

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREGORY PENCILLE,

APPELLANT

APPELLATE CASE NO. 2012-212050

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS
08-GS-26-04686

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
 vs.)
)
 GREGORY THOMAS PENCILLE,)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF RECORD

AUGUST 9, 2010
CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, LARRY B. HYMAN, JUDGE

APPEARANCES:

BY: CANDICE A. LIVELY, ESQ.
ATTORNEY FOR STATE

BY: G. SCOTT BELLAMY
ATTORNEY FOR GREGORY THOMAS PENCILLE

BRENDA R. BABB
Circuit Court Reporter

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GUILTY PLEA - AUGUST 9, 2010

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1 MS. LIVELY: YOUR HONOR, THIS IS THE STATE OF SOUTH
 2 CAROLINA V. GREGORY THOMAS PENCILLE. THIS IS INDICTMENT
 3 NUMBER 2008-GS-26-4686. IT IS A TRUE BILLED INDICTMENT,
 4 YOUR HONOR, FOR CRIMINAL SEXUAL CONDUCT FIRST DEGREE.

5 THE DEFENDANT STANDS BEFORE YOU ALONG WITH HIS
 6 ATTORNEY SCOTT BELLAMY TO PLEAD GUILTY TO THIS OFFENSE.
 7 THERE IS A RECOMMENDATION BY THE STATE, YOUR HONOR, FOR A
 8 30 YEAR ACTIVE SENTENCE AND AT THE APPROPRIATE THE STATE
 9 WOULD ASK TO BE HEARD ON THAT ISSUE AND AT THIS TIME I'LL
 10 PASS UP THE SENTENCE SHEET WHICH INDICATES THE DEFENDANT
 11 HAS SIGNED WHERE NECESSARY IN ORDER TO ENTER THIS PLEA.

12 THE COURT: ALL RIGHT, MR. BELLAMY, AGAIN YOU
 13 REPRESENT MR. PENCILLE?

14 MR. BELLAMY: PENCILLE.

15 THE COURT: PENCILLE?

16 MR. BELLAMY: PENCILLE.

17 THE COURT: PENCILLE.

18 MR. BELLAMY: YES, SIR.

19 THE COURT: PENCILLE, OKAY, I'M SORRY, AGAIN I
 20 APOLOGIZE, MR. PENCILLE, I JUST WANT TO MAKE SURE I GET
 21 YOUR NAME RIGHT, OKAY.

22 MR. BELLAMY: YOUR HONOR, IN ADDITION I WOULD
 23 WANT TO PUT ON THE RECORD THAT THERE ARE OTHER CHARGES THAT
 24 WILL BE DISMISSED AS A RESULT OF THIS PLEA ---

25 THE COURT: ALL RIGHT.

GUILTY PLEA - AUGUST 9, 2010

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1 MR. BELLAMY: --- ONCE THIS PLEA WOULD BE
2 QUALIFIED AND IF THE SOLICITOR WOULD PUT THAT ON THE
3 RECORD.

4 THE COURT: ALL RIGHT, I'M GOING TO DO THAT WHEN
5 WE GET DOWN TO IT ---

6 MS. LIVELY: YES, SIR.

7 THE COURT: --- A LITTLE FURTHER INTO THIS, I
8 HAVE A POINT IN WHICH I SPECIFICALLY MAKE SURE THAT THAT'S
9 ON THE RECORD.

10 ALL RIGHT, MR. BELLAMY, AGAIN YOU REPRESENT MR.
11 PENCILLE?

12 MR. BELLAMY: YES, SIR, YOUR HONOR.

13 THE COURT: AND YOU HAVE HAD AN OPPORTUNITY TO
14 REVIEW THE DISCOVERY MATERIAL IN THIS CASE?

15 MR. BELLAMY: YES, SIR, YOUR HONOR.

16 THE COURT: AND HAVE YOU SHARED THOSE WITH YOUR
17 CLIENT?

18 MR. BELLAMY: I HAVE, YOUR HONOR.

19 THE COURT: MR. PENCILLE, IS THAT RIGHT, HAS MR.
20 BELLAMY GONE OVER THE EVIDENCE IN THIS CASE WITH YOU?

21 DEFENDANT PENCILLE: YES, YOUR HONOR.

22 THE COURT: OKAY, AND, MR. BELLAMY, HAVE YOU
23 EXPLAINED TO YOUR CLIENT THE NATURE OF THE EVENTS AND THE
24 POSSIBLE PENALTY THAT HE IS LOOKING AT?

25 MR. BELLAMY: YES, SIR, YOUR HONOR, I HAVE.

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1 THE COURT: ALL RIGHT, AND, MR. PENCILLE, IS
2 THAT CORRECT, HAS MR. BELLAMY ADVISED YOU THAT THIS CARRIES
3 UP TO 30 YEARS?

4 DEFENDANT PENCILLE: YES, YOUR HONOR.

5 THE COURT: OKAY, AND, MR. PENCILLE, I BELIEVE
6 THAT THERE'S SOME OTHER CHARGES THAT ARE BEING DISMISSED ON
7 YOUR PLEA TO THIS CHARGE; ARE YOU AWARE OF THAT?

8 DEFENDANT PENCILLE: YES, YOUR HONOR.

9 THE COURT: OKAY, NOW, MR. BELLAMY, AFTER YOUR
10 REVIEW OF THE EVIDENCE IN THIS CASE DO YOU FEEL THE STATE
11 HAS SUFFICIENT EVIDENCE TO CONVINC THE JURY OF HIS GUILT
12 BEYOND A REASONABLE DOUBT?

13 MR. BELLAMY: I DO, YOUR HONOR.

14 THE COURT: MR. PENCILLE, DO YOU CONCUR WITH
15 THAT?

16 DEFENDANT PENCILLE: I DO.

17 THE COURT: ALL RIGHT, AND, MR. BELLAMY, THEN
18 YOU CONCUR WITH MR. PENCILLE'S DECISION TO ENTER THIS PLEA?

19 MR. BELLAMY: YES, SIR, YOUR HONOR, I DO.

20 THE COURT: ALL RIGHT, MR. PENCILLE, I SEE HERE
21 THAT YOU ARE 22 YEARS, EXCUSE ME, 32 YEARS OF AGE; IS THAT
22 CORRECT?

23 DEFENDANT PENCILLE: YES, SIR.

24 THE COURT: AND I LOOK AT THE SENTENCING SHEET
25 THAT TELLS ME THAT YOU'RE PRESENTLY INCARCERATED AT LEE

GUILTY PLEA - AUGUST 9, 2010

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1 CORRECTIONAL INSTITUTE; IS THAT ALSO CORRECT?

2 DEFENDANT PENCILLE: YES, YOUR HONOR.

3 THE COURT: WERE YOU ORIGINALLY FROM Horry
4 COUNTY?

5 DEFENDANT PENCILLE: ORIGINALLY FROM NEW YORK
6 STATE.

7 THE COURT: OKAY, YOU NEVER LIVED DOWN HERE?

8 DEFENDANT PENCILLE: I LIVED DOWN HERE FOR ---

9 THE COURT: ON YOUR PREVIOUS CHARGE?

10 DEFENDANT PENCILLE: --- TEN YEARS.

11 THE COURT: OKAY, HOW FAR DID YOU GO IN SCHOOL,
12 MR. PENCILLE?

13 DEFENDANT PENCILLE: GRADUATED AND WENT TO
14 VOCATIONAL FLIGHT SCHOOL.

15 THE COURT: ALL RIGHT, WHAT SORT OF WORK DID YOU
16 DO?

17 DEFENDANT PENCILLE: A LITTLE BIT OF EVERYTHING,
18 YOUR HONOR.

19 THE COURT: WAS THERE ANYTHING SPECIAL THAT YOU
20 DID THAT YOU WERE TRAINED FOR; YOU SAID YOU WENT TO A
21 FLIGHT SCHOOL?

