THE STATE OF SOUTH CAROLINA

IN COURT OF APPEALS

Appeal From Greenwood County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case Tracking No: 2018-001289

STATE OF SOUTH CAROLINA, APPELLANT,

v.

COREY BROWN, RESPONDENT.

RECORD ON APPEAL

VOLUME II of II

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INDEX

THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
EXHIBIT A TO THE MOTION FOR A NEW TRIAL (DISC)

THE COURT: I want to ask Mr. -- I want to ask Ms. White what was represented to Ms. Merrill and her client about the offer or lack thereof regarding Mr. Evans?

MS. WHITE: Your Honor, there was no offer in exchange for his testimony, which is, I think, what Mr. Taylor just said. That the plea negotiations prior to the -- I guess several months leading into trial had been just to resolve his particular set of charges. There was never any discussion of testifying in exchange for that. Actually I think he -- he didn't want to testify is my understanding when that -- those discussions were taking place. After he completely rejected the thirteen-year offer, that's when he said I haven't been completely truthful and I want to testify. At that point there were no offers.

I was actually involved in the conversations with Mr. Evans and Mr. Goranson leading up to trial where it was -- we made it clear to him; you understand you don't have an offer, you understand that this is just -- you're gonna tell what you're saying happened and then after the case is resolved, after the trial is over, we'll talk about your case, but you don't have an offer. My recollection of his testimony was to that effect, that he didn't have an offer, but I think he was asked, you know,

well, you're hoping to help yourself and he said absolutely, so I think -- and in going to but for, you know, would the outcome would have been different, I think the jury definitely heard that he was testifying and hoping he was going to get some assistance from the State. I don't think there's any doubt of why he was there in the minds of the jury or -- or anyone in the courtroom. And I can't entirely remember her closing argument, but I'm sure that Ms. Merrill hit on that in closing.

So I don't know -- you know, I don't know that, first of all, that an offer that had nothing to do with -- with him testifying is something that should have been disclosed under Brady, but I don't think the outcome would have been different regardless.

And turning to -- you know, she said that she could have argued to the jury well, he's the one who got the gun and he was only looking at thirteen years, I think arguing that to the jury would have highly improper and we certainly would have objected to that, getting into punishment and what somebody's looking at in front of the jury, and that's not -- that wasn't the case anyway. He wasn't looking at thirteen years, he didn't have an offer at that point.

Going to the phone calls to -- I think that was the

victim's father, we didn't know about that. We -- there's no way we can listen to every recorded jail phone call that every defendant makes. That being said, I think that was a statement to a third party. It's not something -- it would just be like if he'd seen him in the street and said that not, not something in the care, custody or control of the State. It was not something that we could have known and told them about.

THE COURT: Let me ask you this. Do you not think it's important -- I mean, looking at the big picture, y'all have got a guy y'all are talking to, you offer him twenty, he says no, he comes back with ten and finally y'all end up with thirteen and he says no and then he says you know what, I haven't been completely truthful with you and he comes to you with more information, you don't think that would be relevant to her? I mean, that's --

MR. TAYLOR: Well, Judge, I do want to clarify one thing -- one thing with you. I told Ms. Merrill of -- she didn't know about the -- the whole timeline of it. I remember her asking me during the trial what did you offer him and I said eighteen, ten, fifteen, thirteen. I don't know if she remembers that. I do remember that very well actually because it was almost in front of the microphone during the break.

THE COURT: Well, I mean, that's pretty --

MS. MERRILL: I -- I don't remember if that was made during the --

THE COURT: I mean, for her to know he turned down thirteen and decided to start speaking to you to me is a fact that would be important. Because I didn't -- and this is the first I'm hearing of it today and so I'm kind of like wow.

MR. TAYLOR: Right. Judge, my understanding of all of this, and I'm not here to go back and forth on this on different things, there's a lot of things Ms. Merrill forgot about. She forgot she had talked to the officer about the scene and then she said oh, yeah, I do have the picture; oh, you do have it. I don't remember when or where. You know, we've got a lot going on. I have a very hard time believing that I never told her that that was the offer. I do. I'm saying that a hundred percent. I don't have anything to hide. This is standard for us to make offers to people. There was no offer on this case at that point.

THE COURT: At that point. I agree with you at that point.

MR. TAYLOR: Yes, sir, but there was -- I think that there's -- there's no doubt that there was an offer and my understanding was everybody knew about it. I don't

happen to -- I don't see how that would be something that I would intentionally want to hide or would hide anyway regardless, so I'm kind of confused that we're not all on the same page, but --

THE COURT: Well, I'm not saying just the offer, but him coming to you saying I've not been completely truthful, here's the rest of the story, that's -- that's what's running the flag the pole for me.

MR. TAYLOR: Judge, I did -- I did tell her that because I did say he is now -- he was on the trial docket as well, he's now going to testify against your guy because he's now told us the truth. That was explained.

THE COURT: Okay. Well, that wasn't explained to me, but I don't have to know all that to try the case.

MS. MERRILL: If I can respond just briefly? I agree he did tell me -- I mean, I believe I got an e-mail that there was -- he would now be a witness, but I didn't know how -- I want to say Aaron, I may be wrong, but what you -- you and I had a discussion after sentencing about the case out in the hall.

MR. TAYLOR: I was thinking of before. I meant something different, but go ahead.

MS. MERRILL: Well, and I was thinking that's when we talked and I said -- would that have been during --

MS. WHITE: That was during the trial though.

MR. TAYLOR: Yeah, that was --

MS. MERRILL: Would that have been after he --

MR. TAYLOR: I don't remember that part, but I think he's more concerned about the issue with knowing that he's now saying I'll be completely honest.

