

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Dec 08 2020

CERTIORARI TO RICHLAND COUNTY

SC Court of Appeals

The Honorable J. Derham Cole, Circuit Court Judge

Appellant Case No. 2019-000320

Zacoata Lopey,..... Petitioner,

v.

State of South Carolina,..... Respondent.

AMENDED APPENDIX
VOLUME II

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 ORIGINAL

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Thomas W. Cooper, Jr., Circuit Court Judge

RECEIVED

MAY 15, 2014

SC Court of Appeals TF

THE STATE,

RESPONDENT,

V.

ZACOATA LOPEY,

APPELLANT.

APPELLATE CASE NO. 2013-000554

RECORD ON APPEAL

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Palmetto Health Alliance FNE Program

Adult/Adolescent Forensic Record

Elaine T Henrick

Unit Record:

007037458

Evidence Collected**Clothing Collected:** describe clothing ☐ NA ☐ Bathed ☐ Changed Clothes

- ☐ Shirt _____
☐ Pants _____
☐ Underwear _____
☐ Bra _____
☐ Jacket _____
☐ Belt _____
☐ Shoes _____
☐ Debris Sheet _____
☒ Other Green bathrobe

Trace Evidence Collected: No Yes **Not** Indicated Describe

- Combed pubic hairs ☒ ☐ ☐ no pubic hair present
 Miscellaneous ☐ ☒ ☐ 1. bloody toilet tissue used at perineum post assault 2. blue disposable sheet used by EMS to cover the patient

DNA Evidence Collected:

- Fingernail scraping/cuttings ☒ ☐ ☐ very short nails, denied touching the assailants
 Oral swab and smear ☒ ☐ ☐
 Bite mark/suck/kissing ☒ ☐ ☐
 Miscellaneous secretions ☒ ☐ ☐
 UV + area ☒ ☐ ☐
 Vaginal swab and smear ☐ ☒ ☐
 Penile swab and smear ☐ ☐ ☐
 Rectal swab and smear ☐ ☒ ☐
 Buccal swab ☐ ☒ ☐

Toxicology Evidence Collected:

- Blood/grey top ☒ ☐ ☐
 Urine ☒ ☐ ☐
 Vomit ☒ ☐ ☐
 Other ☒ ☐ ☐

Photography:

- Colposcope ☐ ☒ ☐ ☒ 3.75 mag ☐ 7.5 mag ☐ 15 mag
 Digital pictures ☐ ☒ ☐ # of pictures 33

Palmetto Health Alliance FNE Program

Adult/Adolescent Forensic Record

Elaine T Henrick

Unit Record:

007037458

Post Examination**Lab Tests Performed*:**

Pos Neg NA Comments

*Test results may not be immediately available

Gonorrhea by PCR

☐ ☐ ☐

Chlamydia by PCR

☐ ☐ ☐

RPR

☐ ☐ ☐

HIV

☐ ☐ ☐**Hospital Tests*:**

No hospital tests given

Post Exam: ☐ Showered ☒ New clothing given ☒ Ate or drank prior to medications**Medications Given:**☐ Medication discharge instructions given

Ceftin 1gm po

Rx given for Doxycycline 100 mg PO BID

RX given for Premarin vaginal Cream, us

RX given for Ambien 5mg for insomnia

Discharge Information:

• Time: _____

• Discharged to: niece's home to stay until police have finished• Accompanied by: Ellen Smith (niece)• Discharge Instructions given to: ☒ patient ☒ family ☐ other: _____**Admitted to Hospital:** ☒ No ☐ Yes Room Number: _____ Admitting MD: _____**Consults:** ☐ NA ☐ Yes _____**Medical Follow Up:**

PMD

Dr Hannah

Counselor Follow Up:

Sexual Trauma Services

Officer Receiving Evidence:Signature: _____ Time: 03:40Print Name and ID #: MauldinAgency Richland County SDEvidence Released: ☒ SLED kit ☒ Clothing ☐ Urine ☐ Other _____

Signature of SANE

Temple M. Hart, RN, SANE-A (Temple M. Hart, RN, SANE-A)

1 TEMPLE HART – DIRECT EXAMINATION BY MS. MCDUFFIE

2 DIRECT EXAMINATION BY MS. MCDUFFIE:

3 Q. Ms. Hart, where are you currently employed?

4 A. Palmetto Health Richland.

5 Q. And what are your duties at Palmetto Health Richland?

6 A. I am a forensic nurse examiner.

7 Q. And please tell the Court what a forensic nurse examiner does.

8 A. The forensic nurse examiner program at the regional office at Palmetto Health
9 Richland, we do domestic violence and sexual assault examinations.

10 Q. And please tell the Court a little bit about your background and training and
11 experience in the field of forensic nurse examination.

12 A. I was an obstetric in-patient nurse for seven years and then in January, 2010, I
13 completed the sexual assault nurse examination training, and I have been a forensic nurse
14 for two years.

15 Q. And you've been previously qualified as an expert in this state as a sexual assault
16 nurse examiner?

17 A. Yes, ma'am.

18 MS. MCDUFFIE: Your Honor, at this time I've offer Ms. Hart as an expert in the
19 sexual assault forensic nurse examination.

20 THE COURT: Any objection?

21 MS. DELANY: Without objection, Your Honor.

22 THE COURT: Okay, I so find.

23 Q. Ms. Hart, would you please tell the Court how you came into contact with Elaine
24 Henrick.

25 A. Yes, ma'am. December 14th, 2010, I was on call for a twelve-hour shift, eight

1 p.m. to eight a.m. and I received a call from the command center from Palmetto Health
2 Richland ER stating that the patient was in the ER and requesting that I come to see her.

3 Q. And who requested you come see the patient?

4 A. When a patient presents to the ER complaining of sexual assault, a triage nurse
5 makes a call to the command center and the command center contacts the nurse on call.

6 Q. And so that's something that the hospital does, the patient does?

7 A. The hospital does that.

8 Q. And when you first encounter a patient as you did with Ms. Henrick in this case,
9 please tell the Court what is the first thing you do or tell the Court your protocol for that,
10 what happens.

11 A. I introduce myself to the patient. Explain to them my role and let them know
12 about the examination, the history that will be provided and as long as they consent that
13 they would like for my services and for me to see them, then we begin the assault history,
14 medical history and examination.

15 Q. And on December 14th of 2010, did you come into contact with Elaine Henrick?

16 A. Yes, ma'am.

17 Q. And do you see her in the courtroom today?

18 A. Yes, ma'am.

19 Q. And can you identify her?

20 A. Sitting with the grey sweater around her.

21 Q. And the first time you came into contact with her was December 14th of 2010?

22 A. Yes, ma'am.

23 Q. And did you obtain a medical history asking numerous questions regarding what
24 happened in this particular?

25 A. Yes, I did.

- 1 Q. Please tell the Court Ms. Henrick's date of birth.
- 2 A. [REDACTED] 1930.
- 3 Q. And would it help you to use your notes to help you refresh your memory? Please
- 4 refer to them if you have them in front of you.
- 5 A. Yes.
- 6 Q. Her date of birth [REDACTED] 1930?
- 7 A. Yes.
- 8 Q. And please tell the judge what you noticed when you first saw Ms. Henrick.
- 9 A. Ms. Henrick was still in where we call POD Nine in a private room, room 3. She
- 10 was not in the triage area any longer. Ms. Henrick was being assessed by the ER
- 11 physician, being medically cleared in order for her to come to the interview room which
- 12 is about a five minute walk across the other side of the ER and she was on the stretcher.
- 13 There were law enforcement officers in the room with her and nursing staff.
- 14 Q. Please describe for the Court what she was wearing at that time.
- 15 A. She was wearing a light green bathrobe and she had a disposable sheet on her that
- 16 was provided from EMS.
- 17 Q. Was there anything else on her person?
- 18 A. There was no other clothing; however, Ms. Henrick had - - She was bleeding
- 19 vaginally from some injuries and she had placed some tissue between her legs because of
- 20 the bleeding. She reported that when she called for EMS and called for 911, she had no
- 21 clothes on and she just grabbed a bathrobe and placed that tissue in her underwear.
- 22 Q. And did you collect that tissue at the time that you performed the exam?
- 23 A. Yes, ma'am.
- 24 Q. And you collected that tissue from where?
- 25 A. From her vagina.

1 Q. And you also asked her numerous questions?

2 A. Yes, ma'am.

3 Q. Can you please describe to the Court her demeanor when you were questioning
4 her?

5 A. She was very stoic. She was able to provide very detailed information regarding
6 the home invasion, the assailants. She described one as being young, one as being the big
7 guy. She was able to recall the items that she knew had been taken from her and she was
8 able to - - Very cooperative, however, when we talked about the sexual assault, she
9 became very tearful. She covered her eyes. She cried and we had to take our time and
10 give her a few minutes to get herself together when she described the actual assault.

11 Q. And did you document this in your notes what Ms. Henrick told you on that
12 night?

13 A. Yes, ma'am.

14 Q. If you could please read the Court your notes as to what she told you on that
15 evening.

16 A. The assault history?

17 Q. Yes, please.

18 A. The entire paragraph?

19 Q. Yes, please.

20 A. In the patient's own words and I quote.

21 (Witness reads assault history of Elaine Henrick.)

22 I was watching Minute to Win It Show and it was about halfway through. I was
23 talking on the phone to my friend. I had just hung up and they came in through the
24 sunroom door. I usually shut it and lock it, but I don't know why I didn't do that today.
25 They came in saying, where's your money, where's your money? I said, I don't have

1 any. I am on a fixed income. They asked, do you have a dollar? I said, yeah. And they
2 said, go get it. I went to the bedroom and the other man was already in there filling his
3 pockets with jewelry and stuff. The big guy asked, where is my handbag? and I said, in
4 the bedroom. He went and got it and brought it out upside down and everything was
5 falling out. He asked for my money so I got it out my billfold and gave him my money.
6 The big guy was pulling out the TV, and he was pulling the wrong cords. He didn't
7 know what he was doing. I asked the young guy, would you do this to your
8 grandmother? He said he had three kids and I asked him if he had a job. He said, yes,
9 but it didn't pay much money. They went to my other rooms and they made me go with
10 them. They wanted to keep an eye on me. They asked me if I had a gun. I said, no.
11 Then they held up shotgun shell I had in the jar. I said, no, I don't have one. I did but
12 they didn't find it so I didn't tell them. I was going to call 911 with my cell phone but
13 they must have already taken it. They took my camera and my iPod off the counter. I
14 had a digital photo frame, too, but he didn't know what it was. They told me to go to the
15 bedroom and take off my clothes. They said they was going to make me a hostage. I
16 said, I can't go outside in the cold with no clothes. They had a gun. I told them that it
17 was old and probably not working. He put a bullet in it and said, do you want to see? So,
18 I shut up. I went to the bathroom and started to take off my clothes. I asked to leave on
19 my underpants and he said, no, take them off. They made me take off my underpants.
20 They told me to get down on my back. I asked him, are you going to rape me and he
21 didn't say anything. He threw down my socks over my face and opened my legs hard,
22 pushing them open and he started raping me. He made me cover my face. I hollered,
23 "Oh my God." (In parenthesis, I wrote that she was crying at the time.) He covered my
24 mouth and so I couldn't breath and so I stopped hollering. He got through and the young
25 boy came over and I said, you're not going to do this to your grandmother and he

1 couldn't do it. So he turned around and raped me. He couldn't get it in, so he used
2 saliva.

3 Q. Meaning that he raped her anally?

4 A. (Witness nodded in the affirmative.)

5 Q. You also asked very detailed questions about what each individual did during the
6 assault. She described them in two different ways?

7 A. Yes. She, of course, didn't know their names. She described them as the young
8 one and the big guy.

9 Q. Please tell the Court what she said the big guy did, how he assaulted her. Do you
10 have certain boxes that you check off as to what was done during the assault?

11 A. We do and I've listed them.

12 Q. Please tell the Court what she said the big guy did.

13 A. Under penetration vagina, she said the big guy penetrated her with his penis, her
14 vagina.

15 Q. And the other assailant, how did she describe him?

16 A. The young one penetrated her anus with his penis.

17 Q. And she said that she asked him, would you do this to your grandmother and at
18 that point is when he flipped her over and raped her anally?

19 A. Yes.

20 Q. And he couldn't what? I'm sorry.

21 A. He wasn't able to insert his penis into her so he used saliva.

22 Q. And please tell the judge the exam that you performed on Ms. Henrick.

23 A. The entire exam or details of the specific . . .

24 Q. Details of the physical exam.

25 A. The genitalia was examined externally and she also had speculum exam and the

1 speculum exam was very difficult for her. There was a great deal of vaginal bleeding. It
2 was difficult to assess the injuries. At that time I needed to have the ER doctor come to
3 assess those injuries. He performed a second speculum exam. He was unable to assess
4 whether the lacerations that were internal needed repair and he consulted with the
5 gynecology doctor on call and they came down and did a third speculum exam.

6 Q. Please describe for the Court the injuries that you observed on Ms. Henrick.

7 A. Ms. Henrick had a bruise on her left hand. She reported that she was grabbed and
8 pulled. She also had a bruise on the inside of her right knee from her legs being pushed
9 open and then she had some genital injuries. She had a lot of bruising. She had a lot of
10 swelling. She had bilateral labia majora bruising, that's the outside fold. She had
11 bilateral labia minora swelling and bruising, the inside fold, and she also had a deep
12 laceration at ten o'clock. We use the clock to help us describe in a way that findings or
13 mean the same to everybody and the vaginal wall laceration at 1400 was noted by the
14 physicians to be a four centimeter laceration. And she also had some positive dye uptake
15 at 1800 at the posterior fourchette and that dye is used to help us better visualize injuries.

16 Q. Now, I'm going to hand you three photographs. Have you had the opportunity to
17 review these?

18 A. Yes, ma'am.

19 Q. And are these photographs that you took during your exam of Ms. Henrick?

20 A. Yes, ma'am.

21 MS. MCDUFFIE: Your Honor, we ask that these be marked as State's exhibits.

22 (Photographs marked as State's Exhibit Number Six, Seven and Eight.)

23 Q. State's Exhibits Six, Seven and Eight help you to explain the injuries that you just
24 described verbally for the Court?

25 A. Yes.

1 Q. Please describe for the judge what's depicted in State's Exhibit Eight.

2 A. That is external of her pubis with bleeding.

3 MS. MCDUFFIE: Your Honor, at this time we would offer State's Exhibit Eight
4 into evidence.

5 THE COURT: Any objection?

6 MS. DELANY: Your Honor, I would object to that. There was a case that came
7 out last week, actually, basically, it says photographs of what the witness has just testified
8 to don't add anything, you know, she's testified to them and Ms. McDuffie showed them
9 to her and that was it and I believe that case was reversed. I would object.

10 THE COURT: Do you have a copy of the case?

11 MS. MCDUFFIE: Your Honor, that case -- Ms. Delany is not properly quoting
12 that case. That case was a dog bite case and they said those photographs were not
13 probative as to the issues and facts for that case and it was prejudicial to the jury. There
14 is no jury here, Your Honor. We would ask that the witness be allowed to explain the
15 photographs and Your Honor give them as much weight as Your Honor deems
16 appropriate. They do help describe the injuries.

17 MS. DELANY: And, Your Honor, you are our jury, you're our and finder of
18 facts in this case.

19 THE COURT: Can you get the case for me? I need the case before I rule.

20 Q. State's Six and Seven also help you to explain to the judge the injuries that you
21 observed on the victim?

22 A. Yes.

23 MS. MCDUFFIE: Your Honor, we would also seek to introduce State's Six and
24 Seven.

25 MR. MAY: Can I just give you my computer?

1 THE COURT: Yes.

2 MR. MAY: It's actually -- State v. Collins*, it came out last week in the Court
3 of Appeals.

4 (Mr. May approaches bench with computer.)

5 THE COURT: What's the purpose of the pictures?

6 MS. MCDUFFIE: Your Honor, the purpose of introducing the pictures is so Your
7 Honor may see the injuries that nurse Hart is describing, and also Your Honor she's
8 describing specific injuries in very specific locations and we believe it would be
9 beneficial for the Court to be able to see the exact locations of these injuries as she's
10 described them and also the extent of the injuries.

11 MS. DELANY: And, Your Honor, I would also note that the allegations that my
12 client anally penetrated her is the allegation that the co-defendant vaginally penetrated
13 her so additionally I think they are prejudicial . . .

14 THE COURT: And the hand of one is the hand of all.

15 MS. DELANY: Your Honor, I think, I think it's a picture of a very, very
16 traumatized vagina. No one is denying that she was raped and she's testified to
17 everything. I think they're unfairly prejudicial.

18 THE COURT: Well, there's two issues here. One is, I guess, is where this
19 probable cause crime was committed and then there's the Kent factors that are going to
20 be determined as well. One of those factors are whether the alleged offence was
21 committed in an aggressive, premeditated and willful manner. Wouldn't that also be
22 evidence of that factor?

23 MS. DELANY: She testified, Your Honor.

24 THE COURT: Who testified?

25 MS. DELANY: Ms. Hart testified to all of that. I think at this point it's just

1 cumulative really to the point of being prejudicial.

2 THE COURT: And I disagree with you. I know what you're saying. You're

3 saying I am your jury. I'm not really your jury. I am your fact finder, but I don't think

4 I'm in the same role as a juror. I'm going to allow the evidence to come in.

5 MS. DELANY: Thank you, Your Honor.

6 THE COURT: Objection is overruled. Mr. May, you want your computer?

7 MR. MAY: I'd love to get it.

8 (Mr. May removes computer from bench.)

9 Q. Again, please describe for the Court what's depicted in State's Exhibit Eight.

10 A. That was a photograph that they took showing the bleeding to the external

11 genitalia.

12 Q. And this is also where you removed the tissue that was collected by you and

13 turned into law enforcement?

14 A. That is correct.

15 THE COURT: Okay, Plaintiff's Eight. I know your objection of the juvenile's

16 attorneys.

17 Q. State's Seven, please describe for the Court what's depicted in this photograph.

18 A. That is a photograph with labia retractions showing the positive dye uptake. It is

19 enhancing the posterior fourchette laceration.

20 Q. And State's Exhibit Six, please describe what's contained in this photo.

21 A. That is a photograph showing the vaginal pooling of blood and tissue as well as

22 swelling and bruising.

23 MS. MCDUFFIE: Your Honor, State's Exhibit Six and Seven we offer.

24 THE COURT: Six and Seven are entered and I know the objection of defense.

25 Q. State's Exhibit Seven, is this when you do an exam on a normal, healthy woman,

1 is this what you would observe?

2 A. No, ma'am.

3 Q. Please describe for the judge what differs in this photograph.

4 A. Well, this picture depicts a female with a loss of estrogen showing it diminished
5 to no pubic hair. Typically, the labia is flattened, very pale related to the estrogen loss
6 and fatty tissue. That particular genitalia in that age group is typically very pale, very
7 dry, shrunken and very frail.

8 Q. Is there quite a bit of swelling as evidenced in this photograph?

9 A. Yes, ma'am.

10 Q. Please describe that for the judge.

11 A. The labia majora is swollen, bruised, shiny. Shiny because of the fluid filled
12 bruised tissue.

13 Q. You also performed what's commonly known as a rape kit exam? You collected a
14 rape kit, a sexual assault kit?

15 A. Yes, I did.

16 Q. And please describe to the judge how you do that.

17 A. It's a very lengthy exam. For Ms. Henrick, after speaking with her and her
18 describing in detail the assault history, the evidence was collected particularly to what she
19 stated had happened to her so there were vaginal swabs collected, rectal swabs collected,
20 speculum exams, photographs, documentation of all injuries using body maps and they're
21 all included in there. Each swab is collected, dried and then packaged and sealed and
22 placed in the evidence collection kit box, sealed again and then turned over to law
23 enforcement.

24 Q. And is that exactly what you did in this case?

25 A. Yes, it is.

1 TEMPLE HART – CROSS EXAMINATION BY MS. DELANY

2 Q. You collected vaginal swabs?

3 A. Yes.

4 Q. Rectal swabs?

5 A. Yes.

6 Q. The tissue that we talked about earlier, bloody tissue?

7 A. Yes.

8 Q. And you turned all of that over to investigator Josh Mauldin?

9 A. Yes, I did.

10 Q. And all of that evidence was properly packaged and sealed?

11 A. Yes, it was.

12 Q. It was not contaminated in any way when it was in your custody?

13 A. No, ma'am.

14 MS. MCDUFFIE: Beg the Court's indulgence. No further questions from the
15 State, Your Honor.

16 THE COURT: Ms. Delany.

17 MS. DELANY: Your Honor, may it please the Court.

18 CROSS EXAMINATION BY MS. DELANY:

19 Q. Ms. Henrick described her assailants as big one and the young one, correct?

20 A. That is correct. She did not have names.

21 MS. DELANY: Thank you, that's it, Your Honor.

22 THE COURT: You may step down, watch your step. Can Ms. Hart be excused?

23 MS. DELANY: No objection.

24 THE COURT: You are free to go.

25 MS. WALKER: Your Honor, the State calls Stan Richards.

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: ZACATE LOPEZ PLACE: 120 Sparkleberry Lane
 OFFICER: INV. J.A. Clark DATE: 12-15-2010
 TIME: 12:00

YOUR RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.

If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: [Signature]

SIGNED: Zacate Lopez

WITNESS: _____

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: [Signature]

SIGNED: Zacate Lopez

WITNESS: [Signature]

*9TH GRADE
READ AND WRITE*

STATEMENT of

ZACATA Lopez

Cola SC 29223

Columbia, S.C., this 15 day of December, 2010, at 12:00 hours, in the presence of
INV. J. Miller and/or INV. JOE CLARKE of the Richland County Sheriff's Department

I, FABIAN Lopez, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

DO MAKE THE FOLLOWING STATEMENT.

Q: Did you enter the home @

A: no

Q: Did you ever go inside the home?

A: yes. re AND Long proper. wet inside

Q: Did you touch the Asian Lady who lives at the Home?

A: NO (later said yes)

Q: Have you ever taken something in the Neighborhood, that did not belong to you - yes at the woman's home.

A: I pop. Chr screen TV

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward, or hope of reward of any kind.

Witness

Signed Zacata Lopez

Witness.

This is to certify that I have read or have had read to me the foregoing statement consisting of ____ pages and a true copy has been given to me this ____ day of _____, 20____

SWORN TO AND SUBSCRIBED BEFFORE ME
THIS _____ DAY OF _____, 20____

Signed _____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES

Page 1 of 1

STATEMENT OF

ZACOATA Lopez

(CONTINUED)

DATE 12.15.10 TIME 13:00

Q: Did you hold the shotgun on the woman?

A: I had it in my hand but did not point it at her.

Q: What were you wearing?

A: I had Brown Boots (jolo) Black pants, Brown Sweater w/ Hood., Green Scarf.

Q: What did you do with the Charles?

A: I turned the scarf in the street ~~the~~ dog towing service.

Q: What was Larry Propher wearing?

A: He had green scarf on.

Q: Did he bring the shotgun?

A: I did, I came inside first.

Q: Did Larry Propher have sex with the woman?

A: Yes he told her to get NAKED. He told her to go into the Room. He told her to get on her Back. He got on top of her. She started to get up. He said turn Around. And he got onto her AGAIN.

Q: What was the woman doing?

A: She said "please Don't"

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind

WITNESS

WITNESS

SIGNED Zacoata Lopez

This is to certify that I have read or have had read to me the foregoing statement consisting of ____ pages and a true copy has been given to me this ____ day of _____, 2009

SWORN TO AND SUBSCRIBED BEFORE ME

THIS ____ DAY OF _____, 2010

SIGNED _____

My commission expires _____

STATEMENT OF

ZACARATA Lopez
(CONTINUED)

DATE 12.15.10 TIME 13:00

Q: Did you put your penis inside her?

A: yes in her VAGINA

Q: was she on her Back or front?

A: Back.

Q: What were you looking for when you went inside the woman's home?

A: more.

Q: where is the Shotgun?

A: Larry has the Shotgun.

Q: What did you take from the home?

A: I-POO And T.V.

Q: What did you do with them?

A: We threw them in the woods near the side of road near Dog's Towing. I Burnt the Shirt there too.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward, or hope of reward of any kind

WITNESS

WITNESS

SIGNED. Zacarata Lopez

This is to certify that I have read or have had read to me the foregoing statement consisting of ____ pages and a true copy has been given to me this ____ day of _____, 2009

SWORN TO AND SUBSCRIBED BEFORE ME

THIS ____ DAY OF _____, 2010

SIGNED _____

My commission expires _____

01-24-96

Statement of
Zacoate Lopey
Made at

Columbia, South Carolina, this 15th Day of December, 2010, at 15:19 hours, in the presence of Inv. Clarke the Richland County Sheriff's Department

I, Zacoate Lopey, Understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer. Do make the following statement:

Q: Joseph Clarke

A: Zacoate Lopey

Q: How old are you?

A: 14

Q: Where do you live at this time?

A: [REDACTED]

Q: Is English your first language?

A: Yes

Q: What is the highest level of education you have achieved?

A: 9th Grade

Q: You are able to read and write correct?

A: Yes

Q: Do you understand the Miranda warning I read to you?

A: Yes

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind

Witness: [Signature]

Signed: Zacoate Lopey

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 15th day of December, 2010

Sworn to and subscribed before me
This 15 day of December, 2010

Signed: _____

[Signature]
Notary Public for South Carolina
My commission expires 12/08/2012

Page 1

Q: Tell me about the night you and Larry Prophet went inside the old ladies home across the street from your house?

A: Larry and me rode his moped down too my house from Larry's house. Larry had the shotgun with him. We decided to go over to the old ladies house. We were looking for money. We went to the back door and opened it. We then walked across the street to her house. We went to the back door and opened it. We then opened the sliding glass door and entered the home. I had the shotgun and we walked in on the women as she was watching TV. She started to yell and go "UUUUHHHHH". I told her we were not going to hurt her. I asked where the money was and she told me she did not have any money. I handed the shotgun to Larry and went to look for stuff. I came back into the room with the lady and Larry. He handed me back the shotgun. He (Larry) then went to look for stuff Larry came back into the room and we took the lady to the bathroom. Larry told her to get naked. The woman said no. We then took her to a bedroom and she took off her clothes. Larry laid the woman on the bed on her back. He was hard and pulled his dick out after unzipping his pants. I watched a he started to have sex with the woman. She said no. She then tried to get up and Larry told her to turn over. I stood there but did not watch. He made the woman moan as he started to do something in her butt. When he was done I was hard and I unzipped my pants and pulled my dick out. I then started to have sex with the woman in her Vagina. I then finished and I came in a napkin which I placed in my pocket I later found the napkin in my clothes this morning and flushed the napkin at my house. I took a flat screen TV and an I pod from her house. Larry had already left the home. I took the TV and I pod to Roof Street and laid them on the ground near some woods. I then walked up Nancy Avenue. I took off the Green shirt which had hid my face. I threw the shirt under some bushes. I then took off my brown Hooded Shirt and threw it in the median on Nancy. I then walked to Larry's home on Humphrey Drive. I met with Larry and he did not have any stuff from the ladies house which I could see. I then slept in a chair at Larry's then walked home before catching the school bus at my home.