22 DEFENDANT PENCILLE: YES, YOUR HONOR.

23 THE COURT: ARE YOU A PILOT?

24 DEFENDANT PENCILLE: YES, SIR.

25 THE COURT: OKAY, WHAT OTHER WORK DID YOU DO?

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DEFENDANT PENCILLE: A LITTLE BIT OF SECURITY WORK, CONSTRUCTION, I DID SOME AUTOMOTIVE WORK.

THE COURT: ALL RIGHT, ARE YOU MARRIED?

DEFENDANT PENCILLE: NO, YOUR HONOR.

THE COURT: HAVE YOU EVER BEEN MARRIED?

DEFENDANT PENCILLE: NO, SIR.

THE COURT: DO YOU HAVE ANY CHILDREN?

DEFENDANT PENCILLE: NO, SIR.

THE COURT: OKAY, HAVE YOU EVER BEEN TREATED FOR ANY TYPE OF MENTAL ILLNESS OR ANY ADDICTION PROBLEMS?

DEFENDANT PENCILLE: NO, YOUR HONOR.

THE COURT: HAVE YOU TAKEN ANY DRUGS OR ALCOHOL IN THE LAST 24 HOURS?

DEFENDANT PENCILLE: NO, SIR.

THE COURT: CAN YOU, MR. PENCILLE, TELL ME IF THERE IS ANYTHING GOING ON IN YOUR LIFE THAT WOULD PREVENT YOU FROM FULLY COMPLETELY UNDERSTANDING WHAT YOU ARE DOING HERE TODAY AND I WANT TO KNOW ARE YOU HAVING A PHYSICAL PROBLEM, AN EMOTIONAL PROBLEM, A MENTAL PROBLEM, ANYTHING GOING ON THAT WOULD KEEP YOU FROM UNDERSTANDING WHAT YOU'RE DOING?

DEFENDANT PENCILLE: I DON'T BELIEVE SO, SIR.

THE COURT: ALL RIGHT, SIR, NOW I HAVE AN INDICTMENT HERE, MR. PENCILLE, THAT ALLEGES THAT ON OR ABOUT JUNE THE 3RD OF 2004 YOU DID ENGAGE IN SEXUAL BATTERY

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1 WITH ONE L. MILLER WHILE USING AGGRAVATED FORCE TO
2 ACCOMPLISH SEXUAL BATTERY AND WHILE THE VICTIM WAS ALSO THE
3 VICTIM OF FORCIBLE CONFINEMENT, KIDNAPPING, OR OTHER
4 SIMILAR OFFENSE; ARE YOU FAMILIAR WITH THAT CHARGE?

5 DEFENDANT PENCILLE: I BELIEVE SO, YES, SIR.

6 THE COURT: OKAY, ALL RIGHT, SIR, AND I SEE HERE
7 THAT YOU ARE ACCORDING TO THE SENTENCING SHEET ENTERING A
8 PLEA TO CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE; IS
9 THAT CORRECT?

10 DEFENDANT PENCILLE: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT, IF YOU WOULD, MS. LIVELY,
12 GIVE ME THE FACTS OF THE CASE?

13 MS. LIVELY: YES, SIR, YOUR HONOR, THIS
14 PARTICULAR CASE OCCURRED IN THE NORTH MYRTLE BEACH SECTION
15 OF HORRY COUNTY JUNE 3RD, 2004. THE VICTIM IN THIS MATTER
16 WAS ACTUALLY WALKING ALONG THE BEACH AND WAS HEADING BACK
17 TO THE VACATION HOME WHERE OTHER FAMILY MEMBERS AND FRIENDS
18 WERE STAYING. THE DEFENDANT HAD APPROACHED HER A COUPLE OF
19 TIMES WHILE SHE WAS ON THE BEACH AND AT ONE TIME WHENEVER
20 HE DID APPROACH HER HE PLACED HIS HAND OVER HER MOUTH AND
21 BEGAN TO FONDLE HER BREASTS AND HER VAGINAL AREA. HE
22 FORCED HER UNDER A NEARBY CONDO AT WHICH TIME HE THEN
23 REMOVED HER CLOTHING AND ASSAULTED HER. HE DIGITALLY
24 PENETRATED HER VAGINA AND AS IT APPEARED ACCORDING TO THE
25 VICTIM THAT HE WAS GOING TO ATTEMPT TO PENETRATE HER WITH

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1 HIS PENIS SHE CLAIMED TO HAVE SOME TYPE OF AN STD TO AVOID
2 THAT ASSAULT. THE VICTIM STATED THEN THAT HE SUCKED HER
3 BREAST AND LEFT.

4 A SEXUAL ASSAULT KIT WAS COMPLETED AT THE
5 HOSPITAL. HER BREAST AREA WAS SWABBED AND LATER ON A CODIS
6 HIT WAS MADE THROUGH THE SOUTH CAROLINA LAW ENFORCEMENT
7 DIVISION LEADING THE LAW ENFORCEMENT AGENCY OF NORTH MYRTLE
8 BEACH BACK TO THIS DEFENDANT.

9 THE COURT: ALL RIGHT, AND IS THAT WHAT
10 OCCURRED, MR. PENCILLE?

11 DEFENDANT PENCILLE: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT, AND IS THAT WHY YOU'RE
13 PLEADING GUILTY?

14 DEFENDANT PENCILLE: YES, SIR.

15 THE COURT: AND ARE YOU PLEADING FREELY AND
16 VOLUNTARILY?

17 DEFENDANT PENCILLE: YES, YOUR HONOR.

18 THE COURT: MR. PENCILLE, DO YOU UNDERSTAND THAT
19 YOU DO NOT HAVE TO PLEAD GUILTY; YOU HAVE AN ABSOLUTE RIGHT
20 TO A JURY TRIAL?

21 DEFENDANT PENCILLE: YES, YOUR HONOR.

22 THE COURT: AND HAS MR. BELLAMY EXPLAINED TO YOU
23 HOW A JURY TRIAL WORKS?

24 DEFENDANT PENCILLE: YES, YOUR HONOR.

25 THE COURT: DO YOU UNDERSTAND THAT IF YOU HAVE A

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1 JURY TRIAL YOU WOULD HAVE MANY MANY RIGHTS THAT ARE
2 ATTACHED TO THAT JURY TRIAL AND IF YOU WAIVE YOUR JURY
3 TRIAL, WHICH IS PRECISELY WHAT YOU DO WHEN YOU PLEAD
4 GUILTY, YOU GIVE UP THOSE RIGHTS AS WELL AS YOUR GENERAL
5 RIGHT TO A JURY TRIAL?

6 DEFENDANT PENCILLE: YES, YOUR HONOR.

7 THE COURT: I WANT TO POINT OUT SOME OF THE MANY
8 RIGHTS THAT YOU HAVE BY WAY OF ILLUSTRATION ONLY; IT'S
9 CERTAINLY NOT A CONCLUSIVE LIST. AS I SAID THERE ARE MANY
10 RIGHTS THAT ARE ATTACHED. SOME OF THE MORE IMPORTANT ONES
11 IN MY VIEW ARE THE RIGHT TO REMAIN SILENT. IN THE TRIAL NO
12 ONE CAN MAKE YOU TESTIFY UNLESS YOU CHOSE TO. IF YOU
13 CHOSE TO REMAIN SILENT YOU WOULD EVEN HAVE THE RIGHT TO
14 REQUIRE ME TO TELL THE JURY THEY COULD NOT USE THAT AGAINST
15 YOU.

16 YOU'D ALSO HAVE THE RIGHT TO BE REPRESENTED BY
17 MR. BELLAMY WHO COULD CHALLENGE OR CHALLENGE ALL THE
18 STATE'S EVIDENCE AND COULD PUT UP EVIDENCE THAT MIGHT BE
19 HELPFUL TO YOU REGARDLESS OF WHETHER YOU YOURSELF
20 TESTIFIED. YOU COULD STILL REMAIN SILENT. YOU COULD PUT
21 UP OTHER WITNESSES; DO YOU UNDERSTAND THAT?

