, at 1676 – 1677; Cuddihy 759–760; Amar, Fourth Amendment First Principles, 107 Harv. L. Rev. 757, 786 (1994) ; Kaplan, The Limits of the Exclusionary Rule, 26 Stan. L. Rev. 1027, 1030–1031 (1974).

Recognizing this, the Court has since rejected *Mapp*'s "[e]xpansive dicta" and clarified that the exclusionary rule is not required by the Constitution. *Davis v. United States*, 564 U.S. 229, 237, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011) (quoting *Hudson v. Michigan*, 547 U.S. 586, 591, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006) ). Suppression, this Court has explained, is not "a personal constitutional right." *United States v. Calandra*, 414 U.S. 338, 348, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974) ; accord,

[138 S.Ct. 1678]

*Stone v. Powell*, 428 U.S. 465, 486, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976). The Fourth Amendment "says nothing about suppressing evidence," *Davis, supra*, at 236, 131 S.Ct. 2419, and a prosecutor's "use of fruits of a past unlawful search or seizure 'work[s] no new Fourth Amendment wrong,'" *United States v. Leon*, 468 U.S. 897, 906, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) (quoting *Calandra, supra*, at 354, 94 S.Ct. 613 ).<sup>4</sup> Instead, the exclusionary rule is a "judicially created" doctrine that is "prudential rather than constitutionally mandated." *Pennsylvania Bd. of Probation and Parole v. Scott*, 524 U.S. 357, 363, 118 S.Ct. 2014, 141 L.Ed.2d 344 (1998) ; accord, *Herring v. United States*, 555 U.S. 135, 139, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009) ; *Arizona v. Evans*, 514 U.S. 1, 10, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995) ; *United States v. Janis*, 428 U.S. 433, 459–460, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976).<sup>5</sup>

Although the exclusionary rule is not part of the Constitution, this Court has continued to describe it as "federal law" and assume that it applies to the States. *Evans, supra* ; *Massachusetts v. Sheppard*, 468 U.S. 981, 991, 104 S.Ct. 3424, 82 L.Ed.2d 737 (1984). Yet the Court has never attempted to justify this assumption. If the exclusionary rule is federal law, but is not grounded in the Constitution or a federal statute, then it must be federal common law. See Monaghan, Foreword: Constitutional Common Law, 89 Harv. L. Rev. 1, 10 (1975). As federal common law, however, the exclusionary rule cannot bind the States.

Federal law trumps state law only by virtue of the Supremacy Clause, which makes the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties ... the supreme Law of the Land," Art. VI, cl. 2. When the Supremacy Clause refers to "[t]he Laws of the United States made in Pursuance [of the Constitution]," it means federal statutes, not federal common law. Ramsey, The Supremacy Clause, Original Meaning, and Modern Law, 74 Ohio St. L.J. 559, 572–599 (2013) (Ramsey); Clark, Separation of Powers as a Safeguard of Federalism, 79 Texas L. Rev. 1321, 1334–1336, 1338–1367 (2001) (Clark); see also

[138 S.Ct. 1679]

*Gibbons v. Ogden*, 9 Wheat. 1, 211, 6 L.Ed. 23 (1824) (Marshall, C.J.) ("The appropriate application of that part of the clause which confers ... supremacy on laws ... is to ... the laws of Congress, made in pursuance of the constitution"); Hart, The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 500 (1954) ( "[T]he supremacy clause is limited to those 'Laws' of the United States which are passed by Congress pursuant to the Constitution"). By referencing laws "made in Pursuance" of the Constitution, the Supremacy Clause incorporates the requirements of Article I, which force Congress to stay within its enumerated powers, § 8, and follow the cumbersome procedures for enacting federal legislation, § 7. See *Wyeth v. Levine*, 555 U.S. 555, 585–587, 129 S.Ct. 1187, 173 L.Ed.2d 51 (2009) (THOMAS, J., concurring in judgment); 3 J. Story, Commentaries on the



In sum, I am skeptical of this Court's authority to impose the exclusionary rule on the States. We have not yet revisited that question in light of our modern precedents, which reject *Mapp*'s essential premise that the exclusionary rule is required by the Constitution. We should do so.

Justice ALITO, dissenting.

The Fourth Amendment prohibits "unreasonable" searches. What the police did in this case was entirely reasonable. The Court's decision is not.

On the day in question, Officer David Rhodes was standing at the curb of a house where petitioner, Ryan Austin Collins, stayed a couple of nights a week with his girlfriend. From his vantage point on the street, Rhodes saw an object covered with a tarp in the driveway, just a car's length or two from the curb. It is undisputed that Rhodes had probable cause to believe that the object under the tarp was a motorcycle that had been involved a few months earlier in a dangerous highway chase, eluding the police at speeds in excess of 140 mph. See Tr. of Oral Arg. 22; App. to Pet. for Cert. 67. Rhodes also had probable cause to believe that petitioner had been operating the motorcycle<sup>1</sup> and that a search of the motorcycle would provide

[138 S.Ct. 1681]

evidence that the motorcycle had been stolen.<sup>2</sup>

If the motorcycle had been parked at the curb, instead of in the driveway, it is undisputed that Rhodes could have searched it without obtaining a warrant. See Tr. of Oral Arg. 9; Reply Brief 1. Nearly a century ago, this Court held that officers with probable cause may search a motor vehicle without obtaining a warrant. *Carroll v. United States*, 267 U.S. 132, 153, 155–156, 45 S.Ct. 280, 69 L.Ed. 543 (1925). The principal rationale for this so-called automobile or motor-vehicle exception to the warrant requirement is the risk that the vehicle will be moved during the time it takes to obtain a warrant. *Id.*, at 153, 45 S.Ct. 280; *California v. Carney*, 471 U.S. 386, 390–391, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985). We have also observed that the owner of an automobile has a diminished expectation of privacy in its contents. *Id.*, at 391–393, 105 S.Ct. 2066.

So why does the Court come to the conclusion that Officer Rhodes needed a warrant in this case? Because, in order to reach the motorcycle, he had to walk 30 feet or so up the driveway of the house rented by petitioner's girlfriend, and by doing that, Rhodes invaded the home's "curtilage." *Ante*, at 1678 – 1679. The Court does not dispute that the motorcycle, when parked in the driveway, was just as mobile as it would have been had it been parked at the curb. Nor does the Court claim that Officer Rhodes's short walk up the driveway did petitioner or his girlfriend any harm. Rhodes did not damage any property or observe anything along the way that he could not have seen from the street. But, the Court insists, Rhodes could not enter the driveway without a warrant, and therefore his search of the motorcycle was unreasonable and the evidence obtained in that search must be suppressed.

An ordinary person of common sense would react to the Court's decision the way Mr. Bumble famously responded when told about a legal rule that did not comport with the reality of everyday life. If that is the law, he exclaimed, "the law is a ass—a idiot." C. Dickens, *Oliver Twist* 277 (1867).

The Fourth Amendment is neither an "ass" nor an "idiot." Its hallmark is reasonableness, and the Court's strikingly unreasonable decision is based on a misunderstanding of Fourth Amendment basics.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects." A "house," for Fourth Amendment purposes, is not limited to the structure in which a person lives, but by the same token, it also does not include all the real property surrounding a dwelling. See, e.g., Florida v. Jardines, 569 U.S. 1, 6, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013); United States v. Dunn, 480 U.S. 294, 300-301, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987). Instead, a person's "house" encompasses the dwelling and a circumscribed area of surrounding land that is given the name "curtilage." Oliver v. United States, 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984). Land outside the curtilage is called an "open field," and a search conducted in that area is not considered a search of a "house" and is therefore not governed by the Fourth Amendment. *Ibid.* Ascertaining the boundaries of the curtilage thus determines only whether a search is governed by the Fourth Amendment. The concept plays no other role in Fourth Amendment analysis.