Q: What was your purpose too go in the woman's home?

A: For Money

Q: What made you decide to have sex with the woman?

A: I don't know I just did

Q. Why did you ejaculate in a napkin?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: Lacoste Lopez

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this 15th day of December, 2010

Sworn to and subscribed before me
This 15 day of December, 2010

Signed: _____

[Signature]
Notary Public for South Carolina
My commission expires 10/28/2018

Page 2

A: Because I did not want to bust in her.

Q: Why would you care if you ejaculated inside of her?

A: Cause I know yall can find it like that.

Q: So you know breaking in and raping the woman was a crime?

A: I did not break in the door was unlocked.

Q: Did you have permission to enter her home?

A: No

Q: Did you know that raping an 80 year old woman was wrong?

A: Yes sir.

Q: Why did you take the shotgun with you?

A: We just took it.

Q: the shot gun was loaded correct?

A: yes sir

Q: Describe the shotgun to me?

A: it had a long barrel with a little bit of rust. It has a button on the top that makes the barrel open and it holds one shell.

Q: Did the shotgun have a flashlight taped on the barrel?

A: yes sir.

Q: What did you take from the home?

A: a flat screen TV and an I pod.

Q: Did you burglarize any other home?

A: No

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: Lacoute Lopez

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 15th day of December, 2010

Sworn to and subscribed before me
This 15 day of December, 2010

Signed: _____

[Signature]
Notary Public for South Carolina
My commission expires 12/31/2011

Page 3

Nothing follows

I have made the foregoing statement freely and voluntarily without fear, threat, promise, or reward or hope of reward of any kind.

Witness. _____

Signed: Jacinto Lopez

Witness _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 15th day of December, 2010.

Sworn to and subscribed before me
This 15 day of December, 2010

Signed: _____

Notary Public for South Carolina
My commission expires 10/08

Page 4

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: Larry Profit PLACE: 5023 Two Notch Rd
OFFICER (S): Sgt. K. Isenhour Inv. Mauldin
DATE: 12-15-10 TIME: 14:15

YOUR RIGHTS

- ☒ Before we ask you any questions, you must understand your rights.
- ☒ You have the right to remain silent.
- ☒ Anything you say can be used against you in court.
- ☒ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.
- ☒ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- ☒ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: J. Q.SIGNED: Larry ProfitWITNESS: [Signature]WAIVER OF RIGHTS

- ☒ I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: J. Q.SIGNED: Larry ProfitWITNESS: [Signature]

Statement of

Larry ProphetColumbia, SC 29223

Made at

Columbia, South Carolina, this 15 day of December, 2010, at 16:58 hours, in the presence of Sgt K. Isenhoward of the Richland County Sheriff's Department

I, Larry Prophet, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q: K. Isenhoward R: Larry Prophet

Q: Larry did we let you speak to your mother before you gave this statement?

R: Yes, Sir.

Q: Did you and Zocata Lopey rob an Asian woman last night?

R: Yes.

Q: Tell me what happened.

R: We was at my house. Me, Cotay (Zocata) and Minor 1 walked to Exxon on Shakespeare Road. We went there at around 8pm. We came back to my house and hung out. I asked Cotay if I could borrow his Polo boots to wear to school tomorrow. Andre stayed at my house and me and Cotay went to his house on the moped to get the boots. We came back to my house with the boots and we were hanging out. Cotay told me that he knew someone we could rob. He said she was an old Chinese woman who had some money. He said that if the car ain't there, she probably wasn't there. He went outside then came back in. I think he smoked. He asked me if I was ready. I told him that I was. We rode my moped over to his house. He went in the house and came back out, then went in the backyard and got with a shotgun. It was broke and flopping. He came out and

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: J. Q.

Signed: Larry Prophet

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 15th day of December, 2010.

Sworn to and subscribed before me
This 15th day of December, 2010

Signed: Larry Prophet

[Signature]
Notary Public for South Carolina

My commission expires 10/08/2014

Page 1

asked me if I was ready. He ran over to the woman's house and went inside through the back porch thing. I followed him and went to the carport. I was looking inside. He pointed the gun at her and asked her where the money was at. I went inside behind him. She told him that she didn't have any money. He said; you got a dollar and she said yes. He made her get out the chair and told her to show him where the money was. He told her not to walk fast. She went over to the front door. I heard him say jackpot. He got some cash from her. I went into another room and got a little fake ring and chain, a little girl necklace. I started going through the dressers and stuff. I called for him and went out the back door. I went out and ran to my moped. I drove off and looked back but never seen him leave the house. I just went home and I ain't even talked to him since. I got home at about 9 something, watched TV, smoked a cigarette and went to school this morning. The girl said that gun don't work and Cotay said you want me to show you

Q: When you went back to your house after the robbery, did Kotay or Andre go home with you?

R: Andre never left, he was there when I come back. He didn't know what were gone do

Q: Did you tell him what happened?

R: I told him "we went ham" that means we went and did something. He was halfway sleep though.

Q: Did you ever have the gun during the robbery?

R: I touched the gun in the yard, that's how I know it don't work.

Q: Did you ever force the woman to have sex with you?

R: No.

Q: Did Kotay?

R: I don't know.

Q: Did you that night or have you ever ejaculated (cum) in that woman's house?

R: No.

Q: Did that woman ever let you have sex with her (Consensual)?

R: No. I ain't never did it to her

Q: Did you take that woman's television?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed _____

Witness: _____

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This 15th day of December, 2010

Signed _____

Notary Public for South Carolina

My commission expires 10/08/2014

Page 2

R No.

Q: Did you take that woman's cell phone?

R: No, sir. I think she had it in her lap when he came in. I think she was talking on the home phone with a blanket on her legs and the phone on top of the blanket. He grabbed it and took it apart.

Q: What all did you take from that woman?

R: That ring, chain, a little Chinese pocket book that had a little bible in it. It also had a little change thing in it. That's it. I threw that stuff in the road Kotay's house is on.

Q: Why did you do this?

R: I wanted to do it for a couple dollars. I ain't got no job. We didn't know she was there, we were just going to break in.

Q: Did you see Kotay rape that woman?

R: No, sir.

Q: Is there any way possible that your semen (cum) is in that house?

R: No.

Q: What did ya'll buy at the Exxon when you went there?

R: Cigarettes, Newports, singles. Some dude in there sold me some, he was playing the little game and stuff.

Q: Can you take me to that woman's belongings that you stole?

R: Yes, sir.

Q: Did you give Andre the woman's phone?

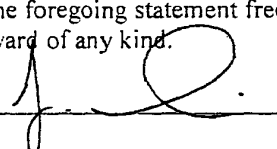
R: No.

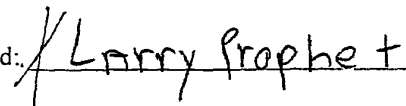
Q: Do you know where the shotgun is now?

R: No sir.

Q. Describe the gun again?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

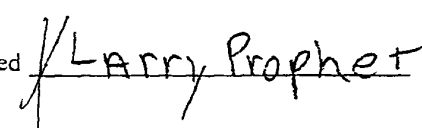
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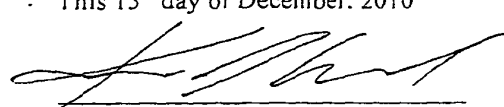
Signed: 

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 15th day of December, 2010

Sworn to and subscribed before me
This 15th day of December, 2010

Signed: 


Notary Public for South Carolina
My commission expires 10/08/2014

Page 3

R: It was old, rusty, beat up. the handle flops. It is rusted brown. It's long and still has the back on it.

Q: What were you wearing when you did this?

R: All black My black jacket, blue jeans, my white j's and a green t-shirt over my face. He had the same shirt covering his face The jacket and shoes are the same ones you took from me today

Q: Were you wearing gloves?

R: No sir

Q: Do you remember what else Kotay had on?

R: I know he had them Polo boots on.

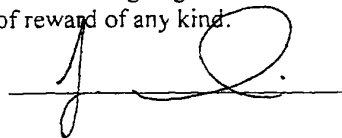
Q: Do you have anything else to say?

R: I ain't wanna do that junk. I just need money. If I knew my mom give some I wouldn't We were gonna break in some houses tonight though.

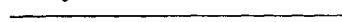
End of Statement 12/15/10 @ 17 52hrs*****

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

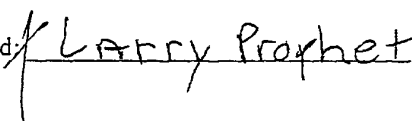
Witness



Witness



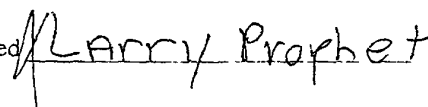
Signed



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Sworn to and subscribed before me
This 15th day of December, 2010

Signed



Notary Public for South Carolina
My commission expires 10/08/2014

Page 4

1 THE COURT: Correct. State's 12 entered into
2 evidence.

3 (RECEIVED IN EVIDENCE AND
4 MARKED STATE'S EXHIBIT NUMBER 12.)

5 Q (MS. CAMPBELL) I show you a copy of State's 12, the
6 redacted version. Does this fairly and accurately
7 reflect his disciplinary action while at the Alvin S.
8 Glenn Detention Center?

9 A Yes, ma'am.

10 Q Did you actually have personal knowledge of Zacoata
11 Lopey yourself?

12 A (NO RESPONSE)

13 Q Did you have personal knowledge of him yourself?

14 A Yes, ma'am.

15 Q In your role at the detention center ---

16 A Yes, ma'am, I knew him.

17 Q --- you had interactions with him and you were aware
18 of his behavior?

19 A Yes, ma'am. We'd come and check on him.

20 Q And you were employed with the detention center for
21 how long?

22 A Thirty-three (33) years.

23 Q He was written up on multiple occasions as reflected
24 in those records?

25 A Yes, ma'am, over 20 times.

1 Q In your personal observations of the defendant as
2 well as reviewing the records, how was his behavior while
3 he was at Alvin S. Glenn?

4 MR. MAY: Objection, your Honor. She's asking for
5 an opinion that would need to be qualified as an expert,
6 and that has not happened yet.

7 THE COURT: Overruled.

8 A Certainly he's had more write-ups than any other
9 juvenile we've ever had. A lot of these incidents
10 started out as small things, maybe like talking in the
11 class, and the teacher or an officer would instruct him
12 to hold the noise down and to be quiet, and then they
13 would seem to always escalate into something much larger.
14 Several of these reports would have probably never been
15 even written if the first underlying thing, like be quiet
16 in class, would have been done.

17 Q He's had more write-ups than anybody else in your
18 experience at Alvin S. Glenn?

19 A That's correct.

20 Q Those are reflected in the records we've provided
21 the Court?

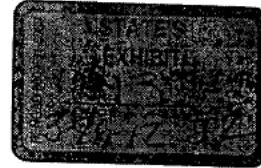
22 A Yes, ma'am.

23 Q And these are records you also provided the public
24 defender's office?

25 A I think we did to both.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Zacoata L. Lopey—JJMS# 364487
 PAGE 20

Social History
Zacoata Lopey



A. Sources of Information

Hilda Lopey (Mother)
 Zacoata Lopey (juvenile)

B. Prior Court History/ Criminal Record

- April 15, 2009, Zacoata was present in court for 2cts of Incurable and was ordered a secured evaluation at Midlands Evaluation Center.
- May 20, 2009, upon disposition, he was ordered a ninety (90) day determinate sentence, suspended upon alternative placement with twelve (12) months probation
- September 10, 2009, Zacoata successfully completed alternative placement at Camp White Pines.
- May 18, 2010, Zacoata was present in court for Probation Violation and was ordered a ninety (90) day determinate sentence suspended upon alternative placement with additional nine (9) months probation
- September 7, 2010, Zacoata completed alternative placement at South Carolina Mentor therapeutic foster care.

C. Family Description

Prior to his commitment to the Alvin S. Glenn Detention Center, Zacoata resided with his birth mother, Hilda Lopey, in the home of maternal grandmother, Mildred Ann Lopey. Zacoata's mother is 42 years of age (DOB: [REDACTED] 1967) and is in good health. She graduated from high school and attended college. She has been employed as a bus driver for Richland County School District Two for the past five (5) years. Zacoata's grandmother, Mildred Ann Lopey, is 69 years of age and is in rather poor health and suffers with diabetes.

Zacoata is the third of five children born to Ms. Lopey; he has two older half-sisters and two younger full sisters. His oldest sister (age 22) was born when his mother was in a relationship with Tony Sawyer of New York. This sister now lives independently in Columbia, SC.

The second of Zacoata's older half-sisters (age 18) was born when his mother was in a relationship with Emory Penniston of New York. This sister also resides in their grandmother's home. Zacoata's two younger sisters (ages five and nine) also reside in the home. In addition to his sister, Zacoata's first cousin (age 19) also resides in his grandmother's home.

Zacoata's birth father, John Baker, resides in Columbia in the home of his mother, Delores Baker. Mr. Baker is 48 years of age and is in good health.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Zacoata L. Lopey—JJMS# 364487
PAGE 21

D. Description of Parents Background

Ms. Lopey was born in New York and attended Clara Barton High School in Brooklyn, New York up to the 12th grade. Ms. Lopey reported that she received her GED in the 80's or the 90's.

Ms. Lopey also stated that she has worked at Richland County School District Two as a Bus Driver for the past five years; her gross salary is about \$1,600.00 monthly.

Ms. Lopey reported that she and Zacoata's father never married but lived together for about a year. Ms. Lopey reported that they separated because she could not trust him around her daughters, and he would also make inappropriate remarks to her niece.

Ms. Lopey also reported that she was married to Emery Penniston for 19 years. She stated that she has been separated for Mr. Penniston for 17 years and was legally divorced from him last year.

Ms. Lopey reported that she does not have a history of substance abuse or criminal activity. However, Ms. Lopey stated that Zacoata's father was incarcerated for burglary or drugs.

E. Family Unity and Emotional Atmosphere

Zacoata reported that he has a close relationship with his family, and Zacoata stated that his relationship is good with both of his parents. However, Ms. Lopey stated that his father has no meaningful part of Zacoata's life. Ms. Lopey stated that Zacoata's father taught him a lot negative things, like not trusting Caucasian individuals and that it is appropriate to harm them.

Ms. Lopey stated that her relationship with Zacoata is good and bad. She stated that she takes care of Zacoata and gives him whatever he needs but acknowledged that she has been too lenient and protective of Zacoata.

Zacoata reported that his family does not do any family activities together, except for eating dinner at Ryan's restaurant. Ms. Lopey reported the family used to take many trips to New York and Florida, but for the last couple of years there have not been many activities, except for the fair.

Zacoata reported that he has received some form of discipline from his mother when he did not follow rules of the home and that his discipline is usually involved spankings or his T.V. privileges being taken away.

Zacoata and his mother both denied any history of abuse and neglect. Ms. Lopey stated that Zacoata's father used to get drunk and wanted to beat on Zacoata, but she would always prevent this from happening.

Ms. Lopey stated that she believes that the reason for the Zacoata's behavior is that he suffers from mental health issues. Ms. Lopey stated that Zacoata was diagnosed for ADHD and was given medication for Bipolar Disorder, but she is not sure if he was fully diagnosed with it. Ms. Lopey stated that Zacoata's problems have affected everyone in the household

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION**Zacoata L. Lopey—JJMS# 364487****PAGE 22**

and reported that Zacoata is constantly fighting with family members. Ms. Lopey also stated that Zacoata started getting in trouble at three years old and these problems have continued.

F. Social Agencies Involved

Ms. Lopey reported that Zacoata has been involved with counseling with A.S.Y counseling agency and Columbia Area Mental Health.

G. Health Practices

Zacoata and Ms. Lopey appeared to be in good health.

H. Early Development and Medical History

According to Ms. Lopey, Zacoata was born following a normal full-term pregnancy and uncomplicated normal delivery. Ms. Lopey stated that Zacoata suffered from breathing problems from a respiratory infection. Also at age seven or eight, Zacoata ran into a pole and received a concussion and injured his eye.

I. Community and Home Adjustment

Zacoata reported that overall, life for him has been good and bad. He stated that he spends most of his time in the studio rapping with his friends and also stated that they hang at the Greenview Neighborhood Park or at one of the friend's home. Zacoata stated that his friend's ages range from 17-20 years old and claimed that he has at least 100 friends. Zacoata also reported that he and his friends smoke at least five (5) to ten (10) marijuana blunts a day, start smoking at 9:00 am, and do not stop until all of the marijuana is finished. Zacoata stated that he started smoking marijuana and drinking alcohol at age nine (9).

Ms. Lopey reported that the neighborhood they lived in is a fairly nice one. Ms. Lopey stated that she dislikes Zacoata's friends and feels that they are a bad influence on Zacoata. Ms. Lopey stated that his friends live in the Greenview Neighborhood, which is around the corner from where they lived and described the Greenview Neighborhood as a gang and drug infected neighborhood with a lot of crime. Ms. Lopey stated that, according to Zacoata, he used marijuana heavy and that he smokes every day, all day.

Zacoata and Ms. Lopey both agreed that he gets upset easily and it usually ends with a fight with his siblings. They both also agreed that Zacoata does not comply with the rules of the house and with curfew, which usually results in daily arguments. Ms. Lopey stated that she believes something is mentally wrong with Zacoata and described him as having a Dr. Jekyll and Mr. Hyde type personality. Ms. Lopey stated that Zacoata can be caring and loving at times, and also stated that Zacoata is an honest person who usually does not lie; reportedly, if you ask him something, he will give you a truthful answer.

Both Zacoata and Ms. Lopey agreed that Zacoata breaks and destroys property by punching the walls when he is angry. Ms. Lopey reported that he also sets fires in the yard and his room for no particular reason, just to do it.

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Both Zacoata and Ms. Lopey stated that they have a love for animals and own several pets.

J. School Information

Zacoata's last school attendance was at Spring Valley High School, where he was enrolled in self-contained student ED classes. At school, Zacoata has a history of threatening his teacher, being disrespectful, and truancy.

K. Institutional History

- April 15, 2009, Zacoata was committed to Midlands Evaluation Center for 2cts of Incurable.
- On May 20, 2009, he was ordered a 90-day determinate sentence suspended upon alternative placement.
- On June 9, 2009, Zacoata went to Camp White Pines and successfully completed placement on September 10, 2009.
- On May 18, 2010, Zacoata received a 90-day determinate sentence, suspended upon alternative placement for a Probation Violation.
- On June 11, 2010, Zacoata was admitted in a SC Mentor Therapeutic Foster Care and successfully completed that placement on September 7, 2010.

L. Recreational Interests.

Zacoata stated that he has interest in becoming a Truck Driver, joining the Army, and owning a Rap record label.

M. Religious Background

Zacoata reported that he does not attend church on a regular basis. The grandmother is a member of Kingdom Hall, and Zacoata stated that he did not like that particular church.

Ms. Lopey stated that she has been a Muslim for ten years.

K. Employment History

Zacoata reported that he steals TVs, laptops, or anything that he can sell to make money. Zacoata stated that he usually sells these things to strangers.

On occasions, Ms. Lopey stated that she gives Zacoata money because he does not have a job.

Kevin Brown
Community Specialist

**SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
PRE-ADJUDICATORY TRANSFER (WAIVER) EVALUATION**

DATE OF REFERRAL: March 16, 2011

NAME: Zacoata Lashane Lopey

SEX: Male

JJMS NO.: 364487

DOB: [REDACTED] 1996

AGE: Fourteen years, ten months (on date of offense)

HEIGHT: Approximately Five feet, two inches

WEIGHT: Approximately 130 pounds

DATE EVALUATION ORDERED: December 16, 2010

DATES OF EVALUATION: April 22, 2010, May 7, 2011; May 20, 2011

DATE OF EVALUATION REPORT: June 29, 2011

CHARGES: Armed Robbery, Criminal Sexual Conduct 1st Degree, Kidnapping, Burglary 1st Degree

REGARDING DOCKET #: 2010JU401520, 1521, 1522, 1523

PAROLE GUIDELINES: 36 – 54 months or until 21st birthday

FORM V: See attached

WAIVER OF RIGHTS FORM(S): See attached

FAMILY COURT ORDER: See attached

SOCIAL HISTORY: See attached



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I. REFERRAL STATEMENT

This report has been prepared as part of the Department of Juvenile Justice's Waiver Evaluation in reporting specific findings for the Family Court in regard to the sophistication and maturity, adequate protection of the public, and the likelihood of rehabilitation in the juvenile justice system. On December 16, 2010, the Honorable Judge Small ordered for Zacoata to undergo a pre-waiver evaluation subsequent to charges of Armed Robbery, Criminal Sexual Conduct 1st Degree, Kidnapping and Burglary 1st Degree.

This report is meant for the use of qualified professionals only and others involved from a legal perspective with this waiver review process. No unauthorized disclosure of this report or information contained in this report is allowed and any person who without proper authorization discloses information contained in this report assumes all liability associated therewith. Some individuals and family members may tend to misunderstand and/or distort the information enclosed in this report. This may result in significant psychological distress to the individual or may interfere with any treatment and eventual recovery from psychological illness, if present. For individuals with self-destructive or assaultive tendencies, the consequences of ill-considered disclosure of this report may be serious.

Zacoata Lopey's Notice of Rights was read to him on April 22, 2011. Prior to this evaluation, he was informed that a report would be sent to the Family Court and that the evaluator might be called upon to testify regarding the evaluation. It was explained, and he understood, that the conversations were not privileged communications concerning the waiver hearing. His responses to questions regarding his comprehension of the Notice of Rights indicated that he understood his rights.

Zacoata conveyed an understanding of the purpose of a pre-transfer (waiver) evaluation. Specifically, after the difference between being tried in a juvenile (Family) court vs. General Sessions court was explained, Zacoata was able to convey an understanding of the difference between the two, particular as related to sentencing.

Zacoata's attorney, Joanna Delaney, did not object to the motion for a pre-transfer (pre-waiver) evaluation. Moreover, the Family Court Order (see attached) made the stipulation under the Hitopoulus ruling State v. Hitopoulus, 309 SE. 2d 747 (1983)] that information Zacoata provided for the purpose of this evaluation could not be used against him in order to establish guilt on these charges. His attorney was present during the initial interview.

II. SOCIAL HISTORY:

See attached document.

III. PSYCHOLOGICAL REPORT:

A. Sources of Information:

Clinical Interviews with:

Zacoata L. Lopey (age 14): Juvenile on April 22, 2011, May 7, 2011, May 20, 2011

Collateral Interviews with:

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Hilda Lopey (age 43) Biological Mother on 4/22/11 (face-to-face); follow-up phone interview on 6/27/11

Consultations with:

Kevin Brown: DJJ caseworker
 Joanna Delaney, Attorney for the Defendant
 Alvin S. Glenn Detention Center staff; 6/27/11 and 6/29/11

Records Reviewed:

Court Documents
 Richland County Sheriff's Office records (including incident/arrest report and victim's information report)
 South Carolina DJJ Child Assessment and Evaluation (CAE)
 Psychological Evaluation—Midlands Evaluation Center (5/14/09)
 School Records: Richland County School District Two
 Findings from Psycho-educational Report (Sep/Oct 2004)
 Forensic Medical Assessment: Palmetto Health Alliance FNE Program
 South Carolina Mentor (clinical notes and TFC service notes)
 Columbia Mental Health Center

Psychological Testing/Instruments:

Behavior Assessment System for Children—Second Edition: Self-Report of Personality-Adolescent
 Mental Status Examination
 Millon Adolescent Clinical Inventory (MACI)
 Multidimensional Anxiety Scale for Children (MASC)
 Reynolds Adolescent Depression Scale (RADS)
 RST-I (Risk for Dangerousness, Sophistication-Maturity, Treatment Amenability Inventory)
 Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV)
 Wechsler Fundamental Academic Skills – select subtests (Reading Comprehension; Numerical Operations)

B. Prior Court History:

In addition to the current charges of Armed Robbery, Kidnapping, Criminal Sexual Conduct 1st Degree, and Burglary 1st Degree, Zacoata was charged in 2008 and 2009 with Disturbing Schools and two counts of Incurable. The Disturbing Schools charge was nol prossed, and he was committed to the Midlands Evaluation Center in April 2009 subsequent to adjudication on the Incurable charges. Upon disposition, he received a determinate sentence, suspended on alternative placement and probation. In May 2010, Zacoata was adjudicated delinquent for a Probation Violation and received another determinate sentence, suspended upon alternative placement and probation. A Receiving Stolen Goods charge was Nol Prossed by the Solicitor in July 2010.

C. Behavioral Observations:

Zacoata Lopey is a male Richland County resident of African American descent. He was fourteen years, 10 months on the date associated with the incident from which the current charges arose.

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Zacoata Lopey was interviewed and assessed at the Alvin S. Glenn Detention Center in Columbia, South Carolina. He has been detained since December 2010. His weight is proportional with his height and he appeared well nourished. Moreover, he was well groomed and he was dressed appropriately in detention center issued attire. Zacoata was cooperative throughout the evaluative process and provided information relatively freely. Eye contact was adequate. His mood and affect were appropriate. Posture and gait were normal. His speech was clear and logical and his vocabulary usage was sufficient.

D. Mental Status Examination:

Zacoata was oriented to person, place, and the purpose of this assessment. He was unable to offer the date. He was alert and responsive. He comprehended the reason for the evaluation and had no difficulty in understanding his rights before choosing to cooperate with the interview and testing. He signed that he was willing to cooperate, for each of the three assessment sessions. He was told, and he understood, that in discussing the pending charges, the information could not be used against him to convict him on said charges. His attorney was also present during the initial interview, thus was available to address concerns or questions related to the limits of confidentiality and/or implications of information disclosure.

During the mental status examination, some deficits in short-term recall were indicated. Moreover, he was unable to complete a calculation task. Zacoata was able to respond to some questions assessing his current level of adaptive functioning. Throughout the interview and psychological testing, his thought processes appeared to be logical, sequential, and reality based. During cognitive testing, Zacoata tired easily and had to be redirected to remain on task. This presentation most likely adversely affected his performance on the intellectual assessment, thus findings from the cognitive test may represent a slight underestimation of his aptitude. Yet, sufficient participation was noted for this to be judged a valid estimate of Zacoata's current psychological functioning, with exceptions as noted.

Zacoata reported that his appetite was good. Regarding sleep issues, he reported a long history of a decreased need for sleep. Specifically, he stated that he often performs exercises or engages in other activities during the overnight hours. By his report, he continues to sleep a minimal amount (an average of one hour nightly) whilst in the detention center.

According to his mother and other supporting documents, Zacoata received mental health services throughout his childhood. A review of the report generated through the Midlands Evaluation Center (SCDJJ) in May 2009 indicated that Zacoata received services at the Columbia Area Mental Health Center Services which were initiated subsequent to behavioral issues, including aggressive and violent acts, exhibited across multiple settings. By the report of his mother, Zacoata has previously been prescribed psychostimulants, antipsychotics, and mood stabilizers and he has been hospitalized several times for stabilization of behavioral and emotional issues. A review of mental health records confirms that Zacoata received services through the Columbia Area office of the Department of Mental Health for treatment of Conduct Disorder, Attention-Deficit/Hyperactivity Disorder, and Mood Disorder NOS. Reports also confirm that he has been prescribed Vyvanse, Clonidine, Depakote ER, and Abilify (at various times) for treatment of these conditions.