22 DEFENDANT PENCILLE: YES, SIR.

23 THE COURT: AND, OF COURSE, YOU HAVE THE RIGHT
24 TO REQUIRE THE STATE TO PROVE YOUR GUILT TO EACH AND EVERY
25 JUROR BEYOND A REASONABLE DOUBT; DO YOU UNDERSTAND THAT?

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1 DEFENDANT PENCILLE: YES, SIR.

2 THE COURT: THOSE ARE ALL RIGHTS THAT ARE
3 ASSOCIATED WITH A JURY TRIAL BUT THE POINT THAT I AM TRYING
4 TO MAKE TO YOU IS THAT IF YOU IN FACT WAIVE YOUR RIGHT TO A
5 JURY TRIAL YOU'RE GIVING UP A LOT OF RIGHTS; DO YOU
6 UNDERSTAND THAT?

7 DEFENDANT PENCILLE: YES, SIR.

8 THE COURT: KNOWING THAT DO YOU STILL WISH TO
9 ENTER A PLEA OF GUILTY?

10 DEFENDANT PENCILLE: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT, NOW I HAVE ALREADY
12 DISCUSSED WITH YOU THE POSSIBLE PENALTY AND THAT'S UP TO 30
13 YEARS AND THAT'S WHAT THE STATE IS ASKING. TELL ME WHAT,
14 MS. LIVELY, HAS BEEN OFFERED TO THIS DEFENDANT BY WAY OF
15 CONSIDERATION FOR HIS ENTRY OF A GUILTY PLEA? NOW I KNOW
16 THAT YOU HAVE MADE REFERENCE TO DISMISSAL OF SOME CASES;
17 TELL ME ABOUT THAT.

18 MS. LIVELY: ABSOLUTELY, YOUR HONOR. WHEN THIS
19 CASE CAME TO US THROUGH THE CODIS OF SLED IT ACTUALLY
20 BROUGHT TWO COLD CASES TO OUR OFFICE, ONE OF THEM OCCURRING
21 BACK IN 2001 WITH THE HORRY COUNTY P.D. WHICH WAS
22 INDICTMENT NUMBERS 2009-GS-26-5014 AND 5015. BOTH OF THOSE
23 WERE RESPECTIVELY CSC FIRST DEGREE AND THEN KIDNAPPING SO
24 THOSE TWO WILL BE NOL PROSSED IN EXCHANGE FOR HIS PLEA OF
25 GUILTY TO THIS CHARGE AS WELL AS ---

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1 THE COURT: LET ME, I MUST HAVE MISUNDERSTOOD
2 YOU. THERE ARE TWO OTHERS THAT ARE BEING DISMISSED, SO
3 THERE WERE THREE TOTAL THAT CAME UP ON THE CODIS?

4 MS. LIVELY: THERE WERE, NO, I'M SORRY, I'LL
5 CLARIFY. THERE WERE TWO DIFFERENT CASES OF TWO SEPARATE
6 VICTIMS CASES THAT CAME UP ON THE CODIS HITS, OKAY. EACH
7 ONE OF THOSE CASES HAD A CHARGE OF CSC FIRST DEGREE AND
8 KIDNAPPING.

9 THE COURT: ALL RIGHT.

10 MS. LIVELY: OKAY, THE ONE THAT WE'RE GOING
11 FORWARD ON TODAY IS THE VICTIM LAURA MILLER AND THAT IS THE
12 CSC FIRST DEGREE HE'S PLEADING TO THE KIDNAPPING ON THAT
13 PARTICULAR CASE WITH THAT PARTICULAR VICTIM IS GOING TO BE
14 A NOL PROSSED AS WELL.

15 THE COURT: OKAY.

16 MS. LIVELY: OKAY, SO THAT IS ONE OF THEM, THAT
17 ONE BEING THE CASE THAT IS ATTACHED TO THIS PARTICULAR
18 VICTIM, KIDNAPPING 2008-GS-26-4687.

19 THE COURT: ALL RIGHT, I THINK I UNDERSTAND YOU
20 NOW. THERE'S GOING TO BE OTHER THAN WHAT HE'S PLEADING TO
21 THERE WILL BE ONE CSC FIRST DEGREE DISMISSED AND TWO
22 KIDNAPPINGS, ONE OF WHICH WAS ASSOCIATED WITH THIS CRIME?

23 MS. LIVELY: YES, SIR, YOUR HONOR.

24 THE COURT: ALL RIGHT, SO WHAT WE'RE TALKING
25 ABOUT ARE ALL THE CASES THAT ARE PRESENTLY PENDING IN HORRY

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13

1 COUNTY?

2 MS. LIVELY: THAT WE ARE AWARE OF FROM THE CODIS
3 HITS.

4 THE COURT: THAT'S PRESENTLY PENDING?

5 MS. LIVELY: PRESENTLY PENDING, CORRECT.

6 THE COURT: OKAY, ALL RIGHT, MR. PENCILLE, THE
7 SOLICITOR TELLS ME THAT WHAT SHE HAS OFFERED YOU AS PART OF
8 THE CONSIDERATION FOR YOUR ENTERING THIS PLEA IS THAT THE
9 THREE CASES THAT SHE HAS DESCRIBED HERE ARE GOING TO BE
10 DISMISSED AGAINST YOU; IS THAT YOUR UNDERSTANDING?

11 DEFENDANT PENCILLE: TWO CASES, YOUR HONOR, YES.

12 THE COURT: WELL THERE'S TWO KIDNAPPINGS AND ONE
13 CRIMINAL SEXUAL CONDUCT FIRST DEGREE?

14 DEFENDANT PENCILLE: YES, SIR.

15 THE COURT: OKAY, THOSE THREE ARE BEING
16 DISMISSED; IS THAT YOUR UNDERSTANDING?

17 DEFENDANT PENCILLE: YES, SIR.

18 THE COURT: OKAY, NOW HAS ANYBODY PROMISED YOU
19 ANYTHING ELSE IN ORDER TO GET YOU TO PLEAD GUILTY?

20 DEFENDANT PENCILLE: NO, YOUR HONOR.

21 THE COURT: OKAY, IS THAT RIGHT, MR. BELLAMY?

22 MR. BELLAMY: THAT WOULD BE CORRECT.

23 THE COURT: THAT'S THE FULL DEAL?

24 MR. BELLAMY: YES, SIR, NOW THERE WAS AN ISSUE
25 OF LIFE WITHOUT PAROLE, THE SOLICITOR POTENTIALLY SEEKING -

1 --

2 THE COURT: ALL RIGHT, WELL THAT'S WHAT I WANTED
3 TO MAKE SURE, YOU ARE WITHDRAWING, YOU SERVED HIM WITH
4 NOTICE TO SEEK LIFE WITHOUT PAROLE?

5 MS. LIVELY: CORRECT.

6 THE COURT: YOU ARE WITHDRAWING THAT?

7 MS. LIVELY: IN EXCHANGE FOR THIS PLEA, YES,
8 SIR.

9 THE COURT: ALL RIGHT, SO HE'S PLEADING TO ONE
10 CSC FIRST WITH ESSENTIALLY A 30-YEAR CAP?

11 MS. LIVELY: YES, SIR, 30 YEARS.

12 THE COURT: THAT'S THE MAX?

13 MS. LIVELY: YES, SIR.

14 THE COURT: ALL RIGHT, INSTEAD OF LIFE WITHOUT
15 PAROLE?

16 MS. LIVELY: CORRECT.

17 THE COURT: OKAY, NOW IS THAT YOUR
18 UNDERSTANDING, MR. PENCILLE?

19 DEFENDANT PENCILLE: YES, SIR.

20 THE COURT: AND DO YOU, CAN YOU THINK OF
21 ANYTHING ELSE THAT'S BEEN PROMISED TO YOU?

22 DEFENDANT PENCILLE: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT, NOW TELL ME ABOUT MR.
24 BELLAMY, ARE YOU SATISFIED WITH HIS REPRESENTATION?

25 DEFENDANT PENCILLE: YES, SIR.

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1 THE COURT: HAS HE DONE EVERYTHING THAT YOU
2 WOULD HOPE THAT HE WOULD DO FOR YOU?