THE COURT: Yeah, that's the comment that's kind of raising my eyebrow.

MR. TAYLOR: Yes, sir. And, Judge, I did want to ask something as well. During the trial I remember asking -- so originally you didn't -- I mean, we talked about how he didn't tell the truth twice and then finally I even said did you not come to me and say you wanted to tell the truth, so I think that was clear as well on the record about him not being truthful the whole time and then at the last minute saying yeah, I want to tell what's going on.

THE COURT: Okay.

MS. MERRILL: And, Your Honor, I do want to make it clear. I'm not even suggesting that the State has intentionally hidden this and I don't think -- whether it's intentional or inadvertent, it doesn't matter for purposes of Brady, but -- and as far as to address the issue about getting into punishment, I think there is some case law that would have allowed me to get into punishment when it comes -- there are some of those exceptions when

it comes to like a co-defendant testifying. I think I would have been able to get into some of that or at least had -- we may have had a pre-trial hearing, but we would have been able to discuss that.

And on some of the these recordings -- and, again, you know, this is Mr. Evans's perception, I'm not suggesting that Mr. Taylor or Ms. White told him this, but in one of the recording he says ten years is the worst I'm looking at, it's nonviolent. Thirteen was my first offer, but then I cut a deal and -- if I cut a deal, I get nonviolent. You know, that's in several of the different recordings.

THE COURT: And that may be conversations that his lawyer is saying if you testify, maybe I can get you nine, and that doesn't involve the State.

MS. MERRILL: Exactly, and that's -- exactly. And that's why I say I'm not saying that that's -- I'm just telling the Court what information I heard on the recordings.

THE COURT: Okay. I understand.

All right. I want to read everything you've brought today and read some of those Supreme Court cases because I've not had them committed to memory.

Anything else you want me to consider? I mean, other than what's in your motions. You don't have to

argue all those. It's all in there and I'll consider it all.

MS. MERRILL: No, sir. That's everything I'd like for the Court to consider.

THE COURT: Okay. Good enough.

MR. TAYLOR: And nothing further from the State, Your Honor.

THE COURT: Okay. I'll let y'all know after I've studied it a little bit.

MS. MERRILL: Thank you, Judge.

THE COURT: I'll do it in all due time this week.

(Off the record discussion.)

MS. MERRILL: Judge, the Court's exhibits? I know the file is actually physically in Greenwood. Do you want to hold onto these or do you want me to take them back to Greenwood and --

THE COURT: I want to hold them onto them and I'll send them to Greenwood this week.

MS. MERRILL: Okay. Thank you.

(Whereupon, the proceedings were concluded at 10:15 AM.)

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eighth 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 the evidence introduced in the hearing of the captioned case in Circuit Court on the 6th day of October, 2014.

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

September 27, 2017

/S/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

State of South Carolina, County of Greenwood
In the Court of General Sessions, Eighth Judicial Circuit

State of South Carolina

vs.

Corey Brown

Defendant.

Indictment nos.
2013-GS-24-1872, 1873, 1874, and 1875; 2014-GS-24-1262

Notice of Motions and Motion for New Trial, Motion to Retain Jurisdiction, and Motion for Reconsideration of Sentence

To The Honorable Eugene C. Griffith, Jr., Presiding Judge, and Aaron V. Taylor and Elizabeth P. White, Assistant Solicitors, and William H. Nicholson, III, Counsel for Christopher Johnson:

Please take notice that the undersigned, on behalf of Defendant Corey Brown, will move before the Honorable Eugene C. Griffith, Jr., Presiding Circuit Court Judge, at a place and time to be determined by the court, and then and there make application for a new trial for the Court to retain jurisdiction, for reconsideration of the sentence, and for such other and further relief as the Court deems just proper and equitable. S. C. Code Ann. § 17-23-110; Rule 29, SCRCrimP.

PROCEDURAL HISTORY

The State tried Mr. Brown before the Honorable Eugene C. Griffith, Jr. and a jury from August 12-14, 2014. The jurors convicted Mr. Brown of conspiracy to commit grand larceny, armed robbery, and kidnapping. It acquitted him of conspiracy to commit armed robbery and conspiracy to commit kidnapping. On August 15, 2014, Judge Griffith sentenced Mr. Brown to twenty-five years for armed robbery and kidnapping, and five

years for conspiracy to commit grand larceny. The sentences are concurrent.

Mr. Brown moves for a new trial, for the Court to retain jurisdiction, and for sentence reconsideration.

SUMMARY OF MOTIONS

GROUNDS FOR MOTION FOR A NEW TRIAL

1. The Court should grant a new trial based on evidence discovered after the trial about offers the State made to Codefendant Evans and Evans' contact with the victim's father.
2. The Court should order a new trial based on Mr. Brown's inability to question Investigator Whitfield Brooks, Investigator Brian Louis, and Codefendant Antonio Nicholson during a pretrial *Neil v. Biggers* hearing. Prior to trial, Mr. Brown did not know about Codefendant Nicholson selecting Mr. Brown's picture from the website www.mugshots.com. Mr. Brown was prejudiced by the inability to question these witnesses during a pretrial *Neil v. Biggers* hearing.
3. The court should order a new trial because the information about Codefendant Nicholson's identification using the website www.mugshots.com was not provided to him before trial and this information was material to his defense. Rule 5 of the South Carolina Rules of Criminal Procedure requires that information material to the defense be provided prior to trial.
4. The Court should grant a new trial because the victim, Latavius Spearman, was allowed to identify Mr. Brown in the presence of the jury despite the Court's pretrial ruling that he could not identify him in the presence of the jury.
5. The Court should grant a new trial because Mr. Brown was jointly tried with Christopher Johnson. Mr. Johnson did not appear for trial and his failure to appear was highly prejudicial to Mr. Brown.
6. The Court should grant a new trial because it was error for the jury to hear any testimony about Mr. Brown's arrest record.