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According to the Health Services Administrator at the Alvin S. Glenn Detention Center, Zacoata was prescribed Depakote, during his stay at the detention center, until 5/18/11. Reportedly, in mid-May, Zacoata began to refuse the medication due to his inability to attain an erection while taking the medication. Regarding his behavior at the detention center, Ms. Lopey reported that Zacoata was in "lock-down" for a few weeks at the detention center subsequent to threatening a guard. Information obtained through the detention center indicated that Zacoata was sequestered for 10-15 days, on multiple occasions, due to behavior problems. Specifically, according to detention center staff Zacoata often walked out of the classroom without permission, was disobedient and disruptive, and failed to follow directives. Moreover, he reportedly made comments about engaging in sexual acts with the mothers/female family members of the other juvenile residents. The medical unit at the detention center stated that on 6/15/11, he threatened to assault the mother of another detainee (upon his release).

In 2004, Zacoata was referred for a psycho-educational assessment through his school district. Findings did not reveal learning deficits per se, yet confirmed the presence of behavioral issues within the classroom that were affecting his academic performance. An extensive history of behavioral issues within multiple settings is documented throughout various reports available for review. Moreover, Zacoata has exhibited a propensity toward aggression and violence, including threats to harm others and acts of aggression against various family members. For example, according to records, he was hospitalized after attempting to stab his sister with a butter knife and threatening to harm various individuals.

Regarding a history of substance and/or alcohol abuse, Zacoata admitted to regular abuse of marijuana and liquor (beginning at the age of nine), including on the date on which the alleged offenses occurred. By his report, he was attending court-mandated substance abuse treatment services, yet discontinued said services prior to the date of the alleged offenses.

Regarding evidence of psychosis, symptoms were denied including delusional thoughts, odd behaviors, and visual, auditory, olfactory and/or tactile hallucinations. However, results from the personality assessment indicated that Zacoata endorsed hearing voices often. Zacoata also described symptoms of mania, including uncontrollable feelings of anger/rage, decreased need for sleep, and engagement in risky behaviors. Symptoms of depression were denied verbally, yet findings from a measure of depressive symptomatology in adolescents suggested that he experiences some ancillary symptoms of depression, including feelings of boredom, wanting to run away, and having a negative self-image.

Zacoata was able to converse fairly well about many facts of his life. Additionally, he demonstrated some insight into the nature of the offenses with which he has been charged. In general, he was able to convey why such actions are unlawful, the effect that said actions could have on victims, and he conveyed a cursory understanding of the court/trial process.

E. Background Information:

According to Ms. Lopey, Zacoata was one of three children born during an intermittent relationship between John Baker (age 48-49) and Hilda Lopey (age 43). Reportedly, she and Mr. Baker also have a 9-year-old daughter and a 5-year-old daughter together. Ms. Lopey also has two older daughters through two prior relationships. Her 22-year-old daughter graduated from high school and is currently employed at a hotel. Her 18-year-old daughter graduated from

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high school in 2011 and reportedly plans to join the military. Ms. Lopey stated that Mr. Baker has one additional child (a 10-year-old son), yet Zacoata reported (in 2009 during the MEC evaluation) that his father has several other children.

Ms. Lopey stated that she earned a GED and for the past five years has been employed as a school bus driver with the Richland County School District. When questioned about a criminal history, she was evasive yet eventually acknowledged that she was charged previously with simple assault (reportedly, the charge was dismissed). Mr. Baker's educational history is unknown. Reportedly, he has been "in and out of" prison throughout his life and has historically worked odd jobs. Zacoata reported that his father was previously convicted of murder, after killing an intruder.

Zacoata was born in Columbia, South Carolina. Reportedly, he was the product of a full-term pregnancy, which culminated with a vaginal delivery. Complications were indicated in that Ms. Lopey became pre-eclamptic toward the end of the pregnancy. No special instrumentation was used to extract the fetus. Ms. Lopey denied use of all potentially toxic substances throughout the pregnancy and noted that he was healthy at birth. Although he reportedly met most major milestones on time, she disclosed that he had trouble with the development of fine and gross motor skills (e.g., tying shoes; riding a bicycle). When questioned about a history of head injuries, both informants reported that Zacoata lost consciousness subsequent to running into a pole at the age of 10 or 11. His mother was unable to describe in detail the exact nature of his injury and/or whether he received medical care following this incident; however, Zacoata stated that he suffered from a "light concussion." Zacoata's vision was reportedly affected by this injury long-term. Zacoata has never experienced seizures.

Zacoata has been in the care and custody of his biological mother since birth. Reportedly, Zacoata and his mother (along with his siblings) have resided with Zacoata's maternal grandmother for the majority of his life. Ms. Lopey described a poor relationship between Zacoata and his father and stated that, when they had contact with each other, Mr. Baker was often physically abusive. Zacoata did not discuss his relationship with his father in depth, when given the opportunity, yet confirmed that contact has been limited between him and his father throughout his life.

Zacoata's relationship with his mother was fraught with conflict, as described by both informants. Specifically, Ms. Lopey acknowledged that she often used corporal punishment to discipline Zacoata. She further stated that she was investigated twice by the Department of Social Services in 2008 and 2009 due to allegations of physical abuse. Reportedly, neither allegation was substantiated although, by Ms. Lopey's own description, she "beat the living he—out of him." No records from the Department of Social Services were available for review.

During the interviews with Zacoata, he reported that he was beaten repeatedly by his mother and that the beatings occurred regularly. At times, his grandmother would intervene, yet the beatings continued. He further stated that he was forthcoming about his experiences when questioned by the Department of Social Services in 2008 and 2009. He also reported that the family struggled financially and often the utilities were cut off due to non-payment. Due to the ongoing problems within the home, Zacoata states that he started fending for himself at the age of 13, which led to him leaving his home for several consecutive days. Reportedly, he often lived with friends and engaged in criminal acts (e.g., muggings) in an effort to survive.

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Reportedly, Zacoata has exhibited an extensive history of aggressive behaviors and violent acts since childhood. His mother reported that he attempted to "poison" his father when he was only 3 ½ years old, yet she was unable to describe in detail how a toddler would have intentionally poisoned an adult. She also stated that Zacoata "stabbed" his older sister with a butter knife and a fork, the former of which led to one of the psychiatric admissions. Reportedly, he also threw a bowl of hot soup on his sister, which led to burns (severity unknown), yet Zacoata described this incident as accidental. By his mother's report, he was initially diagnosed with Attention-Deficit/Hyperactivity Disorder at the age of six or seven, yet has since been diagnosed with various behavioral and emotional disorders. As noted above, a prior evaluation indicates that Zacoata has been diagnosed with behavioral disorders as well as Mood Disorder NOS for which he was prescribed Vyvanse, Depakote ER, Abilify, and Clonidine, at various times, for treatment of these disorders (according to mental health records). Zacoata admitted to regular abuse of marijuana and alcohol and reportedly abused both substances on the date associated with the current offenses. A history of behavioral issues, suspensions, and other disturbances within the school setting are documented within school records.

As indicated in the 2009 MEC report, the discharge summary from Palmetto Health Baptist Medical Center (Baptist) indicated that he was first admitted for stabilization in September 2007, at the age of 11, due to aggressive and violent behaviors. His stay was "unremarkable" and at discharge in October 2007, he was prescribed Elavil and Clonidine with a diagnosis of Conduct Disorder. Zacoata was re-hospitalized at Baptist Hospital in July 2008 (age 12) due to additional acts of aggression and threats of violence. During this second hospitalization, Zacoata was prescribed Abilify and was discharged 10 days later. Approximately two months later, Zacoata was hospitalized for a third time, after threatening to harm a school official. The discharge summary related to this admission indicated "a history of multiple school suspensions, including bomb threats and threatening to shoot teachers." Upon discharge, Zacoata was prescribed Depakote and Clonidine for treatment of Mood Disorder NOS, Oppositional Defiant Disorder, and Attention-Deficit/Hyperactivity Disorder. Records show that one or more of these hospitalizations were due to acts of violence against his older sibling (including stabbing her with a butter knife) and multiple threats to harm others with weapons.

As noted previously, in 2004, Zacoata was referred for a psycho-educational assessment. Findings did not support indications of a learning disorder, yet confirmed the presence of behavioral issues within the classroom that were affecting his academic performance. As such, Zacoata was referred for services as an emotionally disabled student. A review of the most recent team meeting notes for the manifestation review (dated 9/28/10) at Spring Valley High School (ninth grade) indicated that he was served as a "self-contained student in the ED class." The team's recommendations then were to explore a modified school day schedule and placement to address significant behavioral issues. Information from the Alvin S. Glenn Detention Center indicated that Zacoata lacks motivation and exhibits marked behavior problems in the classroom.

Regarding histories of familial criminality and/or psychiatric issues, various family members and others within his environment (i.e., peers) have engaged in minor and serious criminal acts; therefore, Zacoata appears to have been socialized within an environment that seemed to promote or encourage criminogenic attitudes and beliefs. As noted previously, Zacoata's father was (reportedly) convicted of murder and other criminal acts. Ms. Lopey denied a criminal

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history, yet later admitted that she was once charged with Simple Assault. Ms. Lopey described Mr. Baker as an alcoholic, yet denied that Mr. Baker has received treatment for alcoholism (to her knowledge).

Zacoata denied gang membership, yet admitted that most of his peers are involved in a gang (including his co-defendant for the current offenses). Ms. Lopey adamantly denied that Zacoata was involved in a gang and/or that his alleged actions related to the current offense were due, even in part, to gang ties or affiliation. Ms. Lopey denied that Zacoata was ever accused of any other sexual offenses or displayed sexually inappropriate behaviors; however, according to detention center staff, Zacoata has repeatedly made threats to act out sexually against unknown females.

Subsequent to his initial involvement with the South Carolina Department of Zacoata Justice, Zacoata has been placed outside of the home multiple times. In April 2009, he was committed to the Midlands Evaluation Center for an evaluation subsequent to charges of Incurability. Following his dispositional hearing, Zacoata was placed at Camp White Pines in June 2009 as a condition of his probation. According to the discharge summary from Camp White Pines, Zacoata received mental health services and medication management whilst in placement. Reportedly, he satisfactorily completed the program in September 2009 and returned home to the care of his mother. In June 2010, pursuant to a court order for alternative placement, Zacoata was placed in a Therapeutic Foster Care setting in Sumter, SC, in which he "made minimal progress towards his treatment goals." He was released from the TFC placement in September 2010. Three months following his discharge from TFC, Zacoata incurred the charges associated with the current offenses.

According to Lieutenant Moye at the Alvin S. Glenn detention center, Zacoata has been in "lock-down," for up to 15 days, since he was admitted to the detention center in December 2010 for acting out. Additionally, he has reportedly made threats toward the female family members of other juvenile detainees, including sexualized threats.

F. Empathy, Remorse and Responsibility:

Pursuant to State v. Hitopoulus, 3099 SE.2d 747 (1983), the court order indicated that "any oral or written statements made by the Zacoata regarding the charges contained in Petition 08-JU-16-253-257 to the psychologist(s) conducting the pre-waiver shall not be admissible as evidence against him in any criminal trial concerning these charges." Consequently, Zacoata was permitted to discuss the charges and facts associated with the case to gauge a sense of empathy, remorse, and responsibility.

When questioned about the events on the date in question, Zacoata reported that after leaving school, he went to a local gas station for cigarettes. Subsequently, he went to the home of his co-defendant (age 15) and they began consuming alcohol and smoking marijuana. [Note: Zacoata described a very close relationship between him and the co-defendant and perceived him as "a brother from another mother."] Reportedly, the co-defendant left briefly to pick-up another male youngster (juvenile) and returned with said person to the home. Following the co-defendant's return, Zacoata and his co-defendant walked through the streets surrounding the neighborhood, returned to the home of the co-defendant to retrieve a gun, and then set out on a moped to "hit places" [i.e., engage in robberies].

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Upon approaching the victim's residence (an elderly woman), they did not see a vehicle, thus they believed the house to be empty at the time. Notably, the victim resided near Zacoata's residence. They went to the back of the home and entered the house through the (reported) unlocked door of the sunroom. Upon entering the house, they discovered that the victim was in the residence. By Zacoata's report, he handed the gun to his co-defendant and began questioning the victim about the whereabouts of valuables, including money and weapons. By his report, he collected various objects, including an iPod and a flat screen television, while his co-defendant pointed the gun at the victim. The victim reportedly pulled out a wallet to give them money, yet denied that there were weapons in the home.

After gathering the various objects, reportedly Zacoata's co-defendant introduced the idea of sexually assaulting the victim. Zacoata confided that he was hesitant, yet ultimately acquiesced and forcibly penetrated the victim anally. A review of the victim's statement suggested that Zacoata was reluctant to assault her sexually, as she noted that he experienced difficulty penetrating her, thus had to lubricate his penis with saliva. The victim also noted that she made a statement to Zacoata about her being akin to his grandmother. When questioned as to whether that statement affected him in the midst of the incident, he replied that he thought, "I'm going to jail either way if I get caught," thus he opted to assault her sexually despite his reservations.

Zacoata expressed remorse for his actions related to the sexual assault. Reportedly, he ruminates often about the effect of his actions on the victim and aspires to make amends. He further acknowledged that his actions could have long-term implications on the victim. To atone for his actions, Zacoata expressed a desire to "do things to make her happy." Although verbally remorseful for the assault, Zacoata did not express remorse for the robbery or his history of robberies. By his report, he "feels good" when he robs because of the tangible rewards of gaining money or valuables as a result. He further stated that he makes sense of his actions by stating to himself that victims were able to earn the money/valuables initially, thus they are capable to earn them again.

While discussing the specifics of the incident in question, Zacoata was able to describe the nature of the charges against him and provided reasonable explanations as to why sexual assault is unlawful. Yet his conceptualizing of and justification for engagement in robberies diverges from social norms and morals. Zacoata believes that he should be given a "second chance" to atone for his actions as noted above.

G. Psychological Testing:

Cognitive and Achievement Functioning:

The Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) was administered. This is an individually administered clinical instrument, used to assess intellectual/cognitive abilities of children ages six years through sixteen years, eleven months. It is designed to examine the capacity of an individual to act purposefully, think rationally, and to deal effectively with his/her environment. The results of this administration are most likely a slight underestimation of Zacoata's aptitude, given his demeanor and attitude toward testing.

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The scores on the individual subscales of the WISC-IV are reported in the table below. All IQ and index scores have a Mean of 100 and a Standard Deviation of 15. Scaled scores have a mean of 10 and a standard deviation of 3; therefore, a majority of those tested score between 7 and 13.

Results on the WISC-IV suggested that overall Zacoata functions in the Borderline range of cognitive ability. His Full Scale IQ of 71 placed him at the third percentile. Overall, his performance reflected limited strengths, yet significant discrepancies were noted between some subtest scores. Specifically, relative strengths were illuminated for working memory whereas his performance on subtests measuring verbal reasoning abilities, non-verbal reasoning, and his ability to process information fell within the borderline range or below.

Zacoata's verbal reasoning abilities, as measured by the Verbal Comprehension Index, fell in the borderline range and are above just 8% of his peers (VCI = 79; 90% confidence interval = 75-86). The Verbal Comprehension Index is designed to measure verbal reasoning and concept formation. In general, his abilities to engage in abstract reasoning, his expressive vocabulary, and his knowledge of conventional standards of behavior and common sense were limited.

Zacoata's nonverbal reasoning abilities, as measured by the Perceptual Reasoning Index, fell in the borderline range and are above 8% of his peers (PRI = 79; 90% confidence interval = 74-87). Overall, he did not demonstrate the ability to engage in nonverbal concept formation and visual perception and organization, and visual-motor coordination abilities were limited.

Relative strengths were illuminated through subtests measuring his working memory abilities. Specifically he scored within the low average range on subtests comprising the Working Memory Index (WMI = 88; 90% confidence interval = 83-95). This index measures his abilities to sustain attention, concentrate, and exert mental control.

Marked weaknesses were identified in Zacoata's ability to process information swiftly, as measured by the Processing Speed Index (PSI = 56; 90% confidence interval = 54-69). Processing speed is an indication of the rapidity with which Zacoata can mentally process simple or outline information without making errors.

Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV)

Composite Scores Summary

Scale	Sum of Scaled Scores	Composite Score	Percentile Rank	90% Confidence Interval	Qualitative Description
Verbal Comprehension (VCI)	19	79	8	75-86	Borderline
Perceptual Reasoning (PRI)	20	79	8	74-87	Borderline
Working Memory (WMI)	16	88	21	83-95	Low Average
Processing Speed (PSI)	4	56	0.2	54-69	Deficient
Full Scale (FSIQ)	59	71	3	68-76	Borderline

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Subtest Scores:

<u>Verbal Comprehension</u>	<u>Scaled Scores</u>	<u>Perceptual Reasoning</u>	<u>Scaled Scores</u>
Similarities	7	Picture Concepts	10
Vocabulary	7	Matrix Reasoning	6
Comprehension	5	Block Design	4
<u>Working Memory</u>	<u>Scaled Scores</u>	<u>Processing Speed</u>	<u>Scaled Scores</u>
Digit Span	8	Coding	3
Letter-Number Sequencing	8	Symbol Search	1

These scores represent a decline in functioning, on some dimensions, from a previous administration of the WISC-IV in 2004, when Zacoata was eight years old. Specifically, in 2004, Zacoata's Full-Scale Score was 82, which fell within the Low Average range. Other scores were as follows: Verbal Comprehension: 93; Perceptual Reasoning: 84; Working Memory: 83, and Processing Speed: 83. The most drastic variation was a nearly 30-point difference between the prior Processing Speed score and the current score. In 2009, Zacoata had an abbreviated cognitive assessment in 2009 at the Midlands Evaluation Center. Results from the Wechsler Abbreviated Scale of Intelligence, administered in 2009, yielded a Full Scale score of 82 (Low Average), a Verbal IQ score of 92 (Average) and a Performance IQ score of 75 (Borderline). While his performance on the Verbal subtests was markedly better in 2009, in comparison to his performance on the current administration of the WISC-IV, the 2009 Performance score was commensurate with findings from current testing. Notably, Zacoata did not report a history of a head injury according to the 2009 MEC report, thus this raises the question as to the timeframe for this injury (i.e., before or after the MEC admission). Additionally, as noted above, given Zacoata's presentation during testing, the current WISC-IV findings are most likely an underestimation of his overall level of cognitive functioning; however, given a reported head injury, additional testing is warranted (i.e., neuropsychological testing) to corroborate current findings and to determine if current findings represent a decline from previous functioning.

Zacoata was also administered two subtests (Reading Comprehension and Numerical Operations) of the Wechsler Fundamental Academic Skills test. The standard score achieved in Reading Comprehension suggested that Zacoata performed within the Average Range, using age-based norms. His performance on the Numerical Operations subtest reflected markedly below average performance, using age-based norms. Findings from the Reading Comprehension subtest were inconsistent with his performance on the WISC-IV, yet the Numerical Operations score was commensurate with his aptitude as measured by the intellectual assessment.

Wechsler Fundamental Academic Skills—Select subtests

Standard Scores	
Reading Comprehension:	94
Numerical Operations:	74

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Personality and Emotional Functioning:

The Millon Adolescent Clinical Inventory is a self-report inventory designed to assess personality styles, significant problems or concerns, and clinical symptoms in adolescents, using a true-false format. The response style suggested a tendency toward self-deprecation and a consequent exaggeration of current emotional problems, thus the findings were interpreted cautiously. Findings from this assessment reflected an intense conflict between his anger toward most people with whom he has a personal relationship and his feelings of guilt and self-condemnation. Although he would like to depend on others, he has learned to anticipate pain and disillusionment. His despondency overlies a markedly deflated sense of self-esteem, and his expectancy of repeated personal failures and humiliation constrain his efforts to assert himself by becoming more autonomous or independent. Because others either have undone or deprecated his attempts at self-assertion, he has become increasingly pessimistic about the future, brooding over past events, and feeling sorry for himself. However, these restrictions and dispiriting adaptations stir deep resentments within him. Consequently, he will often act in a petulant, unruly, and passively aggressive manner, occasionally attacking others for their lack of support. The associations that he seeks with others are seriously jeopardized by these displays of discontent and anger, however. To restrain his resentments and to protect himself against a further loss of support, he may withdraw into fantasy solutions, remaining in his characteristically depressed and somber state.

The unruly outbursts and gloomy moodiness of this teenager often evoke critical if not humiliating reactions from others, and such reactions reinforce his depressive tendency and self-protective withdrawal. Every avenue of potential gratification is fraught with conflict. He hesitates to stand on his own because of feelings of pessimism and self-doubt. Conversely, he cannot depend on others because of his deep social mistrust. Disposed to anticipate disillusionment, he may behave obstructively and thereby incur the expected rejection and disappointment.

His depressive tone and feelings of self-reproach are omnipresent. Unable to gain the skills for overcoming his deficits or for attracting the support of others, and finding that his resentful fantasies provide little respite from his low self-esteem, he turns against himself, expressing feelings of unworthiness and uselessness. Feeling misunderstood, unappreciated, and demeaned by others, he builds his defenses against anticipated ridicule and contempt.

In regards to expressed concerns, he describes a significant amount of conflict within his family. He perceives his family life as troubled and disharmonious. In regards to clinical syndromes, Zacoata acknowledged abuse of illicit substances. Anxiously troubled, lonely, and socially apprehensive much of the time, he appears to turn to alcohol or drugs to fulfill a number of otherwise difficult-to-achieve psychological functions. The substances not only may serve to medicate his social anxiety and thereby enhance his confidence but also may help him relate more comfortably to others by bolstering his feelings of self-esteem and well-being. For him, alcohol or drugs provide a quick dissolution of psychic pain, a method for blotting out awareness of his loneliness and troubled experience. Moreover, he fails to follow societal conventions and exhibits discomfort with conformity.

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The Behavior Assessment System for Children (BASC) is a multimethod, multidimensional approach to evaluating the behavior and self-perceptions of students aged 4 to 18 years. Results from this instrument indicated that Zacoata has trouble within the academic setting including regarding his attitude toward school and school officials. Additionally, he endorsed several items on the Atypicality subscale, which yielded a clinically significant score. Items endorsed included hearing his name when alone, occasionally feeling as if others are out to get him, feeling as if someone wants to hurt him, feeling as if someone is watching him, and hearing voices in his head. Scores on the Hyperactivity and Attention Problems subscales also fell within the clinically significant range. Slightly elevated scores were also indicated on the Social Stress and Depression subscales. As reflected on the MACI as well, Zacoata reported significant problems within his relationships with his parents.

Two other measures, the Multidimensional Anxiety Scale for Children and the Reynolds Adolescent Depression Scale—Second Edition (both of which assess for emotional distress) were administered. Findings from the MASC did not support symptoms consistent with clinical symptoms of anxiety; however, one subscale elevation was noted on the Tense/Restless scale. This elevation was most likely related to Zacoata's angst related to the court process and potential outcomes of such. Findings from the RADS-2 indicated significant elevations on the Somatic Complaints subscale, yet the overall depressive score was not elevated.

Violence Risk Assessment

Historically, Zacoata has exhibited a history of maladaptive and antisocial acts. Beginning in his childhood, he has exhibited behavioral problems in various settings. Additionally, he was exposed to violence, reared in a culture of criminal activity, lacked adequate protective factors, and reportedly experienced physical abuse. He has struggled academically and his relationships with his parents were variable and unstable. Although his formal criminal history was not extensive prior to the (alleged) current offenses, the nature of the allegations are very severe and involved a complete disregard for the welfare of others and a lack of respect for human life. Moreover, although he has never been charged with any other serious offenses other than the current charges, Zacoata readily admits to various other acts of violence and antisocial acts, including repeatedly robbing others.

A recently developed instrument, the RST-I was designed to be utilized for the purpose of waiver/transfer evaluations to offer the evaluator information on three specific variables: (a) potential risk for dangerousness to the community, (b) level of sophistication-maturity, and (c) amenability to treatment.

In regards to the level of Dangerousness exhibited, Zacoata scored high on two of three clusters under this construct. Specifically, in terms of the R-VAT cluster (i.e., Violent and Aggressive Tendencies, characterized by unprovoked violent crimes) his score was markedly elevated. By his own admission, Zacoata has engaged in several acts of violence, particularly those related to his affiliation with known gang members. Additionally, as pertained to the current charges, Zacoata was unable to provide a rationale for his actions and he did not indicate that his actions were in response to being provoked in any way by the alleged victims. In regards to the R-PEX cluster (Planned and Extensive Criminality), which is characterized by pre-mediated acts and an early onset of criminal and/or anti-social acts, the following variables contributed to a high score on this cluster: (a) his admission of involvement with delinquent peers (i.e., known gang

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members), (b) engagement in maladaptive acts commenced or intensified by the age of 12, and (d) involvement in several antisocial acts. In terms of the final Dangerousness cluster (R-PPF, which is characterized by Psychopathic Features or a lack of remorse), although he demonstrated some remorse for his actions, the remorse exhibited was limited to one act (sexual assault) and was still incongruent with the seriousness of the offenses.

In regards to the other two constructs measured by the RST-I, Sophistication-Maturity and Treatment Amenability, the overall score for the Sophistication-Maturity clusters fell within the moderate range indicating that, in comparison to his peers, Zacoata exhibits moderate levels of maturity, which has implications for culpability. Factors contributing to his score included his lack of appropriate conflict resolution skills, his inability to engage in cost-benefit analysis as related to engagement in criminal acts, and his poorly developed sense of self-worth. In terms of being amenable to treatment, the score generated fell within the moderate range indicating that he is moderately amenable to treatment.

H. Psychological Summary:

Zacoata is a 15-year-old African American male who has a history of significant behavior problems. Beginning in his childhood, Zacoata exhibited behavior problems in multiple settings, which contributed to an early diagnosis of ADHD. Behavioral problems escalated throughout his childhood and emotional issues began to emerge as well. By late childhood/early adolescence, Zacoata had been hospitalized three times for behavioral health issues, including aggressive, violence and seemingly marked emotional problems. Despite numerous treatment attempts (including therapeutic placements), Zacoata made minimal progress towards improved behavior. At some point during this timeframe, Zacoata reportedly experienced a head injury, yet limited information was offered related to the exact nature of this injury and treatment sought. Yet, reportedly, the injury was significant enough to affect Zacoata's vision.

Records vary regarding whether Zacoata exhibits symptoms of mood disturbances, yet symptoms and behaviors described are congruent with clinical symptomatology of a mood disorder, including a propensity toward irritability, sleep disturbances, and engagement in risky behaviors. Thus, sufficient evidence was presented to indicate the presence of a mood disturbance and Zacoata has been treated pharmacologically for mood disturbances. Behavioral issues are also well-documented including a history of Attention-Deficit/Hyperactivity Disorder and Conduct Disorder. Findings from personality measures reflected a troubled youngster who, due to a history of an unstable home environment and other factors, exhibits signs of sullenness, emotional insecurity, impulsivity, and a lack of regard for the welfare of others.