3 DEFENDANT PENCILLE: YES, SIR.

4 THE COURT: NOW ONE OF THE THINGS I HAVE TO
5 DETERMINE, MR. PENCILLE, IS WHETHER OR NOT YOU ARE MAKING
6 THIS PLEA FREELY AND VOLUNTARILY, KNOWINGLY AND
7 INTELLIGENTLY. THE ONLY WAY YOU CAN MAKE IN MY VIEW A
8 KNOWING AND INTELLIGENT PLEA IS TO HAVE ALL THE INFORMATION
9 YOU THINK THAT IS PERTINENT TO YOUR DECISION MAKING
10 PROCESS, THAT IS YOUR DECISION TO ENTER THIS PLEA. IN THAT
11 REGARD HAS YOUR ATTORNEY PROVIDED WITH YOU WITH EVERYTHING
12 YOU THINK HE POSSIBLY COULD DO?

13 DEFENDANT PENCILLE: YES, SIR.

14 THE COURT: ALL RIGHT, HAS ANYONE THREATENED YOU
15 OR INTIMIDATED YOU IN ANY WAY TO MAKE YOU PLEAD GUILTY?

16 DEFENDANT PENCILLE: NO, SIR.

17 THE COURT: ARE YOU PLEADING FREELY AND
18 VOLUNTARILY?

19 DEFENDANT PENCILLE: YES, SIR.

20 THE COURT: HAS ANYONE DONE ANYTHING THAT YOU
21 THOUGHT WAS INAPPROPRIATE IN ORDER TO COERCE YOU INTO
22 PLEADING GUILTY?

23 DEFENDANT PENCILLE: NO, SIR.

24 THE COURT: OKAY, HAVE YOU HAD ALL THE TIME YOU
25 NEED TO THINK ABOUT THIS?

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1 DEFENDANT PENCILLE: YES, SIR.

2 THE COURT: DO YOU NEED ANY MORE TIME TO TALK
3 WITH YOUR FAMILY, YOUR ATTORNEY, ANYONE ELSE?

4 DEFENDANT PENCILLE: NO.

5 THE COURT: DO YOU BELIEVE THIS IS THE BEST
6 THING FOR YOU?

7 DEFENDANT PENCILLE: YES, SIR.

8 THE COURT: OKAY, DO YOU UNDERSTAND, MR.
9 PENCILLE, THAT EVEN THOUGH THIS IS A GUILTY PLEA YOU STILL
10 HAVE A RIGHT TO APPEAL?

11 DEFENDANT PENCILLE: YES, SIR.

12 THE COURT: YOUR RIGHT TO APPEAL IS SPECIFICALLY
13 CONDITIONED UPON YOUR FILING A NOTICE OF INTENT TO APPEAL
14 WITHIN THE NEXT TEN DAYS AND I'M SURE YOU DON'T KNOW HOW TO
15 DO THAT OR WHERE TO DO IT BUT MR. BELLAMY KNOWS, RIGHT, MR.
16 BELLAMY?

17 MR. BELLAMY: YES, SIR, YOUR HONOR.

18 THE COURT: AND HE WOULD DO THAT FOR YOU, RIGHT,
19 MR. BELLAMY?

20 MR. BELLAMY: YES, SIR, YOUR HONOR,

21 THE COURT: ALL RIGHT, SIR, DO YOU UNDERSTAND
22 THAT?

23 DEFENDANT PENCILLE: YES, SIR.

24 THE COURT: DO YOU UNDERSTAND WHAT AN APPEAL IS?

25 DEFENDANT PENCILLE: YES, SIR.

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1 THE COURT: OKAY, ALL RIGHT, I FIND THAT THERE
2 IS A SUBSTANTIAL FACTUAL BASIS FOR THE PLEA. I FIND THAT
3 IT'S MADE FREELY AND VOLUNTARILY, KNOWINGLY AND
4 INTELLIGENTLY AFTER THE ADVICE FROM A VERY COMPETENT
5 ATTORNEY WITH WHOM THE DEFENDANT SAYS HE IS SATISFIED AND I
6 WILL ACCEPT HIS PLEA.

7 NOW ANYTHING FURTHER FROM THE STATE?

8 MS. LIVELY: YES, SIR, YOUR HONOR, BRIEFLY.

9 THE COURT: ALL RIGHT.

10 MS. LIVELY: WHENEVER THESE CASES WERE ASSIGNED
11 TO ME WE WENT THROUGH, WE BEING MYSELF AS WELL AS MY VICTIM
12 ADVOCATE AND LAW ENFORCEMENT, WENT THROUGH EXTENSIVE
13 RESEARCH REGARDING THIS DEFENDANT'S M.O. AND HIS ACTUAL,
14 THE CONCERNS THAT WE WOULD HAVE OURSELVES A SERIAL RAPIST
15 ON OUR HANDS AND I UNDERSTAND THAT I AM, YOU KNOW, I'M
16 OBVIOUSLY DISMISSING THE CHARGES IN EXCHANGE FOR HIM
17 PLEADING GUILTY TO THIS CHARGE AND RECEIVING A 30-YEAR
18 SENTENCE, WHICH I'M HOPING FOR AT THIS TIME BECAUSE BASED
19 UPON ALL THE INFORMATION THAT WAS PROVIDED TO ME THROUGH
20 LAW ENFORCEMENT AS WELL AS CONCERNS THAT THERE MAY HAVE
21 BEEN OTHER CASES OUT THERE WHICH I'M NOT ASKING THE COURT
22 TO CONSIDER, I'M EXPLAINING WHY I DID WHAT I DID, THAT HE
23 TRULY IS A PREDATOR.

24 THE CASE FROM 2005 WHERE HE WAS CONVICTED OR
25 WHERE HE PLED GUILTY TO THE KIDNAPPING, IT WAS A YOUNG

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1 GIRL, I BELIEVE SHE WAS ONLY 12 AT THE TIME, AND THEN
2 BECAUSE OF THAT WE WERE ABLE TO GET HIS DNA WHICH LED TO
3 THESE OTHER TWO CASES, ONE FROM 2001 AND ONE FROM 2004.
4 WHO KNOWS IF THERE ARE OTHERS OUT THERE BUT THE CONCERN FOR
5 THE STATE WOULD BE PROTECTING THE COMMUNITY AND, YOU KNOW,
6 WE COULD TAKE HIM TO TRIAL ON THIS, HAVE HIM GET LIFE
7 WITHOUT PAROLE IN EXCHANGE FOR PUTTING THE VICTIMS THROUGH
8 HAVING TO TESTIFY AND WE BELIEVE THAT THIS IS A GOOD
9 RESOLUTION. HOWEVER WE DO HAVE CONCERNS ABOUT THIS PERSON
10 EVER GETTING OUT OF PRISON BUT WE BELIEVE THIS IS A FAIR
11 RESOLUTION AND WE'RE JUST ASKING THE COURT TO PLEASE
12 CONSIDER THE GRAVITY OF THESE MATTERS, THAT THERE IS
13 ANOTHER VICTIM. I'VE TALKED TO HER; SHE WAS READY TO COME
14 DOWN HERE AND TESTIFY IF WE NEEDED TO. HE WOULD HAVE BEEN
15 LOOKING AT LIFE WITHOUT PAROLE, THAT I BELIEVE THAT THIS
16 WOULD BE THE BEST SENTENCE FOR THIS PARTICULAR TYPE OF
17 CASE. I DON'T KNOW IF MS. UNGERMAN, IT ACTUALLY WAS MS.
18 MILLER, SHE'S NOW MS. UNGERMAN, WISHES TO ADDRESS THE COURT
19 AT THIS TIME, BUT I'VE SPOKEN WITH MS. UNGERMAN AND KNOW
20 HOW DIFFICULT IT IS FOR HER TO BE HERE.

21 THE COURT: SHE IS PRESENT FOR THE RECORD?

22 MS. LIVELY: SHE IS PRESENT FOR THE RECORD AND
23 SHE IS, SHE DROVE DOWN YESTERDAY TO BE HERE FOR THE PLEA
24 THIS MORNING, OR FOR NOW, BUT ALL ALONG DEALING WITH THIS
25 AND SPEAKING ABOUT THAT TRAUMATIC EVENT IS JUST

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1 OVERWHELMING FOR HER, SO, BUT SHE IS HERE AND WISHES TO SEE
2 THIS MATTER CONCLUDED.