7. The Court should grant a new trial if the State gives favorable consideration to Codefendants Nicholson and Evans since both testified they had no "deals" or "promises" from the State.

Ground for Motion to Retain Jurisdiction

8. The Court should retain jurisdiction over all codefendants' cases for judicial economy and to ensure the truthfulness of Codefendants Evans and Nicholson's testimony about plea negotiations.

Ground for Motion to Reconsider Sentence

9. The Court should reconsider its sentence of Mr. Brown. He has no prior convictions for violent offenses, unlike Codefendants Antonio Nicholson and Shadarron Evans, and the evidence discovered after trial shows the State made an offer to Evans.

Argument

New Trial: Evidence Discovered After Trial

The Court should grant a new trial based on evidence discovered after trial regarding whether the State made any offers to Codefendant Evans and Evans' contact with the victim's father. During the trial, Codefendants Nicholson and Evans testified the State had not offered or promised them anything related to their pending criminal charges. After the trial, Mr. Brown learned the State offered Codefendant Evans thirteen years if he pled guilty and if Evans would testify against Mr. Brown, the State would reduce his charges to nonviolent charges and his sentence would be ten years or less.

Mr. Brown's counsel reviewed recorded phone calls Evans made from the Greenwood County Detention Center. See Attached Exhibit A (disc that contains the recorded calls). During these calls, Evans said the State had offered him thirteen years. But if Evans agreed to testify against Mr. Brown, then the State would "guarantee" him a plea to nonviolent charges. The State could not make "any promises" so Evans couldn't say he was made a promise when he testified. However, prior to trial, Evans' attorney told him it would definitely be a nonviolent charge and no more

than ten years. During a phone call, Evans asked a male to pay money to the victim's father.

Mr. Brown should be allowed to present this information to a jury. As such, the court should grant a new trial.

NEW TRIAL: NO *NEIL V. BIGGERS* HEARING

Mr. Brown was prejudiced by not having a pretrial *Neil v. Biggers* hearing about Codefendant Antonio Nicholson's pretrial identification through photos on a website, www.mugshots.com. The Court should order a new trial based on Mr. Brown's inability to question Investigator Whitfield Brooks, Investigator Brian Louis, and Codefendant Antonio Nicholson during a pretrial *Neil v. Biggers* hearing. Mr. Brown did not know about Codefendant Nicholson's pretrial identification until the State's last witness testified about it. Mr. Brown was prejudiced by the inability to question these witnesses during a pretrial *Neil v. Biggers* hearing.

In *Neil v. Biggers*, the United States Supreme Court held a trial court must review pretrial eyewitness identification to determine if it was unduly suggestive and if so, whether it was nevertheless a reliable identification. *Neil v. Biggers*, 409 U.S. 188, 93 S Ct. 375 (1972). The court should consider 1) the witness's opportunity to view the perpetrator at the time of the crime, 2) the witness's degree of attention, 3) the accuracy of the witness's prior description of the perpetrator, 4) the level of certainty demonstrated by the witness at the confrontation, and 5) the length of time between the crime and the confrontation to determine the reliability of the identification. *Id.*

South Carolina courts have held the *Neil v. Biggers* hearing should be conducted *in camera*, outside the presence of the jury. *State v. Simmons*, 308 S.C. 80, 417 S.E.2d 92 (1992) (holding the trial court should have held an *in camera* hearing of undercover officer's identification of defendant and such failure warranted a remand); *See State v. Ramsey*, 345 S.C. 607, 613, 550 S.E.2d 294, 297 (2001). The purpose of the *in camera* hearing is to determine whether the in-court identification was of independent origin

or was tainted because of the circumstances surrounding the prior, out-of-court identification. *State v. Liverman*, 398 S.C. 130, 727 S.E.2d 422 (2012) (citing *Ramsey*, 345 S.C. at 613, 550 S.E.2d at 297).

In *State v. Liverman*, the South Carolina Supreme Court overruled its *McLeod* decision, which held a pretrial *Neil v. Biggers* hearing was unnecessary when the eyewitness knows the accused, in light of *Perry v. New Hampshire* decided by the United States Supreme Court's. 398 S.C. 130, 727 S.E.2d 422 (2012) (citing *Perry v. New Hampshire*, 565 U.S. _____, 132 S. Ct. 716 (2012)); *State v. McLeod*, 260 S.C. 445, 196 S.E.2d 645 (1973) (overruled by *State v. Liverman*, 398 S.C. 130, 727 S.E.2d 422 (2012)).

Perry requires that preliminary judicial inquiry is required once the accused contends the identification was obtained under unnecessarily suggestive circumstances arranged by state action, regardless of the witness's prior knowledge of the accused. *Perry v. New Hampshire*, 565 U.S. _____, 132 S. Ct. 716 (2012).

The *Liverman* decision addressed the intersection of a suggestive police line-up and an eyewitness who knew the accused. 398 S.C. at 134, 727 S.E.2d at 423. Within minutes of the shooting, the eyewitness identified the shooter by his nickname, described the gun used, and described the clothes the shooter was wearing. *Id.* Shortly thereafter, Liverman was apprehended. *Id.* An investigator drove the eyewitness to where Liverman was being detained, turned on his high beam headlights, and the witness confirmed Liverman was the shooter. *Id.* The Court held the pretrial hearing did not comport with the due process requirements, but this failure was harmless error. *State v. Liverman*, 398 S.C. 130, 727 S.E.2d 422 (2012); *See also State v. Liverman*, 386 S.C. 223, 687 S.E.2d 70 (Ct. App. 2009) (noting the eyewitness identification was only one part of the evidence the State produced at trial).