[138 S.Ct. 1682]

In this case, there is no dispute that the search of the motorcycle was governed by the Fourth Amendment, and therefore whether or not it occurred within the curtilage is not of any direct importance. The question before us is not whether there was a Fourth Amendment search but whether the search was reasonable. And the only possible argument as to why it might not be reasonable concerns the need for a warrant. For nearly a century, however, it has been well established that officers do not need a warrant to search a motor vehicle on public streets so long as they have probable cause. *Carroll, supra*, at 153, 156, 45 S.Ct. 280; see also, e.g., Pennsylvania v. Labron, 518 U.S. 938, 940, 116 S.Ct. 2485, 135 L.Ed.2d 1031 (1996) (*per curiam*); *Carney, supra*, at 394, 105 S.Ct. 2066; South Dakota v. Opperman, 428 U.S. 364, 367-368, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976); Chambers v. Maroney, 399 U.S. 42, 50-51, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970). Thus, the issue here is whether there is any good reason why this same rule should not apply when the vehicle is parked in plain view in a driveway just a few feet from the street.

In considering that question, we should ask whether the reasons for the "automobile exception" are any less valid in this new situation. Is the vehicle parked in the driveway any less mobile? Are any greater privacy interests at stake? If the answer to those questions is "no," then the automobile exception should apply. And here, the answer to each question is emphatically "no." The tarp-covered motorcycle parked in the driveway could have been uncovered and ridden away in a matter of seconds. And Officer Rhodes's brief walk up the driveway impaired no real privacy interests.

In this case, the Court uses the curtilage concept in a way that is contrary to our decisions regarding other, exigency-based exceptions to the warrant requirement. Take, for example, the "emergency aid" exception. See Brigham City v. Stuart, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006). When officers reasonably believe that a person inside a dwelling has urgent need of assistance, they may cross the curtilage and enter the building without first obtaining a warrant. *Id.*, at 403-404, 126 S.Ct. 1943. The same is true when officers reasonably believe that a person in a dwelling is destroying evidence. See Kentucky v. King, 563 U.S. 452, 460, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011). In both of those situations, we ask whether " 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable." *Brigham City, supra*, at 403, 126 S.Ct. 1943 (quoting Mincey v. Arizona, 437 U.S. 385, 394, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978)). We have not held that the need to cross the curtilage independently necessitates a warrant, and there is no good reason to apply a different rule here.<sup>3</sup>

[138 S.Ct. 1683]

It is no answer to this argument that the emergency-aid and destruction-of-evidence exceptions require an inquiry into the practicality of obtaining a warrant in the particular circumstances of the case. Our precedents firmly establish that the motor-vehicle exception, unlike these other exceptions, "has no separate exigency requirement." Maryland v. Dyson, 527 U.S. 465, 466–467, 119 S.Ct. 2013, 144 L.Ed.2d 442 (1999) (*per curiam*). It is settled that the mobility of a motor vehicle categorically obviates any need to engage in such a case-specific inquiry. Requiring such an inquiry here would mark a substantial alteration of settled Fourth Amendment law.

This does not mean, however, that a warrant is never needed when officers have probable cause to search a motor vehicle, no matter where the vehicle is located. While a case-specific inquiry regarding *exigency* would be inconsistent with the rationale of the motor-vehicle exception, a case-specific inquiry regarding *the degree of intrusion on privacy* is entirely appropriate when the motor vehicle to be searched is located on private property. After all, the ultimate inquiry under the Fourth Amendment is whether a search is reasonable, and that inquiry often turns on the degree of the intrusion on privacy. Thus, contrary to the opinion of the Court, an affirmance in this case would not mean that officers could perform a warrantless search if a motorcycle were located inside a house. See *ante*, at 1669 – 1670. In that situation, the intrusion on privacy would be far greater than in the present case, where the real effect, if any, is negligible.

I would affirm the decision below and therefore respectfully dissent.

Notes:

<sup>1</sup> Virginia does not dispute that Collins has Fourth Amendment standing. See Minnesota v. Olson, 495 U.S. 91, 96–100, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990).

<sup>2</sup> Helpfully, the parties have simplified matters somewhat by each making a concession. Petitioner concedes "for purposes of this appeal" that Officer Rhodes had probable cause to believe that the motorcycle was the one that had eluded him, Brief for Petitioner 5, n. 3, and Virginia concedes that "Officer Rhodes searched the motorcycle," Brief for Respondent 12.

<sup>3</sup> The dissent concedes that "the degree of the intrusion on privacy" is relevant in determining whether a warrant is required to search a motor vehicle "located on private property." *Post*, at 1670 – 1671 (opinion of ALITO, J.). Yet it puzzlingly asserts that the "privacy interests at stake" here are no greater than when a motor vehicle is searched "on public streets." *Post*, at 1669 – 1670. "An ordinary person of common sense," *post*, at 1676, however, clearly would understand that the privacy interests at stake in one's private residential property are far greater than on a public street. Contrary to the dissent's suggestion, it is of no significance that the motorcycle was parked just a "short walk up the driveway." *Ibid*. The driveway was private, not public, property, and the motorcycle was parked in the portion of the driveway beyond where a neighbor would venture, in an area "intimately linked to the home, ... where privacy expectations are most heightened." California v. Ciraolo, 476 U.S. 207, 213, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986). Nor does it matter that Officer Rhodes "did not damage any property," *post*, at 1681, for an officer's care in conducting a search does not change the character of the place being searched. And, as we explain, see *infra*, at 1674 – 1675, it is not dispositive that Officer Rhodes did not "observe anything along the way" to the motorcycle "that he could not have seen from the street," *post*, at 1681. Law enforcement officers need not "shield their eyes when passing by a home on public thoroughfares," Ciraolo, 476 U.S., at 213, 106 S.Ct. 1809, but the ability visually to observe an area protected by the Fourth Amendment does not give officers the green light physically to intrude on it. See Florida v. Jardines, 569 U.S. 1, 7–8, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013). It certainly does not permit an officer physically to intrude on curtilage, remove a tarp to reveal license plate and vehicle identification numbers, and use those numbers to confirm that the defendant committed a crime.

The dissent also mistakenly relies on a law enacted by the First Congress and mentioned in Carroll v. United States, 267 U.S. 132, 150–151, 45 S.Ct. 280, 69 L.Ed. 543 (1925), that authorized the warrantless search of vessels. *Post*, at 1677 – 1678, n. 3. The dissent thinks it implicit in that statute that "officers could cross private property such as wharves in order to reach and board those vessels." *Ibid*. Even if it were so that a



<sup>2</sup> Rhodes suspected the motorcycle was stolen based on a conversation he had with the man who had sold the motorcycle to petitioner. See App. 57–58.

<sup>3</sup> Indeed, I believe that the First Congress implicitly made the same judgment in enacting the statute on which *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925), relied when the motor-vehicle exception was first recognized. Since the First Congress sent the Bill of Rights to the States for ratification, we have often looked to laws enacted by that Congress as evidence of the original understanding of the meaning of those Amendments. See, e.g., *id.*, at 150–151, 45 S.Ct. 280; *Town of Greece v. Galloway*, 572 U.S. ----, ----, 134 S.Ct. 1811 1838, 188 L.Ed.2d 835 (2014); *United States v. Villamonte-Marquez*, 462 U.S. 579, 585–586, 103 S.Ct. 2573, 77 L.Ed.2d 22 (1983); *United States v. Ramsey*, 431 U.S. 606, 616–617, 97 S.Ct. 1972, 52 L.Ed.2d 617 (1977). *Carroll* itself noted that the First Congress enacted a law authorizing officers to search vessels without a warrant. 267 U.S., at 150–151, 45 S.Ct. 280. Although this statute did not expressly state that these officers could cross private property such as wharves in order to reach and board those vessels, I think that was implicit. Otherwise, the statute would very often have been ineffective. And when Congress later enacted similar laws, it made this authorization express. See, e.g., An Act Further to Prevent Smuggling and for Other Purposes, § 5, 14 Stat. 179. For this reason, Officer Rhodes's conduct in this case is consistent with the original understanding of the Fourth Amendment, as explicated in *Carroll*.