3 THE COURT: DOES SHE WISH TO ADDRESS THE COURT?

4 MS. LIVELY: NO, YOUR HONOR, IT'S MY
5 UNDERSTANDING SHE DOES NOT WISH TO ADDRESS THE COURT. SHE
6 WANTED TO BE HERE TO SHOW THE COURT HOW IMPORTANT THIS WAS
7 TO HER BUT THAT ACTUALLY SPEAKING AND BEING IN THE SAME
8 COURTROOM WITH THIS DEFENDANT IS EXTREMELY DIFFICULT FOR
9 HER.

10 THE COURT: I CAN UNDERSTAND.

11 MS. LIVELY: BUT THAT WOULD BE IT FOR THE STATE,
12 YOUR HONOR.

13 THE COURT: ALL RIGHT, MR. BELLAMY?

14 MR. BELLAMY: MAY IT PLEASE THE COURT, YOUR
15 HONOR, GREGORY IS 32 YEARS OLD. HE IS STANDING HERE
16 ACCOMPANIED WITH HIS MOTHER AND FATHER WHO ARE HERE IN THE
17 COURTROOM. WE CERTAINLY DON'T CONDONE ANYTHING THAT HAS
18 GONE ON AND ON BEHALF OF MY CLIENT AND HIS FAMILY WE
19 APOLOGIZE TO THE YOUNG LADY HERE TODAY FOR ANY AND
20 EVERYTHING THAT SHE HAS HAD TO ENDURE AND GO THROUGH COMING
21 HERE TODAY AND EVERYTHING THAT'S HAPPENED.

22 JUDGE, MY CLIENT IS HERE, HE'S 32, AND PRIOR TO
23 WHAT HE'S INCARCERATED BACK IN '05 HE HAD NO CRIMINAL
24 RECORD UP UNTIL THAT POINT. I BELIEVE HE WOULD HAVE BEEN
25 ABOUT 27 OR 28 YEARS OLD AT THAT TIME, JUDGE. HE HAS SOME

GUILTY PLEA - AUGUST 9, 2010

20

1 EDUCATION. HE AS HE SAID IS A PILOT AND HAS SOME TRAINING
2 IN OTHER AREAS. HE HAD BEEN LIVING HERE IN MYRTLE BEACH
3 FOR APPROXIMATELY 10 YEARS AT THE TIME.

4 I DID NOT REPRESENT HIM PREVIOUSLY IN THE OTHER
5 MATTER, OBVIOUSLY REPRESENTING HIM HERE WHEN WE GOT THE
6 INFORMATION AND SHORTLY, I'D SAY WITHIN 30 DAYS OF THE
7 WARRANTS BEING SERVED ON HIM MOTHER AND FATHER, CAME IN AND
8 HIRED ME AND I, OF COURSE, THEN WENT AND VISITED MR.
9 PENCILLE HERE IN PRISON.

10 AT NO TIME, JUDGE, WAS THIS GOING TO BE A TRIAL.
11 THIS HAS BEEN ALMOST TWO YEARS NOW, I BELIEVE OCTOBER WILL
12 BE TWO YEARS, IT WAS OCTOBER OR NOVEMBER OF '08. THIS
13 CASE CERTAINLY WAS NOT ON THE FRONT BURNER BECAUSE OF HIS
14 BEING HOUSED IN THE DEPARTMENT OF CORRECTIONS AND THOSE
15 SORT OF THINGS BUT THERE WAS SOME GETTING THE DISCOVERY AND
16 THEY HAD TO DO THE CONFIRMATION ON THE DNA AND CERTAINLY
17 FROM MY STANDPOINT WE WANTED TO MAKE SURE THAT EVERYTHING
18 WAS IN ORDER BEFORE WE GOT IN THE SITUATION OF DOING A PLEA
19 BUT WE ARE HERE ENTERING A PLEA, YOUR HONOR. THE MAXIMUM
20 PENALTY IS UP TO 30. AS YOUR HONOR KNOWS THIS IS AN 85
21 PERCENT CRIME SO VIRTUALLY DAY PER DAY.

22 WE WOULD ASK, JUDGE, OBVIOUSLY HE'S 32, WE WOULD
23 ASK THE COURT FOR SOME CONSIDERATION FOR NOT REQUIRING THE
24 STATE AND THESE VICTIMS AND THESE LADIES TO COME FORWARD
25 AND GO THROUGH AND ENDURE THIS, SOME CONSIDERATION OF A

GUILTY PLEA - AUGUST 9, 2010

21

1 LITTLE BIT LESS THAN THE MAXIMUM. WE CERTAINLY UNDERSTAND
2 THE SERIOUS NATURE OF THE CHARGES AND THE BENEFITS HE HAS
3 RECEIVED UP UNTIL THIS POINT BUT I GUESS FROM MY STANDPOINT
4 MY CLIENT, AND CERTAINLY HIS FAMILY, THAT AT SOME POINT
5 THAT HE HAS SOME AMOUNT OF LIFE TO LIVE IN FREEDOM. MIGHT
6 NOT BE MUCH BUT WITH THE 85 PERCENT AND THE SENTENCE RANGE
7 THAT WE'RE DEALING WITH WE WOULD ASK THE COURT TO CONSIDER
8 COMING UNDER THAT IN LIGHT OF THE FACT THAT IT IS THE
9 MAXIMUM AMOUNT OF 30 AND THAT HE IS HERE TENDERING A PLEA,
10 NOT REQUIRING THE STATE TO GO THROUGH SOME OF THE EVIDENCE
11 OF BRINGING THESE LADIES HERE TO GO THROUGH THIS PROCESS.

12 JUDGE, I THINK HE MAY WANT TO ADDRESS THE COURT
13 BRIEFLY, BUT I BELIEVE HIS FATHER WOULD LIKE TO BRIEFLY
14 ADDRESS THE COURT ---

15 THE COURT: VERY WELL.

16 MR. BELLAMY: --- AT THIS TIME.

17 THE COURT: CERTAINLY, MR. PENCILLE?

18 MR. PENCILLE: RICHARD PENCILLE.

19 THE COURT: PENCILLE, OKAY.

20 FAMILY MEMBER: PENCILLE, CORRECT. I'D JUST
21 LIKE THE COURT TO KNOW THAT HIS MOTHER AND FATHER DO
22 SUPPORT HIM. WE DON'T KNOW FROM THE CIRCUMSTANCES THAT
23 BROUGHT THIS ON. WE FEEL VERY VERY BAD FOR THE VICTIM. WE
24 WOULD LOVE TO SEE HIM GET AN OPPORTUNITY A LITTLE LESS THAN
25 30 YEARS, IF POSSIBLE, A LITTLE LESS THAN 30 YEARS SO THAT

GUILTY PLEA - AUGUST 9, 2010

22

1 HE WILL HAVE THE CHANCE TO AT LEAST HAVE A CHANCE AT LIFE
2 AND THIS IS ALL WE CAN ASK FOR, THANK YOU.

3 THE COURT: OKAY, THANK YOU.

4 MR. BELLAMY: YOUR HONOR, I WOULD STATE JUST
5 BRIEFLY IN TERMS OF APPARENTLY THE EVENT AS DESCRIBED BY
6 THE SOLICITOR THERE WAS THE ASSAULT AND APPARENTLY SOME
7 CONVERSATION ABOUT AN STD AND APPARENTLY AT THAT POINT MY
8 CLIENT LEFT. HE WAS NOT ARMED. THERE WAS NO, AND
9 OBVIOUSLY THE EMOTIONAL INJURY IS WHAT WE'RE DEALING WITH,
10 BUT THERE WAS NO WEAPON USED OR ANYTHING OF THAT NATURE. I
11 WOULD ASK THE COURT TO CONSIDER THAT THAT HE DID WALK AWAY
12 AND THAT HE IS HERE PLEADING GUILTY AND SAVING THE STATE
13 AND THESE YOUNG LADIES THE DIFFICULTY OF COMING TO TRIAL
14 AND I THINK HE MAY WANT TO BRIEFLY ADDRESS THE COURT IF THE
15 COURT WOULD DEEM THAT APPROPRIATE.