At trial, Mr. Brown contended the www.mugshots.com photo identification was a suggestive lineup procedure. Mr. Brown should have been able to question Investigator Whitfield Brooks, Investigator Brian Louis, and Codefendant Nicholson about the pretrial identification to determine if it tainted Nicholson's subsequent in court identification of

Mr. Brown. The failure to have the pretrial *Neil v. Biggers* hearing is highly prejudicial to Mr. Brown.

The identification was suggestive because officers showed Codefendant Nicholson pictures from the website www.mugshots.com. During proffer testimony, Investigator Brooks could not provide details about how many pictures were shown, whether the pictures included women, people of different races, or people with or without other identifying characteristics such as facial hair.

Investigator Brian Louis was not available to testify but counsel for Mr. Brown placed information on the record that was learned during a conference call with him. Investigator Louis stated he did not know what Mr. Brown looked like when he and Codefendant Nicholson were looking at the website www.mugshots.com. Investigator Louis said he thought the website allowed him to narrow the search by race, gender, geographic location, and possibly age.

Even though Investigator Louis did not know what Mr. Brown looked like, the Court still may have found the identification suggestive depending on how narrowly Investigator Louis filtered the search results. During the phone call, Investigator Louis could not remember the details of the search criteria or terms on www.mugshots.com.

Once Mr. Brown discovered there was a pretrial lineup, he moved for a mistrial based on the inability to question the witnesses during a pretrial *Neil v. Biggers* hearing. The Court denied this motion finding Codefendant Nicholson's identification was merely "confirmation" identification since Nicholson already knew Mr. Brown. Codefendant Nicholson testified he just met Mr. Brown the night of the incident. Regardless of whether Codefendant Nicholson had known Mr. Brown prior to this night, a pretrial *Neil v. Biggers* hearing should have been held, particularly in light of court's holdings in *Perry v. New Hampshire* and *State v. Liverman*.

Unlike *Liverman*, there is no physical evidence to confirm Nicholson's testimonial evidence. Investigator Brooks stated he viewed a video from that showed "everything at [the crime scene,] pump number

8," but that he never collected a copy of this video. No fingerprint or DNA evidence linked Mr. Brown to the crime. As there is no physical evidence to confirm or dispute the Nicholson lineup, the failure to hold a *Neil v. Biggers* hearing cannot be found to be harmless error.

In a case of first impression, the South Carolina Court of Appeals held that an accused has a constitutional right to challenge an identification by a codefendant. *State v. Miller*, 359 S.C. 589, 599, 598 S.E.2d 297, 302-03 (Ct. App. 2004) aff'd, 367 S.C. 329, 626 S.E.2d 328 (2006). The South Carolina Supreme Court affirmed the holding and found the error was not harmless because the case was supported only by testimonial evidence. *State v. Miller*, 367 S.C. 329, 626 S.E.2d 328 (2006). Like *Miller*, the case against Mr. Brown is based solely on testimonial evidence and the error in allowing this identification is not harmless. The Court should grant a new trial based on Mr. Brown's denial of a pretrial *Neil v. Biggers* hearing.

NEW TRIAL: MATERIAL DISCOVERY WITHHELD

The court should order a new trial because the information about Codefendant Nicholson's identification using photos on the website www.mugshots.com was not provided to Mr. Brown before trial and this information was material to his defense.

The prosecuting agency has knowledge of all evidence in the State's possession, custody or control. This includes evidence "known only to police investigators and not to the prosecutor." *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555 (1995). Prosecutors have a duty to learn of any favorable evidence known to others acting on the government's behalf, including the police. *Id.*

Evidence material to an accused's defense is discoverable pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure. Rule 5 (a)(1)(A) and (a)(1)(C), SCRCrimP ("...Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of

the prosecution, **and which are material to the preparation of his defense** or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.") (emphasis added).

In *State v. Lawton*, the prosecution did not disclose a letter the Defendant had written about his own dishonesty. 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009). The state then used the previously undisclosed letter to impeach the Defendant's credibility during his testimony. *Id.* The circuit court found the letter only addressed Defendant's credibility and was merely collateral to the case; therefore, the circuit court deemed it was not relevant within the meaning of Subsection (a)(1)(A) of Rule 5. *Id.* The Court of Appeals held the letter was relevant and should have been provided in response to Lawton's Rule 5 request. *Id.*

Moreover, the Court held the letter was clearly material to preparing Lawton's defense because it likely would have affected his decision to testify, a fundamental right. *Id.*; Rule 5 (a)(1)(C), SCRCrimP. There was reasonable probability Lawton would not have testified had he known the state had such strong impeachment evidence. *Id.* As such, the court held the State's failure to disclose this letter prior to trial violated Rule 5 and this error was not harmless. *Id.*

The right to a fair trial is a fundamental constitutional right and like the impeachment letter in *Lawton*, the Nicholson Lineup is material to Mr. Brown's case. Rule 5 (a)(1)(C), SCRCrimP. As such, *Lawton* is directly on point. *Neil v Biggers* is in place to assure the photo lineup was not unduly suggestive and did not taint any subsequent in court identification so that an accused receives a fair trial. Mr. Brown was not given the opportunity to conduct a proper pretrial *Neil v. Biggers* hearing.

Evidence is material if there is a reasonable probability of a different result if it had been disclosed to the defense and confidence in the outcome of the trial is undermined. *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999).