Live Chat



NAME OF ENLISTEE/REENLISTEE (Last, First, Middle) BANNER GENUINE TRUTH		SOCIAL SECURITY NO. OF ENLISTEE/REENLISTEE [REDACTED]	
<b>D. CERTIFICATION AND ACCEPTANCE</b>			
<p>13a. My acceptance for enlistment is based on the information I have given in my application for enlistment. If any of that information is false or incorrect, this enlistment may be voided or terminated administratively by the Government or I may be tried by a Federal, civilian, or military court and, if found guilty, may be punished.</p> <p>I certify that I have carefully read this document, including the partial statement of existing United States laws in Section C and how they may affect this agreement. Any questions I had were explained to my satisfaction. I fully understand that only those agreements in Section B and Section C of this document or recorded on the attached annex(es) will be honored. I also understand that any other promises or guarantees made to me by anyone that are not set forth in Section B or the attached annex(es) are not effective and will not be honored.</p>			
b. SIGNATURE OF ENLISTEE/REENLISTEE Biometrically Signed		c. DATE SIGNED (YYYYMMDD) 20160617 12:01:09	
<p>14. SERVICE REPRESENTATIVE CERTIFICATION</p> <p>a. On behalf of the United States (list branch of service) <u>NAVY</u>, I accept this applicant for enlistment. I have witnessed the signature in item 13b to this document. I certify that I have explained that only those agreements in Section B of this form and in the attached Annex(es) will be honored, and any other promises made by any person are not effective and will not be honored.</p>			
b. NAME (Last, First, Middle) KAUL KEVIN G		c. PAY GRADE GS-5	d. UNIT/COMMAND NAME NAVY PERSONNEL DETROIT MEPS
e. SIGNATURE Biometrically Signed		f. DATE SIGNED (YYYYMMDD) 20160617 12:01:09	g. UNIT/COMMAND ADDRESS (City, State, ZIP Code) DETROIT MI 48207
<b>E. CONFIRMATION OF ENLISTMENT OR REENLISTMENT</b>			
<p>15. IN THE ARMED FORCES EXCEPT THE NATIONAL GUARD (ARMY OR AIR):</p> <p>I, <u>GENUINE TRUTH BANNER</u>, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.</p>			
<p>16. IN THE NATIONAL GUARD (ARMY OR AIR):</p> <p>I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the State of _____ against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the Governor of _____ and the orders of the officers appointed over me, according to law and regulations. So help me God.</p>			
<p>17. IN THE NATIONAL GUARD (ARMY OR AIR):</p> <p>I do hereby acknowledge to have voluntarily enlisted/reenlisted this _____ day of _____, _____ in the _____ National Guard and as a Reserve of the United States (list branch of service) _____ with membership in the _____ National Guard of the United States for a period of _____ years, _____ months, _____ days, under the conditions prescribed by law, unless sooner discharged by proper authority.</p>			
18.a. SIGNATURE OF ENLISTEE/REENLISTEE Biometrically Signed		b. DATE SIGNED (YYYYMMDD) 20160617 12:22:15	
<p>19. ENLISTMENT/REENLISTMENT OFFICER CERTIFICATION</p> <p>a. The above oath was administered, subscribed, and duly sworn to (or affirmed) before me this date.</p>			
b. NAME (Last, First, Middle) SIERPIEN JEFFERY A		c. PAY GRADE O-4	d. UNIT/COMMAND NAME DETROIT MEPS
e. SIGNATURE Biometrically Signed		f. DATE SIGNED (YYYYMMDD) 20160617 12:22:15	g. UNIT/COMMAND ADDRESS (City, State, ZIP Code) TROY MI 48084-4846
(Initials of Enlistee/Reenlistee) Biometrically Signed			



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Genuine Truth Banner, #375165	)	
Applicant,	)	Case No.: 2018-CP-42-1206
	)	
v.	)	
	)	<b>ORDER OF DISMISSAL</b>
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Genuine Truth Banner on April 10, 2018. Respondent made its return on July 30, 2018. The Court convened an evidentiary hearing into the matter on October 11, 2019, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Susannah C. Ross, Esquire. Assistant Attorney General Jacob A. Isenberg, Esquire of the South Carolina Attorney General's Office, represented Respondent.

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Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, William J. Nowicki (hereafter "Counsel") also testified. After a thorough review of all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below.

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During the October 2016 term, the Spartanburg County Grand Jury indicted Applicant for armed robbery (count one) and bank robbery (count two) (2016-GS-42-05451), armed robbery (count one) and possession of a weapon during commission of a violent crime (count two) (2016-GS-42-5452), and five counts

of kidnapping (2016-GS-42-5453, -5454). William J. Nowicki, Esquire, represented Applicant. Assistant Solicitor Barry Barnette, Esquire, prosecuted the case. On January 22, 2018, at the conclusion of pre-trial motions, Applicant pled guilty as indicted to all charges before the Honorable J. Mark Hayes, II. The only request from the State was that the armed robbery and bank robbery sentences run concurrent. On January 23, 2018, Judge Hayes sentenced Applicant to twenty years' imprisonment for kidnapping, armed robbery, and bank robbery, and five years' imprisonment for possession of a weapon during commission of a violent crime, sentences running concurrently.

Applicant filed a *pro se* notice of appeal on March 27, 2018. This was denied and dismissed by written order, filed on April 25, 2018. Applicant's timely motion to reconsider sentence was withdrawn, the notice of appeal was untimely and not served within ten days of imposition of the sentence, pursuant to 221(b), SCACR. The remittitur was issued on May 1, 2018.

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**Statement of Facts**

On October 29, 2016, Applicant, armed with a shotgun, robbed Spartan Federal Credit Union. (Plea Tr. 91). Applicant held bank customers, including a minor, hostage while the bank tellers collected money from registers. (Plea Tr. 91-92). Applicant took one of the tellers by the arm and led her around the room, forcing her to open drawers. (Plea Tr. 92). Thereafter, he ordered her to go faster and, emphasizing his point, fired a shotgun into the roof. (Plea Tr. 92). The other teller came around to help empty the drawers. (Plea Tr. 92). Seed money, which had serial numbers marked for robbery cases and totaled over \$15000, was dropped on the floor by one of the tellers. (Plea Tr. 92-93). Applicant took part of the seed money, went around the room, and fired another round into the floor of the breakroom. (Plea Tr. 93). He then put the money in

*G* 2

his backpack, loaded it on his back, and left through the back door. (Plea Tr: 93). Applicant stole a victim's truck and fled the crime scene. (Plea Tr: 93).

The Applicant was later apprehended after he reported his license plate had been stolen. As it happened, prior to the robbery Applicant had backed his gray BMW into some bushes at a parking lot near the crime scene. A Spartanburg County deputy patrolling the area investigated the BMW and found it had an expired license plate with no insurance and removed the plate. After the robbery, the getaway truck stolen from the scene was found in the lot but the gray BMW was gone. The same deputy who took the plate went to the address given by the person who reported the stolen plate and saw a grey BMW backed up in the driveway. He walked up the driveway and looked in the car and walked around the car to see the VIN number and tag area. This was the same car he had seen at the parking lot. He then got a search warrant.

In the vehicle, officers found ammunition shells that matched the gun used in the robbery, and clothing that matched what the robber wore during the armed robbery. (Plea Tr: 97-98). A shotgun was found under the deck of Applicant's house. (Plea Tr: 97). Additionally, when the officers entered the house they found a bag containing the money, including the seed money that was traced back to the money stolen from the bank. (Plea Tr: 98). This money was taken into evidence. (Plea Tr: 98). In the bottom of the bag was Applicant's photo identification card, containing his name and social security number. (Plea Tr: 98-99). Based off of these facts, Applicant was arrested for and charged with the crimes listed above.