16 THE COURT: ALL RIGHT, MR. PENCILLE, I'LL BE
17 GLAD TO HEAR FROM YOU.

18 DEFENDANT PENCILLE: I WOULD JUST LIKE TO ASK
19 FOR AS MUCH MERCY AS POSSIBLE FROM YOU. I'D LIKE TO
20 APOLOGIZE TO MY PARENTS FOR HAVING TO PUT THEM THROUGH THIS
21 STRESS. IT KEEPS PILING ON THEM AND I NEVER INTENDED ANY
22 OF THIS TO HAPPEN OR THEM TO BE AFFECTED BY IT SO I JUST,
23 I, I WOULD LIKE TO HAVE A CHANCE AT A NORMAL LIFE ONE DAY
24 AND JUST ASK FOR YOUR MERCY AS, AS MUCH AS YOU CAN GRANT.

25 THE COURT: OKAY, ANYTHING FURTHER FROM THE

GUILTY PLEA - AUGUST 9, 2010

23

1 STATE?

2 MS. LIVELY: YOUR HONOR, I APOLOGIZE AND MS.
3 UNGERMAN DID STATE THAT SHE WOULD LIKE TO MAKE A BRIEF
4 STATEMENT.

5 THE COURT: MS. UNGERMAN?

6 MS. LIVELY: IF THE COURT WILL ALLOW HER TO DO
7 SO.

8 THE COURT: CERTAINLY.

9 MS. LIVELY: STATE YOUR NAME?

10 MS. UNGERMAN: I'M LAURA UNGERMAN.

11 THE COURT: UNGERMAN, OKAY.

12 MS. UNGERMAN: YES, SIR, I DO UNDERSTAND THAT
13 PEOPLE DESERVE A RIGHT TO MAKE THE BEST OF THEIR LIFE AND
14 DO WHAT THEY CAN AND DEAL WITH CIRCUMSTANCES THAT MAY ARISE
15 OUT OF THEIR CONTROL. IT WAS JUST A, YOU KNOW, SMALL
16 ENCOUNTER THAT HAPPENED WITH ME. IT WAS OUT OF MY CONTROL
17 AND I'M MAKING THE BEST OF MY LIFE IN LIGHT OF THAT. I
18 DON'T GO OUT AND HARM OTHER PEOPLE WEAPON OR NOT. I DON'T
19 FIND SOMEONE SMALLER THAN MYSELF AND FORCE THEM TO DO
20 SOMETHING THAT THEY'RE NOT OKAY WITH. I DON'T TERRIFY
21 PEOPLE AND THAT'S WHAT IT WAS, IT WAS TERRORISM.

22 IT TOOK ME YEARS TO TRUST PEOPLE. IT TOOK ME, I
23 STILL DON'T GO ON PARKING DECKS OR ELEVATORS BY MYSELF AND
24 MAYBE IT'S JUST MADE ME MORE OF AWARE OF A PERSON AND I
25 THINK THAT'S A GOOD THING FOR ANY WOMAN IS JUST TO BE MORE

GUILTY PLEA - AUGUST 9, 2010

24

1 AWARE OF HER SURROUNDINGS. I DON'T TRUST PEOPLE THE SAME
2 ANYMORE BUT I THINK THAT I'M JUST A LITTLE BIT LESS NAIVE.
3 I JUST THOUGHT THE BEST IN PEOPLE. I THOUGHT THIS MAN WAS
4 MAYBE JUST KIND OF CREEPY AND MAYBE WAS HITTING ON ME AND I
5 COULD JUST, YOU KNOW, I DIDN'T THINK ANYTHING MORE OF IT OR
6 I WOULD HAVE JUST WALKED AWAY AS QUICKLY AS POSSIBLE. I
7 WOULDN'T HAVE TRIED TO CHIT CHAT MY WAY OUT OF IT BUT TO
8 DOWNPLAY IT I THINK IS UNFAIR AND SAY THAT HE WAS UNARMED
9 AND NOTHING REALLY CAME OUT OF IT. THAT'S NOT FAIR AND
10 OBVIOUSLY IT WASN'T A ONE TIME THING AND I GUESS
11 SPECULATION DOESN'T MATTER BUT AS FAR AS WHAT THE COURTS
12 ALREADY KNOW ABOUT, THEY ALREADY KNOW ABOUT SEVERAL OTHER
13 WOMEN THAT HE HAS DONE THIS TO, A CHILD THAT HE HAS DONE
14 THIS TO. I MEAN I AM MORE THAN WILLING TO TESTIFY SO THE
15 FACT THAT HE IS PLEADING GUILTY AND GETTING CHARGES THAT HE
16 DID TO ME DISMISSED BECAUSE HE'S BEING HONEST AND PLEADING
17 GUILTY I THINK IS RIDICULOUS BUT I UNDERSTAND THAT THERE'S
18 A SYSTEM IN PLACE FOR A REASON AND I'M WILLING TO DEAL WITH
19 THAT AND I WILL GO HOME FEELING OKAY BECAUSE HE WILL BE
20 JAIL FOR MORE TIME BUT I THINK IT IS LAUGHABLE THAT HE
21 SHOULD BE ABLE TO HAVE ANY MORE LIFE OUT TO BE ABLE TO MAKE
22 THE BEST OF HIS LIFE BECAUSE WE'VE ALL OBVIOUSLY SEEN WHAT
23 HE'S DONE WITH THE LIFE THAT HE'S HAD SO FAR ON THE
24 OUTSIDE. SO I WOULD JUST LIKE TO SAY THAT.

25 THE COURT: THANK YOU, MA'AM.

GUILTY PLEA - AUGUST 9, 2010

25

1 MS. LIVELY: THAT'S ALL FROM THE STATE, YOUR
2 HONOR.

3 THE COURT: ALL RIGHT, ANYTHING FURTHER FROM THE
4 DEFENSE?

5 MR. BELLAMY: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT, MR. PENCILLE, YOU HAVE
7 RECEIVED A SUBSTANTIAL AMOUNT OF MERCY FROM THE STATE AND
8 YOU WERE LOOKING AT LIFE WITHOUT PAROLE. ALL THEY HAD TO
9 DO WAS JUST TRY YOU FOR THIS AND THEY'VE GOT A DNA MATCH,
10 I'M THINKING A DNA MATCH ON ANOTHER CASE AS WELL, PLUS A
11 PRIOR THAT COULD HAVE BEEN USED AGAINST YOU IF YOU TRIED TO
12 TESTIFY IN THIS CASE. I DON'T THINK A WHOLE LOT ABOUT THE
13 FACT THAT YOU PLED GUILTY. MR. BELLAMY HAD A REALLY TOUGH,
14 CASE HERE. I DON'T THINK THERE WAS REALLY MUCH YOU COULD
15 DO BUT NEGOTIATE THIS THING. HE'S DONE A GREAT JOB DOING
16 THAT FOR YOU I CAN ASSURE OF THAT.

17 THE SENTENCE OF THE COURT IS YOU BE CONFINED TO
18 THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30
19 YEARS. I'M GOING TO RUN THAT CONCURRENT WITH THE SENTENCE
20 THAT YOU ARE PRESENTLY SERVING. I'LL GIVE YOU CREDIT FOR
21 THE TIME THAT YOU WERE CHARGED WITH THIS, OKAY?