The State's case against Mr. Brown was solely built on testimonial evidence. No physical evidence linked Mr. Brown to the crimes of which he was accused. Had Mr. Brown known about the Nicholson Lineup his

strategy and approach to defending his case would have been different. Had he known officers showed Nicholson various photos from www.mugshots.com to identify him, Brown would have extensively questioned the State's methods for identification and hired an expert in photo identification, as this method likely does not comport with due process and the criteria South Carolina courts have established for proper photo lineup presentations. Had the court found the Nicholson Lineup unduly suggestive, an in court identification by Nicholson would be disallowed since the unduly suggestive lineup would taint the in court identification.

No definite rule of law governs finding an error harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. *State v. Lee-Grigg*, 374 S.C. 388, 414, 649 S.E.2d 41, 55 (S.C. Ct. App. 2007) aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010) (citing *State v. Gillian*, 360 S.C. 433, 454-55, 602 S.E.2d 62, 73 (Ct. App. 2004); *State v. Mitchell*, 286 S.C. 572, 336 S.E.2d 150 (1985); *State v. Curry*, 370 S.C. 674, 636 S.E.2d 649 (Ct. App. 2006); *State v. Pagan*, 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004) aff'd as modified 369 S.C. 201, 631 S.E.2d 262 (2006)). "Whether an error is harmless depends on the particular facts of each case, including: the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case." *Id.* (citing *State v. Mizzell*, 349 S.C. 326, 333, 563 S.E.2d at 315, 318-19 (2002)).

This error directly affects Mr. Brown's right to a fair trial. Given the State's reliance on testimonial evidence and its lack of any direct physical evidence, this error cannot be found to be harmless. The Court should grant a mistrial because Mr. Brown's fundamental right to a fair trial has been denied by the State's failure to disclose evidence material to his defense.

NEW TRIAL: VICTIM IDENTIFICATION OF MR. BROWN

Prior to the victim's testimony, the trial judge ruled the victim, Latavius Spearman would not be allowed to identify Mr. Brown in the courtroom. Prior to trial, Mr. Spearman was shown a six-person photo lineup including a picture of Mr. Brown and could not identify him. The crime had occurred more than one year prior to trial and the Court found Mr. Spearman's in court identification inadmissible. *See State v. Thompson*, 276 S.C. 616, 281 S.E.2d 216 (1981).

During the trial, Mr. Brown's counsel repeated the judge's ruling to Mr. Spearman that "he could not identify Mr. Brown in the courtroom." On redirect, the State's counsel directed Mr. Spearman to identify Mr. Brown in the courtroom. Mr. Brown objected based on the court's pretrial ruling.

The State argued Brown's counsel had opened the door to the in court identification. Mr. Brown's counsel was not opening the door to an in court identification but merely repeated the court's pretrial ruling. South Carolina courts have held that a defendant may "open the door" to a topic based on the defendant's testimony. *See State v. Curtis*, 356 S.C. 622, 632, 591 S.E.2d 600, 605 (2004) ("Given that [defendants] maintained that [the company] did not allow pornographic materials or links on the website, it is patent that they opened the door to this line of inquiry."); *State v. Dunlap*, 353 S.C. 539, 541, 579 S.E.2d 318, 319 (2003) (holding defense counsel's opening statement "opened the door to the introduction of evidence rebutting the contention that [defendant] was merely an addict"); *State v. Taylor*, 333 S.C. 159, 175, 508 S.E.2d 870, 878 (1998) ("[B]ecause appellant opened the door about his relationship with his wife, the solicitor was entitled to cross-examine him regarding the relationship, even if the responses brought out appellant's prior criminal domestic violence conviction.").

Mr. Brown did not testify and did not open the door. Instead Mr. Brown's counsel was simply repeating the trial judge's ruling that Mr.

Spearman could not identify Mr. Brown. The court should grant a new trial based on the Mr. Spearman's in court identification of Mr. Brown.

NEW TRIAL: SEVER TRIAL

The Court should grant a new trial because Codefendant Johnson's failure to appear for trial was highly prejudicial to Mr. Brown and their trials should have been severed.

Mr. Brown's counsel erred in not making a motion to sever his trial from Codefendant Johnson, particularly in light of Codefendant Johnson's failure to appear for trial.

Severance should be granted only where there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent a jury from making a reliable judgment about a codefendant's guilt. *State v. Dennis*, 337 S.C. 275, 523 S.E.2d 173 (1999). Evidence of flight may be considered as consciousness of guilt. *See State v. Grant*, 275 S.C. 404, 272 S.E.2d 169 (1980); *See also State v. Williams*, 350 S.C. 172, 175-176, n. 5, 6, and 7, 564 S.E.2d 688, 690-691, n. 5, 6, and 7 (Ct. App. 2002).

During his closing argument, Johnson's lawyer admitted his client's guilt to conspiracy to commit grand larceny and stated there was no "discrepancy" about the facts. The Court should grant a new trial because Codefendant Johnson's failure to appear for trial and his lawyer's comments during closing argument were highly prejudicial to Mr. Brown, the joint trial should have been severed, and Mr. Brown should have been tried alone.

NEW TRIAL: ARREST RECORD

The Court should grant a new trial because the jury should not have heard any testimony about Mr. Brown's arrest record. State's witness, Investigator Brooks testified that Mr. Brown was arrested on an unrelated charge the day after this incident. The jury should never have heard about an unrelated arrest. The court's curative instruction was not enough to remove the taint of the testimony.

Evidence of other crimes, wrongs, or acts is inadmissible to prove the character of a person in order to show action in conformity therewith;

however, such evidence may be admissible "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE. The evidence admitted "must logically relate to the crime with which the defendant has been charged." *State v. Simmons*, 384 S.C. 145, 159, 682 S.E.2d 19, 26 (Ct. App. 2009) (quoting *State v. Beck*, 342 S.C. 129, 135, 536 S.E.2d 679, 682-83 (2000)).