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**Current Action before this Court and Summary of Testimony at the Evidentiary Hearing**

***Current Action before this Court***

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

1. "Ineffective Assistance of Counsel"
  - a. "My motion of discovery was never viewed in its entirety by myself because I was not afforded the opportunity by my counselor."
  - b. "During the motion to suppress evidence, Mr. Nowicki never subpoenaed my witnesses to court so that the judge could evaluate their input into my argument that the arresting officer committed an illegal search prior to obtaining a search warrant."
2. "Illegal search and seizure"
  - a. "This was an illegal search as verified by court transcripts, even the judge admitted there was a violation but called it minimal."
3. "Miranda rights violation by arresting officer"

Applicant, through Counsel, filed an amended application on September 11, 2018. In the amended application, Applicant alleged the following (excerpts verbatim):

1. Ineffective assistance of trial counsel for"
  - a. "Failure to investigate and prepare for trial."
  - b. "Advising him to plea under *Alford* without a proper inducement or benefit."
  - c. "Failing to request a continuance to wait for ruling on *Collins v. Virginia*, which had oral argument on January 9, 2018; 584 U.S. \_\_\_ (May 2018)."
  - d. "Failing to challenge jurisdiction as Applicant was enlisted in the Navy at the time of plea."
  - e. "Failure to advise Applicant that his right to appeal the ruling on his pretrial motion to suppress would be waived he pled guilty."
  - f. "Failure to appeal plea and sentence on behalf of the Applicant."
2. Involuntary Plea:
  - a. "Due Process violations because the plea was not knowingly and voluntarily made because the Applicant was not advised that the guilty plea would waive his right to appellate review of the court's ruling on his pretrial motion to suppress."

Regarding relief sought, Applicant requested: "conviction to be overturned on ground of illegal search and seizure and Miranda rights violation or vacated on the grounds of ineffective assistance of counsel."

At the PCR hearing, Applicant proceeded on the allegations listed in his amended

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application.

**Motion for Judgment as a Matter of Law**

At the PCR hearing, Respondent requested a motion for judgment as a matter of law after Applicant presented his case. Respondent argued that essentially the only argument Applicant presented at the hearing was that he wanted relief so he could appeal the suppression hearing and base his argument on the U.S. Supreme Court's decision in *Collins v. Virginia*,<sup>1</sup> which came out months after the plea hearing. Respondent argued this was essentially the sole issue raised and has nothing to do with the ineffectiveness of counsel or invalidity of the plea. PCR Counsel objected, stating that Applicant's appeal issues were not preserved for review and plea Counsel was ineffective for failure to inform Applicant he was waiving his right to appeal, which are both cognizable claims under the Uniform Post-Conviction Procedure Act.<sup>2</sup> Respondent's motion was overruled.

**Applicant's Testimony**

Applicant alleged Counsel was ineffective because Applicant was never afforded the opportunity to view his entire discovery other than the search warrant and officer's incident report. (PCR Tr. 8). Applicant said he remembered Counsel bringing discovery to only one meeting, but they only discussed the search warrant and incident report. (PCR Tr. 8). Applicant stated he never received a full copy of the discovery. (PCR Tr. 8).

Applicant said his intention was always to go to trial. (PCR Tr. 8). Applicant said he thought his strongest issue at trial was the illegal search and seizure issue originally brought up at a suppression hearing. (PCR Tr. 9). Specifically, Applicant stated that officers went to

<sup>1</sup> 584 U.S. \_\_\_ (2018).

<sup>2</sup> S.C. Code Ann. §§ 17-27-10 – 17-27-160.

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Applicant's property to search and verify a few things, including that the plate reported stolen was on the car on his property. (PCR Tr. 9). Applicant also stated the officer ran the car's plate and found the car was uninsured. (PCR Tr. 9-10). He also said that after the robbery, a call was made regarding a stolen license plate. (PCR Tr. 9-10). Applicant testified that the officer showed up at Applicant's house and, while no one was home, entered the curtilage of the house to search and verify that the car's VIN number was the same car as the one reported. (PCR Tr. 10-11). Applicant stated that based upon verification of the VIN number, the officer requested a search warrant. (PCR Tr. 10-11). Applicant stated that he wanted to raise this issue, claiming it was an illegal search and seizure pursuant to *Florida v. Jardines*<sup>3</sup> and *Collins v. Virginia*. (PCR Tr. 12-13). Applicant said he requested a continuance from the trial judge based upon the pending decision in *Collins* because it dealt with the similar physical intrusion onto private property prior to a search warrant. (PCR Tr. 15). Instead, he said because Counsel did not think the judge would continue the case indefinitely, Counsel did not request a continuance. Instead, he advised Applicant to plead under *North Carolina v. Alford*,<sup>4</sup> which he did. (PCR Tr. 15). Applicant testified that he was not informed that *Alford* was "actually a guilty plea", and pleading that he could still appeal the denial of the motion to suppress. (PCR Tr. 15).

Applicant said he enlisted in the Navy, which Counsel mentioned at the plea hearing, but proof was never submitted to the plea Court for sentence mitigation purposes. (PCR Tr. 16-17). He said this was particularly true within the context of *Williams v. Taylor*,<sup>5</sup> where the court found counsel ineffective for failing to investigate and present substantial mitigating evidence. (PCR Tr. 18). Applicant argued that there was a reasonable probability that sentencing would

<sup>3</sup> 569 U.S. 1 (2013).

<sup>4</sup> 400 U.S. 25 (1970).

<sup>5</sup> 529 U.S. 362 (2000).

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have been different if this was presented. (PCR Tr: 18); Applicant also stated he was on heavy prescribed medications leading up to the incident and Counsel never argued these drugs affected his decision-making during the incident. (PCR Tr: 17). Applicant said Counsel failed to show the case belonged in a military tribunal as a mitigating factor or defense. (PCR Tr. 16-17).

Applicant stated he filed an appeal because he thought he did not waive this right. (PCR Tr. 18-19). Applicant stated he would not have pled if he knew he had to waive his right to appeal. (PCR Tr. 19). Additionally, Applicant stated he was never Mirandized throughout the entire arrest and booking process, and Counsel never brought this up in Court. (PCR Tr. 19). Applicant testified that Counsel never stated that the search and seizure violated his state constitutional rights to privacy. (PCR Tr. 19). Applicant said he believed he would have won on the motion to suppress if appealed and suppression of the evidence would have changed the case's outcome. (PCR Tr. 20-21).

On cross-examination, Applicant stated that Counsel made a suppression argument originally, but refused to preserve it for appeal. (PCR Tr: 21-22). Applicant stated when he appealed from the suppression decision it was denied as untimely and conceded that untimely is not the same thing as unpreserved. (PCR Tr. 22). Applicant testified Counsel failed to investigate and prepare for trial, because they both thought they would win on the motion to suppress and the trial would not occur. (PCR Tr. 25).

Applicant said he thought he would win the motion, but admitted Counsel did well at the motion hearing and still lost. (PCR Tr. 25-26). Applicant also said that after the denial of the motion, there was a lot of evidence admissible against him at trial that connected him to the bank robbery. (PCR Tr. 26). Thus, after losing the suppression hearing, Applicant said he and Counsel thought he had a lesser chance of winning at trial and, consequently, Counsel advised him to

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plead thereafter. (PCR Tr. 26-27).

Applicant said he wanted a continuance until after *Collins* was decided, so he and Counsel would have a better idea regarding likelihood of success at trial. (PCR Tr. 28). At the PCR hearing, Applicant deflected when asked if an indefinite continuance is appropriate. (PCR Tr. 29). Additionally, though Applicant enlisted in the military, he said he never went to basic training because of a medical emergency that delayed him. (PCR Tr. 29-30). He also said he never gave Counsel relevant paperwork, but was informed by his family that they gave him the paperwork and mentioned it to Counsel. (PCR Tr. 30).

Applicant stated he was confused regarding the concept of an *Alford* plea and had not heard of the term prior to the plea hearing. (PCR Tr. 31). He also stated he did not understand it was a guilty plea because Counsel told him it did not involve an admission of guilt. (PCR Tr. 31-32).

