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Apr 30 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
STATE OF SOUTH CAROLINA, )  
-vs- )  
CRAIG CORY COOPER, )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS

ORDER ON MOTION  
TO WITHDRAW PLEA

LISA M. CONNER  
CLERK OF COURT  
LEXINGTON, SC

2021 APR 15 PM 1:07

FILED

Case Numbers:

- 2017A3221100535 – Burglary, 1<sup>st</sup> Degree
- 2017A3221100537 – Criminal Sexual Conduct, 1<sup>st</sup> Degree
- 2017A3221100538 – Kidnapping
- 2017A3221100539 – Armed Robbery
- 2017A3221100540 – Possession of Firearm During Violent Crime
- 2017A3221100541 – Conspiracy

Heard: April 2, 2021 via video conference

State's Attorney: Heather Weiss, Deputy Attorney General

Defense Attorney: Colin Spangler

Court Reporter: Nadine Capps

*WPC*  
*#1*

The defendant moves to be allowed to withdraw his guilty pleas. Defense counsel and the defendant consented to conducting this hearing by video conference. The motion is denied.

Mr. Cooper pleaded guilty on November 19, 2020, pursuant to a plea bargain for a sentence range of ten to nineteen years, contingent upon the defendant's cooperation with the prosecution of his co-defendant. Sentencing was deferred and has not yet been conducted because of delays occasioned by the COVID-19 emergency. At the time of the pleas, the trial of the co-defendant was scheduled to begin on December 7, 2020, but it was subsequently postponed because the Supreme Court issued an order suspending all

jury trials. Mr. Cooper has remained in jail continuously since his arrest on August 1, 2017. The trial of the co-defendant is currently set for the week of April 19, 2021.

This case involves allegations that the defendant and his co-defendant, while armed with a deadly weapon, burglarized, robbed, kidnapped, and raped the female victim at her home which she shared with her husband. It is asserted that the home was damaged and money was taken. The defense indicated that the investigative reports state that the husband had been at the home previously that night, but that he left to go to a Waffle House restaurant around 1:00 a.m. and was not present during the incident.

Two grounds are asserted as the basis for the request to withdraw.

First, it is argued that the defendant's plea was not entered freely, knowingly, and voluntarily because he was under the pressure of a time constraint. Prior to November 5, 2020, when private counsel was retained, Mr. Cooper had been represented by the Public Defender's office. The Attorney General's office became involved in this case in 2019, over a year after the arrest, presumably due to a conflict arising in the Solicitor's office. According to the State, it was defendant's prior counsel who initiated discussions about pleading guilty in exchange for a plea bargain. The Deputy Attorney General stated that prior defense counsel sent an email early in the process indicating that the defendant wanted to cooperate in the prosecution. It is asserted that this was reiterated in May of 2020. Former defense counsel told the Deputy Attorney General in October of 2020 that the defendant admitted his guilt and wanted to cooperate.

A plea bargain was proposed, and a decision on the plea offer had to be made because the trial was set to begin in early December. At a status conference held on November 10, 2020, the defendant was given ten additional days in which to accept or

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reject the plea bargain. So, defense counsel maintains that he had only a couple of weeks to prepare and discuss matters with his client.

The second ground is that defense counsel just learned that the background information provided by the State concerning the criminal history of the victim's husband, who might be a witness at trial, was incorrect. Since the husband was a resident of the home, he is a victim of the burglary and, presumably, the armed robbery charges.

Defense counsel states that he was provided discovery materials from the State on November 12 and 13, 2020, which did not include any criminal history on the victim or her husband. The court's understanding is that there was no written criminal history provided to the defense, other than a driving record. However, defense counsel was told that neither the female victim nor her husband had a criminal record.

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Defense counsel recently learned that SLED reports show that the husband was arrested on June 12, 2020, which was before the plea, and that the husband was arrested on separate charges of attempted murder and possession of a firearm or knife during a violent crime on February 11, 2021, which was after the plea. None of the charges have resulted in convictions at this point.

The arrest in June of 2020 is argued to be for felony offenses. The public index for Richland County shows that the offenses charged are for assault and battery in the third degree (which is a thirty-day misdemeanor) and for pointing and presenting a firearm (which is a five-year felony).

When defense counsel inquired about the information to the contrary in the recently-obtained SLED report, the Deputy Attorney General confirmed in an email that the reports that she had did not show a criminal record. To the best of this court's

recollection, the records that the Deputy Attorney General had obtained and upon which she based her representations of no prior criminal record are not part of this file. The court understands that a willful or intentional failure to provide discovery by the State is not required in order to show a due process violation. A mistake is sufficient.