Mr. Brown's arrest on July 27, 2013 was for a probation violation and had nothing to do with the crime for which he was being tried. It did not show motive, identify, common scheme or plan, or the absence of mistake or accident, or intent. Rule 404(b), SCRE. It was error for the jury to hear this testimony and the curative instruction was insufficient to cure the error. This error created cumulative "other wrongs" evidence against Mr. Brown that cannot be harmless. The prejudice of this arrest information substantially outweighed any probative value and warrants a new trial.

New Trial: Favorable Consideration to Codefendants Antonio Nicholson and Shadarron Evans

This motion is not ripe until the parties and counsel see if the State extends favorable consideration to Codefendants Nicholson and Evans. During its direct examinations of Nicholson and Evans, the State elicited testimony that they were not receiving any "deal" or "promise" in exchange for testifying for the State. Newly discovered evidence, discussed above, contradicts this testimony. Codefendant Evans stated he was offered thirteen years but after he agreed to testify he would be allowed to plead to a nonviolent offense for a sentence of no more than ten years.

As stated, this issue is not ripe. However, should the State offer any favorable consideration to Codefendant Nicholson and/or Codefendant Evans, Mr. Brown will make this motion. Mr. Brown's counsel requests the Court and prosecution provide notice of any proceedings related to Codefendants Nicholson and Evans.

MOTION TO RETAIN JURISDICTION

Mr. Brown moves The Honorable Eugene C. Griffith, Jr. retain jurisdiction over all codefendants in this matter. Judicial economy is served if the same judge hears any motions or pleas, and if the same judge sentences the codefendants. Retaining jurisdiction will assist to assure Defendants Evans and Nicholson truthfully testified regarding their plea negotiations with the State. Again, Mr. Brown's counsel requests the Court and prosecution provide notice of any proceedings related to Codefendants Nicholson and Evans, and any other codefendants in this matter.

MOTION TO RECONSIDER SENTENCE

The Court should reconsider the sentence and impose the minimum sentence for armed robbery and kidnapping. During the sentencing, the State requested the Court sentence Mr. Brown closer to the maximum time given the nature of the charges.

The State did not reveal its offer of thirteen years, or possibly less, to Codefendant Evans prior to Mr. Brown's trial or sentencing. If the State believed thirteen years was appropriate for Codefendant Evans, who had a prior conviction for robbery and whose gun was used in this armed robbery, then there is no basis in their request for sentence close to the maximum for Mr. Brown. He has no prior convictions for violent offenses, unlike Codefendants Antonio Nicholson and Shadarron Evans. See Attached Exhibits B, C, and D (criminal histories of Evans, Nicholson, and Brown). Prior to trial, the state concluded Mr. Brown did not possess a weapon as it did not try Mr. Brown for Possession of a Weapon during a violent crime even though the grand jury had indicted him and agreed during sentencing that Mr. Brown did not have a weapon.

It appears the State's only basis for requesting the Court impose a sentence close to the maximum is because Mr. Brown exercised his constitutional right to trial. "Courts have long adhered to the principle forbidding a trial court from improperly considering the defendant's exercise of his constitutional right to a jury trial as an influential factor in

determining the appropriate sentence." *State v. Hazel*, 317 S.C. 368, 370, 453 S.E.2d 879, 880 (1995); *See Davis v. State*, 336 S.C. 329, 520 S.E.2d 801 (1999).

CONCLUSION

For the reasons stated above, the Court should grant Mr. Brown a new trial, retain jurisdiction over the codefendants' cases. The Court should reconsider its sentence of Mr. Brown for the reasons stated above.

Respectfully submitted,

HAWTHORNE MERRILL LAW, LLC

Jane H. Merrill

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August 25, 2014
Greenwood, SC

State of South Carolina, County of Greenwood
In the Court of General Sessions, Eighth Judicial Circuit

State of South Carolina

vs.

Corey Brown

Defendant.

Indictment nos.
2013-GS-24-1872, 1873, 1874, and 1875; 2014-GS-24-1262

Supplement to Motion for New Trial, Motion to Retain Jurisdiction, and Motion for Reconsideration of Sentence

Defendant Corey Brown supplements his Motion for New Trial, Motion to Retain Jurisdiction, and Motion for Reconsideration of Sentence. At trial, the two testifying codefendants, Antonio Nicholson and Shadarron Evans, testified that they were not receiving any deals or promises from the state. Since the trial, the state has dismissed both codefendants' indictments for Armed Robbery and Kidnapping.

As noted in the previously filed motion, Codefendant Evans stated during phone calls from the jail, discovered after the trial, that he was offered thirteen years but after he agreed to testify, he would be allowed to plead to a nonviolent offense for a sentence of no more than ten years.

Ten days after Mr. Brown's trial, the state disposed of Codefendant Evans' charges. The state dismissed, as part of the plea, the indictments for Kidnapping (2013-GS-24-1647) and Armed Robbery (2013-GS-24-1648). Evans waived venue and pleaded guilty in Abbeville, South Carolina to conspiracy (2014-GS-24-1276), and a direct indictment for false imprisonment (2014-GS-24-1444) on August 26, 2014.

The sentencing sheet indicates the pleas were without negotiation or recommendation. The Honorable Eugene C. Griffith, Jr. sentenced Evans to 4 years on the criminal conspiracy charge, and consecutively to that, 8 years suspended to 48 months probation for false imprisonment.

The state disposed of Codefendant Nicholson's charges on October 13, 2016. The state dismissed the indictments for kidnapping (2013-GS-24-1705) and Armed Robbery (2013-GS-24-1704). Nicholson pleaded guilty to Criminal Conspiracy (2014-GS-24-1309) without negotiation or recommendation. The Honorable Alison Renee Lee sentenced Nicholson to three years suspended 30 months probation.