Applicant conceded that if all evidence was admissible, he would probably be found guilty at trial. (PCR Tr. 34). However, he alleged that if he appealed the suppression issue and utilized *Collins* advantageously, the appeal would be granted and he would win at trial. (PCR Tr. 34-35).

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***Trial Counsel's Testimony***

Counsel William J. Nowicki stated he has been practicing law for eighteen years, the bulk of his practice has always been criminal law, and has represented clients accused of armed robbery and bank robbery previously. (PCR Tr. 39).

Counsel said Applicant's parents retained him to represent Applicant. (PCR Tr. 40). Counsel stated that a week after he was retained, he visited Applicant. (PCR Tr. 40). During their first meeting, Counsel said he asked for Applicant's point of view and discussed armed robbery

and kidnapping in general terms, including the sentencing ranges. (PCR Tr. 40-41). Counsel stated he did not remember if Applicant told him he enlisted in the military during the initial meeting, but mentioned it at one point prior to the plea hearing. (PCR Tr. 41). Counsel said he was given the name of an individual involved in Applicant's enlistment process and attempted to contact him, but was unable to do so. (PCR Tr. 41). Counsel also stated that he was never presented with any pertinent documents regarding Applicant's enlistment. (PCR Tr. 41-42).

After reviewing the discovery, Counsel said his strategy was to attack the vehicle search because the vehicle was backed into the garage and, to get a search warrant, officers entered Applicant's property and retrieved information off of the vehicle, including the VIN number. (PCR Tr. 44). Counsel said he thought this was an illegal search and seizure and, thus, a violation of the Fourth Amendment. (PCR Tr. 45). Counsel testified that he discussed this with Applicant, and Applicant was satisfied with the strategy. (PCR Tr. 45).

Before the motion hearing, Counsel said he and Applicant discussed *Collins*. (PCR Tr. 46). Counsel also stated that the decision was not released, but the facts were very similar and Counsel agreed it would be a good case to argue because it was before the U.S. Supreme Court. (PCR Tr. 46). Counsel said he advised the Court about the case and found other law that would supporting their argument, but the motion hearing judge ruled against them. (PCR Tr. 46). Counsel testified that he did not request another continuance, feeling like he had to proceed before the decision was rendered because Applicant did not request Counsel continue the case, the case was set for trial, one continuance was already granted, and it remained unknown when the Supreme Court would release the decision. (PCR Tr. 47).

Counsel stated he was prepared for the motion hearing and if he had more time to prepare, would not have changed his approach. (PCR Tr. 47-48). Counsel also stated he thought

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the motion to suppress was denied because *Collins* was not decided and, though other case law existed, indicating the search was a Fourth Amendment violation, the cases were not on point. (PCR Tr. 45-46): Counsel testified that the judge found that if an invasion occurred, it was at most minimal, an argument Counsel said he struggled to understand, claiming a search and seizure violation was all or nothing and there is no such thing as a "minimal" violation. (PCR Tr. 45-46).

After losing the motion, Counsel said he advised Applicant there was a lot of evidence against him and pleading would probably give him a shorter sentence than if he proceeded to trial and lost. (PCR Tr. 49). Counsel stated he discussed the difference between an *Alford* plea, a no contest, and a regular plea. (PCR Tr. 49). Counsel also stated told Applicant an *Alford* plea would be treated the same as a guilty plea, but was similar to a no contest plea where Applicant states he was offered a good deal and he will take it. (PCR Tr. 50). Counsel testified that Applicant understood what an *Alford* plea was and he never indicated to Counsel he did not. (PCR Tr. 51). Counsel testified he told Applicant the Solicitor would request the armed robbery and bank robbery sentences run concurrent if he pled. (PCR Tr. 51). Counsel said Applicant was hesitant at first, but ultimately decided to plead. (PCR Tr. 49).

Counsel said he told Applicant he had a right to appeal and could move to reconsider. (PCR Tr. 52). Counsel testified he then submitted a motion to reconsider because of the amount of time Applicant was facing and the search issue discussed in the suppression motion. (PCR Tr. 52). Counsel said he and Applicant made the decision to withdraw based upon the Solicitor saying he was going to ask for more time and bring the victims back. (PCR Tr. 52).

Counsel testified he told Applicant he had ten days to appeal. (PCR Tr. 53). Applicant said he did not contact Counsel during those ten days. (PCR Tr. 53-54). Counsel stated he

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understood that the appeal was dismissed for untimeliness. (PCR Tr. 54). Counsel testified he would have appealed if Applicant requested one. (PCR Tr. 54).

On cross-examination, Counsel stated that after the sentence was given the Solicitor walked very quickly out of the courtroom and some of the victims were upset. (PCR Tr. 54). Counsel said he does not remember telling Applicant he would waive his right to appeal by entering a plea, but told him he was waiving all of his rights when doing so. (PCR Tr. 55).

**Findings of Fact and Conclusions of Law**

This Court has reviewed the pleadings, records submitted by the parties, and applicable law. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the PCR action records.

Pursuant to South Carolina Code Annotated, Sections 17-27-70 and -80, this Court ~~dismisses~~ the application based upon the following findings:

***Ineffective Assistance of Counsel***

Applicant's allegations of ineffective assistance of counsel are without merit. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, which the Supreme Court expanded upon through developing the two-pronged test outlined in *Strickland*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d

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624, 625 (1989). To show deficiency, the applicant must prove by the preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the inquiry is limited to facts available to counsel at the time of the representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in "countless" ways. *Strickland*, 466 U.S. at 688-89.

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Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

Regarding guilty pleas, specifically, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty.

but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). The applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the solemnity and truthfulness inherent in the plea proceeding. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from admissions made at the plea hearing, sworn statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and essential elements of the offense, the maximum and minimum penalties, and the rights he is giving up by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leake*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

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Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea."

*Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

***Failure to Mitigate the Sentence***

Applicant stated Counsel was deficient for failure to mitigate the sentence. In similar cases, counsel was deficient for failing to mitigate the sentence when they put forth little to no effort in investigating potential mitigating factors and when they intentionally did not present mitigating factors after providing an insufficient reason for the deficiency. *See Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

At the PCR hearing, Applicant testified that at the sentencing hearing Counsel mentioned Applicant's military enlistment, but did not present proof of enlistment nor argue that the case was improperly brought in that court's jurisdiction, as opposed to a military tribunal, to mitigate the sentence. (PCR Tr. 16-17). Applicant argued that there was a reasonable probability that sentencing would have been different if proof was submitted or the jurisdiction issue argued. (PCR Tr. 18). Applicant also stated he was on heavy prescribed medications leading up to the

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incident and Counsel never used this as a mitigating factor. (PCR Tr. 17).

However, at the plea hearing, Applicant told the judge that he enlisted, but never served. (Plea Tr. 87). Counsel was given the name of an individual who was involved in the Applicant's enlistment process, but could not connect with him after trying to establish contact and was not presented with any relevant documents regarding Applicant's enlistment. (PCR Tr. 41-42). Counsel pointed out Applicant was on pain pills post-surgery when the robbery took place; again, attempting to mitigate the sentence. (Plea Tr. 113). Further, because the only recommendation given was that the armed robbery and bank robbery sentences run concurrently, it was within the judge's discretion to determine the sentence after learning of his military enlistment and prescribed drug use. (Plea Tr. 81, 87, 113).

Thus, this Court finds that Counsel was not ineffective for failing to present mitigating evidence. Counsel's argument for mitigation revolved around the two issues Applicant contends Counsel did not present. Specifically, Counsel brought up Applicant's enlistment and drug use at the sentencing hearing to mitigate the sentence. Additionally, Applicant has made no showing, beyond mere speculation, that his sentence would have been lessened if Counsel presented a stronger argument or investigated further into mitigating factors. Thus, this Court finds Applicant has not met his burden of proof and, as such, relief is denied.