22 MS. LIVELY: YOUR HONOR, MAY WE BE CLEAR ON THE
23 RECORD AS TO WHAT THE TIMING IS IN REGARDS TO GIVING HIM
24 CREDIT BECAUSE ---

25 THE COURT: 2008.

GUILTY PLEA - AUGUST 9, 2010

26

1 MS. LIVELY: . YES, IT WAS ---

2 THE COURT: LAST YEAR WHENEVER HE WAS CHARGED
3 WITH THIS.

4 MS. LIVELY: HE WAS, THE WARRANTS WERE SERVED ON
5 HIM OCTOBER 9TH OF 2008.

6 THE COURT: THAT'S IT.

7 MS. LIVELY: OKAY, I WANTED TO MAKE SURE, THANK
8 YOU.

9 THE COURT: THANK YOU.

10 END OF REQUESTED TRANSCRIPT.....

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA.

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

July 28, 2012

Brenda R. Babb

BRENDA R. BABB, CVR

OFFICIAL REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF Horry

IN THE COURT OF GENERAL SESSIONS
08-GS-26-04686

State of South Carolina,)
)
vs.)
)
Gregory Pencille,)
)
Defendant.)
_____)

TRANSCRIPT OF RECORD

March 14, 2012
Conway, South Carolina

Before:

The Honorable, Larry B. Hyman, Judge

Appearances:

BY: Candice A. Lively, Esq.
Attorney for State

BY: G. Scott Bellamy, Esq.
Attorney for Gregory Pencille

Brenda R. Babb
Circuit Court Reporter

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1 The Court: What do we have?

2 Mr. Bellamy: This is Mr. Gregory Pencille who
3 was a client of mine that I represented before Your Honor,
4 I believe back in 2010, I believe August 9th, 2010 when he
5 appeared before Your Honor and pled guilty to CSC ---

6 The Court: I remember, Mr. Pencille, how are
7 you, good to see you.

8 Mr. Bellamy: There was a recommendation by the
9 State in the case of, I believe, a cap of thirty years
10 after the sentencing of the guilty plea and hearing from
11 both sides, Your Honor, sentenced him to thirty years to
12 run concurrent with a sentence he was presently serving at
13 the Department of Corrections of twelve years, and to back
14 date his time back to October of 2008.

15 The Court: Okay.

16 Mr. Bellamy: There is just for the record and
17 my client pointed this out to me, there is a box checked on
18 the sentencing sheet indicating mandatory gps which would
19 be appropriate if it was CSC with a minor or lewd act. It
20 was scriveners error ---

21 The Court: This was with adults as I remember
22 it.

23 Mr. Bellamy: Yes, it was a scriveners error on
24 behalf, I didn't catch it ---

25 The Court: Well I can correct that.

Motion to Reconsider/Relieve Counsel - March 14, 2012 4

1 Mr. Bellamy: --- but we can correct that part,
2 he raised that issue, so that if Your Honor would do that
3 we ask that that be amended in the sentencing sheet to
4 reflect, to not be reflected as mandatory gps.

5 Now beyond that, Judge, he is here and he has
6 filed a motion to have me relieved and have another lawyer
7 appointed to represent him.

8 The Court: How is that you are, were you
9 retained?

10 Mr. Bellamy: Yes, sir, Your Honor.

11 The Court: Okay, all right.

12 Mr. Bellamy: And after, well in just procedure
13 to his guilty he asked me to file a notice of intent to
14 appeal and a motion to reconsider. I told him I didn't
15 know if the place would be appropriate at the same time,
16 but I did file both of those. I believe his appeal has
17 been dismissed and I'm not sure exactly what he's asking
18 for ---

19 The Court: Does he have a pending charge?

20 Mr. Bellamy: No, he has no, all charges ---

21 The Court: What would the purpose of appointing
22 an attorney be?

23 Mr. Bellamy: Well, Your Honor, I'll let him
24 state it.

25 The Court: Okay.

1 Mr. Bellamy: I asked him today, you know,
2 exactly what he wanted and there's some things that I think
3 he wants to tell Your Honor. I've advised him that I don't
4 think they're appropriate to this kind of a motion.

5 The Court: All right, Mr. Pencille, I'll be
6 glad to hear from you.

7 You want to relieve Mr. Bellamy from further
8 representation?

9 Defendant Pencille: Oh, yes, Your Honor.

10 The Court: Okay, Mr. Bellamy, you're relieved.

11 Mr. Bellamy: Thank you.

12 Defendant Pencille: What I had asked for the
13 relief of counsel was for counsel to be present today for
14 the motion to reconsider and upcoming appeal if it proceeds
15 that far. Some of the issues that I had with the hearing
16 were Ms., Ms. Lively's accusations ---

17 The Court: Are you proceeding pro se?

18 Defendant Pencille: I would, I'm completely at
19 a loss for words at the moment for procedures. I'm not a
20 lawyer by any means so --

21 The Court: Obviously.

22 Mr. Bellamy: Your Honor, if I could help him
23 just sort of shorten this up. I think some of the issues
24 that he's raised have to do with statements made by the
25 Solicitor at the sentencing after the plea ---

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1 The Court: All right, do you want Mr. ---

2 Mr. Bellamy: --- relating to other charges.

3 The Court: --- Mr. Bellamy to represent you or
4 continue on representing you for the purposes of this
5 hearing?

6 Defendant Pencille: Is that appropriate?

7 Mr. Bellamy: He's asking you if you would, I'll
8 be willing to stand up and aid in this process, Judge.

9 Defendant Pencille: There would be a lack of
10 trust but as long as, you know, it's worded properly or,
11 or, you know --

12 Mr. Bellamy: I think what he, he, he believes
13 that the Solicitor brought up unrelated matters which he
14 was not charged with and matters that he was charged with
15 that would either be dismissed. In other words, the
16 Solicitor referenced that there could have been some other
17 rapes unsolved and he may be ---

18 The Court: I remember this case now and, sir,
19 didn't the Solicitor need to place on the record all the
20 other charges because as I recall you were served with
21 notice that the State was seeking life without parole ---

22 Defendant Pencille: Yes, Your Honor.

23 The Court: --- and at the eleventh hour there
24 was an agreement that you would plead guilty and all these
25 other charges would be dismissed; isn't that right?

1 Defendant Pencille: Yes, sir.

2 The Court: Well how other than by placing that
3 on the record would you be assured of getting the benefit
4 of your bargaining, so to speak, that is the State, you
5 could be assured that the State would be barred from
6 further prosecution of those cases?

7 Defendant Pencille: I understand that, what,
8 what had happened or what caught me kind of in the, in the
9 dark is I was here for two incidents, one in '01 and one in
10 '04, which were a total of four charges. Three were
11 dropped in the plea agreement, one I pled to.

12 The Court: Right.

13 Defendant Pencille: I was under the impression
14 that I was pleading to kidnaping. Right before I came into
15 the plea agreement it had been changed to CSC which we have
16 on the sentencing sheet.

17 The Court: I think the kidnaping had been
18 dropped off of it, hadn't it?

19 Defendant Pencille: It had, but what it was
20 supposed to have been was kidnaping instead of CSC, and
21 then I was told at the last minute that Ms. Lively would
22 not agree to ---

23 The Court: Well you certainly wouldn't want to
24 do that, would you? The kidnaping carried up to life; is
25 that right, at that time or is it just thirty years?

Motion to Reconsider/Relieve Counsel - March 14, 2012

8

1 Defendant Pencille: No, it was thirty.

2 The Court: Thirty years.

3 Ms. Lively: They both carried up to thirty,
4 Your Honor.

5 The Court: Okay, both of them were thirty years
6 sentences.

7 Ms. Lively: Yes, sir.

8 Defendant Pencille: But the issue that I had
9 was in her arguments addressed to you she had mentioned
10 several other incidents that were unsolved crimes in the
11 Myrtle Beach and North Myrtle Beach area that I have no
12 discovery on, I have no knowledge of, and she addressed
13 that.

14 The Court: They were dismissed, were they not?

15 Defendant Pencille: There is no such thing, she
16 made them up.

17 Mr. Bellamy: Judge, if I might clarify.

18 There's obviously a lot of unsolved cases right now where
19 the rape cases they don't have suspect and they haven't
20 been able to link anybody and I think her references were
21 that because of the nature of this case going back almost
22 ten years on a CODIS hit that there were other unsolved
23 cases that he could have been involved in; that nobody had
24 been arrested on; and that was a very brief portion of what
25 she stated.