Results from the intellectual assessment suggested that overall Zacoata is functioning within the borderline range of intellectual functioning; however, Zacoata's true level of cognitive functioning is most likely within the Low Average range. With that said, given marked discrepancies on some domains when comparing current findings with prior results and due to a possible closed head injury, neuropsychological testing is encouraged to corroborate current findings and to rule out potential neurological impairments. Results from the achievement testing reflected an adequate level of functioning on a reading comprehension subtest and markedly low performance on a mathematical subtest. A review of school records indicated that he was referred for a psycho-educational assessment during the second grade and, although he did not appear to meet criteria for a learning disorder, he was labeled as emotionally disabled due to

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significant behavioral and emotional issues. Recent school records, from 2010, indicated that he continued to receive services as an emotionally disabled student. Information from the detention center indicated that he continues to exhibit marked behavioral problems within the academic setting.

An assessment of family functioning revealed an unstable and chaotic home environment. Specifically, he was (reportedly) the victim of physical abuse, was socialized in an environment that appeared to foster engagement in criminality, and often his basic needs were not met, which contributed to his engagement in criminal acts as a means of survival. Although he denounces gang membership, Zacoata admits that most of his peers are gang members. He also acknowledged abusing alcohol and marijuana regularly, and engaging in various violent and aggressive acts.

Despite his history, the current charges are Zacoata's first known serious offenses for which he has been formally charged. Major life stressors included feeling the need to fend for himself due to limited resources, being a victim of physical abuse, and feeling ostracized. Additionally, very few protective factors were evident since his support system is limited, his relationships with his parents are maladaptive, he has historically performed poorly in school, and he continues to espouse criminogenic beliefs and attitudes.

IV. CONCLUSIONS:

Based on the sum of the data obtained, it is the opinion of this evaluator that several important factors should be taken into consideration as the decision regarding transferring for processing through the adult court system is made. Specifically, Zacoata presents as a troubled youngster who has exhibited a history of significant behavioral and emotional issues.

A. Level of Sophistication and Maturity:

In the opinion of the Preadjudicatory Transfer Evaluation Team, consisting of the Director of Consultation and Evaluation Services and the Contract Psychologist, Zacoata is functioning at a level of maturity and sophistication that is somewhat lower than what would be expected given his age. From a cognitive perspective, Zacoata demonstrated many deficits related to abstract reasoning abilities, decision-making skills, and common sense thinking. His social maturity is less developed in comparison to his peers, as indicated by his inability to resolve conflict in a socially and age-appropriate manner. In terms of his moral development, although he understands criminal acts are wrong, he appears more motivated by the notion of punishment in comparison to a consideration of how his acts affect the alleged victims. Yet, he appears to grasp the concepts of right vs. wrong, he understands the seriousness of the actions of which he is accused, and he understands the potential implications of a guilty verdict in the adult court system.

Considering the developmental stage of an adolescent of his age, empirical data suggests that fourteen-years-old should be held less culpable for their actions due to a variety of reasons, including their susceptibility to peer influence and their capacity for self-management. Yet, given the seriousness nature of the alleged offenses, Zacoata should be held accountable for his actions although, if he is found guilty on these charges, his degree of culpability should be

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
 Zacoata L. Lopey—JJMS# 364487
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considered in the context of his cognitive, emotional, and social development at the time of the offense.

B. Likelihood of Reasonable Rehabilitation:

There are a number of factors suggesting the possibility of positive treatment outcomes within the Juvenile Justice System. These include:

1. Zacoata was cooperative and forthcoming during the interview process.
2. Zacoata was open, disclosing, and willing to share in the exploration of his life. Open individuals are more likely to engage in the rehabilitative process.
3. Zacoata appears moderately motivated to receive help if deemed necessary.
4. Zacoata has accepted responsibility for his decision related to the current offenses and acceptance of responsibility can enhance the possibility for rehabilitation.
5. Some expressions of remorse for the current offenses were noted. Remorse can be a deterrent to crime, and those who feel remorse are more likely to benefit from rehabilitation.
6. Zacoata's prior adjudications were related to relatively minor/status offenses, thus the current offenses are the first serious offenses with which he has been charged.
7. At the age of 15 years (at the time of the report), there is significant time for Zacoata to benefit from services provided by the South Carolina Department of Juvenile Justice.

The following negative factors, which suggest poor prognosis for treatment outcome, also need to be considered:

1. Zacoata is charged with very serious and violent offenses, and if adjudicated delinquent, this would reflect a lack of concern for the well-being of others and a complete disregard for human life. Persons who commit antisocial actions of this magnitude are more difficult to rehabilitate.
2. Although the current offenses are the first known serious criminal offenses brought against Zacoata, the nature of the charges are extremely violent and serious demonstrating a propensity toward criminal involvement. Moreover, Zacoata has actively associated with known gang members and admits to engaging in other antisocial acts (i.e., robberies), which provides additional evidence to suggest a pattern of criminal behavior.
3. Historically, Zacoata has exhibited marked behavioral problems in multiple settings. Persons with a history of behavioral problems tend to benefit less from a structured rehabilitative effort and rehabilitative services of the kind that the Department of Juvenile Justice could provide for Zacoata.

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4. School attendance, performance, and behavior have historically been poor for Zacoata. Persons who demonstrate minimal regard for social conventions are more difficult to rehabilitate.
5. Zacoata demonstrates overall borderline to low average cognitive abilities. Although he understands that there are consequences for his actions, he does not appear to consider said consequences prior to committing various acts. Additionally, he exhibits extremely low verbal/abstract reasoning abilities, which has direct implications on his decision-making abilities and use of other adaptive life skills.
6. Zacoata admits to regular abuse of marijuana and alcohol. Individuals with serious drug problems and those that promote the use of drugs are more difficult to rehabilitate.
7. Zacoata has been involved in long-term intensive rehabilitative efforts in which he demonstrated minimal progress, thus there is reason to believe that such rehabilitation might not be beneficial.
8. Currently, Zacoata appears to lack a supportive and adaptive support network given that his relationship with his mother is poor and his relationship with his father is non-existent. Individuals with poor support networks are more difficult to rehabilitate.
9. Zacoata appears to lack an adequate sense of self-worth and is most likely contending with an untreated mood disorder. Persons with low levels of self-esteem and moderate to severe psychiatric disorders are more difficult to rehabilitate.

C. Adequate Protection of the Public:

The offenses with which Zacoata are charged are of a very serious nature. Moreover, Zacoata readily admits to the commission of said offenses. Therefore, in the opinion of this evaluator, the protection of the public would be compromised if Zacoata does not remain in a secure, highly structured setting.

If committed to the Department of Juvenile Justice for an offense that would be a criminal offense if committed by an adult, Section 20-7-7810 states that the juvenile may be committed for an indeterminate period not to exceed his 21st birthday. If committed to the Department of Juvenile Justice by the Family Court, Zacoata's guidelines for the offenses Armed Robbery, Kidnapping, Criminal Sexual Conduct, 1st Degree, and Burglary 1st Degree would be 36-54 months. If he is adjudicated delinquent, and committed to the Department of Juvenile Justice and is not sooner released by the Juvenile Parole Board, at age seventeen (17) he will be transferred to the S. C. Department of Corrections. Upon being transferred to the Department of Corrections at age seventeen (17), the length of time he would remain in secure custody (until age 21) or under community supervision would be within the discretion of the Juvenile Parole Board. During this indeterminate period of incarceration, the public would be adequately protected from any antisocial acts committed by this juvenile.

Community supervision of a juvenile paroled (conditionally released) from the Department of Juvenile Justice or the Department of Corrections can be provided until the juvenile's twenty-first (21st) birthday (Section 20-7-8320). Given the present age of this juvenile and his parole

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guidelines, if committed to DJJ for these offenses, it is possible that he will be conditionally released by the Juvenile Parole Board prior to his twenty-first (21st) birthday. At age twenty-one (21), release must be unconditional.

D. Procedures, Services, and Facilities currently available to the Juvenile Court which would potentially be a benefit to Zacoata Lopey:

If adjudicated delinquent by the Family Court and placed on probation, the South Carolina Department of Juvenile Justice can provide until the age of eighteen (Section 20-7-400 (B)) probation, aftercare supervision, psychological consultation, and, when appropriate, short-term placement for juveniles in need of non-secure community-based services.

If adjudicated delinquent by the Family Court and committed to the Department of Juvenile Justice, the Department would provide institutional confinement. If necessary, institutional placement includes confinement in a maximum-security facility. Within its institutional facilities, the Department of Juvenile Justice operates a 12-month continuous educational program for incarcerated juveniles including, if appropriate, a Cities-in-Schools Program. Treatment services potentially available to incarcerated juveniles which could be of benefit to Zacoata include individual, group, and family therapy; sex offender treatment, social skills training; anger control training; drug education; addiction treatment substance abuse self-help groups; tutorial programs; vocational rehabilitation programs; independent living skills education groups; and psychiatric and medical services

Whether or not Zacoata's case is heard in Family Court or the Court of General Sessions, the following specific therapeutic recommendations are provided:

1. Zacoata will benefit from individual psychotherapy to address mood disturbances, maladaptive personality traits, behavioral issues, sex offender specific treatment, and other efforts to foster the development of adaptive life skills and to help him accept further responsibility for his actions.
2. A comprehensive neuropsychological evaluation is strongly encouraged to identify potential neurological deficits stemming from a head injury.
3. Psychopharmacological interventions for treatment of mood and behavioral disturbances are strongly encouraged.
4. Participation in a gang awareness program is strongly encouraged given his admission of gang involvement
5. Participation in a weapons awareness program is strongly encouraged.
6. Given his own admission of marijuana and alcohol abuse, Zacoata could benefit from substance abuse treatment services.
7. Other activities are strongly encouraged in an effort to allow Zacoata to atone for his actions given his young age.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION

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8. Upon earning a high school diploma or a GED, vocational training is strongly encouraged given that, regardless of the court in which his case is heard, he likely will be an adult at the time of his release. Efforts should be made to foster the development of job training such that Zacoata can make an effort to secure lawful employment and contribute to society as a law-abiding citizen.

Aalece O. Pugh-Lilly, Ph.D.
Licensed Psychologist/Contract Evaluator
SC Department of Juvenile Justice

Craig S. Williams, Ph.D.
Supervising Psychologist
Director, Consultation and Evaluation Services
Department of Juvenile Justice

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF RICHLAND

10JU401520

IN THE INTEREST OF

JUVENILE PETITION

Lopey, Zacoate	DOB [REDACTED]
[REDACTED]	B/M
Columbia, SC 29223	803-705-1616

R 10 - 4 3 1 3

Inv. Joe Clarke, RCSD petitioner, residing at Post Office Box 143, Columbia, SC 29202, having sufficient knowledge or information to believe that a case has arisen which invokes the juvenile jurisdiction of the Court alleges.

1.

That the above named is less than seventeen years of age and resides in the County at the address shown above, and was found in the County as alleged herein

2.

That the names and addresses of the child's parents or guardian or custodian is as follows.

Name	Relationship or Title	Address
Hilda Lopey	Parent	Same

3.

On 12/14/10, respondent did commit the crime(s) of Armed Robbery, violation of SC Code 16-11-330, in that at [REDACTED], in Richland County, he did willfully and unlawfully enter the victim's home, during the hours of darkness while armed with a loaded shotgun. Lopey admits in a confession to illegally entering the home. Once inside Lopey and co-defendant, Larry Prophet searched for items of value. Lopey claims he and Prophet then forced the woman against her will to a back bedroom at gun point. Both men ordered the victim to undress. Lopey claims he watched as Prophet had vaginal intercourse with the victim. Lopey then admits to having vaginal intercourse with the victim. Lopey has admitted to taking electronics to include a flat screen TV and I-pod from the victim's home, valued more than \$2000. Petitioner and others are witness to prove the same (1012-0455-14).

Petitioner prays the Court to hear the case to determine whether the allegations are true and whether the child is in need of the care, protection, or discipline of the State

This 16th day of December, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

[Signature] For Clarke
Petitioner

Inv. Joe Clarke, RCSD, being duly sworn, says that he(she) is the petitioner herein, and that he(she) has read the foregoing Petition and knows the contents thereof; that the same is true of his(her) own knowledge, except as to the matters therein stated to be alleged on information and belief, and to those matters he(she) believes them to be true.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 16th DAY OF December, 2010

[Signature]
Petitioner

[Signature]

Notary Public for South Carolina
My Commission Expires August 2015

554

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF RICHLAND

IN THE INTEREST OF

10JU401521
JUVENILE PETITION

Lopey, Zacoate

R 1 0 - 4 3 1 4

B/M

Columbia, SC 29223

803-705-1616

Inv J. Clarke, RCSD petitioner, residing at Post Office Box 143, Columbia, SC 29202, having sufficient knowledge or information to believe that a case has arisen which invokes the juvenile jurisdiction of the Court, alleges:

1
That the above named is less than seventeen years of age and resides in the County at the address shown above, or was found in the County as alleged herein

2
That the names and addresses of the child's parents or guardian or custodian is as follows:

Name	Relationship or Title	Address
Hilda Lopey	Parent	Same

3
On 12/14/10, respondent did commit the crime(s) of Burglary 1st, violation of SC Code 16-11-311, in that at [REDACTED] in Richland County, he did willfully and unlawfully enter the victim's home, during the hours of darkness while armed with a loaded shotgun. Lopey admits in a confession to illegally entering the home. Once inside Lopey and co-defendant, Larry Prophet searched for items of value. Lopey claims he and Prophet then forced the woman against her will to a back bedroom at gun point. Both men ordered the victim to undress. Lopey claims he watched as Prophet had vaginal intercourse with the victim. Lopey then admits to having vaginal intercourse with the victim. Lopey has admitted to taking electronics to include a flat screen TV and I-pod from the victims home, valued more than \$2000. Petitioner and others are witness to prove the same (1012-0455-14)

Petitioner prays the Court to hear the case to determine whether the allegations are true and whether the child is in need of the care, protection, or discipline of the State.

This 16th day of December, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

J. Clarke
Petitioner

Inv J. Clarke, RCSD, being duly sworn, says that he(she) is the petitioner herein, and that he(she) has read the foregoing Petition and knows the contents thereof, that the same is true of his(her) own knowledge, except as to the matters therein stated to be alleged on information and belief, and to those matters he(she) believes them to be true

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 16th DAY OF Dec, 2010

J. Clarke
Petitioner

Notary Public for South Carolina

My Commission Expires Aug 5 2015

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF RICHLAND

10:11401522

IN THE INTEREST OF.

JUVENILE PETITION

Lopey, Zacoate

B/M

Columbia, SC 29229

803-705-1616

R 10 - 4315

2010 DEC 16 PM 12:06

Inv J. Clarke, RCSD petitioner, residing at Post Office Box 143, Columbia, SC 29202, having sufficient knowledge or information to believe that a case has arisen which invokes the juvenile jurisdiction of the Court, alleges:

1.

That the above named is less than seventeen years of age and resides in the County at the address shown above, or was found in the County as alleged herein.

2.

That the names and addresses of the child's parents or guardian or custodian is as follows

Name	Relationship or Title	Address
Hilda Lopey	Parent	Same

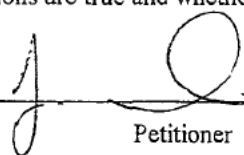
3.

On 12/14/10, respondent did commit the crime(s) of Kidnapping, violation of SC Code 16-3-910, in that at [redacted] in Richland County, he did willfully and unlawfully enter the victim's home during the hours of darkness while armed with a loaded shotgun. Lopey admits in a confession to illegally entering the home. Once inside Lopey and co-defendant, Larry Prophet searched for items of value. Lopey claims he and Prophet then forced the woman against her will to a back bedroom at gun point. Both men ordered the victim to undress. Lopey claims he watched as Prophet had vaginal intercourse with the victim. Lopey then admits to having vaginal intercourse with the victim. Lopey has admitted to taking electronics to include a flat screen TV and I-pod from the victims home, valued more than \$2000. Petitioner and others are witness to prove the same (1012-0455-14)

Petitioner prays the Court to hear the case to determine whether the allegations are true and whether the child is in need of the care, protection, or discipline of the State

This 16th day of December, 2010

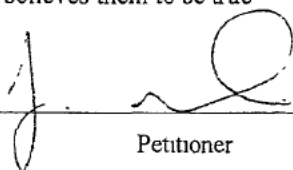
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

 For Clarke
Petitioner

Inv J. Clarke, RCSD, being duly sworn, says that he(he) is the petitioner herein, and that he(he) has read the foregoing Petition and knows the contents thereof, that the same is true of his(her) own knowledge, except as to the matters therein stated to be alleged on information and belief; and to those matters he(he) believes them to be true

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 16th DAY OF December, 2010


Petitioner

Notary Public for South Carolina
My Commission Expires Aug 5, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE INTEREST OF:

IN THE FAMILY COURT

JUVENILE PETITION

R 10 - 4316

Lopey, Zacoate	DOB [REDACTED]
[REDACTED]	B/M
Columbia, SC 29223	803-705-1616

Inv J. Clarke, RCSD petitioner, residing at Post Office Box 143, Columbia, SC 29202, having sufficient knowledge or information to believe that a case has arisen which invokes the juvenile jurisdiction of the Court, alleges

1

That the above named is less than seventeen years of age and resides in the County at the address shown above, or was found in the County as alleged herein.

2.

That the names and addresses of the child's parents or guardian or custodian is as follows

Name	Relationship or Title	Address
Hilda Lopey	Parent	Same

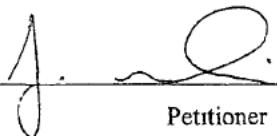
3.

On 12/14/10, respondent did commit the crime(s) of CSC 1st Degree, violation of SC Code 16-3-652, in that at [REDACTED], in Richland County, he did willfully and unlawfully enter the victim's home, during the hours of darkness while armed with a loaded shotgun. Lopey admits in a confession to illegally entering the home. Once inside Lopey and co-defendant, Larry Prophet searched for items of value. Lopey claims he and Prophet then forced the woman against her will to a back bedroom at gun point. Both men ordered the victim to undress. Lopey claims he watched as Prophet had vaginal intercourse with the victim. Lopey then admits to having vaginal intercourse with the victim. Lopey has admitted to taking electronics to include a flat screen TV and I-pod from the victims home, valued more than \$2000. Petitioner and others are witness to prove the same (1012-0455-14).

Petitioner prays the Court to hear the case to determine whether the allegations are true and whether the child is in need of the care, protection, or discipline of the State.

This 16th day of December, 2010

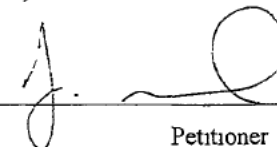
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND


Petitioner

Inv J. Clarke, RCSD, being duly sworn, says that he(she) is the petitioner herein, and that he(she) has read the foregoing Petition and knows the contents thereof, that the same is true of his(her) own knowledge, except as to the matters therein stated to be alleged on information and belief, and to those matters he(she) believes them to be true.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 16th DAY OF December, 2010


Petitioner

Notary Public for South Carolina

My Commission Expires 04/05/2015

557

WITNESSES

(S) Joshua Mauldin – Richland County
Sheriff

ARREST WARRANT NUMBER

DP12090

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date

APR 11 2012

VERDICT

Foreperson of Petit Jury
Date

DOCKET NO. 2012GS4001922

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2012

154

**THE STATE
vs.**

ZACOATA LASHANE LOPEY

**Indictment for
BURGLARY 1ST DEGREE**

SC Code 16-11-0311
CDR Code 0079

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

Defendant

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

Defendant

Witness

C C C PLS AND G S

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 11, 2012, the
 Grand Jurors of Richland County present upon their oath

BURGLARY, 1ST DEGREE

That ZACOATA LASHANE LOPEY did in Richland County on or about
 December 14, 2010, ✓ enter the dwelling of ELAINE HENRICK located at [REDACTED]
 [REDACTED] without consent and with the intent to commit a crime therein
 and when, in effecting entry or while in the dwelling or in immediate flight, the
 defendant and/or co-defendant entered or remained in the dwelling during the
 hours of darkness and/or was armed with a deadly weapon and/or caused physical
 injury to a non-participant in the crime and/or used or threatened the use of a
 dangerous instrument and/or displayed what is or what appears to be a knife or
 firearm, in violation of Section 16-11-0311(A), Code of Laws of South Carolina,
 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS

ZACOATE ELASHANE LOPEY

AKA

Race BLACK Sex M Age 17

DOB [REDACTED] SS# [REDACTED]

Address [REDACTED]

City, State [REDACTED]

DL# [REDACTED]

SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

559

INDICTMENT/CASE# 2012GS4001922

A/W# DP12090

Date of Offense 12/14/2010

S C Code § 16-11-0311

CDR Code # 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0311 of the S C Code of Laws, bearing CDR Code # 0079

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

ATTEST

McDuffie, Joanna

SC Bar#

Zacoate Lopey

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and/or paymentof \$, plus costs and assessments as applicable*, the balance is suspended with probation for ~~30~~ 20

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: # 1923, 1924, 1925☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code §17-25-135

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

SPECIAL CONDITIONS:

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

*Fine

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

PTUP

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Jeanette McBride /
Helms

Presiding Judge

Judge Code

Sentence Date

Thomas L. [Signature]
054
3/12/13

WITNESSES

(S) Joshua Mauldin – Richland County
Sheriff

ARREST WARRANT NUMBER

DP12091

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date

APR 11 2012

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2012GS4001923

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2012

154

THE STATE
vs.

ZACOATA LASHANE LOPEY

Indictment for
ARMED ROBBERY

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

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

Defendant

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

Defendant

Witness

C C C PLS AND G S

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 11, 2012, the
 Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That **ZACOATA LASHANE LOPEY** did in Richland County on or about
 December 14, 2010, commit robbery by feloniously taking from the person or
 presence of Elaine Henrick, by means of force or intimidation, goods or monies of
 Elaine Henrick, such goods or monies being described as television and/or
 Currency and/or cell phone, with the intent to deprive the owner permanently of
 such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or
 other deadly weapon, or while alleging, either by actions or words, that he or she
 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. All in violation of §16-11-330(A), SC Code of Laws (1976, as
 amended).

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

562
COUNTY OF Richland
STATE VS
ZACOATE ELASHANE LOPEY
AKA _____
Race BLACK Sex M Age 17
DOB [REDACTED]
Address [REDACTED]
City, State, Zip Columbia, SC 29223
DL# _____ SID# _____

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

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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

ATTEST
Joanna McDuffie 77043 ZACOATE LOPEY 75392
McDuffie, Joanna 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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on 3/12/13
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION. ☐ Deferred ☐ Def Waives Hearing ☐ Ordered PTUP _____
Total \$ _____ plus 20% fee \$ _____
Payment Terms _____
☐ Set by SCDPPPS _____

Recipient _____

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

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Jeanette McBride-Helm

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2012GS4001923
A/W# DP12091
Date of Offense 12/14/2010
S C Code § 16-11-0330(A)
CDR Code # 0139

SENTENCE SHEET

Presiding Judge

Judge Code

Sentence Date

3/12/13

569

WITNESSES

(S) Joshua Mauldin – Richland County
Sheriff

ARREST WARRANT NUMBER

DP12092

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date

APR 11 2012

VERDICT

Foreperson of Petit Jury
Date

DOCKET NO. 2012GS4001924

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2012

154

**THE STATE
vs.**

ZACOATA LASHANE LOPEY

**Indictment for
KIDNAPPING**

SC Code: 16-03-0910
CDR Code 0095

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

Defendant

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

Defendant

Witness

C C C PLS AND G S

The State of South Carolina
COUNTY OF RICHLAND

THE STATE VS

Zacate Lopez

Warrant/Ind.# DP 12,92/12-1924
Charge: Kidnapping

By Jeanette McBride, Clerk of Court in and for the County and State aforesaid. To the Keeper
of the Jail for said County, GREETING:

FORASMUCH as Zacate Lopez
is in your custody on the above charge only has pled guilty and received a
Suspended Sentence

THESE ARE, THEREFORE, to authorize and require you that if the said
do remain in jail for no other cause, then you forbear to detain him any longer, but suffer him go at
large; herein fail not, upon the pain of penalty which will fall therein.

GIVEN under my Hand and Seal, this

12 day of

March

,A.D. 19 2013.

Jeanette McBride (L.S.)
Clerk

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 11, 2012, the
 Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That ZACOATA LASHANE LOPEY did in Richland County on or about
 December 14, 2010, unlawfully seize, confine, inveigle, decoy, kidnap,
 abduct or carry away one ELAINE HENRICK, without authority of law, in
 violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

COUNTY OF
STATE

Richland

VS

ZACOATE ELASHANE LOPEY

AKA

Race BLACK Sex M Age 17

DOB

Address

City, State, Zip Columbia, SC 29223

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

INDICTMENT/CASE# 2012GS4001924

A/W# DP12092

Date of Offense 12/14/2010

S C Code § 16-03-0910

CDR Code # 0095

SENTENCE SHEET

☐ 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 plea is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

Joanna McDuffie
McDuffie, Joanna77063
SC Bar#ZACOATE LOPEY
DefendantJennifer Davis
Attorney for Defendant75392
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 yearsand/or to pay a fine of \$ 500, provided that upon the service of 5 days/months/years and/or paymentof \$ 500, plus costs and assessments as applicable*, the balance is suspended with probation for 5 years

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 3/12/13

The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied by the State Department of Corrections

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☐ OrderedTotal \$ 500 plus 20% fee \$ 100

Payment Terms

☐ Set by SCDPPPS

Recipient

*Fine

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Jeanette McBride
Helm

PTUP

5 days/hours Public Service EmploymentObtain 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 \$ 500 beginning\$ 500 paid to Public Defender FundOther * Probation to
Begin after Community Supervision
Complete on 12/12/13, 12/13/13, 12/14/13☐ Appointed PD or appointed other counsel,
§ 47-12 requires \$500 be paid to Clerk during probation

Presiding Judge

Judge Code

Sentence Date

Dennis L. Perry
059
3/12/13

567

WITNESSES

(S) Joshua Mauldin – Richland County
Sheriff

ARREST WARRANT NUMBER

DP12093

ACTION OF GRAND JURY

TRUE BILL

Margaret A. Dickerson
Foreperson of Grand Jury
Date **APR 11 2012**

VERDICT

Foreperson of Petit Jury
Date

DOCKET NO. 2012GS4001925

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2012

154

**THE STATE
vs.**

ZACOATA LASHANE LOPEY

**Indictment for
CRIMINAL SEXUAL CONDUCT,
1ST DEGREE**

SC Code: **16-03-0652**
CDR Code **0160**

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

Defendant

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

Defendant

Witness

C C C PLS AND G S

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 11, 2012, the
 Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT, 1ST DEGREE

That ZACOATA LASHANE LOPEY did in Richland County on or about
 December 14, 2010, engage in sexual battery with ELAINE HENRICK, while the
 victim was also the victim of forcible confinement, kidnapping, robbery, extortion,
 burglary, housebreaking, or any other similar offense or act, and/or actor uses
 aggravated force to accomplish sexual battery, all in violation of Section 16-03-
 0652, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

COUNTY OF Richland
 STATE VS
ZACOATA LASHANE LOPEY
 AKA _____
 Race BLACK Sex M Age 17
 DOB. [REDACTED] SS# [REDACTED]
 Address [REDACTED]
 City, State, Zip Columbia, SC
 DL# _____ SID# _____

INDICTMENT/CASE# 2012GS4001925
 A/W# DP12093
 Date of Offense 12/14/2010
 S C Code § 16-03-0652
 CDR Code # 0160

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO Sex / Criminal sexual conduct - First degree

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0652 of the S C Code of Laws, bearing CDR Code # 0160
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)
 The plea is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST Joanna McDuffie 75392
McDuffie, Joanna SC Bar# 75392
ZACOATA LASHANE LOPEY SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
 of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on 3/12/13
☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C Code §17-25-135

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total \$ _____ plus 20% fee \$ _____
 Payment Terms _____
☐ Set by SCDPPPS _____

Recipient _____

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

_____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc Rehab or Job Corp _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd in equal, consecutive weekly/monthly
 pmts of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other _____

☐ Appointed PD or appointed other counsel,
 § 47-12 requires \$500 be paid to Clerk
 during probation

Clerk of Court/ Deputy Clerk Jeanette McBride
 Court Reporter Helms
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code PS4
 Sentence Date 3/12/13

CERTIFICATE OF COUNSEL FOR APPELLANT

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

This 5th day of May,



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ZACOATA LOPEY,

APPELLANT.