**Valid Guilty Plea**

**Failure to Warn of Appellate Consequences of Accepting the Plea**

Applicant alleged that Counsel was ineffective and the plea invalid for failure to advise him he was waiving his right to appeal from the suppression decision. Applicant stated he filed an appeal because he thought he did not waive this right. (PCR Tr. 18-19). Applicant stated if he was made aware of this waiver, he would not have pled. (PCR Tr. 19). Applicant believed he

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SPRINGFIELD COUNTY  
AMY W. FOX

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would have won on the suppression issue if it was appealed and the suppression of the evidence would have changed the outcome of the case. (PCR Tr. 20-21).

However, on cross-examination, Applicant stated that when he appealed from the suppression decision, it was denied as untimely and conceded that untimely is not the same thing as unpreserved. (PCR Tr. 22). Also, Counsel testified that he told Applicant he had a right to appeal and could move to reconsider. (PCR Tr. 52). Counsel submitted a motion to reconsider because of the amount of time Applicant was facing and the search issue discussed in the suppression motion. (PCR Tr. 52). Counsel and Applicant made the decision to withdraw based upon the Solicitor saying he would ask for more time and bring the victims back. (PCR Tr. 52).

Counsel told Applicant he had ten days to appeal. (PCR Tr. 53). Applicant did not contact Counsel during those ten days. (PCR Tr. 53-54). Counsel understood that the appeal was dismissed for untimeliness. (PCR Tr. 54). Counsel testified he would have filed a right to appeal if Applicant requested one. (PCR Tr. 54). Counsel does not remember telling Applicant he would waive his right to appeal by entering a plea, but told him he was waiving all of his rights when doing so. (PCR Tr. 55).

Thus, this Court finds that Applicant was informed of his right to appeal, Counsel would have appealed if Applicant requested it. Counsel filed a motion to reconsider but was withdrawn upon request by Applicant. Additionally, Applicant's appeal request was not denied because Counsel failed to preserve the issue, but because Applicant did not file the appeal before this right expired, through no fault of Counsel. Thus, this Court declines to find that the plea was invalid because of failure to warn of appellate consequences.

*Confusion Concerning Alford Plea and Validity of Plea*

Applicant also alleges that he was confused about the concept of an Alford plea. At the

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hearing; Applicant stated he was confused regarding the concept of an *Alford* plea, including that he did not know it was a guilty plea and had not heard of the term prior to the plea hearing. (PCR Tr. 31). Applicant testified that Counsel told him an *Alford* plea did not involve an admission of guilt. (PCR Tr. 31-32). Applicant stated if all the evidence was admitted at trial, he would probably be found guilty. (PCR Tr. 34).

However, at the hearing, Applicant stated no one threatened him into taking the plea and that the decision to plead was free and voluntary. (Plea Tr. 88). He was told about the sentencing ranges pertinent to the charges pled to and all the rights he was giving up when taking the plea and still proceeded in entering the plea. (Plea Tr. 89-102).

According to Counsel, he advised Applicant there was a lot of evidence against him and pleading would probably give him a shorter sentence than being found guilty at trial. (PCR Tr. 49). After this discussion, Applicant decided to plead. (PCR Tr. 49). Counsel told Applicant the difference between an *Alford* plea and no contest and regular plea and told him that an *Alford* plea would be treated the same as a guilty plea, but was similar to a no contest plea where Applicant states he is offered a good deal, on record, and that he will take it. (PCR Tr. 50). Counsel thought Applicant understood what an *Alford* plea was when deciding to take it and Applicant never indicated to Counsel he did not. (PCR Tr. 51). Counsel told Applicant the Solicitor would request the sentences run concurrent if he pled. (PCR Tr. 51).

Accordingly, this Court finds that Applicant voluntarily, knowingly, and intelligently entered the *Alford* plea. This Court has already disposed of the allegation that Counsel failed to warn of appellate consequences regarding the plea. The plea transcript establishes that Applicant knew what rights he was giving up, the sentencing range of the crimes pled to, and the charges against him. This Court finds Applicant has failed to present a sufficient reason why this Court

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should disregard his sworn testimony and waiver given at the plea hearing. Thus, this Court finds that Applicant has not met his burden of proof and, thus, his request for relief must be denied.

*Failure to Review Discovery, Request a Continuance, and Prepare a Defense*

Applicant claims Counsel was ineffective for failing to review discovery with him, failing to request a continuance, and failing to investigate, prepare, and assert defenses for trial. These allegations are addressed, in turn, below.

*Failure to Review Discovery*

Applicant alleged Counsel was ineffective because he was never afforded the opportunity to review the discovery, other than the search warrant and officer's incident report. (PCR Tr. 8). Applicant only remembers Counsel bringing discovery to one meeting where they only discussed the search warrant and incident report. (PCR Tr. 8). Applicant alleged he never received a copy of the discovery. (PCR Tr. 8).

However, Counsel testified he reviewed all of the evidence and discovery and discussed it with Applicant, along with discussing the Fourth Amendment issue. (PCR Tr. 45). After losing the suppression motion, Counsel discussed with Applicant all of the evidence that the State would admit at trial to incriminate him and, because of this evidence, Applicant would most likely be found guilty. (PCR Tr. 49).

This Court finds that Counsel did not fail to review discovery with Applicant, given the testimonies outlined above. Even so, Applicant waived this right when he entered the plea and cannot reassert this argument now.

Regarding prejudice, applicants must go beyond mere speculation that that the evidence not obtained or reviewed prejudiced him but, rather, must present the evidence he claims was not properly reviewed, obtained or presented. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538,

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540 (1995). Further, when the allegations is failure to investigate or discover evidence, whether an applicant is prejudiced depends on the likelihood of the evidence changing counsel's recommendation as to the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009). Applicant did not specifically state what evidence was not shared with him, nor state how that evidence would have affected his decision to plead. Thus, prejudice is not found. Accordingly, this Court rejects Applicant's argument and relief is denied on this allegation.

*Failure to Request a Continuance*

Applicant requested a continuance based on *Collins* pending decision because it dealt with the similar physical intrusion onto private property prior to a search warrant. (PCR Tr. 15). Applicant wanted an indefinite continuance until after *Collins* was decided, so he and counsel would have a better idea regarding likelihood of success at trial. (PCR Tr. 28). Counsel did not request an indefinite continuance because the case was up for trial, one continuance already granted, and it remained unknown when the Court would release the *Collins* decision. (PCR Tr. 47).

This Court finds that the likelihood of an indefinite continuance being granted was unlikely. Even if a continuance could have been granted, this option was waived when Applicant entered his plea. It appears that Applicant knew he was giving up the option of a continuance. Counsel and Applicant both seemed aware of the *Collins* case before the U.S. Supreme Court and decided not the request another continuance nor to go to trial and, instead, decided to enter a plea which they did. (PCR Tr. 12-15, 46-47). Thus, Applicant knew by entering a plea on that date he was waiving his right to try to hold off proceeding with the case until after *Collins* was decided and, as such, cannot reassert this claim now. This Court rejects Applicant's argument and relief is denied on this allegation.

*GT*

*Failure to Investigate and Prepare a Defense*

Applicant testified Counsel failed to investigate and prepare a defense for trial. This Court finds that Applicant and Counsel thought they would succeed on the suppression issue and the trial would not occur. (PCR Tr. 25). Though he was hesitant at first, Applicant stated at the plea hearing he understood and was willing to give up his right to a jury trial. (Plea Tr. 89-90). He was also told he was waiving his right to cross-examine witnesses and present a defense. (Plea Tr. 90). He stated he understood this and wished to give up this right. (Plea Tr. 90). He entered the plea, freely and voluntarily. (Plea Tr. 89-90).

Additionally, even if Counsel failed to investigate and present a defense, the right to assert a defense was waived knowingly and voluntarily at the plea hearing and Applicant cannot reassert this claim now. Further, to demonstrate prejudice at the PCR hearing Applicant is required to present the evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Applicant failed to present any evidence or witnesses at the PCR hearing and, thus, this Court finds that Applicant has failed to meet his burden of proof. Therefore, because Applicant has failed to meet his burden of proving either deficiency or prejudice, relief is denied on this ground.

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Conclusion

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

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d

395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the PCR application must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 4<sup>th</sup> day of May, 2020.