Certified copies of Evans and Nicholson's indictments and sentencing sheets are attached.

Respectfully submitted,

HAWTHORNE MERRILL LAW, LLC

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December 27, 2016
Greenwood, SC

State of South Carolina, County of Greenwood
In the Court of General Sessions, Eighth Judicial Circuit

State of South Carolina vs. Corey Brown Defendant.	Indictment nos. 2013-GS-24-1872, 1873, 1874, and 1875; 2014-GS-24-1262 **Order Granting New Trial**

This matter came before the Court for a hearing on October 6, 2014, on Defendant's motion for a new trial. Mr. Brown[1] was present and represented by Jane H. Merrill, and the State was represented by Assistant Solicitors Aaron Taylor and Elizabeth White. On August 14, 2014, Mr. Brown was convicted by a jury on charges of Armed Robbery, Kidnapping, and Conspiracy, and he was sentenced to 25 years imprisonment. Thereafter, he timely filed a motion for a new trial.

Mr. Brown argued the court should grant a new trial because evidence discovered after the trial showed the State made a plea offer to at least one of the testifying co-defendants prior to Mr. Brown's trial, which was never disclosed to Mr. Brown and which contradicts testimony the State presented. The State called two co-defendants, Shadarron Evans (Evans) and Antonio Nicholson (Nicholson). Both testified that the State

[1] Mr. Brown is currently in the custody of the South Carolina Department of Corrections and his inmate number is 361112.

had not made them any offers or promised them anything in exchange for their testimony.

After his trial, Mr. Brown learned that the State extended an offer to Evans. He provided proof through recordings of Evans' phone calls from the Greenwood County Detention Center, discovered after trial but recorded beforehand, that reveal the State initially offered Evans thirteen years. But after meeting with his attorney and a solicitor, Evans believed if he testified, the State would present him a more favorable offer allowing him to plead guilty to a non-violent offense instead of to his original violent offenses. The State did not disclose to Mr. Brown, or the tribunal, its offer to Evans or the discussions the solicitor had with Evans and his attorney.

Evans' pretrial prediction about the resolution of his charges, captured on the recorded phone calls, came to fruition just ten days after Mr. Brown's trial. On August 26, 2014, the State transported Evans to another county where he pleaded guilty to two nonviolent offenses, Criminal Conspiracy and False Imprisonment (a direct indictment to which he waived presentment to the grand jury). Evans was sentenced to 4 years for criminal conspiracy and a consecutive suspended sentence for false imprisonment. As part of their plea deal, the State dismissed Evans' indictments for Kidnapping and Armed Robbery.[2] Failing to disclose this material evidence prejudiced Mr. Brown.

The State dismissed Nicholson's Armed Robbery and Kidnapping indictments as part of a plea deal on October 13, 2016. Nicholson then pleaded guilty to one count of criminal conspiracy for which his sentence was suspended to probation.[3] The State made this deal with Nicholson,

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[2] Evans was indicted for Kidnapping (2013-GS-24-1647), Armed Robbery (2013-GS-24-1648), and Conspiracy (2014-GS-24-1276). He waived presentment to the grand jury on a direct indictment for False Imprisonment (2014-GS-24-1444).

[3] Nicholson was indicted for Kidnapping (2013-GS-24-1705), Armed Robbery (2013-GS-24-1704), and Criminal Conspiracy (2014-GS-24-1309).

even though he was charged with another criminal offense, while out on bond.[4]

Mr. Brown also argued he should be granted a new trial because there was no pretrial *Neil v. Biggers* hearing, additional material evidence was withheld, there was improper witness identification during trial, and the jury heard improper testimony about Mr. Brown's criminal history.

The Court grants Mr. Brown's motion for a new trial based on the foregoing and the evidence and arguments presented in the motion for a new trial and subsequent hearing.

ORDER

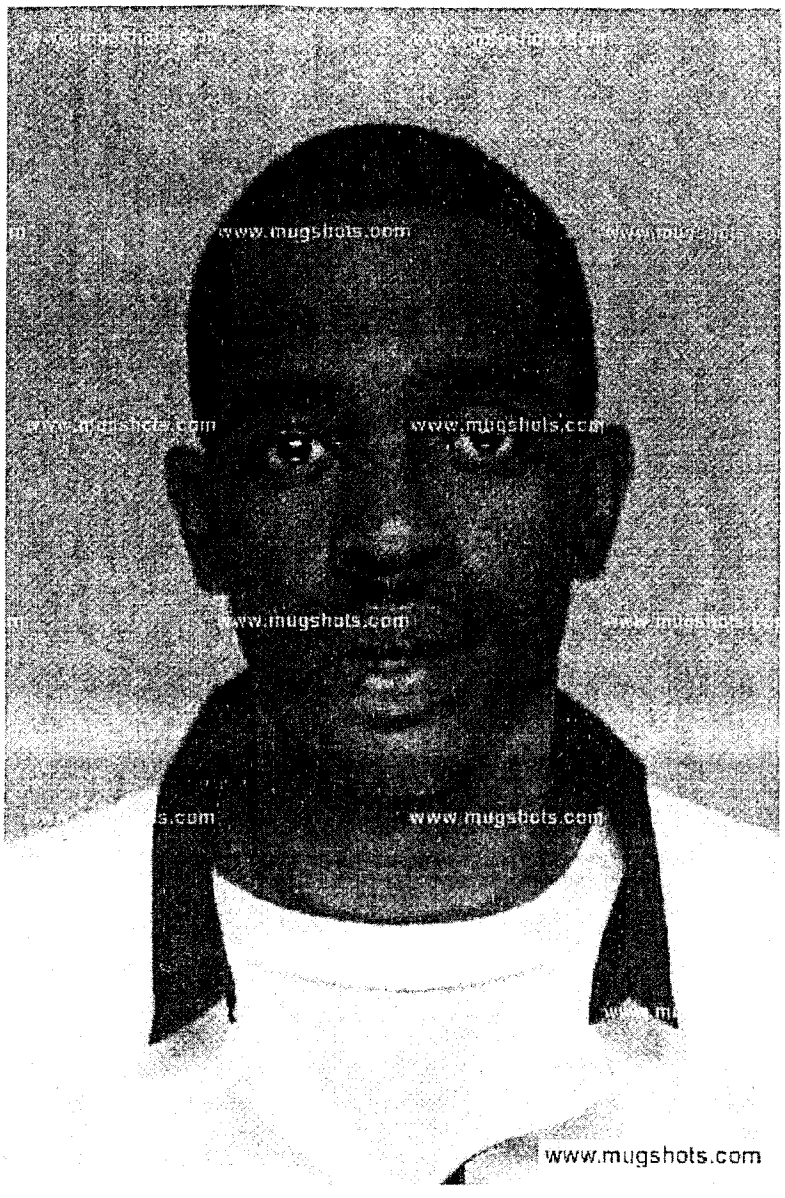
For the foregoing reasons, it is ordered that Defendant Corey Brown is granted a new trial.