APPELLATE CASE NO. 2013-000554

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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U.S. Const. Amend. XIV, § 1	9

STATEMENT OF ISSUE ON APPEAL

Appellant's due process rights pursuant to Fourteenth Amendment of the United States Constitution and Article I, Section three of the South Carolina Constitution were violated by the statutory requirement that he register for life as a sex offender where the statute provided no right to a hearing to determine whether Appellant was a sex offender and provided no judicial review after a term of years to determine whether Appellant should remain on the registry.

STATEMENT OF THE CASE

Appellant was fourteen-years old when the alleged crimes took place on December 14, 2010. On December 16, 2010, Investigator Joe Clarke with the Richland County Sheriff's Office filed four juvenile petitions charging Appellant with armed robbery, burglary in the first degree, kidnapping, and criminal sexual conduct in the first degree. R. 553. The Fifth Circuit Solicitor's Office moved to transfer Appellant from the Family Court to the Court of General Sessions pursuant to Section 63-19-1210(5) of the South Carolina Code. The Honorable James F. Fraley, Jr. presided over the transfer hearing on February 21-22, 2012 and March 27-29, 2012. Kathryn Luck Campbell, Joanna McDuffie, and Meghan Walker represented the state. Joanna Delaney and James May represented Appellant. S. Boyd Young served as Appellant's guardian ad Litem. R. 1; R. 194. At the conclusion of the transfer hearing, Judge Fraley ordered that the Family Court would no longer have jurisdiction over Appellant concerning the pending charges and transferred the case to the Court of General Sessions. R. 383, line 1 – R. 392, line 8.

On April 11, 2012, the Richland County Grand Jury indicted Appellant for burglary in the first degree, armed robbery, kidnapping, and criminal sexual conduct in the first degree. R. 557. On March 12, 2013, Appellant appeared before the Honorable Thomas W. Cooper, Jr. to enter a guilty plea to all charges without negotiation or recommendation. Again, Kathryn Luck Campbell, Joanna McDuffie, and Meghan Walker represented the state. Joanna Delaney and Jennifer Davis represented Appellant. R. 394. Judge Cooper sentenced Appellant to thirty years' imprisonment for armed robbery, criminal sexual conduct in the first degree, and burglary in the first degree. He ordered those sentences to be served concurrently. Concerning the kidnapping conviction, Judge Cooper sentenced

Appellant to fifteen years' imprisonment, which he suspended to probation for five years. However, he ordered the kidnaping sentence to be served consecutively to the other sentences. R. 476, line 5 -- R. 477, line 11; R. 559.

STATEMENT OF FACTS

On December 14, 2010, officers with the Richland County Sheriff's Office responded to a call regarding a home invasion and purported sexual assault. R. 408, lines 20-24. The homeowner informed police that she had been robbed at gunpoint and sexually assaulted by two black males earlier in the evening. R. 409, line 17 – R. 411, line 18. Through their investigation, the officers developed Appellant, who was fourteen-years old, as a suspect and questioned him at his high school. Appellant readily accepted responsibility for his actions and admitted his conduct. Appellant further implicated a co-defendant, an older male child, in the crimes. R. 412, lines 6-21. Forensic DNA testing determined Appellant's semen was found in the homeowner's rectum and on a tissue the homeowner had used to clean herself after the encounter. R. 414, lines 4-9.

ARGUMENT

Appellant's due process rights pursuant to Fourteenth Amendment of the United States Constitution and Article I, section three of the South Carolina Constitution were violated by the statutory requirement that he register for life as a sex offender where the statute provided no right to a hearing to determine whether Appellant was a sex offender and provided no judicial review after a term of years to determine whether Appellant should remain on the registry.

Relevant facts

On March 12 2013, Appellant pled guilty to criminal sexual conduct in the first degree, kidnaping, burglary in the first degree, and armed robbery. Appellant objected to his automatic and lifetime placement on the sexual offender registry. Specifically, Appellant objected to the mandatory nature of the statute and its lifetime applicability without judicial review as a violation of Appellant's due process rights. Appellant explained that the state's psychologist, who evaluated Appellant concerning the transfer of jurisdiction, opined that Appellant was not a sex offender. She explained the stark difference in statistics about re-offending between juvenile and adult offenders. The psychologist was clear that Appellant's conduct was not motivated by sexual deviancy. R. 442, line 25 – R. 445, line 4.

In fact, Aalece O. Pugh-Lilly, who testified at the transfer hearing regarding her pre-adjudicatory transfer evaluation of Appellant as a witness for the prosecution, explained that the majority of adolescent sex offenders do not act out of sexual deviancy. R. 285, lines 14-25. Unsurprisingly, adolescent offenders are more amenable to treatment than adult sex offenders because their motivation for engaging in those behaviors is very different. Based upon new scientific research, it is clear that "more sexually deviant behaviors and pathology

[do not] even emerge in people until around the age of 18 or older." R. 286, line 14 – R. 287, line 6. The rate of recidivism for juveniles is "very low." R. 287, lines 7-16. Dr. Pugh-Lilly explained that Appellant was not a sex offender because "he did not exhibit any of the characteristics" of a sex offender. Although he had committed a sex offense, he was not motivated by sexual deviancy or pathology. R. 288, lines 2-13. As a result, Appellant was more amenable to therapy than other sex offenders. R. 288, lines 14-17. The sex offense would not have occurred had the co-defendant not been present. R. 288, lines 18-21.

Although the judge had uncontested evidence that Appellant was not a sex offender and was unlikely to re-offend before him, the trial judge was forced to place Appellant on the sex offender register based upon the mandatory nature of the statute. Additionally, the trial judge was unable to order judicial review of Appellant's placement on the registry after the passage of time because the statute did not permit such review.

Discussion

"Any person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to" certain enumerated offenses, including criminal sexual conduct in the first degree, "shall be required to register" as a sex offender. S.C. Code Ann. § 23-3-430(A); § 23-3-430(C)(1). However, the statute provides for a showing of good cause to include a person on the sex offender registry when the person has been convicted of an offense other than one enumerated in the statute. S.C. Code Ann. § 23-3-430(D). The automatic provision applies based solely on the name of the offense without any consideration of the individual being placed on the registry. Appellant recognizes that the South Carolina Supreme Court has

held that registering as a sex offender is "not so punitive in purpose or effect as to constitute a criminal penalty." State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the language of the Court is clear that registration is in fact punitive, but not so punitive that it be considered a criminal penalty. In Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 352 (2003), the Court stated that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest." The Court concluded that due to the non-punitive nature of the registry, no due process violation occurred as the result of a requirement that one register. Appellant further recognizes that the South Carolina Supreme Court held that a juvenile's due process rights were not violated by requiring him to register as a sex offender. In re Ronnie A., 355 S.C. 407, 585 S.E.2d 311 (2003). However, recent developments in the law require a re-examination of the statutory requirement that a person convicted of certain offenses register as a sex offender without a hearing to determine if the person is indeed a sex offender and that the person remain on the registry for life without subsequent judicial review of the person's likelihood of re-offending.

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. Amend. XIV, § 1; S.C. Const. Art. I, § 3. Substantive due process protects citizens against arbitrary or capricious action by the government regardless of the procedures used to carry out that action. In re Treatment and Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002). The substantive component of this right prohibits the state from arbitrarily or capriciously depriving a person of life, liberty, or property regardless of whether or not the way in which the government carries out this

deprivation is, itself, ostensibly fair. Luckabaugh, 351 S.C. at 140. Substantive due process “allows a court to examine the constitutionality of the underlying statute as opposed to merely the process by which it is applied to each individual.” Id. To comport with due process, the legislation must have a rational basis for the deprivation. Hamilton v. Board of Trustees of Oconee County School District, 282 S.C. 519, 319 S.E.2d 717 (Ct. App. 1984).

Recently, the Court examined the statute requiring mandatory enrollment in satellite monitoring programs based upon certain convictions. The Court found that “lifetime imposition of satellite monitoring implicates a protected liberty interest to be free from permanent, unwarranted governmental interference.” Further, the Court found “the requirement of satellite monitoring places significant restraints on offenders that amount to a liberty interest.” State v. Dykes, 403 S.C. 499, 506, 744 S.E.2d 505, 509 (2013). Based upon this finding that electronic monitoring implicated a protected liberty interest, the Court held due process protections were invoked. Id. Therefore, the legislation must “have, at a minimum, a rational basis, and not be arbitrary.” Id. at 507, 744 S.E.2d at 509 (quoting Luckabaugh, 351 S.C. at 139-140, 568 S.E.2d at 346)).

The Dykes Court explained the express purpose of the state’s sex offender registration and electronic monitor provisions “is to promote the state’s fundamental right to provide for the public health, welfare, and safety of its citizens” by giving law enforcement tools for investigating criminal conduct. The General Assembly also referred to “[s]tatistics show[ing] that sex offenders often pose a high risk of reoffending.” The Court held “it is clear the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who

may re-offend and to aid law enforcement in solving sex crimes.” Id. at 507, 744 S.E.2d at 510 (quoting Walls, 348 S.C. at 31, 558 S.E.2d at 526). Thus, the Court concluded, “a likelihood of re-offending lies at the core of South Carolina’s civil statutory scheme.” Id.

The Court found that the statute’s initial mandatory imposition of satellite monitoring for certain child-sex crimes to have a rational relationship to the state’s policy. However, the Court held the statute requiring lifetime monitoring with no opportunity for judicial review was unconstitutional because it was arbitrary and not rationally related to the legislature’s stated purpose of protecting the public from those with a high risk of re-offending. Id. at 508-509, 744 S.E.2d at 510. Therefore, persons required to comply with the electronic monitoring statute were entitled to judicial review. Id. at 510, 744 S.E.2d at 511.

Just as the imposition of electronic monitoring implicates a protected liberty interest, the lifetime inclusion and public dissemination of a person’s name on the sex offender registry implicates a protected liberty interest – to be free from permanent, unwarranted governmental interference. The automatic and mandatory inclusion of individuals on the registry based solely on the nature of the offense fails to serve the General Assembly’s stated purpose of providing for the public health, welfare, and safety of its citizens through police investigatory tools and guarding against the likelihood of re-offending. Id. The statute requires all individuals convicted of certain crimes to be placed on the registry without a determination that the individuals are indeed sex offenders, which would include only those who display the pathology of acting out based on sexual deviancy. As such, the mandatory provision does not guard against sex offenders or those individuals likely to re-offend. Further, the lifetime requirement also

fails to guard against re-offenders because it does not permit a judicial body to determine a person is or is not likely to re-offend. The list is merely a collection of individuals who have been convicted of certain crimes and labeled as sex offenders based upon those convictions without any consideration of the individuals' pathologies, mental health, and likelihood of re-offending.

CONCLUSION

Appellant respectfully requests this Court order that Appellant not be placed on the sex offender registry based on the undisputed evidence that he is not a sex offender, or in the alternative, this Court should order that Appellant's placement on the registry be reviewed after a term of years.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of May, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ZACOATA LOPEY,

APPELLANT.

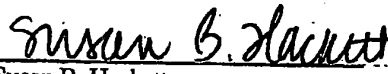
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Zacoata Lopey states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Thomas W. Cooper, Jr., which was held on March 12, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Zacoata Lopey.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of May, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ZACOATA LOPEY,

APPELLANT.

DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

- (1) Transfer Hearing Transcript dated February 21-22, 2012;
- (2) Transfer Hearing Transcript dated March 27-29, 2012;
- (3) Guilty Plea Transcript dated March 12, 2013;
- (4) Court's Exhibit #1 from March 12, 2013 guilty plea hearing;
- (5) State's Exhibit #13 from the March 27-29, 2012 hearing;
- (6) State's Exhibit #14 from the March 27-29, 2012 hearing;
- (7) Juvenile Petitions;
- (8) True-billed indictments;
- (9) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

May 5, 2014

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

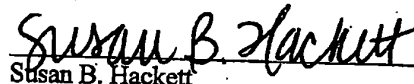
V.

ZACOATA LOPEY,

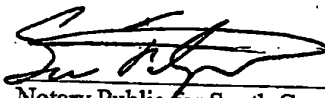
APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Zacoata Lohey, #354734 at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 5th day of May, 2014.


Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of May, 2014.


(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Zacoata Lopey a/k/a Zacoate Lopey, Appellant.

Appellate Case No. 2013-000554

Appeal From Richland County
Thomas W. Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-012
Submitted November 1, 2014 – Filed January 14, 2015

APPEAL DISMISSED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Richland

ZACOTTA LOPEZ #354734
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

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 INST, 990 WISACKY HWY Bishopville, S.C.
2. Name and location of Court which imposed sentence Richland General Session 2/9/10
3. Name(s) of co-defendant(s) (if any) LARRY PROPHET (30 YRS) MINOR
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) FIRST DEGREE BURGLARY
 - (b) ARM ROBBERY
 - (c) KIDNAP 21st CSC
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MARCH 12, 2013 30 YRS
 - (b) _____

RICHLAND COUNTY
FILED

JANETTE W. JONES
C.C.P. & S.S.
2015 FEB 25 AM 11:52

2015CP400771

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEAL
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. UNPUBLISHED OPINION No. 2015-UP-012
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. SUBMITTED Nov 01, 2014 - Filed Jan 14, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. APPEAL DISMISSED (Rule) 268 (d) (2) SCACR
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL 6th AMENDMENT
- (b) NEWLY DISCOVER
- (c) MINOR BEING TRIAL AS AN ADULT (8th AMENDMENT)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) STRICKLAND vs. WASHINGTON (SEE ATTACHMENT SHEET)
- (b) JANISON vs. STATE (OPINION No. 27454)
- (c) ~~Alabama~~ vs. Miller, UNITED STATES SUPREME COURT (2013)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? POST-CONVICTION RELIEF
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? PCR

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. RELATE APPEAL / DIRECT APPEAL
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. S.C. COURT OF APPEAL
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. APPEAL DISMISSED
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. Filed Jan 14, 2015
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. APPEAL DISMISSED (Rule 268 (d) (2), SCACR
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? JOANN DELANY (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? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. JOANN DELANY (Family Court-Appoint)
- ii. JENNIFER DAVIS
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. FAMILY COURT-APPOINT COUNSEL
- ii. PUBLIC DEFENDER COURT-APPOINT COUNSEL
- iii. _____
19. State clearly the relief you seek in filing this application:
TO HAVE CONVICTION VACATED
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, ZA, 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.

ZACOATE LOPEZ

SWORN to and subscribed before me this 30
day of Jan, 2015.

Debra Sures (L.S.)
Notary Public

My Commission Expires: 11-4-2015

SEE ATTACHMENT SHEET

PG. 3, LINE 10-11

CITE JAMISON VS. STATE. (OPINION NO. 27454) OCT 22, 2014) THE S.C. SUPREME COURT CONSIDERED THE QUESTION OF WHETHER A GUILTY PLEA PRECLUDED PCR RELIEF BASED ON AFTER-Discovery EVIDENCE. THE COURT STATED: ALTHOUGH WE FIND THAT A GUILTY PLEA DOES NOT PRECLUDE POST-CONVICTION RELIEF FOLLOWING A GUILTY PLEA IN ALL CIRCUMSTANCES, WE NONE THE LESS CONCLUDE THAT THE TRADITIONAL FIVE-FACTOR NEWLY DISCOVERED EVIDENCE TEST IS NOT THE PROPER TEST FOR ANALYZING WHETHER A PCR APPLICANT IS ENTITLED TO RELIEF ON THE BASIS OF NEWLY DISCOVERED EVIDENCE FOLLOWING A GUILTY PLEA. INDEED THE TRADITIONAL NEW DISCOVERED EVIDENCE FACTORS ARE DIFFICULT IF NOT IMPOSSIBLE TO APPLY WHEN THE MOVING PARTY PLEAD GUILTY INSTEAD OF STANDING TRIAL. THE COURT FURTHER HELD THAT WHEN A PCR APPLICANT SEEKS RELIEF ON THE BASIS OF NEWLY DISCOVERED EVIDENCE FOLLOWING A GUILTY PLEA RELIEF IS APPROPRIATE ONLY WHERE THE APPLICANT PRESENT EVIDENCE SHOWING THAT (1) THE NEW DISCOVERY EVIDENCE WAS DISCOVERED AFTER THE ENTRY OF THE PLEA AND IN THE EXERCISE OF REASONABLE DILIGENCE, COULD NOT HAVE BEEN DISCOVERED PRIOR TO THE ENTRY OF THE PLEA; AND (2) THE NEWLY DISCOVERED EVIDENCE IS OF SUCH WEIGHT AND QUALITY THAT UNDER THE FACTS AND CIRCUMSTANCES OF THAT PARTICULAR CASE, THE INTEREST OF JUSTICE REQUIRES THE APPLICANT'S GUILTY PLEA TO BE VACATED.

1/30/15 ZACDATA LOPEY[#] 354731

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
ZACOA LASHANE LOPEY

AKA:

Race: BLACK Sex: M Age: 17DOB: 1996 SS#: Address: City, State, Zip: Columbia, SC 29223DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree

INDICTMENT/CASE#: 2012GS4001922A/W#: DP12090Date of Offense: 12/14/2010S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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:

Joanna McDuffie
McDuffie, Joanna7003
SC Bar#Zacoate Lohey
Defendant2020
Attorney for Defendant75392
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for 700

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

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

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

SPECIAL CONDITIONS:

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

*Fine:

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

PTUP

 days/hours Public Service EmploymentObtain 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 FundOther:

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 C.C.C. # 11-00172-
 RICHLAND COUNTY
 SOUTH CAROLINA

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

Clerk of Court/ Deputy Clerk

Court Reporter: Helm

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 054Sentence Date: 3/12/13

WITNESSES

(S) Joshua Mauldin – Richland County
Sheriff

ARREST WARRANT NUMBER

DP12090

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 11 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS4001922

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2012

154

**THE STATE
vs.**

ZACOATA LASHANE LOPEY

**Indictment for
BURGLARY 1ST DEGREE**

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

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
J. J. Williams
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 11, 2012, the
Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That ZACOATA LASHANE LOPEY did in Richland County on or about
December 14, 2010, enter the dwelling of ELAINE HENRICK located at [REDACTED]
[REDACTED] without consent and with the intent to commit a crime therein
and when, in effecting entry or while in the dwelling or in immediate flight, the
defendant and/or co-defendant entered or remained in the dwelling during the
hours of darkness and/or was armed with a deadly weapon and/or caused physical
injury to a non-participant in the crime and/or used or threatened the use of a
dangerous instrument and/or displayed what is or what appears to be a knife or
firearm, in violation of Section 16-11-0311(A), Code of Laws of South Carolina,
1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.ZACOATE ELASHANE LOPEY

AKA:

Race: BLACK Sex: M Age: 17DOB: 1996 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Columbia, SC 29223DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponin 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) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Joanna McDuffie
McDuffie, Joanna77043
SC Bar#ZACOATE LOPEY
Defendant[Signature]
Attorney for Defendant75392
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/12/13☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine:

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Jeanette McBride
Helm

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4001923A/W#: DP12091Date of Offense: 12/14/2010S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSPTUP days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge Judge Code: 059Sentence Date: 3/12/13CERTIFIED TRUE COPY
ORIGINAL FILED
JAN 14 2013
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) Joshua Mauldin – Richland County
Sheriff

ARREST WARRANT NUMBER

DP12091

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date

APR 11 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS4001923

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2012

154

**THE STATE
vs.**

ZACOATA LASHANE LOPEY

**Indictment for
ARMED ROBBERY**

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

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Sheriff's Office
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 11, 2012, the
Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That **ZACOATA LASHANE LOPEY** did in Richland County on or about
December 14, 2010, commit robbery by feloniously taking from the person or
presence of Elaine Henrick, by means of force or intimidation, goods or monies of
Elaine Henrick, such goods or monies being described as television and/or
Currency and/or cell phone, with the intent to deprive the owner permanently of
such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or
other deadly weapon, or while alleging, either by actions or words, that he or she
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. All in violation of §16-11-330(A), SC Code of Laws (1976, as
amended).

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
ZACOATE ELASHANE LOPEY

INDICTMENT/CASE#: 2012GS4001924
 A/W#: DP12092
 Date of Offense: 12/14/2010
 S.C. Code §: 16-03-0910
 CDR Code #: 0095

AKA: _____
 Race: BLACK Sex: M Age: 17
 DOB: 1996 SS#: _____
 Address: _____
 City, State, Zip: Columbia, SC 29223
 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
 TO: Kidnapping / Kidnapping

☐ 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 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:

Joanna McDuffie 770623 ZACOATE LOPEY 75392
 McDuffie, Joanna SC Bar# Defendant Attorney for Defendant SC Bar# Jean For Davis

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 13 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 5 Ave
 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: 3/12/13
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

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

_____ days/hours Public Service
 Obtain GED ☐ OF ORIGINAL FILED
 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: * Probation to
Beard after Community Supervision
Complete on 1922, 1923, 1926

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Jeanette McBride
Holmes

Presiding Judge

Judge Code:

Sentence Date:

3/12/13

WITNESSES

(S) Joshua Mauldin – Richland County
Sheriff

ARREST WARRANT NUMBER

DP12092

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 11 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS4001924

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2012

154

THE STATE

vs.

ZACOATA LASHANE LOPEY

**Indictment for
KIDNAPPING**

SC Code: 16-03-0910

CDR Code: 0095

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jesse H. [Signature]
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 11, 2012, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That ZACOATA LASHANE LOPEY did in Richland County on or about
December 14, 2010, unlawfully seize, confine, inveigle, decoy, kidnap,
abduct or carry away one ELAINE HENRICK, without authority of law, in
violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
ZACOATA LASHANE LOPEY

AKA:

Race: BLACK Sex: M Age: 17DOB: 1996 SS#: Address: City, State, Zip: Columbia, S.C.DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Sex / Criminal sexual conduct - First degreein violation of § 16-03-0652of the S.C. Code of Laws, bearing CDR Code # 0160

☐ 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:

Joanna McDuffie
McDuffie, Joannanow
SC Bar#x ZACOATA LOPEY
DefendantJohn For Darr
Attorney for Defendant75392
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

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

*Fine:

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

 days/hours Public Service EmploymentObtain 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 FundOther:

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

Clerk of Court/ Deputy Clerk

Court Reporter: Jeanette McBride

SCCA/217 (03/2011)

Presiding Judge

Judge Code: Sentence Date: 3/12/13

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4001925A/W#: DP12093Date of Offense: 12/14/2010S.C. Code §: 16-03-0652CDR Code #: 0160

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

WITNESSES

(S) Joshua Mauldin – Richland County
Sheriff

ARREST WARRANT NUMBER

DP12093

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 11 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS4001925

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2012

154

**THE STATE
vs.**

ZACOATA LASHANE LOPEY

**Indictment for
CRIMINAL SEXUAL CONDUCT,
1ST DEGREE**

SC Code: 16-03-0652

CDR Code: 0160

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jenette W. H. Smith
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

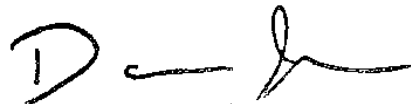
INDICTMENT

At a Court of General Sessions, convened on APRIL 11, 2012, the
Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT, 1ST DEGREE

That **ZACOATA LASHANE LOPEY** did in Richland County on or about
December 14, 2010, engage in sexual battery with **ELAINE HENRICK**, while the
victim was also the victim of forcible confinement, kidnapping, robbery, extortion,
burglary, housebreaking, or any other similar offense or act, and/or actor uses
aggravated force to accomplish sexual battery, all in violation of Section 16-03-
0652, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR



RECEIVED

MAR 12 2015

close

ATTORNEY GENERALS
OFFICE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 10, 2015

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: The State v. Zacoata Lopey a/k/a Zacoate Lopey
Lower Court Case No. 2012GS4001922, 2012GS4001923,
2012GS4001924, 2012GS4001925
Appellate Case No. 2013-000554

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Zacoata Lopey, 354734
Salley W. Elliott, Esquire

Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Zacoata L. Lopey, #354734

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2015-CP-40-0771

RETURN

RICHLAND COUNTY
FILED
2015 JUN 16 AM 11:01
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed February 5, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the April 2012 term of the Court of General Sessions for Richland County for Burglary First Degree (2012-GS-40-1922), Armed Robbery (2012-GS-40-1923), Kidnapping (2012-GS-40-1924), and Criminal Sexual Conduct First Degree (2012-GS-40-1925). Applicant was represented by Joann Delaney, Esq., and Jennifer Davis, Esq. Applicant proceeded to trial on March 12, 2013. He was convicted as indicted. The Honorable Thomas W. Cooper, Jr., sentenced Applicant to concurrent terms of thirty years for all charges except Kidnapping, for which Judge Cooper sentenced the Applicant to fifteen (15) years' imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Susan B. Hackett, Esq. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Lopey, No. 2015-UP-012 (filed January 14, 2015). The Remittitur was dated March 10, 2015.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial hearing, Applicant's records for the Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. "Ineffective Assistance Counsel,"
 - a. "Strickland v. Washington"
2. "Newly Discover," in that;
 - a. "Janison v. State (Opinion No. 27454)"
3. "Minor being trial [sic] as an adult,"
 - a. "Alabama v. Miller, United States Supreme Court (2013)."

III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

Respondent interprets Applicant's final two claims as allegation of Due Process Violations. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must specifically set forth the grounds upon which the application is based. Section 17-27-50 of the Code of Laws of South Carolina (1976). In an

application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

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

VIII.