G. THOMAS COOPER  
Presiding Judge  
Seventh Judicial Circuit



South Carolina

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 ALY W. COX

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

## INDICTMENT

At a Court of General Sessions, convened on                     OCT 28 2016                    , the  
 Grand Jurors of Spartanburg County present upon their oath:

**KIDNAPPING (Count I)**

That the Defendant, Genuine Truth Banner, did in Spartanburg County on or about August 29, 2016, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, [REDACTED] without authority of law, all in violation of Section 16-03-910, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

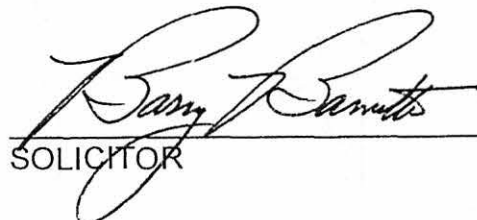
**KIDNAPPING (Count II)**

That the Defendant, Genuine Truth Banner, did in Spartanburg County on or about August 29, 2016, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, [REDACTED] without authority of law, all in violation of Section 16-03-910, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**KIDNAPPING (Count III)**

That the Defendant, Genuine Truth Banner, did in Spartanburg County on or about August 29, 2016, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, [REDACTED] without authority of law, all in violation of Section 16-03-910, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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

  
 SOLICITOR

WITNESSES

247  
Spartanburg County Sheriff's Office

*Jimmy W. [Signature]*

ARREST WARRANT NUMBER

2016A4210103273 (Count I)

2016A4210103274 (Count II)

2016A4210103276 (Count III)

ACTION OF GRAND JURY

Foreperson of Grand Jury  
Date:

OCT 28 2016

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. -

16-GS-42-5454

The State of South Carolina  
County of Spartanburg

*Barry J. Barnette, Solicitor*

COURT OF GENERAL SESSIONS

OCT 31 2016

TERM

THE STATE  
v.

GENUINE TRUTH BANNER

Indictment for  
KIDNAPPING (3 Counts)

SC Code: 16-03-910  
CDR Code: 0095  
Class FEL-A

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SPARTANBURG COUNTY  
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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

INDICTMENT

GCT 28 2016

At a Court of General Sessions, convened on \_\_\_\_\_, the  
 Grand Jurors of Spartanburg County present upon their oath:

**KIDNAPPING (Count I)**

That the Defendant, Genuine Truth Banner, did in Spartanburg County on or about August 29, 2016, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, [REDACTED] without authority of law, all in violation of Section 16-03-910, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**KIDNAPPING (Count II)**

That the Defendant, Genuine Truth Banner, did in Spartanburg County on or about August 29, 2016, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, [REDACTED] a minor child, without authority of law, all in violation of Section 16-03-910, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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

  
 SOLICITOR

WITNESSES

249  
Spartanburg County Sheriff's Office

*Jimmy W. Davis*

ARREST WARRANT NUMBER

2016A4210103275 (Count I)

2016A4210103277 (Count II)

ACTION OF GRAND JURY

Foreperson of Grand Jury  
Date:

OCT 28 2016

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 16-ES-42-5453

The State of South Carolina  
County of Spartanburg

*Barry J. Barnette, Solicitor*

COURT OF GENERAL SESSIONS

OCT 31 2016

TERM

THE STATE  
v.

GENUINE TRUTH BANNER

Indictment for

KIDNAPPING (2 Counts)

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

INDICTMENT

GCT 28 2016

At a Court of General Sessions, convened on \_\_\_\_\_, the Grand  
 Jurors of Spartanburg County present upon their oath:

**COUNT ONE – ARMED ROBBERY**

That the Defendant, Genuine Truth Banner, did in Spartanburg County on or about August 29, 2016, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of [REDACTED] including but not limited to a 2000 white Chevrolet Silverado truck, by means of force, violence, and/or intimidation with the intent to deprive him permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO – POSSESSION OF A WEAPON DURING  
 COMMISSION OF A VIOLENT CRIME**

That the Defendant, Genuine Truth Banner, did in Spartanburg County on or about August 29, 2016 possess or visibly display a firearm or a knife during the commission of a violent crime, to-wit: ARMED ROBBERY, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
 SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

2. REPORT MADE

3. CARD FILLED

4. INDEXED

5. CHECKED WRITERS

6. CHECKED IN FILES

7. APPROVED

Computer  
Computer

ARREST WARRANT NUMBER

Count One - 2016A4210103278

Count Two - 2016A4210103279

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury  
Date:

OCT 28 2016

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET ~~16-GS-42-5452~~

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 31 2016

TERM

THE STATE

v.

GENUINE TRUTH BANNER

Indictment for  
ARMED ROBBERY (Count I);  
POSSESSION OF A WEAPON DURING  
COMMISSION OF A VIOLENT CRIME  
(Count II)

SC Code: 16-11-330 (A); 16-23-490

CDR Code: 139; 649

Class: FEL/A; FEL/F

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SPARTANBURG COUNTY

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M. HOPE BLACKLEY

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

INDICTMENT

At a Court of General Sessions, convened on GCT 28 2016 the Grand Jurors of Spartanburg County present upon their oath:

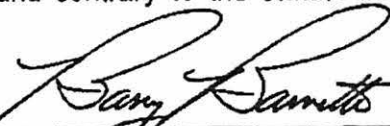
**ARMED ROBBERY (Count I)**

That the Defendant, Genuine Truth Banner, did in Spartanburg County on or about August 29, 2016, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the Spartan Federal Credit Union located at 930 Charisma Drive, Spartanburg, SC, including but not limited to, cash, by means of force, violence, and/or intimidation with the intent to deprive the institution permanently of such property, in violation of §16-11-330 (A), THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

**BANK ROBBERY (Count II)**

That the Defendant, Genuine Truth Banner, did in Spartanburg County on or about August 29, 2016, enter a building or part of a building occupied as a bank, depository, or savings and loan association named 930 Charisma Drive, Spartanburg, SC with the intent to steal money, securities for money, or property, by either force, intimidation, or threats and received U.S.-Currency-by-demanding it-from-the-teller(s), [REDACTED] with intent to deprive the owner permanently of such property, goods or monies in violation of Section 16-11-0380, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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

  
SOLICITOR

**WITNESSES**

Spartanburg County Sheriff's Office

1. RETURNED TO SENDER

2. REPORT MADE

3. CHECKED

4. INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

**ARREST WARRANT NUMBER**

2016A4210103272  
2016A4210203086

**ACTION OF GRAND JURY**

**True Bill**

OCT 28 2016

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. **16-GS-42-5451**

The State of South Carolina

County of Spartanburg

*Barry J. Barnette, Solicitor*

**COURT OF GENERAL SESSIONS**

OCT 31 2016

**TERM**

THE STATE  
v.

**GENUINE TRUTH BANNER**

Indictment for

**ARMED ROBBERY (Count I)  
BANK ROBBERY (Count II)**

SC Code: 16-11-330 (A); 16-11-380(A); (D)(1)  
CDR Code: 139; 0257  
Class: FEL/A

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**M. HOPE BLACKLEY**

*of*

COUNTY OF SPARTANBURG VS. STATE

INDICTMENT/CASE#: 2016GS4205454B

Genuine Truth Banner

A/W#: 2016A4210103276

AKA:

Date of Offense: 8/29/2016

Race: BLACK Sex: M Age: 27

S.C. Code §: 16-03-0910

DOB:

CDR Code #: 0095

Address:

City, State, Zip:

DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

ALFORD

In disposition of the said indictment comes now the Defendant who was TO: Kidnapping / Kidnapping - COUNT THREE (3)

CONVICTED OF or PLEADS

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) §17-25-45 w/minor 1st or Lewd Act

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

ATTEST: BARNETTE, BARRY SC Bar# 13039 Defendant
Attorney for Defendant SC Bar# 704132

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 (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

PTUP
days/hours Public Service Employment

Recipient:

Obtain GED
Attend Voc. Rehab. or Job Corp.