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1 The Court: That would have made no difference.

2 Mr. Bellamy: And I think Your Honor may have
3 addressed that, I don't have the transcript, but may have
4 said ---

5 Defendant Pencille: I have the transcript right
6 here.

7 Mr. Bellamy: And I don't know but that's what
8 he's trying to say is that there was uncharged or unsolved
9 crimes that the Solicitor ---

10 The Court: Well that would certainly have been
11 an inappropriate to tell a jury but I was the sentencing
12 judge, not the jury.

13 Mr. Bellamy: Your Honor, I've explained to my
14 client that at a sentencing hearing the rules of evidence
15 as that apply in a trial aren't, do not apply in
16 sentencing; that Your Honor is able to hear whatever you
17 think is relevant and ferret it out and that's your job and
18 that you can decide what's relevant and not, and I think
19 that's what his objection here is today or statement.

20 The Court: And the relief he's seeking is --

21 Mr. Bellamy: Well I don't, I don't know. I
22 guess to ask you to reconsider your sentence based on the
23 fact that those things shouldn't have been stated to you.

24 The Court: Is that what you're asking me to do?

25 Defendant Pencille: Yes, the way she had made

Motion to Reconsider/Relieve Counsel - March 14, 2012 10

1 it sound in the courtroom was there was several cases that
2 I was a believed suspect or ---

3 The Court: I don't even recall that but it
4 seems to me that there was a reference to one other case in
5 which there was a CODIS hit on.

6 Ms. Lively: Yes, sir, there was one from, the
7 one he pled to, I believe ---

8 The Court: Cause I remember that he had more
9 than just the victim of the one he was pleading to.

10 Ms. Lively: Yes, sir.

11 The Court: Wasn't there another lady that was
12 also in here that had been a victim of another one?

13 Ms. Lively: Yes, sir.

14 The Court: In which there was a CODIS hit?

15 Ms. Lively: Correct, there were two CODIS hits.

16 The Court: And so both ladies were here?

17 Ms. Lively: I believe one, the one that was
18 here with her, either friend or sister, was the one on the
19 charge he was pleading to but the one, the other one I had
20 notified her the plea and she had just told me to make a
21 statement on her behalf. She didn't actually come cause
22 she's out of state.

23 The Court: I remember the two.

24 Ms. Lively: But that's right.

25 The Court: Two ladies.

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1 Ms. Lively: Yes, sir, there were two women
2 here. You're exactly right, Your Honor, and the only
3 concern I have, the first thing we needed to know is
4 exactly what Mr. Pencille was looking for today. I did not
5 tell the victim to come back for a re-sentencing cause I
6 really, like I said, even Mr. Bellamy wasn't sure what the
7 motion was for because I've received several papers from
8 Mr. Pencille asking him to be, asking Mr. Bellamy to be
9 relieved on top of motion for reconsideration and some
10 other stuff, so ---

11 The Court: All right, let me try to find out,
12 Mr. Pencille, you are here today on a motion to reconsider
13 because you believe the Court received improper information
14 during your sentencing hearing?

15 Defendant Pencille: Yes, sir.

16 The Court: Is that it, you got any authority
17 that would indicate that what she said was improper?

18 Defendant Pencille: Other than the fact I was
19 never informed or mentioned of any other crimes or
20 incidents that, that I should have been connected to.

21 The Court: Well I can tell you what she said,
22 if she said that, would not have been of any consequence to
23 me; that what your sentence was based on was the fact that
24 you had prior convictions, this was a life without parole
25 situation, the Solicitor had taken life without parole off

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1 of the table. I believe you were in your twenties at the
2 time; is that right?

3 Defendant Pencille: 10/32.

4 The Court: Okay, late twenties or early
5 thirties, and that there was a recommendation of a, a
6 thirty-year cap.

7 Defendant Pencille: That's right.

8 The Court: Now the only thing that concerned me
9 was the taking of life off the table, life without parole,
10 the reduction of the charges to one count, dropping of the
11 kidnaping charge. How many charges were there, were there
12 four?

13 Ms. Lively: There were four, Your Honor.

14 The Court: Two kidnappings, two CSC first?

15 Ms. Lively: CSC first, yes, sir.

16 The Court: Mr. Pencille, I can tell you right
17 now that the sentence was the same sentence I would have
18 given you regardless of whether there was any mention of
19 any other offenses. Those things don't have, are of no
20 consequence to me. You were not indicted for them.
21 There's no evidence that tie you to them, has nothing to do
22 with the sentence you got. The sentence you got had to do
23 with three very serious charges being dropped, your prior
24 criminal record, and the fact that life without parole was
25 taken off the table. That's where your sentence came from.

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1 Ms. Lively: And, Your Honor, I can address the
2 statement that was made during the plea. I do have the
3 transcript and clearly whenever you were giving me the
4 opportunity to speak I wanted to address why the thirty
5 years actually what the State was asking for, is that based
6 upon all the information, this is a quote that I was
7 provided to me through law enforcement as well as concerns
8 that there may have been other cases out there, which I'm
9 not asking the Court to to consider. I'm explaining why I
10 did what I did and that I believe he's a predator, and that
11 was a part of my information I was provided to you and I
12 even told you I'm not asking you to consider that but I was
13 explaining to you the strong opinion I had in regards to
14 the thirty-year sentence.

15 The Court: Well I can tell you I did not
16 consider any other offenses.

17 Ms. Lively: Yes, sir.

18 The Court: There was no allegations of any
19 specific offenses, no details of any other offenses.. I did
20 not consider that as you, and you did not ask me to do
21 that.

22 Ms. Lively: Yes, sir.

23 The Court: Again my sentence was based upon the
24 reduction in charges, the reduction in exposure,
25 substantial reduction in exposure, and your prior criminal

Motion to Reconsider/Relieve Counsel - March 14, 2012 14

1 record. That's what your sentence was based on,
2 consequently I would respectfully deny your motion for
3 reconsideration, thank you, sir.

4 End of requested transcript - - - -

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CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, official court reporter the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina.

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

July 28, 2012

Brenda R. Babb

Brenda R. Babb, CVR
OFFICIAL REPORTER

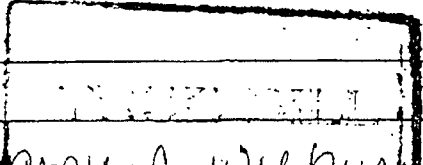
WITNESSES

Vant Abercrombie North Myrtle Beach Police
Department

ARREST WARRANT NUMBER

J740369
CDR: 0160 16-03-0652
DOA: 10/9/2008

ACTION OF GRAND JURY


James C. Wilbush
Foreperson of Grand Jury
Date: NOV 20 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-26- 04686

The State of South Carolina

County of Horry

Candice Lively 08H04414

COURT OF GENERAL SESSIONS

NOVEMBER, 2008 TERM

THE STATE

vs.

Gregory Thomas Pencille W/M

Bennettsville, SC 29512

DOB:
SSN:

ATTORNEY:

Indictment for

CRIMINAL SEXUAL CONDUCT

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

INDICTMENT

At a Court of General Sessions, convened on November 20, 2008, the Grand Jurors of Horry County present upon their oath:


CRIMINAL SEXUAL CONDUCT

First Degree

CDR: 0160 16-03-0652

That **GREGORY THOMAS PENCILLE** did in Horry on or about June 3, 2004, engage in sexual battery with L. Miller, while using aggravated force to accomplish the sexual battery and while the victim was also the victim of forcible confinement, kidnapping, or any other similar offense or act, 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.



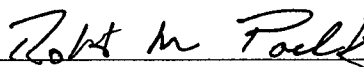
J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 17, 2012



Robert M. Pachak
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

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,


V.

GREGORY PENCILLE,

APPELLANT

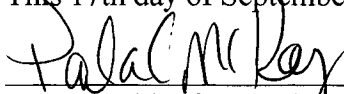
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of September, 2012.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
This 17th day of September, 2012.



(L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.

RECEIVED
SEP 17 2012
SC Court of Appeals