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

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
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June 10th, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
2015-CP-40-0771

Zacoata Lopez,)
Applicant,)

vs.)

**AMENDED APPLICATION
FOR POST CONVICTION RELIEF**

State of South Carolina,)
Respondant.)

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows to include in **addition** to prior grounds stated in the original application for post-conviction relief:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of appellate counsel – appellate counsel failed to properly argue the statement for basis of appeal, including but not limited to, the selective application of the solicitor's office to waive the applicant and the applicant being tried as an adult; and
- (b) Ineffective assistance of trial counsel—trial counsel failed to have the applicant testify as to his statement regarding the charges during the underlying waiver hearing.

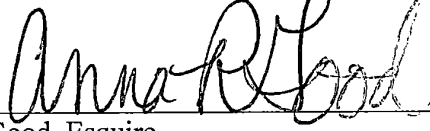
18. Add Attorney:

Susan Hackett—Office of Appellate Defense

[SIGNATURE ON NEXT PAGE]

RICHLAND COUNTY
FILED
2015 AUG 31 AM 10:09
JEANETTE W. McBRIDE
C.C.P. & C.S.

LAW OFFICE OF ANNA GOOD, LLC

A handwritten signature in cursive script, reading "Anna R. Good", written over a horizontal line.

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

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF RICHLAND } IN THE COMMON PLEAS COURT
3
4 Zacoata L. Lopey, }
5 Applicant, } TRANSCRIPT OF RECORD
6 -vs- } 2015-CP-40-0771
7 The State. } February 1, 2016
8 } Columbia, South Carolina
9
10

11 B E F O R E :

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 ANNA R. GOOD, ESQUIRE
17 Attorney for the Applicant

18 JAMES CLAYTON MITCHELL, III, ESQUIRE
19 Attorney for the State
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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20	No exhibits entered into evidence.	
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1 MR. MITCHELL: Judge, next case is Zacoata Lopey vs.
2 the State of South Carolina, case No. 2015-CP-40-771.

3 Mr. Lopey -- he was charged as a juvenile with, let's
4 see, burg first, armed robbery, kidnapping and C.S.C. first
5 allegations.

6 These charges started off in family court. There was
7 a waiver hearing February 21st to February 22nd, and then
8 March 22nd to March 23rd of 2012. It was a 4-day waiver
9 hearing in front of Judge Fraley out of Spartanburg, I
10 believe.

11 So he was successfully waived up by the state. He was
12 then indicted in April of 2012 on burg first, armed robbery
13 and kidnapping and C.S.C. first.

14 He was represented on these charges by Joanna Delaney
15 and Jennifer Davis, and also Jim May assisted with the
16 waiver hearing in family court.

17 He pled guilty before Judge Thomas Cooper on, I
18 believe, March 12th of 2013.

19 He was sentenced to 30 years on all charges except the
20 kidnapping, which was to be run consecutive, 15 years
21 suspended upon service of probation for five years.

22 He did file an appeal in that case. Anders brief was
23 submitted on his behalf. The remittitur came down March of
24 2015. This application was filed February 5th of 2015.

25 He's made various aspects -- various allegations of

1 ineffective assistance of counsel, specifically that
2 appellate counsel failed to properly argue his statement,
3 basis of the appeal, and ineffective assistance of trial
4 counsel in that failed to have him testify as to his
5 statement regarding the charges at the waiver hearing, so
6 during the, whatever, Denno hearing in the family court.

7 I note for the record Mr. Lopey is here and he is
8 represented by Ms. Anna Good. And I'll turn it over to her
9 at this time.

10 THE COURT: All right. Ms. Good.

11 MS. GOOD: Thank you, Your Honor. I call Zacoata
12 Lopey to the stand.

13 THE COURT: While he's coming to the stand, Ms. Good,
14 I need you to tell me specifically for the record what
15 grounds you are proceeding on, and if it's ineffective
16 assistance of counsel what the specific allegations are
17 that you're proceeding on.

18 MS. GOOD: Yes, sir. They're exactly what Mr.
19 Mitchell just mentioned -- ineffective assistance of trial
20 counsel.

21 During a Jackson vs. Denno hearing they failed to put
22 him on the stand to testify regarding the situation
23 surrounding his statement to law enforcement. And then
24 also, Your Honor, the ineffective assistance of appellate
25 counsel as appellate counsel failed to properly argue the

Zacoata Lopey
Direct examination by Ms. Good

1 statement for basis of appeal, specifically, the selected
2 application of the solicitor's office to waive the
3 applicant and the applicant being tried as an adult due to
4 his race.

5 THE COURT: Okay.

6 MS. GOOD: We can get into that more.

7 THE COURT: All right. Come around.

8 All right. You are Zacoata Lopey.

9 THE APPLICANT: Yes, sir.

10 THE COURT: Are you Zacoata Lopey?

11 THE APPLICANT: Yes, sir, Your Honor.

12 ZACOATA LOPEY, having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MS. GOOD

15 Q Mr. Lopey, as you heard, you were arrested for
16 burglary first, kidnapping, C.S.C. first and armed robbery,
17 correct?

18 A Yes, ma'am.

19 Q At the time of your arrest how old were you?

20 A Fourteen.

21 Q Fourteen. And what grade were you in in school?

22 A At the ninth grade.

23 Q Okay. And where were you going to school?

24 A Spring Valley High School.

25 Q And at the time what type of classes were you in?

Zacoata Lopey
Direct examination by Ms. Good

- 1 A E.D. classes.
- 2 Q So self-contained classes?
- 3 A Yes, ma'am.
- 4 Q And during your waiver hearing in family court, you
- 5 understood what the reasoning for the waiver hearing was,
- 6 correct?
- 7 A Yes, ma'am.
- 8 Q And during that waiver hearing there were several
- 9 pretrial motions. I'll go specifically to the Jackson vs.
- 10 Denno one first, and that was as to the admissibility of
- 11 the statement you gave to law enforcement, correct?
- 12 A Yes, ma'am.
- 13 Q Do you remember where that statement was given?
- 14 A In the school resource officer's classroom in the
- 15 school.
- 16 Q Okay. At Spring Valley High School?
- 17 A Yes, ma'am.
- 18 Q They pulled you out of class?
- 19 A Yes, ma'am.
- 20 Q And who was that resource officer?
- 21 A Ben Fields.
- 22 Q And do you if he's currently still employed there or
- 23 not?
- 24 A He's not employed.
- 25 MR. MITCHELL: Objection. Relevance.

Zacoata Lopey
Direct examination by Ms. Good

1 A He was -- it was on the news.

2 THE COURT: She's just asking him if he's employed
3 there.

4 MR. MITCHELL: I think she's getting at something that
5 has recently happened to Mr. Fields. That doesn't have any
6 relevance to this hearing, is my position.

7 THE COURT: Okay.

8 MS. GOOD: I believe it's relevant as to his
9 statement, Your Honor. I mean, whether he was employed
10 there or not, I mean, I haven't gone into anything other
11 than whether he's still employed there or not. He answered
12 no question.

13 THE COURT: All right. Answer it yes or no if you
14 know, not based upon what you might have heard, but if you
15 know of your own knowledge.

16 In other words, everything you testify to has got to
17 be of your own knowledge. Do you understand?

18 THE WITNESS: Yes, sir.

19 THE COURT: So if you know whether or not this officer
20 is still employed there, you can testify to it.

21 A No, sir. He is not currently employed there any more.

22 Q And at the time that you were taken out of your
23 classroom, do you remember what time of the day it was?

24 A No, ma'am. I don't know the time.

25 Q And who came and got you from the classroom?

Zacoata Lopey
Direct examination by Ms. Good

1 A It was -- well, I had -- they said that the school
2 resource officer had sent the teacher to come and get me,
3 and then that's when the teacher escorted me down to the
4 officer's room or whatever right there.

5 Q And when you got to the --

6 THE COURT: Excuse me just a minute.

7 He's going to have to have to pull that up and use
8 that microphone. That's what that microphone is for.

9 Q All right. When you got to Officer Fields' room, who
10 else was there?

11 A Just Officer Fields there sitting in the room.

12 Q And did anybody else come into the room?

13 A Two investigators did after, while I was sitting there
14 for about an hour or two, yes, ma'am.

15 Q And during that hour or two you talked to Officer
16 Fields about the case?

17 A But he just -- he was asking me a lot of questions,
18 but we didn't really go too much in-depth.

19 Q All right. So y'all were basically waiting until
20 investigators got there?

21 A Yes, ma'am.

22 Q And to kind of back up a little bit, everything that
23 we're discussing now, did you let your trial counsel
24 know -- Jo-Jo Delaney?

25 A Yes, ma'am.

Zacoata Lopey
Direct examination by Ms. Good

1 Q And did y'all discuss during the Jackson vs. Denno
2 hearing whether you should testify or not?

3 A I tell you. Honestly, I can't recall that, that part
4 of it.

5 Q Did you want to testify during the Jackson vs. Denno
6 hearing to tell your side of what happened regarding the
7 statement?

8 A Yes, ma'am, but I was really -- at the time I was
9 really blue. I was green, so I didn't know what was going
10 on. I didn't know that I was going to do, yes, ma'am.

11 Q And at the time of the statement did you ask for your
12 mother before you started talking to law enforcement?

13 A Yes, sir -- yes, ma'am.

14 Q How many times did you ask for your mother?

15 A I had asked for her about twice, but she had never
16 came until they was taking me down to the station.

17 Q When you asked for your mother to investigators did
18 they respond that they would let your mother come talk to
19 you before you talked to them?

20 A No, ma'am. They never did.

21 Q Okay. And when you got to headquarters, had you
22 talked to your mother at that time?

23 A Yes, ma'am.

24 Q Okay. If you were to have testified during the
25 Jackson vs. Denno hearing would you have testified as to

Zacoata Lopey
Direct examination by Ms. Good

1 what you just testified to?

2 A Yes, ma'am.

3 Q And that you were 14 at the time?

4 A Yes, ma'am.

5 Q And in self-contained classes?

6 A Yes, ma'am.

7 Q And you had asked for your mother before talking to
8 law enforcement?

9 A Yes, ma'am.

10 Q One of the other pretrial hearings, which was kind of
11 involved, was regarding the solicitor's-office decision on
12 whether to waive you, correct?

13 A Yes, ma'am.

14 Q And as to that pretrial hearing, it focused around the
15 fact that the solicitor's office in Richland County, South
16 Carolina, hadn't waived a Caucasian defendant since 1992,
17 correct?

18 A Yes, ma'am.

19 Q And that every defendant they waived since then had
20 been African-American descent?

21 A Correct, yes, ma'am.

22 Q And your trial counsel went into that very detailed,
23 correct?

24 A Correct.

25 Q And ultimately the judge ruled against that.

Zacoata Lopey
Direct examination by Ms. Good

- 1 A Yes, ma'am.
- 2 Q Right? And ultimately after your plea your appellate
3 counsel came onto the case, correct?
- 4 A Correct.
- 5 Q And who was your appellate counsel?
- 6 A Ms. Suzanne B. Hackett.
- 7 Q Ms. Hackett?
- 8 A Yes, ma'am.
- 9 Q And did you ever speak with Ms. Hackett regarding your
10 case?
- 11 A No, ma'am.
- 12 Q And she ultimately filed an appeal for you, on your
13 behalf, correct?
- 14 A Correct.
- 15 Q Did it include this long detailed issue regarding the
16 solicitor's office discriminating against Caucasians --
- 17 A No, ma'am.
- 18 Q -- when it came to waiver hearings?
- 19 A Never mentioned it.
- 20 Q And the only issue she brought up was G.P.S.
21 monitoring, correct?
- 22 A Yes, ma'am.
- 23 Q And if you had been aware at the time if potentially
24 you had to go to trial in order to appeal any of your
25 waiver-hearing issues, would you have gone to trial?

Zacoata Lopey
Cross-examination by Mr. Mitchell

- 1 A Yes, ma'am.
- 2 Q And you wouldn't have pled guilty?
- 3 A Yes, ma'am.
- 4 MS. GOOD: No further questions, Your Honor.
- 5 CROSS-EXAMINATION
- 6 BY MR. MITCHELL
- 7 Q Good morning, Mr. Lopey.
- 8 A Good morning.
- 9 Q So you wanted to testify at your Jackson vs. Denno
- 10 hearing, but you were 14 years old, is that right?
- 11 A Yes, sir.
- 12 Q Right?
- 13 A Yes, sir.
- 14 Q That came out. I mean, that came out through every
- 15 witness that testified. Your lawyers asked those witnesses
- 16 about how old you were, right?
- 17 A Yes.
- 18 Q And then they asked, you know, what grade you were in
- 19 and where you were at in school, right?
- 20 A Yes, sir.
- 21 Q So, I mean, the family court judge and Judge Cooper
- 22 all knew your background and all of that, right?
- 23 A Yes, sir.
- 24 Q You were advised of your Miranda rights, right?
- 25 A Yes, sir.

Zacoata Lopey
Cross-examination by Mr. Mitchell

- 1 Q And they made you sign. You signed -- not made you.
2 Excuse me. They -- you signed a form waiving your right to
3 have an attorney present during that questioning, right?
4 A I think you said it right the first time. They
5 coerced me, yeah, during.
6 Q Okay. But you did sign it, right?
7 A Yes, sir.
8 Q And that was all presented to the judge at that
9 hearing, correct?
10 A I'm not familiar with it.
11 Q Well, I mean, it was presented that -- those officers
12 that interviewed y'all testified.
13 A Yes, sir.
14 Q Right? And they testified that they complied with
15 Miranda and with these other requirements in order to have
16 you waive your right to a lawyer, right?
17 A I'm not familiar with it.
18 Q Okay. Now, you testified just a second ago that you
19 wanted to have your mother present before you talked to law
20 enforcement.
21 A Yes, sir.
22 Q So that would have been the bulk of your testimony at
23 the Denno hearing, correct, or at the hearing that you
24 wanted to testify at, right?
25 A Yes, sir.

Zacoata Lopey
Cross-examination by Mr. Mitchell

- 1 Q All right. Towards the end there you just testified
2 that if you had known you could not appeal the issues from
3 the family court hearing that you would not have pled
4 guilty?
- 5 A Can you run that by me again? I didn't understand.
- 6 Q Yeah, sure. You testified that if you knew that you
7 were going to be unable to appeal things that happened at
8 the family court hearing -- are you with me so far? That
9 you would not have pled guilty.
- 10 A Correct.
- 11 Q You would not have pled guilty if you knew you
12 couldn't appeal different things that were brought, like
13 the equal-protection argument, right, about how -- is that
14 right?
- 15 A Yes, sir.
- 16 Q In that your lawyers argued that no white children had
17 ever been -- that they could find had been waived up from
18 family court to general sessions in Richland County, is
19 that correct?
- 20 A Correct.
- 21 Q Okay. Now, in basing your decision to plead guilty
22 you were advised by your lawyers that they thought it would
23 be in your best interest to plead guilty?
- 24 A No, sir.
- 25 Q So you talked to your lawyers about whether you were

Zacoata Lopey
Cross-examination by Mr. Mitchell

1 going to plead guilty, right, or take the case to trial?

2 Is that right?

3 A Yes, sir.

4 Q Okay. So in those talks you had with them their
5 advice was that you should plead guilty, right?

6 A No, sir.

7 Q So your lawyers told you to go to trial? They advised
8 you to take the case to trial?

9 A They didn't advise me because they just said -- they
10 give me their advice, and it's up to me to know, go about,
11 you know, how I want.

12 Q So they didn't tell you one way or the other.

13 A No. They was telling me that it was best that I did
14 take it to trial because I would have a better chance to do
15 this, and I said all right. But I didn't know. I wasn't
16 understanding everything that they was explaining to me.

17 Q They explained --

18 THE COURT: Excuse me. Let's stop right there a
19 minute.

20 Would you take that microphone and put it down there
21 so I can hear what he's saying?

22 MR. MITCHELL: Sure.

23 THE COURT: Use that microphone so I can hear
24 everything you say. All right. Thank you.

25 Q That should be a little better.

Zacoata Lopey
Cross-examination by Mr. Mitchell

- 1 So in your talks with Ms. Delaney and Ms. Davis, they
2 kind of left it up to you whether you wanted to plead guilty
3 or go to trial, right? That's what you just said, is that
4 right?
- 5 A Yes, sir.
- 6 Q Okay. So you were facing a life sentence if you went
7 to trial, correct?
- 8 A Yes, sir.
- 9 Q And did they talk to you about the benefits of
10 pleading guilty?
- 11 A They talked to me about the benefits of everything,
12 yes, sir.
- 13 Q So did they say something along the lines that if you
14 plead guilty you will likely get a lower sentence than if
15 you go to trial?
- 16 A No, sir.
- 17 Q No? All right. When you were deciding to plead
18 guilty, what was the major factor of your decision there?
- 19 A The major factor of my decision was I didn't know what
20 was going on. They was telling me that if I didn't take
21 the plea the solicitor was saying she was ready to take me
22 to trial and give me a long time to do this and that.
- 23 Q So you were worried about facing a very long prison
24 sentence, right?
- 25 A Yes, sir.

Zacoata Lopey
Cross-examination by Mr. Mitchell

- 1 Q Potentially life, right?
- 2 A Yes, sir.
- 3 Q So it's fair to say that you pled guilty because you
- 4 wanted to avoid going to trial and facing all of those
- 5 charges in full, is that right?
- 6 A No, sir, it's not right. It's not right.
- 7 Q Okay. So you just said you didn't want to go to trial
- 8 because they were all ready to try it and that your
- 9 sentence could be significant, right?
- 10 A Yes, sir.
- 11 Q Your sentence is still significant, but it could have
- 12 been much worse, right?
- 13 A Yes, sir.
- 14 Q You could have absolutely gotten life, right?
- 15 A Correct.
- 16 Q So you got 30 years that you'll have to serve now, and
- 17 then you have some time hanging out there, is that right?
- 18 A Yes, sir.
- 19 Q And you had admitted. You had given a statement. In
- 20 the statement we're talking about -- I guess you gave two
- 21 statements, is that right, to law enforcement?
- 22 A I'm not familiar with it.
- 23 Q Okay. But in those statements you admitted doing what
- 24 you did, right?
- 25 A Yes, sir.

Zacoata Lopey
Redirect examination by Ms. Good

- 1 Q So the solicitor had that evidence that they would
2 have presented to the jury, right?
3 A Yes, sir.
4 Q Statements from you confessing to the crimes, correct?
5 A Yes, sir.
6 Q You also had a codefendant, Larry Profit, in this
7 case, right?
8 A Yes, sir.
9 Q He implicated you as well?
10 A Yes, sir.
11 Q Okay. And there was also D.N.A. evidence found at the
12 scene that linked you to the crime as well, right?
13 A Correct, yes, sir.
14 Q Okay. So the likelihood of you being convicted at
15 trial you thought was pretty high?
16 A I didn't really know what to think to be honest with
17 you.
18 Q I understand that. All right. No further questions.
19 Thank you.
20 MS. GOOD: Very briefly, Your Honor.
21 REDIRECT EXAMINATION
22 BY MS. GOOD
23 Q During the pretrial hearing regarding your statement,
24 all law enforcement testified that you did not ask for your
25 mother, correct?

Joanna K. Delany
Direct examination by Ms. Good

1 A Yes, ma'am.

2 Q Was there any witness that testified that you did ask
3 for your mother?

4 A No, ma'am.

5 Q You would have been the only one if you were allowed
6 to testify.

7 A Yes, ma'am.

8 Q And regarding that statement, if you'd been able to
9 testify, of course, you don't know but it would have gone
10 towards your argument as to it potentially being
11 suppressed.

12 A Yes, ma'am.

13 Q As to your advice by counsel as to plea versus trial,
14 were you ever advised to the fact that you may not be able
15 to raise your appeal issues if you took a plea?

16 A I'm not familiar with it.

17 MS. GOOD: No further questions, Your Honor.

18 THE COURT: Okay. Step down.

19 MS. GOOD: Call Joanna K. Delany.

20 JOANNA K. DELANY, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. GOOD

23 Q Ms. Delany, where are you currently employed?

24 A The Children's Law Center at U.S.C.

25 Q And how long have you been there?

Joanna K. Delany
Direct examination by Ms. Good

- 1 A About one year.
- 2 Q And where were you previously?
- 3 A The Richland County Public Defender's Office.
- 4 Q And how long had you been employed at the public
5 defender's office?
- 6 A About seven years.
- 7 Q And how long have you been an attorney with the South
8 Carolina Bar?
- 9 A Eight years.
- 10 Q And at the Richland County Solicitor's Office did you
11 represent Zacoata Lohey?
- 12 A I did -- public defender's office.
- 13 Q I'm sorry. The public defender's office. And
14 Mr. Lohey -- can you explain a little bit of the background
15 of his case regarding the waiver and how you prepared for
16 that?
- 17 A Is there anything more particular?
- 18 Q Well, he was 14, so he was in family court, correct?
- 19 A Right. He was.
- 20 Q And the solicitor's office filed a waiver hearing for
21 him?
- 22 A They did.
- 23 Q And when you were preparing the waiver hearing was
24 there particular issues that you were concerned with
25 regarding whether he should be waived or not?

Joanna K. Delany
Direct examination by Ms. Good

1 A There were. And as you mentioned earlier, one of the
2 issues that --

3 THE COURT: How about pulling that microphone around
4 in front of you?

5 THE WITNESS: Yes, sir. Can you hear me better?

6 A One of the issues that we were very concerned about is
7 my cocounsel and I started discussing we'd never seen a
8 Caucasian child be waived. And so we started talking to
9 people that had worked in the courthouse for a long time
10 and worked at the local D.J.J. office for a long time.

11 And we were able to go back and talk to people for
12 about 20 years that had worked here who said, yeah, I know
13 they've never tried to waive a white child but they -- they
14 filed for it but then they pulled it and allowed the child
15 to plead in -- in family court when they had.

16 So we did a pretrial motion, and the judge ordered that
17 D.J.J. turn over a list of all of the kids that had been
18 waived in Richland County. And the farthest that they were
19 able to go back, I believe, was the 90s. And that did
20 confirm that every defendant who was waived was either black
21 or Latino. And so that was an equal protection concern for
22 us. I do think that that was a strong issue.

23 Q And you went into very much detail regarding that
24 issue, correct?

25 A We did. We did it. We did motions on it. We did a

Joanna K. Delany
Direct examination by Ms. Good

- 1 number of motions on it.
- 2 Q You filed memorandums and --
- 3 A We did.
- 4 Q And made it a part of the court record?
- 5 A Yes.
- 6 Q And, ultimately, it was decided against you. However,
- 7 when the appeal did come around you specifically set that
- 8 out in the appeal, correct?
- 9 A We did.
- 10 Q Your notice of appeal.
- 11 A We did.
- 12 Q And when you did an appeal were you talking to anybody
- 13 in the appellate division regarding Mr. Lopey's case?
- 14 A I believe we were talking to Ms. Hudgens.
- 15 Q And she was aware of this issue?
- 16 A Yes.
- 17 Q And, ultimately, she ended up not being the one on the
- 18 case, correct?
- 19 A That's right.
- 20 Q And you're aware that that issue was never appealed.
- 21 A I did see that.
- 22 Q And in your opinion you researched this very
- 23 thoroughly and you set it up for an appeal, correct?
- 24 A Yes.
- 25 Q Do you believe that some of that should have been

Joanna K. Delany
Direct examination by Ms. Good

1 appealed?

2 A I do.

3 Q And regarding the other pretrial motion regarding
4 Mr. Lopey's Jackson vs. Denno hearing, he was ultimately
5 with two investigators and school officer Ben Fields,
6 correct?

7 A Yes.

8 Q And you had discussions with Mr. Lopey regarding
9 whether he asked for his mother?

10 A I think so.

11 Q And when you were doing the Jackson vs. Denno hearing
12 was there any evidence that -- put up by anybody that he
13 had asked for his mother?

14 A I was trying to look through my notes when you were
15 asking me about that. I don't remember.

16 Q Okay. Did you put up Mr. Lopey to testify that he did
17 ask for his mother?

18 A I did not.

19 Q And why was that?

20 A We thought we had a -- we thought we had a good
21 suppression issue, and we talked about it and we decided --
22 we decided to save it for a trial in case we went to trial
23 in general sessions.

24 Q So you thought the issue of whether he asked for his
25 mother was a good suppression issue, correct?

Joanna K. Delany
Direct examination by Ms. Good

1 A Whether he asked for his mother, his age, you know,
2 when you look at the factors, when you look at the factors
3 specific to juvenile confessions, I think Schneckloth was
4 the case that there's some -- you know, and he hit several
5 of those. He -- he was borderline intellectual
6 functioning. He was 14. There were several -- you know,
7 there was a good issue there.

8 And, also, as to whether or not he was free to leave,
9 you know, he was taken out of class by the S.R.O. and taken
10 to the S.R.O.'s office where the S.R.O. talked to him for an
11 hour, I think, before the investigators got there.

12 And we felt that that would be very good, you know, for
13 the defense in terms of whether or not he felt free to
14 leave, because I don't think -- I don't think you are free
15 to leave if you're taken by the school resource officer.

16 Q But for purposes of the waiver hearing the statement
17 was ultimately used against him, correct?

18 A It -- it was considered in the probable-cause factor
19 again.

20 Q However, there was no testimony regarding his mother.
21 And he would have been the only one that would be able to
22 testify as to whether he asked for her.

23 A I think there was testimony that she was in the police
24 station hallway asking for him. I think one of the
25 investigators testified to that.

Joanna K. Delany
Direct examination by Ms. Good

1 Q And they didn't let her or him see each other until
2 after he gave a statement?

3 A I -- I believe that's correct.

4 Q Now, finally, when you were discussing plea versus
5 trial once it got to the general sessions stage with
6 Mr. Lopey, was there any discussion about whether he could
7 appeal any of his waiver-hearing issues if he took a plea
8 versus going to trial?

9 A It is hard for me to remember. This was several years
10 ago. I think -- I think we talked about -- Ms. Davis and I
11 were discussing this. I think -- I think we talked about
12 jurisdiction, that you can raise jurisdiction at any stage
13 of the case. But I don't remember anything. Could you
14 rephrase that?

15 Q Yes. Is there any issue as to whether you can appeal
16 waiver hearings if you plead versus if you went to trial?

17 A I believe -- I saw a case recently that was from 2013,
18 and it said if you have a waiver hearing you have to go to
19 trial in order to appeal the waiver.

20 I think we told him that, but I don't remember if
21 that -- I know that case came out after he -- after we pled.
22 And I don't -- I don't remember if there was a prior case
23 basically.

24 Q Okay.

25 MS. GOOD: No further questions, Your Honor.

Joanna K. Delany
Cross-examination by Mr. Mitchell

1 CROSS-EXAMINATION

2 BY MR. MITCHELL

3 Q Good morning, Ms. Delaney.

4 A How are you?

5 Q Nice being here today.

6 A Sure.

7 Q So what was your role? Your role in this case, were
8 you lead counsel throughout, is that correct, or --

9 A I was lead counsel in the family court and then stayed
10 on in the case as, I guess, second seat in G. S.

11 Q Did you handle a lot of family court cases at the
12 time?

13 A Yes.

14 Q So at the waiver hearing Jim May assisted you, and
15 then after that Jennifer Davis was on the case with you
16 when it was waived up?