Table with 3 columns: Description, Amount, Total. Includes items like § 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 61.6 (Public Def/Probation) \$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, 3% to County (if paid in installments) \$ 3.75

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:
No contact with victims
no negotia

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (07/2016)

Presiding Judge
Judge Code:
Sentence Date: 1/23/18

COUNTY OF SPARTANBURG
STATE VS.

Genuine Truth Banner

AKA:

Race: BLACK Sex: M Age: 27

DOB:

Address:

City, State, Zip:

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 - COUNT TWO (2)

INDICTMENT/CASE#: 2016GS4205454A

A/W#: 2016A4210103274

Date of Offense: 8/29/2016

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

ALFORD

CONVICTED OF or PLEADS

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) §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: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

APPEARS: BARNETTE, BARRY SC Bar# 13039 Defendant Attorney for Defendant SC Bar# 704132

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. 512 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$ 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

Set by SCDPPPS Other: NO CONTACT WITH VICTIMS THE REPRODUCTION

Recipient:

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and fees totaling \$168.75.

TOTAL \$168.75

Clerk of Court/ Deputy Clerk

Court Reporter: Le Aliffitt

Presiding Judge

Judge Code: 2132

Sentence Date: 1/23/18

COUNTY OF SPARTANBURG VS. GENUINE TRUTH BANNER

INDICTMENT/CASE#: 2016GS4205454
A/W#: 2016A4210103273
Date of Offense: 8/29/2016
S.C. Code §: 16-03-0910
CDR Code #: 0095

AKA:
Race: BLACK Sex: M Age: 27
DOB:
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

ALFORD

In disposition of the said indictment comes now the Defendant who was TO: Kidnapping / Kidnapping - COUNT ONE

CONVICTED OF or PLEADS

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 §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: BARNETTE, BARRY SC Bar# 13039 Defendant
Attorney for Defendant SC Bar# 20432

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. 512 day
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 (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

PTUP days/hours Public Service Employment

Recipient:

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

Table with 3 columns: Description, Amount, Total. Includes items like § 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 61.6 (Public Def/Probation) \$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, 3% to County (if paid in installments) \$ 3.75

Other: NO CONTACT WITH VICTIM
NO REGISTRATION

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk
Court Reporter: L. Moffitt
SCCA/217 (07/2016)

Presiding Judge
Judge Code: 2132
Sentence Date: 1/23/18

COUNTY OF SPARTANBURG
STATE VS.

Genuine Truth Banner

AKA:

Race: BLACK Sex: M Age: 27

DOB:

Address:

City, State, Zip:

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 - COUNT TWO (2)

INDICTMENT/CASE#: 2016GS4205453A

A/W#: 2016A4210103277

Date of Offense: 8/29/2016

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

ALFORD

CONVICTED OF or PLEADS

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 §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: BARNETTE, BARRY SC Bar# 13039 Defendant
Attorney for Defendant SC Bar# 70432

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 (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

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
prmts. of \$ beginning
\$ paid to Public Defender Fund
Other: no contact with victims, no negotiation

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 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 61.6 (Public Def/Probation) \$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, 3% to County (if paid in installments) \$ 3.75, TOTAL \$ 128.75

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 fee paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (07/2016)

Presiding Judge
Judge Code: 213
Sentence Date: 1/23/18

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Genuine Truth Banner

AKA:

Race: BLACK Sex: M Age: 27

DOB:

Address:

City, State, Zip:

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 - COUNT ONE (1)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4205453

A/W#: 2016A4210103275

Date of Offense: 8/29/2016

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

ALFORD

CONVICTED OF or PLEADS

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 §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: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: BARNETTE, BARRY SC Bar# 13039 Defendant Attorney for Defendant SC Bar# 70432

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. 512 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 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 61.6 (Public Def/Probation) \$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, 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

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:

no contact with victims

no repeat offense

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees

Presiding Judge

Judge Code:

Sentence Date:

Handwritten signature and date 1/23/18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.
Genuine Truth Banner

INDICTMENT/CASE#: 2016GS4205452A
A/W#: 2016A4210103279
Date of Offense: 8/29/2016
S.C. Code § : 16-23-0490
CDR Code #: 0549

AKA:
Race: BLACK Sex: M Age: 27
DOB:
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

\*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 weapon during violent crime, if not also sentenced to life without parole or death - COUNT TWO(2)

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: BARNETTE, BARRY SC Bar# 13039 Defendant
Attorney for Defendant SC Bar# 70432

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/year 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. 512 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 (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

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
prmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 2 columns: Description and Amount. Includes items like § 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 61.6 (Public Def/Probation) \$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/ca, 3% to County (if paid in installments) \$ 3.75. TOTAL \$ 128.75

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge
Judge Code:
Sentence Date: 8/31/16

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Genuine Truth Banner

AKA:

Race: BLACK Sex: M Age: 27

DOB:

Address:

City, State, Zip:

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon - COUNT ONE (1)

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEYS: BARNETTE, BARRY SC Bar# 13039 Defendant Attorney for Defendant SC Bar# 7432

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. 512 days

This 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 (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:

Table with 3 columns: Description, Amount, Total. Includes items like § 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 61.6 (Public Def/Probation) \$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, 3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 138.75

Clerk of Court/ Deputy Clerk: Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4205452

A/W#: 2016A4210103278

Date of Offense: 8/29/2016

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

CONVICTED OF or PLEADS ALFORD

MANDATORY GPS(CSC) §17-25-45

As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEYS: BARNETTE, BARRY SC Bar# 13039 Defendant Attorney for Defendant SC Bar# 7432

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. 512 days

This 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 (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:

Table with 3 columns: Description, Amount, Total. Includes items like § 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 61.6 (Public Def/Probation) \$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, 3% to County (if paid in installments) \$ 3.75

Other: no contact with victims

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Judge Code: Sentence Date:

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 STATE VS. )  
 Genuine Truth Banner )  
 AKA: )  
 Race: BLACK Sex: M Age: 27 )  
 Address: )  
 City, State, Zip: )  
 SID#: )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4205451A  
 A/W#: 2016A4210203086  
 Date of Offense: 8/29/2016  
 S.C. Code §: 16-11-0380(A)  
 CDR Code #: 0257

SENTENCE SHEET

ALFORD

\*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: Robbery / Entering bank, depository or bldg and loan association with intent to steal - Count Two

6-30

in violation of § 16-11-0380(A) of the S.C. Code of Laws, bearing CDR Code # 0257  
 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 Presentation to Grand Jury. (defendant's initials)

The pleas:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTORNEY: Barry Barnett 13039 2 W. J. [Signature] 70432  
 BARNETTE, BARRY 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 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. 512 day

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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ Obtain GED

Payment Terms: \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Set by SCDPPS \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

Recipient: \_\_\_\_\_ Substance Abuse Counseling

\*Fine: \$ \_\_\_\_\_ Random Drug/Alcohol testing

§ 14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

§ 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 61.6 (Public Def/Probation) \$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 \$ \_\_\_\_\_

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: [Signature]  
 Court Reporter: [Signature]  
 SCCA/217 (07/2016)

Presiding Judge: [Signature]  
 Judge Code: 2132  
 Sentence Date: 1/23/19

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Other: no contact w/ the victim

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Genuine Truth Banner

AKA:
Race: BLACK Sex: M Age: 27

Address:
City, State, Zip:

SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon - COUNT ONE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4205451
A/W#: 2016A4210103272
Date of Offense: 8/29/2016
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

10-30 CONVICTED OF or PLEADS
ALFORD

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
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: BARNETTE, BARRY SC Bar# 13039 Defendant
Attorney for Defendant SC Bar# 70432

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. 512 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:
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: no contact with victims

Table with 2 columns: Description and Amount. Includes items like § 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 61.6 (Public Def/Probation) \$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, 3% to County (if paid in installments) \$ 375.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (07/2016)

Appointed PD or appointed other counsel. Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge
Judge Code:
Sentence Date: 1/23/18