No information was provided to the court concerning the underlying facts of the husband's pending cases or how they might relate to this case. A written memorandum was submitted by the defense in support of this motion, and it is the defense's position that this information is relevant. However, there is no explanation as to how the lack of a criminal record for the husband in any way influenced this defendant to decide to plead guilty to heinous crimes.

There is no evidence that the husband was present at the scene during the attack, and the court has been presented no evidence of third-party guilt. Aside from the argument that these arrests involve allegations of serious crimes, no link has been shown between those incidents and the factual scenario here. As for the information that the husband was arrested for an unrelated incident months after the plea, the court sees no basis whatsoever for that being a reason to allow withdrawal of a plea that was entered months before, especially without any evidence that the husband was a perpetrator of these crime.

The court is unaware if the State intends to call the victim's husband as a witness at trial. Defense counsel stated that it is suspicious that the husband left the home to go to Waffle House around 1:00 a.m. Defense counsel asserts in his well-written brief that the lack of information about the husband's arrest deprived the defendant of inquiring as to an alternate theory. He asserts that his client was denied due process by the discovery

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violation and that the defendant's plea was not entered freely, knowingly, voluntarily, and intelligently. He said that his client would not have entered the pleas, had he known that the husband had the pending charges. He cites cases in his memorandum in support of his argument.

It is the court's understanding that a discovery violation is material if there is a reasonable probability that, but for the State's failure to disclose the husband's pending charges, the defendant would not have entered a guilty plea. Respectfully, the court finds that there is not a reasonable probability that this defendant would have insisted on trial had he known that the husband had the charges that were pending before or after this defendant's guilty plea. The court assumes that the arrest for attempted murder and possession of a firearm or knife during that incident is for something that occurred after the date of this defendant's plea. The State cannot be expected to disclose information about an event that had not yet occurred.

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It is pure speculation as to whether the husband going to the restaurant was a suspicious event. If he were to testify, there is no explanation as to how an arrest for an unrelated magistrate's-level offense and for pointing a firearm, both being without a conviction, could be used to impeach him. As for any alternative theory, surely this defendant would know whether or not he himself burglarized, raped, kidnapped, and robbed the female victim. There appears to be ample evidence of actual guilt and the State's ability to prove it.

There being no evidence provided to the court that the husband was involved in attacking his wife on the night in question or removing any items from the home, the only possible impact that this information would seem to have is some type of assertion that

the husband was in trouble with the law, had some extra motivation to make up a false story, and has violent propensities. However, the court's understanding is that EMS and police were on the scene before the husband arrived back at the home. It is doubtful that any of the suspected alternative theories along this vein could be made relevant or admissible in the prosecution of the defendant. There is no evidence of a link between the husband and these defendants. If the possible alternate theory is that they were co-conspirators, there is no explanation as to how that absolves this defendant of responsibility and why he would not know it from the beginning.

As for the time crunch, this event occurred in 2017. Mr. Cooper has had the benefit of counsel for years. The information supplied to the court is that prior defense counsel repeatedly told the prosecutors that his client admitted his guilt and wanted to assist in the prosecution in order to secure a plea bargain. When the trial was set after reopening courts from the initial COVID-19 shutdown, no one knew that the spread of the virus would bring another wave that required shutting down jury trials again. Mr. Cooper was given ten days after the status conference to accept or reject the offer. It is apparent that he knew about the offer for a longer period. There is nothing inappropriate about the fact that the defendant was required to make a decision so that the State could prepare its trial strategy.

Defense counsel argues that he was put in a position of not being able to advise his client about the fact that the husband had pending charges. Again, the court does not see how that makes any material difference in whether the defendant chose to plead guilty or not.

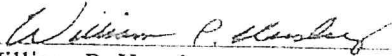
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As to both grounds, during the plea colloquy with this court, the defendant stated under oath that he admits his guilt, and he expressed full satisfaction with his attorney. As for any pressure associated with the timeframe, he stated that he was not forced, threatened, or coerced in any manner, and he indicated that he was pleading guilty of his own free will. Moreover, since he was expected to testify at the upcoming trial, he provided an elocution under oath admitting to the crime as part of the plea bargain. The plea colloquy covered a variety of issues in which the defendant stated that he is actually guilty, and he acknowledged that he was giving up the presumption of innocence and the requirement that the State prove him guilty beyond a reasonable doubt.

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The court finds that there has been an insufficient showing that there was a material violation by the State concerning Rule 5, SCRCrimP, or *Brady* that caused the defendant to plead guilty. There also was nothing about the time constraints that warrants withdrawal of the guilty pleas. His motion to withdraw his pleas of guilty is denied.

AND IT IS SO ORDERED.

April 14, 2021

  
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William P. Keesley  
Circuit Judge