17 A It was. I think Jim may have left the office at that
18 point, and so I was still doing all family court work. And
19 so it was assigned to Ms. Davis, and I stayed on it to
20 continue some representation.

21 Q Can you give us just a bit of the background of the
22 allegations that the state was going to proceed on
23 factual -- factual, briefly, just kind of?

24 A Sure. It was a -- it was a burglary. It was two
25 teenagers. Zacoata was 14; his codefendant was 15. They

Joanna K. Delany
Cross-examination by Mr. Mitchell

1 burglarized the home of a woman who was at home during the
2 burglary and sexually assaulted her and stole things from
3 her, from the home.

4 Q This waiver hearing lasted for about four days or so,
5 three and a half days. Is that usual? Have you had any
6 other cases where you had waiver hearings?

7 A Waiver hearings are very unusual in themselves, and
8 most family court judges are uncomfortable doing them and
9 take more time with them than I think if they were more --
10 if they did more of them, I think they would go faster.
11 But it really depends on the judge.

12 Q It kind of seemed like everyone was a little unsure of
13 the standards in family court as opposed to if the case was
14 in general sessions. Is that kind of fair to say?

15 A I -- I remember some discussions with the judge in
16 chambers with opposing counsel, and he was saying that he
17 had not done a waiver previously, and so that we were back
18 there looking at all of the statutes with him and that type
19 of thing.

20 Q So is that kind of how you came about this
21 equal-protection argument, just doing some research and
22 saying wait a second, I don't think any Caucasian children
23 have been waived up?

24 A We were -- we were discussing trial strategy, and that
25 was something, you know, we decided to look into further.

Joanna K. Delany
Cross-examination by Mr. Mitchell

- 1 And once we looked into it we realized that intentional or
2 not it -- I think it is an equal-protection issue. And
3 I'll say that five years later they still haven't done it.
4 So it still continues to be an issue as far as I know.
- 5 Q So if the case had gone to trial that would have been
6 something that you definitely would have raised and made
7 about the same record as you made at the family court
8 hearing, is that right?
- 9 A Yes.
- 10 Q Did you think that issue had some merit?
- 11 A I think so.
- 12 Q You also made the argument at the family court hearing
13 that it was kind of -- it was not a uniform application of
14 who gets waived up and then therefore argued that the
15 waiver statute in itself was unconstitutional.
- 16 A We did.
- 17 Q What was the thought process behind that?
- 18 A We -- we were thinking about Bush vs. Gore and how the
19 fact that everybody had different policies about what to do
20 with the hanging chads, made that unconstitutional, and we
21 felt like because there's no standards to guide the
22 solicitor that -- the solicitor is the one who decides
23 whether or not a child -- whether or not to move for
24 waiver.
- 25 So at 14 he is automatically charged in family court.

Joanna K. Delany
Cross-examination by Mr. Mitchell

1 We have a statute that says it's discretionary to the
2 solicitor of whether or not that can be waived for certain
3 felonies. And there's not any policy or legislation
4 regarding who should be waived, and then so that was -- that
5 was a concern.

6 Q Is that something -- that's something that you also
7 would have raised at trial and tried to make a thorough
8 record for if the case had gone to trial.

9 A Yes.

10 Q And you were prepared to do that if it turned out not
11 to plead?

12 A I think so. I think he was on the trial docket for
13 the next week, but I think we had discussed that it was
14 going to be a plea several times.

15 Q Getting into that, what -- what were your thoughts and
16 advice -- what was your advice on whether Mr. Lopey should
17 plead or whether he should take the case to trial?

18 A We talked about doing a motion to suppress, and he --
19 he preferred to plead.

20 You know, specifically, I would agree with him that
21 when he said we didn't tell him do this or do that, it was
22 more here's what could happen if you plead, here's what
23 could happen if you go to trial. You know, this is what we
24 will do if you go one way or this is what we'll do if we go
25 the other.

Joanna K. Delany
Cross-examination by Mr. Mitchell

1 I mean, I think we had a good motion to suppress, but,
2 you know, I -- we didn't have a plea offer. It was a
3 straight-up plea.

4 Q That answered my question.

5 As far as that Jackson vs. Denno --

6 THE COURT: Excuse me just a minute.

7 Let me ask something for clarification. When you said
8 we discussed the motion to suppress --

9 THE WITNESS: Yes, sir.

10 THE COURT: Who is we?

11 THE WITNESS: Ms. Davis and Mr. Lopey and I.

12 THE COURT: Okay.

13 A I -- I have -- I had it in my notes that we discussed
14 doing the motion, and that we did discuss doing the motion
15 and going to trial or pleading and that he wanted to plea.

16 Q I guess I'm going to call it the Denno hearing, the
17 family court hearing. But is that the same standard as
18 would be in general sessions?

19 A That's -- that's kind of complicated, and that's one
20 of the reasons that hearing took so long, is, you know, we
21 have little guidance about that. And because family cases
22 aren't -- family court cases aren't appealed a lot, there's
23 not much case law on it.

24 One of the factors at -- at a waiver hearing is just
25 probable cause. So it's not a beyond-a-reasonable-doubt

Joanna K. Delany
Cross-examination by Mr. Mitchell

1 standard. It's a probable-cause standard. And so it's not
2 really clear if, you know -- what standard the Denno is, but
3 the factual standard is -- it's easy.

4 Q Okay. Did you talk to Mr. Lobby about whether he
5 should testify at the family court hearing?

6 A Generally or in the --

7 Q Just in that pre -- just in the motion to suppress his
8 statement, not the merits case.

9 A I -- I don't remember, and I've looked through my
10 notes, and I don't have anything written about that. I
11 just don't remember.

12 Q Do you think he would have been a strong witness?
13 Would his intellectual limitations have gone into your
14 decision not to call him in that hearing?

15 A I think -- I think that would mitigate or lead me
16 towards calling him, because that is one of the factors
17 that is considered. I try to keep good notes but, you
18 know...

19 Q Oh, I know. It's very specific and it's a few years
20 ago. So everything -- you were here -- going back, you
21 were here when he was testifying a few minutes ago.

22 A Yes, sir.

23 Q So when he talks about, you know, he wants some of
24 these things presented, that he was 14, that he was in
25 ninth grade, he was in high school, he was in special ed

Joanna K. Delany
Cross-examination by Mr. Mitchell

- 1 classes essentially, I mean, that was all argued by you in
2 support of this motion to suppress, right?
- 3 A In the Denno?
- 4 Q Yes, ma'am.
- 5 A Yeah. We -- and that's -- I did ask one of the
6 officers those questions and got those answers out on
7 cross.
- 8 Q Well, also on cross, I know you asked him about
9 whether he asked for his mother, is that right?
- 10 A Is that in the record?
- 11 Q I believe it is.
- 12 A Okay. I don't remember, but if you show it to me I'll
13 look at it.
- 14 Q I don't have a page number. It's in the record right
15 in front of you. I think that was asked. You can take my
16 word for it.
- 17 But is that something that you -- that seemed to
18 be what he is -- the substance of his Denno testimony, would
19 have been, that he had asked for his mother. And instead of
20 calling him you could just questioned the officers on that
21 themselves.
- 22 A I could -- I could have asked him that question. I
23 don't remember if I did.
- 24 Q All right. Move to the issue of whether he was
25 advised about an appeal.

Joanna K. Delany
Cross-examination by Mr. Mitchell

1 Did you have discussions with him regarding what could
2 be raised on appeal? Would you have discussions with him at
3 all about the appeal?

4 A We -- we did talk about...

5 THE WITNESS: And when I say we, I'm talking about
6 Ms. Davis, Your Honor.

7 A We did talk about an appeal. We ultimately filed a
8 notice of intent to appeal, you know.

9 I -- I can tell you I generally would advise clients
10 that getting any type of appeal on a guilty plea is very,
11 very unlikely to get an appeal granted. But beyond that, I
12 don't remember specifically what we discussed about appeal.

13 I know we put a lot of things on the record during the
14 plea just to try to preserve them without knowing that that
15 was possible, just giving it a try.

16 Q And you did make an argument that you thought a
17 lifetime G.P.S. requirement was unconstitutional.

18 A Yes.

19 Q And are you aware that that was the issue raised on
20 the Anders brief?

21 A Yes.

22 Q Were you aware that there was an Anders brief?

23 A Yes. But we didn't -- or we don't submit that. That
24 was the appellate counsel.

25 Q Yes, ma'am. You testified on direct that you thought

Joanna K. Delany
Cross-examination by Mr. Mitchell

1 that you told him that if he wanted to appeal the issues in
2 the waiver hearing that he would have had to go to trial.

3 A I -- I don't -- I don't know. I think so. I, again,
4 generally tell clients you are very -- it's very difficult
5 to get an appeal on a plea.

6 And I just -- you know, I -- Ms. Davis and I talked
7 about, you know, whether or not we actually expressed to him
8 that you could not reserve issues for appeal. I think we
9 both knew that, but whether or not we expressed to him, I
10 just don't remember. And we're talking five years ago, you
11 know.

12 Q Oh, I understand. I am not trying to pin you down on
13 that.

14 But as far as advice on what would be in his best
15 interest, he was facing a substantial amount of time. I
16 mean, facing up to life, is that right?

17 A Kind of, because we had Graham v. Florida that said he
18 couldn't get life because juveniles can't get that. I
19 think at that point Graham said juveniles can't get life
20 for a non-homicide. But it still isn't clear what kind of
21 term of years they can get. So we told him it could be a
22 term of years but that it couldn't be life.

23 Q It could be an effective life sentence.

24 A It could be.

25 Q But/and that's something you presented at the guilty

Joanna K. Delany
Cross-examination by Mr. Mitchell

1 plea in mitigation too, isn't it, that --

2 A It is.

3 Q -- the average life expectancy of a S.C.D.C. inmate is
4 52.6, something like that?

5 A Yes. We did. We did present that.

6 Q Would you -- would you characterize the state's
7 evidence against him as strong?

8 A Yes. Well, if -- if it wasn't suppressed, very
9 strong. If it -- if it was, you know, everything sort of
10 came from that initial encounter.

11 Q Okay. But there still would have been D.N.A. out
12 there, right?

13 A Not if they hadn't gotten a buccal swab from him when
14 they were questioning him.

15 Q Okay. Do you think that would have been fruit of the
16 poisonous there?

17 A Yeah, yeah, yes, sir.

18 Q And the codefendant's statement as well, right?

19 A Well, but, again, all of that came from his initial
20 statement to the police. But the victim described them as
21 being an adult men in their 20s or 30s. So there wasn't
22 anything either of them had, you know, in the database,
23 either one. And so everything really stemmed from that
24 initial encounter. They got the codefendant through his
25 statement.

Joanna K. Delany
Redirect examination by Ms. Good

1 Q Now, Lopey -- Mr. Lopey lived across the street from
2 the victim --

3 A He lived --

4 Q -- or very near?

5 A -- very near, yeah.

6 Q And he was suspected in a number of other burglaries
7 or larcenies at the time?

8 A I don't -- I don't believe so. I could be wrong. I
9 don't remember that.

10 Q He wasn't charged with anything.

11 A No.

12 Q Okay.

13 MR. MITCHELL: One second, Your Honor.

14 (Pause.)

15 Q No further questions. Thank you.

16 REDIRECT EXAMINATION

17 BY MS. GOOD

18 Q When you filed your notice of appeal with the Court of
19 Appeals, do you remember what specific issues you put in
20 your statement for the basis, what you had to do, since it
21 was a guilty plea?

22 A Let me -- if you will give me a second, I can find it.

23 Q Sure.

24 (Pause.)

25 A Or actually if you know what page it's on of the

Joanna K. Delany
Redirect examination by Ms. Good

1 transcript.

2 Q I'm not sure it's in the transcript. I can hand up.

3 A Do you want me to state what they were?

4 Q Yeah, what your basis was.

5 A So we moved to strike the waiver statute as violating
6 equal protection on the grounds of systemic racial bias in
7 the solicitor's office in choosing when to petition
8 waivers.

9 We moved to keep him under family court jurisdiction.
10 There's a -- there's a part of the waiver statute that says
11 a general sessions judge can send them back, or there's a
12 part of the transfer jurisdiction statute that says a G.S.
13 judge can send a child back to court, back to family court.
14 And that was based on Kent.

15 We argued arbitrariness of the application of the
16 waiver statute under Bush vs. Gore. And we made some other,
17 other arguments -- Eighth Amendment based on his sentencing
18 in general sessions at all because of his age and sex
19 offender. We argued the sex offender registry was
20 unconstitutional because there hasn't -- hadn't been a
21 likelihood, a determination that he was likely to reoffend.

22 Q And the majority of those issues, were they brought up
23 on appeal to the best of your knowledge?

24 A No, no, they were not.

25 Q And you felt, as you testified earlier, that equal

Jennifer C. Davis
Direct examination by Mr. Mitchell

1 protection clause in the discretionary features the
2 solicitor's office had were very strong issues.

3 A I -- I -- yes, I did.

4 Q And you also stated you couldn't remember if you
5 discussed with Mr. Lopey whether he should testify or not
6 during the Jackson vs. Denno hearing?

7 A I cannot remember and I don't have any notes about
8 that.

9 I -- I can say if he told me he wanted to I would have
10 put him up, but I don't remember us talking about it.

11 MS. GOOD: No further questions, Your Honor.

12 THE COURT: You may step down.

13 MS. GOOD: The applicant rests, Your Honor.

14 MR. MITCHELL: Your Honor, the state calls
15 Ms. Jennifer Davis.

16 JENNIFER C. DAVIS, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. MITCHELL

19 Q Good morning, Ms. Davis.

20 A Good morning.

21 Q Thanks for being here today.

22 A Sure.

23 Q I'll try not to overlap a lot of testimony. Can you
24 describe your role in representing Mr. Lopey?

25 A I was appointed to represent Mr. Lopey once the waiver

Jennifer C. Davis
Direct examination by Mr. Mitchell

1 hearing was conducted and he was waived up to general
2 sessions, so I was appointed. I think it was April of
3 2012.

4 Q You kind of handled the guilty plea. I guess you and
5 Ms. Delany both handled the guilty plea before Judge
6 Cooper, is that right?

7 A Yes.

8 Q Okay. So you would have been appointed about a year
9 before he pled, which would have been right after he got
10 waived up, is that right?

11 A Right. I represented him. I think it was about 11
12 months before the guilty plea.

13 Q So what was your advice on if this was going to be a
14 plea or a trial to Mr. Lopey?

15 A We had that conversation several times leading up to
16 the guilty plea.

17 I think he was correct in stating that we did not ever
18 tell him you should definitely plead guilty or you should
19 definitely go to trial. It was one of those situations
20 where we laid out for him the benefits and consequences of
21 both of those decisions.

22 Q And what would be the -- what would be the benefits
23 and the -- I guess the cons of going to trial, the risks of
24 going to trial?

25 A Well, the better way for me to explain it is I think

Jennifer C. Davis
Direct examination by Mr. Mitchell

1 there are some cases where I would definitely give an
2 affirmative opinion to a client of you should plead guilty
3 because of this offer or because we can mitigate in this
4 way at a plea.

5 His case I think was little bit different because we
6 did not have an offer in the case. We knew that the state
7 was going to be asking for, you know, essentially as close
8 to life as they could get it.

9 Granted, we knew he couldn't get an actual life
10 sentence or the functional equivalent, but there's a lot
11 of -- there's a lot left to -- discretion left in there.

12 So it was really one of those cases where we wanted to
13 be clear with him that a straight-up plea was still risky.
14 We didn't know exactly what the end result would be of
15 course and then laid out at trial what, you know, what we
16 would attempt to do, including the motion to suppress in
17 terms of his statement and evidence thereafter.

18 Q So if the case would have gone to trial y'all were
19 ready to argue these motions that we've been talking about,
20 is that right?

21 A Correct. And we specifically talked to him -- in my
22 notes. I specifically recall talking to him about the
23 motion to suppress the statement and, you know, if we went
24 to trial and lost that that we would have that as an appeal
25 issue but that that would have -- we would have to go to

Jennifer C. Davis
Direct examination by Mr. Mitchell

1 trial in order to do that.

2 Q Okay. So you advised him that he would have to go to
3 trial to get this statement suppressed.

4 A Correct.

5 Q You're talking about the family court?

6 A In terms of -- as I have from my notes specifically
7 about the motion to suppress in terms of the statement and
8 explaining to him that that would be an appeal issue if we
9 went to trial and we lost motion to suppress the statement,
10 that that would be an issue for appeal down the road if he
11 was convicted at trial.

12 Q When he decided to plea -- well, did you think it was
13 in his best interest to plead guilty?

14 A Again, we left that decision up to him for those
15 reasons, is because it was a pretty tough case factually.
16 And we knew the state was going to be asking for, like I
17 said, as much time as they could possibly get.

18 So it wasn't a situation where we were overly thrilled
19 with a straight-up plea, but his concern was that if he went
20 to trial that he would get significantly more time.

21 Q So in your experience if you plead guilty and accept
22 responsibility you usually receive a lesser sentence than
23 maybe if you had gone to trial, is that --

24 A That's certainly the hope, is that you're going to get
25 a benefit for pleading guilty versus not.

Jennifer C. Davis
Direct examination by Mr. Mitchell

- 1 Q That would be not putting the victims through a trial.
2 A Which was one of his concerns.
3 Q Okay. So he did have concerns with --
4 A Putting the family through the trial. I think after
5 the waiver hearing, going through the trial, he was very
6 hesitant to do that.
7 Q And that was a pretty good preview of what the trial
8 would have been like, is that right?
9 A Yes.
10 Q At the waiver hearing?
11 A Correct.
12 Q And, you know, as to whether he could appeal anything
13 from the family court hearing, there wasn't any talk about
14 a conditional plea or anything like that, was there?
15 A No.
16 Q Not that you could plead guilty but we'd still
17 challenge these rulings, the prior rulings. You never
18 advised him of that, did you?
19 A Not that I recall. Again, in terms of my notes
20 specific about the motion to suppress and explaining to him
21 that we'd have to go to trial in order to preserve that
22 issue, I don't specifically see in my notes where we
23 addressed one way or the other really if he was going to be
24 able to appeal the waiver-hearing issues from family court.
25 Obviously at the plea, I know he objected and tried to

Jennifer C. Davis
Direct examination by Mr. Mitchell

1 preserve anything that we could and put that in the appeal.

2 Q Yeah. That may have been a little unclear at the
3 time.

4 Is that why you put everything in, in your statement,
5 basis for appeal? You put everything that happened at the
6 family court hearing as well?

7 A Right. And I think just in general, as kind of as a
8 practice, if I'm appealing a guilty plea if there's
9 anything during the plea that we object to or said
10 objection, we try to lay that out if there's something that
11 can be done from appellate defense, that we try to keep it
12 as preserved if at all possible so that it's there.

13 Q This hasn't been mentioned, but he was evaluated and
14 found competent to stand trial, is that right?

15 A He had been evaluated prior to my involvement in the
16 case, but had been evaluated -- was evaluated for
17 competency, yes.

18 Q There was a lot of testimony at the family court
19 waiver hearing that his intellectual capacity may not --
20 his I.Q. level may not be normal or average.

21 A Right.

22 Q But he was found competent.

23 A That's my understanding. Again, that evaluation took
24 place I think --

25 Q Prior to.

Jennifer C. Davis
Cross-examination by Ms. Good

1 A -- when Ms. Delany had the case, but yes.

2 Q Prior. No further questions. Please answer any Ms.
3 Good has.

4 CROSS-EXAMINATION

5 BY MS. GOOD

6 Q I just have a couple of questions.

7 Regarding the plea, you said you objected to several
8 things during the plea just for purposes of preserving the
9 appeal. Can you explain to the judge what those were?

10 A I recall looking at the transcript. I know we
11 objected generally to him being sentenced as an adult.

12 I think we asked the judge or brought up the fact that
13 the judge had the ability under to transfer jurisdiction and
14 send it back down if he chose to, or that was our position.

15 And I believe Ms. Delany argued and objected to the sex
16 offender registry or maybe the G.P.S. monitoring part in the
17 plea.

18 Q And you were actually the one who did the notice of
19 appeal, correct?

20 A I filed it, yes.

21 Q And you're aware of when there's a plea you have to
22 give a statement of basically whether there's actually an
23 appealable issue, correct?

24 A Right.

25 Q And in this case you did do that.

Jennifer C. Davis
Cross-examination by Ms. Good

1 A We did.

2 Q And which appealable issues did you believe were
3 important enough to put in that statement of basis?

4 A The same ones that Ms. Delany read off from the
5 appeal. We tried to include everything.

6 Q Which included the waiver issues regarding equal
7 protection and Bush vs. Gore and the discretionary of the
8 solicitor's office?

9 A Yes.

10 Q And you believe that those would have been taken up on
11 appeal since you were putting that in your issues.

12 A My understanding is -- he had me put something in
13 there as opposed to like a letter just stating my client
14 wants me to appeal, so I'm appealing. So any time I have
15 anything that I can add in there above or beyond that, I'm
16 going include it, so yes.

17 Q And did you have any discussions with anybody in
18 appellate division regarding those issues and what you
19 thought were important?

20 A We did. We -- I had from my notes that we spoke with
21 Cat Hudgens.

22 Q And is she the one that ultimately did the appeal?

23 A No. She did not.

24 MS. GOOD: No further questions, Your Honor.

25 MR. MITCHELL: I have no further witnesses, Your

1 Honor.

2 THE COURT: Anything else?

3 MS. GOOD: No, sir.

4 THE COURT: Any statement either would like to make?

5 MS. GOOD: No, sir.

6 I mean, just basically on the record and the grounds
7 that we're going on regarding specifically the
8 equal-protection clause and those issues were not brought
9 up on appeal, which we believe would have been very good
10 appealable issues.

11 Trial counsel made it very clear during their
12 arguments and during their testimony that they thought it
13 was an issue, that they were very thorough in reserving the
14 record for appeal on those issues.

15 And the fact that they were not brought up on appeal
16 was very prejudicial to Mr. Lopey as those are not issues
17 that have ever been decided in this state before. They
18 would have been new issues for the Court to determine.

19 MR. MITCHELL: Judge, just in response to that, it is
20 our position that if you plead guilty you waive -- there's
21 case law. You waive all non-jurisdictional defects and all
22 prior constitutional violations.

23 So by pleading guilty it's like a clean slate. You
24 can't come up. You can't have a suppression hearing, lose
25 the suppression hearing, then plead guilty and then

1 challenge the suppression hearing. You know what I mean?
2 Because it's -- you lose that conditional plea at that
3 point. And that's kind of what Mr. Lopey is asking this
4 Court to do, is to recognize the conditional plea.

5 I think it's pretty clear from the plea transcript
6 that the plea was knowingly and voluntarily made.

7 I think this is one of the most thorough cases I've
8 seen where he's had help of a number of very qualified
9 lawyers throughout the process.

10 But, you know, my main argument is that you cannot --
11 you cannot be ineffective for raising something that you're
12 barred from raising if it's non-jurisdictional, which the
13 State vs. Rice, which was mentioned by Ms. Delany. She
14 said a 2013 case. That's a 2013 Supreme Court case that
15 found that erroneous order transferring the case from
16 family court to general sessions is a judicial error, not a
17 jurisdictional error. And so at that point he waived that
18 by pleading guilty.

19 I'd also note that it was an Anders brief, was
20 submitted. And it doesn't mean that he can't bring
21 ineffective assistance of counsel, but I think I'd ask you
22 to take into account that if it's an Anders brief that the
23 Court of Appeals and everyone in their staff would review
24 every preserved objection or any merit at all.

25 And, you know, there's cases all the time where you

1 submit an Anders brief and the Court denies the motion to
2 be relieved and orders brief on an issue. And that didn't
3 happen here.

4 So I think if -- even if you were to find some kind of
5 deficiency there you could not find prejudice as the Court
6 of Appeals would review the entire record.

7 But I would note that you still do a Strickland
8 analysis of what's taken place with ineffective assistance
9 of appellate counsel.

10 But I think you can take into account that it was an
11 Anders brief that did not show prejudice in that one of
12 these issues would not have been successful had they been
13 raised.

14 But I think -- main argument is that he waives all
15 non-jurisdictional defects prior. So anything, any prior
16 constitutional violation, is waived by pleading. We ask
17 you to deny those grounds.

18 THE COURT: Any reply?

19 MS. GOOD: Yes, Your Honor.

20 That there's no way to appeal that waiver hearing
21 without something happening on the case in general
22 sessions, and there's no way Mr. Lopey could have appealed
23 any of those waiver issues before he either pled or went to
24 trial in general sessions.

25 And it was made clear through testimony that they

1 aren't sure whether they even discussed with him that he
2 would appeal potentially those family court issues if he
3 pled guilty versus if he went to trial and had to go to
4 trial and was to bring those issues up.

5 So it's unclear as to whether he was even aware of
6 that in making a voluntary decision to plead based on
7 whether he would appeal those issues or not.

8 THE COURT: All right. I'll review the record and
9 issue an order.

10 END OF REQUESTED TRANSCRIPT OF RECORD
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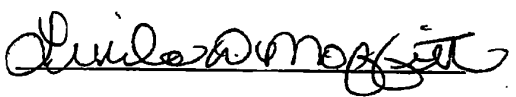
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CERTIFICATE

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 Common Pleas Court for Richland County, South Carolina, on the 1st day of February 2016.

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

September 6, 2017



Linda D. Moffitt
Circuit Court Reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-40-00771

Zacoata LOPEY, SCD CID# 354734

Applicant

The STATE of South Carolina,

Respondent

CHECK ONE:

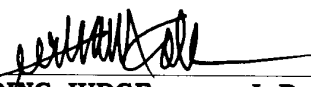
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41, SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☒ Formal order is attached; ☒ Statement of Judgment by the Court:

This matter came before this court on an application for post-conviction relief filed pursuant to *South Carolina Code Annotated Section 17-27-10 et seq.*

Based upon the record of the case, the evidence presented at the evidentiary hearing held in this matter, the argument of counsel, and consideration of the applicable statutory and case law, this court finds that the applicant's request for **post-conviction** relief should be and **is** therefore **denied** and the **application** is **dismissed** with prejudice for failure of the applicant to establish deficient performance of counsel and/or prejudice resulting from counsel's performance.

Dated at Spartanburg, South Carolina, this **12th** day of **February**, 2019.


PRESIDING JUDGE, J. Derham Cole

This judgment was entered on the _____ day of **February**, 2019, and a copy mailed first class this **19th** day of **February**, 2019 to attorneys of record or to parties (when appearing pro se) as follows:

Anna R. Good, Esq.
1201 Main Street, Suite 103
Columbia, South Carolina 29201

ATTORNEY(S) FOR THE APPLICANT

J. Clayton Mitchell, Esq.
Post Office Box 11549
Columbia, South Carolina 29211-1549
Kelly Oppenheimer, Esq.
Post Office Box 11549
Columbia, South Carolina 29211-1549
ATTORNEY(S) FOR THE RESPONDENT


CLERK OF COURT, Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Zacoata Lopey, #354734,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2015-CP-40-077

ORDER OF DISMISSAL

2019 FEB 19 PM 4:04
RICHLAND COUNTY
FILED
JEANETTE M. MCBRIDE
C.C.P. & G.S.

This matter comes before this Court by way of an application for post-conviction relief filed by Zacoata Lopey (Applicant) on February 5, 2015. The State (Respondent) made its return on June 10, 2015, requesting an evidentiary hearing be held. Thereafter, through counsel, Applicant filed an amended application for post-conviction relief on August 31, 2015. An evidentiary hearing into the matter was convened on February 1, 2016, at the Richland County Courthouse before the Honorable J. Derham Cole. Applicant was present at the hearing and represented by Anna R. Good, Esquire. Assistant Attorney General J. Clayton Mitchell, III of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was initially charged in Family court for armed robbery (2010-JU-40-1520), first-degree burglary (2010-JU-40-1521), kidnapping (2010-JU-40-1522), and first-degree criminal sexual conduct (2010-JU-40-1523). Waiver hearings were held before the Honorable James F. Fraley, Jr., family court judge, on February 21-22, 2012, and March 27-March 29, 2012. Applicant was present at those hearings and represented by James H. May, Esquire, and Joanna K.

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Delany, Esquire. Assistant Solicitors Kathryn Luck Campbell, Joanna McDuffie, and Meghan Walker, all of the Fifth Circuit Solicitor's Office, represented Respondent. After hearing all arguments and testimony presented at the waiver hearing, Judge Fraley issued a written order on April 11, 2012, transferring the case to the court of general sessions and finding it was in the best interest of Applicant and the community to transfer jurisdiction. Subsequently, during its April 2012 term, the Richland County Grand Jury indicted Applicant for first-degree burglary (2012-GS-40-01922), armed robbery (2012-GS-40-01923), kidnapping (2012-GS-40-01924), and first-degree criminal sexual conduct (2012-GS-40-01925). Joanna K. Delany, Esquire, and Jennifer C. Davis, Esquire, represented Applicant on these charges. On March 12, 2013, Applicant appeared before the Honorable Thomas W. Cooper, Jr., circuit court judge, and pled guilty as indicted to all charges. Judge Cooper sentenced Applicant to concurrent terms of imprisonment of thirty years for first-degree burglary, thirty years for armed robbery, and thirty years for first-degree criminal sexual conduct. Judge Cooper also sentenced Applicant to a consecutive term imprisonment of fifteen years for kidnapping.

Applicant filed a timely notice of appeal, and Appellate Defender Susan B. Hackett, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed an *Anders*¹ brief on Applicant's behalf. On appeal, Applicant raised the following issue:

[Applicant's] due process rights pursuant to Fourteenth Amendment of the United States Constitution and Article I, Section three of the South Carolina Constitution were violated by the statutory requirement that he register for life as a sex offender and provided no judicial review after a term of years to determine whether [Applicant] should remain on the registry.

Following a review pursuant to *Anders*, the South Carolina Court of Appeals dismissed Applicant's appeal and granted appellate counsel's request to withdraw by unpublished opinion

¹ *Anders v. California*, 386 U.S. 738 (1967).

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on January 14, 2015. *State v. Lopey*, Op. No. 2015-UP-012 (S.C. Ct. App. filed January 14, 2015).
The Remittitur was issued on March 10, 2015.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations:

1. Ineffective Assistance of Counsel 6th Amendment;
 - a. *Strickland v. Washington*.
2. Newly discover [sic]; [and]
 - a. *Jamison v. State* (Opinion No. 27454.
3. Minor being trial [sic] as an adult (8th Amendment.
 - a. *Alabama v. Miller* [sic], United States Supreme Court (2013).

In his amended application, Applicant raises the following additional grounds for relief:

1. Ineffective assistance of appellate counsel – appellate counsel failed to properly argue the statement for basis of appeal, including but not limited to, the selective application of the solicitor's office to waive the applicant being tried as an adult; and
2. Ineffective assistance of trial counsel—trial counsel failed to have the applicant testify as to his statement regarding the charges during the underlying waiver hearing.

At the evidentiary hearing, Applicant proceeded forward on the allegations raised in his amended application for post-conviction relief.

STATEMENT OF FACTS

On December 14, 2010, at 8:45 in the evening, eighty-year-old Elaine Henrick (Victim) was watching television and talking with a friend of hers on the phone. R. 409. When Victim hung up the phone, she heard a noise in her sunroom. R. 409. She went to investigate, and two males entered her house through the sunroom, one carrying a shotgun. R. 409. They told Victim

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not to move and asked her where she kept her valuables. R. 410. They then ransacked the home, searching for anything of value and handing the gun off amongst each other. R. 410.

After the robbers found some money, they told Victim to go into the bathroom and remove her clothes. R. 410. The robbers then took Victim from the bathroom to her bedroom, where they instructed Victim to lie on the bed. R. 410. Applicant's co-defendant, Larry Prophet, then passed the gun to Applicant, climbed on top of Victim, and sexually assaulted her. R. 410. After Prophet was finished, Applicant handed the gun back to him and attempted to sexually assault Victim. R. 410. Victim pled with Applicant, whom she referred to as the young one,² for mercy and asked him if he would do the same thing to his grandmother. R. 410. Applicant then turned Victim over and sexually assaulted her in the anus. R. 410.

Applicant and Prophet then left the home, and Victim called 911. R. 410-11. When Investigator John Mauldin arrived, the house was in disarray. R. 409. Drawers had been pulled out, cabinets had been opened, and their contents were thrown all over the floor. R. 409. Investigator Mauldin also observed a stain on the floor of the bedroom and on the sheets, which Victim advised was potentially semen. R. 409.

As the investigation continued, Richland County law enforcement officers received information about Applicant from Deputy Ben Fields, the school resource officer (SRO) at Spring Valley High School. R. 412. Law enforcement then proceeded to Spring Valley in order to speak with Applicant. R. 412. Applicant informed law enforcement officers he was responsible for these crimes, along with Prophet. R. 412. Law enforcement then picked up Prophet, and both Applicant and Prophet were taken to be fingerprinted in the Sheriff's Office. R. 412-13. While in a room in the Sheriff's Office, Investigator Mauldin observed Applicant and Prophet laughing, rapping, dapping each other up, and joking about the crimes they had committed and that they were going to prison. R. 413.

In addition, Applicant's semen was found in the rectum of Victim, as well as the tissue she had used to clean blood between her legs. R. 414. Prophet's semen was also found on the carpet of Victim's bedroom, where he ejaculated. R. 414.

² Applicant was fourteen years old at the time of these crimes. R. 398.

[Handwritten signature] 4

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of plea counsel Joanna K. Delany (Counsel Delany). Respondent presented testimony from plea counsel Jennifer C. Davis (Counsel Davis). This Court also had before it a copy of the Applicant's plea transcript, a copy of the transcripts from Applicant's waiver hearings in Family Court, the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified at the time of his arrest he was fourteen years old and in the ninth grade at Spring Valley High School. He testified at the time, he was in self-contained classes. He also testified he understood the reasoning behind the waiver hearing on his charges. He further testified there was a *Jackson v. Denno*³ hearing as to the admissibility of a statement he gave while in the school resource officer's classroom. He explained he was pulled out of his class at the time. He further explained Ben Fields was the SRO, but he is no longer employed as such. Applicant elaborated when he arrived at the classroom, Officer Fields was the only one in the room, but two investigators arrived after he was in the classroom for one or two hours. He further elaborated Officer Fields asked him a lot of questions, but they did not discuss anything in detail. He testified he asked for his mother twice before he started talking to law enforcement, but she did not arrive until after he was being escorted to the police station. He further testified when he asked for his mother, the investigators never told him they would let his mother talk to him before they did. He explained the bulk of his testimony would have been concerning the fact he wanted his mother present before he talked to law enforcement. He testified at the *Denno* hearing every witness testified he did not ask for his mother, and he would have been the only one to testify that he had asked for his mother, which would have supported his argument to suppress his statement.

Applicant also testified he was advised of his *Miranda*⁴ rights, but law enforcement coerced him into signing a form waiving his rights. He testified, however, he signed the form. He further

³ 378 U.S. 368 (1964).

⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

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testified he was not familiar with whether or not the information regarding his *Miranda* rights and the waiver of those rights arose during the *Denno* hearing. Applicant also testified he was not familiar with whether or not he gave two statements to law enforcement, but he admitted to committing these crimes in his statements. He also testified his co-defendant, Larry Prophet, also implicated him in these crimes, and there was DNA evidence found at the scene linking him to the crimes.

Applicant testified he informed Counsel Delany of this conversation with the investigators, but he could not recall whether or not they discussed him testifying during the *Jackson v. Denno* hearing. He elaborated he wanted to testify, but at the time, he did not know what was going on and did not know what he was going to do. He further elaborated had he testified he would have testified that he was fourteen years old, in self-contained classes, and had asked for his mother. Applicant also testified his counsel asked every witness at the *Denno* hearing how old Applicant was and what grade he was in in school. He testified the family court and the plea court both knew all about his background.

He also testified there was a pre-trial hearing involving the solicitor's decision to waive him up to the court of general sessions. He testified that hearing focused on the fact the Richland County Solicitor's Office had not waived up a Caucasian defendant since 1992 and every defendant who had been waived up was African-American. He further testified his counsel argued that point in great detail, but the judge ruled against them.

He also testified his counsel did not advise him it would be in his best interest to plead guilty. He testified, however, he spoke with counsel about whether to plead or whether to proceed to trial. Applicant explained in those conversations, his counsel did not advise him to plead guilty. He further explained his counsel did not advise him, but rather gave him their advice and told him it was his decision. He testified counsel explained the benefits of everything with him, but they did not advise him if he pled guilty he would likely receive a lower sentence than if he went to trial. He testified counsel told him to proceed to trial because he "would have a better chance to do this," but he did not understand everything they explained to him. He further testified had he proceeded to trial, he was facing a life sentence. Applicant explained the reason he decided to plead guilty was because he did not know what was going on; and his counsel told him if he did

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not take the plea, the solicitor was prepared to take his case to trial. He further explained he was worried about facing a lengthy prison sentence. Applicant testified, however, it was not accurate to say he pled guilty in order to avoid a trial and facing all of his charges in full. He further testified he did not want to proceed to trial because the State was ready to try his case and his sentence could be significant and could have been much worse than the sentence he actually received.

Applicant testified after his plea, his appellate counsel, Appellate Defender Hackett, came onto his case, but they never spoke about his case. He further testified appellate counsel did not raise the issue concerning discrimination in waiver hearings, but rather raised an issue concerning GPS monitoring. He elaborated had he known he had to proceed to trial in order to appeal any of his waiver hearing issues, he would have gone to trial and would not have pled guilty. He further elaborated he was not familiar with whether or not counsel advised him he would not be able to raise his appellate issues if he pled.

Following Applicant's testimony, Counsel Delany testified. Counsel Delany testified she was formerly employed with the Richland County Public Defender's Office, and she worked there for approximately seven years. She further testified she represented Applicant; and he was initially charged in family court because he was fourteen years old, but the Solicitor's Office filed a waiver for Applicant. She testified she was lead counsel in family court and remained on the case as second chair in the court of general sessions. She explained at the time, she handled a lot of family court cases. She further explained waiver hearings are unusual in and of themselves, so most family court judges take more time with them.

She testified one issue which concerned her and her co-counsel was whether or not a Caucasian child had ever been waived, and they decided to research this issue further when discussing trial strategy. She explained they began discussing with people who had worked in the courthouse and at the Department of Juvenile Justice (DJJ) for a long period of time. She further explained based on these conversations, they learned the Solicitor's Office had filed waivers for white children in the past but then withdrew the waiver and allowed the child to plead in family court. She testified because of this information, she filed a pre-trial motion, and the judge ordered DJJ turn over a list of all of the children who had been waived in Richland County. She further testified after the records pulled confirmed that every defendant who was waived up was either

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African-American or Latino. She testified, therefore, she had concerns about Equal Protect, and she believed this was a strong issue. She further testified she made a number of motions on this issue and filed memoranda with the court, which were made part of the record. She testified had this case proceeded to trial, she would have raised and made the same record regarding this issue in the court of general sessions as she did in family court.

She testified she also made an argument during the waiver hearing there was no uniform application in waiving up defendants, thereby making the waiver statute unconstitutional. She explained she relied on *Bush v. Gore*⁵ in making this argument. She further explained there are no standard guidelines instructing the solicitor which cases apply for waiver, and it is within the discretion of the solicitor to determine whether or not to waive a defendant. Counsel Delany testified had the case proceeded to trial, she would have raised this issue, and she was prepared to raise that issue if Applicant had not pled guilty.

Counsel Delany also testified Applicant's statement was considered in the probable cause factor of the waiver hearing. She also testified there is not much case law regarding the standard of a *Denno* hearing in family court, as family court cases are not often appealed. Counsel Delany testified she had conversations with Applicant about him asking for his mother when he was interviewed by law enforcement. She did not recall whether or not she presented any evidence during the *Denno* hearing about Applicant asking for his mother, but there was testimony Applicant's mother was in the police station hallway asking for Applicant, to which one of the investigators testified. She testified law enforcement did not let Applicant and his mother see each other until after Applicant gave his statement. She further testified Applicant did not testify at the *Denno* hearing, and she did not recall whether or not they discussed the possibility of him testifying. She further testified Applicant's intellectual functioning would have led her to call him as a witness during the *Denno* hearing, as that is one of the factors considered during a waiver hearing. She testified had Applicant told her he wanted to testify at the hearing, she would have had him testify. She testified on cross-examination of one of the officers, she was able to glean information about Applicant, specifically that he was fourteen years old, he was in ninth grade,

⁵ 531 U.S. 98 (2000).

and he was in special education classes. She further testified she did not specifically recall whether or not she asked an investigator during the hearing whether or not Applicant asked for his mother.

She explained they believed they had a good suppression issue, and they decided to save that argument for a trial in the court of general sessions. She further explained Applicant's age, the fact he was borderline intellectual functioning, the fact he asked for his mother, and the fact he was taken out of class by the SRO and the SRO spoke with him for about an hour prior to investigators arriving all were strong arguments in favor of suppression when looking at the factors concerning juvenile confessions and whether or not Applicant was free to leave.

She further testified she and Applicant discussed the motion to suppress and trial, but Applicant wanted to plead guilty. She testified she explained to Applicant what could happen if he pled and what could happen if he proceeded to trial. She explained she told Applicant what they would do if he decided to plead and what they would do if he went to trial. She further explained she believed they had a good motion to suppress, and there was no plea offer. She testified if the motion to suppress was unsuccessful, the evidence against Applicant was strong. She explained everything came from that initial encounter. She further explained there would have been no DNA evidence if law enforcement had not gotten a buccal swab from Applicant when they were questioning him, because it would have been fruit of the poisonous tree. She also testified law enforcement got the co-defendant's statement from Applicant's statement. She testified Applicant lived very close to Victim.

She testified juveniles cannot receive a life sentence on non-homicide crimes.⁶ She further testified she explained to Applicant he could receive a sentence for a term of years, but could not receive a life sentence. She explained, however, Applicant could have received an effective life sentence. Counsel Delany testified she presented this to the plea court, specifically highlighting the average life expectancy of an inmate in the Department of Corrections was 52.6.

Counsel Delany also testified she discussed the appeal with Applicant, and she typically advises all of her clients it is very unlikely to get an appeal granted from a guilty plea. She testified she specifically laid out this Equal Protection issue in the notice of appeal, and she spoke with

⁶ See *Graham v. Florida*, 560 U.S. 48 (2010) (the Eighth Amendment prohibits imposition of a life without parole sentence on a juvenile offender who did not commit homicide).

Appellate Defense about this issue. She also testified in her basis for the appeal, she argued the waiver statute violated Equal Protection on the grounds of systemic racial bias in the Solicitor's Office, to keep Applicant under family court jurisdiction, the arbitrariness of the application of the waiver statute under *Bush v. Gore*, an Eighth Amendment violation based on his sentencing in general sessions due to his age, and the sex offender registry was unconstitutional because there had not been a finding Applicant was likely to reoffend. She testified in her opinion, the Equal Protection issue should have been raised on appeal, and many of the issues she argued in her notice of appeal were not raised. She testified, however, in order to appeal the waiver, a defendant has to proceed to trial, which she explained to Applicant. She further testified she and her co-counsel put a lot of things on the record during the plea in order to attempt to preserve them for appeal. She explained she made an argument a lifetime GPS requirement was unconstitutional, and she was aware this was the issue raised in the *Anders* brief.

Following Counsel Delany's testimony, Applicant rested and Respondent presented the testimony of Counsel Davis. She testified she was appointed to represent Applicant once the waiver hearing was conducted and he was waived up to general sessions. She testified Applicant was evaluated for competency prior to her appointment, but he was found to be competent. She further testified she was appointed right after the waiver, which would have been about eleven months prior to the plea.

She testified she and Applicant had numerous conversations about a trial versus a plea, but she and Counsel Delany never told him he should definitely choose one or the other. She explained they laid out the benefits and consequences of both decisions for Applicant. She further explained although there was no plea offer in this case, she and Counsel Delany knew the State would ask for a sentence as close to life as they could get. Counsel Davis also testified they wanted to be clear with Applicant a straight-up plea was still risk, and they did not know exactly what the end result would be. She testified they also explained to Applicant what they would attempt to do at trial, including the motion to suppress his statement and the evidence thereafter. She specifically recalled explaining to Applicant if they proceeded to trial and lost the motion to suppress, that could have been an appellate issue; and explained in order to do so, they would have to go to trial. She testified she and Counsel Delany left the decision whether or not to plead guilty up to

Applicant. She further testified Applicant was concerned if he proceeded to trial, he would receive significantly more time. She testified another concern of Applicant's was putting Victim and her through a trial, and he was particularly hesitant to do that after the waiver hearing. She explained the waiver hearing was a good preview of what the trial would have been like. She also testified there was no discussion with Applicant about a conditional plea. She testified she could not specifically recall whether or not she discussed with Applicant his ability to appeal the waiver hearing issues from family court, but she specifically recalled explaining to him he would need to proceed to trial if he wanted to preserve the suppression issue.

She further testified at the plea, she and Counsel Delany attempted to object and preserve anything that could be put in the appeal. Counsel Davis explained she objected to Applicant being sentenced as an adult, as well as the sex offender registry and GPS monitoring, and raised an issue the plea court had the ability to transfer jurisdiction back to family court. She further explained generally, if she appeals a guilty plea and there is anything during the plea she objected to, she tries to specifically set those objections out in her notice of appeal. She explained she tries to keep the record as preserved as possible. She testified she filed the notice of appeal and tried to include everything in her basis for the appeal, including the waiver issues concerning Equal Protection and *Bush v. Gore*. She further testified she included a letter with her notice of appeal, which Applicant requested. Counsel Davis also testified she discussed the appeal with Appellate Defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant's allegations are two-fold: (1) ineffective assistance of plea counsel for failing to have Applicant testify regarding his statement to law enforcement at the waiver hearing in family court; and (2) ineffective assistance of appellate counsel for failing to properly argue the

statement for basis of appeal, specifically the selective application of the Solicitor's Office to waive Applicant to the court of general sessions.

Ineffective Assistance of Counsel

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

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel Delany's alleged failure to have Applicant testify

Applicant alleges Counsel Delany was ineffective for failing to have Applicant testify during the waiver hearing in family court. Specifically, Applicant contends Counsel Delany was ineffective for failing to present to the family court his testimony that he asked for his mother prior to giving his statement to law enforcement and that he was fourteen years old at the time, in ninth grade, and taking special education classes. Applicant testified he did not recall whether or not he and Counsel Delaney discussed the possibility of him testifying during the *Denno* hearing, but he wanted to testify. He explained, however, he "was green, so [he] didn't know what was going on. [He] didn't know that [he] was going to do." Indeed, Applicant wholly failed to testify that he had, in fact, told Counsel Delany he wanted to testify during the *Denno* hearing. Counsel Delany, on the other hand, testified although she did not specifically recall discussing with Applicant whether or not he would testify at this hearing, she would have called him as a witness if he had expressed a desire to testify. This Court finds Counsel Delany's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Based on the foregoing testimony and the fact Applicant wholly failed to express a desire to testify, this Court further finds Applicant has failed to establish any deficiency on the part of Counsel Delany.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. "Admissions and confessions of juveniles require special caution." *In re Gault*, 387 U.S. 1, 45 (1967). "Although courts have given confessions by juveniles special scrutiny, courts generally do not find a juvenile's confession involuntary where there is no evidence of extended, intimidating questioning or some other form of coercion." *State v. Pittman*, 373 S.C. 527, 568, 647 S.E.2d 144, 165 (2007). Indeed:

"[A] minor has the capacity to make a voluntary confession . . . without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement."

In re Williams, 265 S.C. 295, 300, 217 S.E.2d 719, 722 (1975) (emphasis added) (quoting *People v. Lara*, 432 P.2d 202, 215 (Cal. 1967)). Here, Deputy Joe Clarke, of the Richland County Sheriff's Office, testified at the waiver hearing he partook in the interview of Applicant at Spring Valley High School. R. 42-43. He further testified he was aware Applicant was fourteen and in the ninth grade. R. 43, 53, 142. He was unaware, however, Applicant was a special needs student and also unaware Applicant was in a self-contained classroom. R. 53-54, 147-48. He further testified Applicant appeared to understand everything as it was explained to him, and Applicant even took the time to read the Advice of Rights form himself prior to signing it. R. 43, 48, 54, 134, 141. Applicant did not specifically ask for his mother, nor was his mother present during questioning; but he was provided the opportunity to speak with her at the school. R. 45-46, 50-51, 138-39, 141, 148, 151. Furthermore, Applicant was not threatened, intimidated, or coerced in any way. R. 45, 58-59, 140-41. Based on the totality of the circumstances, there was no indication Applicant's confession was not voluntarily given—he chose to waive his rights and speak with law enforcement after being thoroughly advised of such and made no indication he wanted to speak with his mother or anyone else. Accordingly, this Court finds this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Appellate Counsel

A defendant is entitled to effective assistance of appellate counsel. *Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent he would have been successful on appeal, he is entitled to a new trial. See *Ezell v. State*, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); *Southerland*, 337 S.C. 615-16, 524 S.E.2d at 836. See also *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

Although ineffective assistance of appellate counsel claims for failure to raise a particular

issue on direct appeal can be successful, the Supreme Court has reiterated it is "difficult to demonstrate that counsel was incompetent." *Smith v. Robbins*, 528 U.S. 259, 288 (2000). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." *Thrifi v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." *Jones*, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion appellate counsel has an obligation to raise all meritorious issues on appeal. *Tisdale*, 357 S.C. at 476, 594 S.E.2d at 167. "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." *Smith v. Robbins*, 528 U.S. at 288 (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

In order to meet his burden, an applicant must establish a reasonable probability that, but for appellate counsel's failure to raise a specific issue on appeal, he would have prevailed on his appeal. *Smith*, 528 U.S. at 285-86.

*Appellate Counsel's alleged failure to properly argue the statement for
basis of appeal*

Applicant alleges appellate counsel was ineffective for failing to argue on appeal the selective application of the Solicitor's Office to waive defendants up to the court of general sessions. Both the United States Supreme Court and the South Carolina Supreme Court have consistently ruled that appellate counsel has no duty to raise all meritorious issues on appeal. See *Jones*, 463 U.S. 745; *Smith*, 528 U.S. at 288; *Tisdale*, 357 S.C. 474, 594 S.E.2d 166. When appellate counsel reviews all possible issues and elects to raise those issues she deems most meritorious, she has performed in accordance with professional standards and is not deficient. Moreover, if counsel finds an appellant's case "to be wholly frivolous, after a conscientious examination of it, [s]he should so advise the court and request permission to withdraw," with an

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accompanying brief "referring to anything in the record that might arguable support the appeal." *Anders*, 386 U.S. at 744. The court must then fully examine all of the proceedings and the record to determine whether or not the appeal is frivolous. *Id.* Here, appellate counsel submitted an *Anders* brief on behalf of Applicant, raising one issue that could be arguable on appeal. Following the submission of said brief, the Court of Appeals underwent a thorough review of the record and, ultimately, concluded the appeal lacked merit. Based on the foregoing, this Court finds Applicant has failed to establish the requisite deficiency of appellate counsel. This Court finds Applicant has failed to show appellate counsel's performance was deficient, where there is no standard requiring appellate counsel to brief every possible meritorious issue, and her performance was in accordance with professional norms.

Additionally, this Court finds Applicant has failed to establish any prejudice from counsel's alleged deficiency. Conditional guilty pleas are not recognized in South Carolina. *State v. Truesdale*, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982). Furthermore, "a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *State v. Rice*, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485 (2013). Because of this, in order to challenge the transfer from family court to the court of general sessions, a juvenile must proceed to trial. *Id.* at 333, 737 S.E.2d at 486. Here, Applicant was waived up from family court to the court of general sessions, after making an Equal Protection argument and other arguments the waiver statute was unconstitutional. Applicant testified had he known he had to proceed to trial in order to challenge the waiver on appeal, he would have proceeded to trial. However, although Counsel Davis could not specifically recall whether or not she discussed with Applicant his ability to appeal the waiver hearing issues from family court, she specifically recalled explaining to him he would need to proceed to trial if he wanted to preserve the suppression issue. Similarly, Counsel Delany testified she explained to Applicant he would need to proceed to trial if he wanted to appeal the waiver. She also testified she discussed the appeal with Applicant, and she typically advises all of her clients it is very unlikely to get an appeal granted from a guilty plea. This Court finds Counsel Delany's and Counsel Davis's testimony with respect to this allegation very credible, whereas Applicant's testimony is not. Based on the foregoing, this Court finds Applicant had a clear understanding he had to proceed to trial in order to appeal the waiver and voluntarily and

intelligently chose to enter a guilty plea. Accordingly, this allegation must be denied and dismissed with prejudice.

CONCLUSION

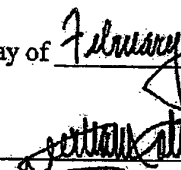
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 12 day of February, 2019.


J. DERHAM COLE
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina

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IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
J. DERHAM COLE, CIRCUIT COURT JUDGE
2015-CP-40-0771

RECEIVED

FEB 27 2019

S.C. SUPREME COURT

Zacoata Lopey,.....Petitioner.

vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

John Barnes appeals the Honorable J. Derham Cole's February 12, 2019 Order of Dismissal. Undersigned counsel received notice of entry of the order on February 21, 2019. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



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Attorney for the Petitioner.

February 27, 2019

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IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
J. DERHAM COLE, CIRCUIT COURT JUDGE
2015-CP-40-07771

RECEIVED

FEB 27 2019

S.C. SUPREME COURT

Zacoata Lopey,.....Petitioner.

vs

The State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Anna Browder, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Kelly Oppenheimer, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 27th day of February 2019.

Respectfully submitted,



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