Eugene C. Griffith, Jr.
Circuit Court Judge
Eighth Judicial Circuit

May 29, 2018

Newberry, SC

[4] Nicholson was arrested and charged with Domestic Violence, 2nd degree (2015A2420100929) on April 27, 2016, and the State dismissed it on November 10, 2016.



COURT'S EXHIBIT
NO. #1 ID

State of South Carolina, County of Greenwood
In the General Sessions Court, Eighth Judicial Circuit

State of South Carolina

Plaintiff,

vs.

Corey Brown

Defendant.

Case No.: 2013A2410201005, 006, 007, and 008

Rule 5 Brady Motion

TO: Mr. David Stumbo

Pursuant to Rule 5 of the South Carolina Rules of Civil Procedure and pursuant to Brady v. Maryland, 373 U.S. 83 (1963), the defendant makes the following motions.

RULE 5 MOTION

Pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, the defendant moves that the prosecution permit the defendant to inspect and copy or photograph the following:

1) Any written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

2) The substance of any oral statement which the prosecution intends to offer in evidence at trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent;

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

4) Books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at trial, or were obtained from or belong to the defendant;

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

6) Written, recorded, or oral statements made by prosecution witnesses or prospective prosecution witnesses or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at trial.

For purposes of this motion, the defendant assets that all items requested are material to the preparation of the defense in this case and that the State should not substitute its judgment for what is material in the preparation of a defense.

If the State objects to disclosing the statements of prosecution witnesses or potential prosecution witnesses, then the defendant requests a hearing, as soon as can be scheduled, prior to trial, before the chief administrative judge, for an order requiring production of the statement.

The defendant objects to the introduction of a chemist's or analyst's report pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure and moves that a copy of the report(s) and chain of custody be produced and that the chemist or analyst and all chain of custody witnesses be required to testify at trial.

BRADY MOTION

The defendant moves the court for an order requiring the State to disclose to counsel for the defendant and to produce for inspection, copying and photographing, all evidence that is favorable to the defendant, regardless of materiality, which is within the possession, custody or control of the prosecution or law enforcement, the existence of which is known, or by the exercise of due

diligence may become known, to the attorney for the prosecution or law enforcement. This motion is made pursuant to Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitley, 115 S.Ct. 1555 (1995), the Fifth, Sixth, and Fourteenth Amendments of the Unites States Constitution, and Article One, Sections Three and Fourteen of the South Carolina Constitution.

This request includes but is not limited to the following:

1) Any information that shows or tends to show that the defendant is not guilty of the
crime charged, the defendant is guilty of a less serious crime, the defendant may have reduced culpability or reduced capacity, or any information that may influence the penalty or punishment imposed in favor of the defendant;

2) Any information that shows that someone else may be guilty of the crime charged, regardless of whether the State contends that the information is accurate and regardless of whether the State contends that this information exonerates the defendant;

3) Any and all promises, rewards, and inducements made to all co-defendants, witnesses or potential witnesses, regardless of whether they will testify at trial;

4) Any offers or grants of immunity made to any witness relating to any fine, forfeiture, sentence, charge reduction, prosecution or punishment in this or any other case or potential case;

5) All statements made by any co-defendant, victim, witness or potential witness, regardless of whether the State intends to call the witness at trial, including but not limited to the time, date, place and substance, as well as the name, address and telephone number of anyone witnessing the statement;

6) Any statements or admissions by a co-defendant, victims, witness or potential witness, regardless of whether the State intends to call that witness at trial, regarding the co-defendant's, victim's, witness's or potential witness's failure to recall or recollect any part of the incident or regarding any lapse of memory in general or regarding any recantation of allegations, testimony or statements;

7) Any inconsistent statement made by any co-defendant, victim, witness or potential witness, regardless of whether the State intends to call the witness at trial, including but not limited to the time, date, place and substance, as well as the name, address and telephone number of anyone witnessing the statement;

8) The criminal histories of all co-defendant's, victim, witnesses or potential witnesses, regardless of whether the State intends to call this co-defendant, witness or potential witness at trial (please take notice that the defendant may seek to introduce the prior criminal record of any witness regardless of age of the conviction, pursuant to S.C.R.Evid. Rule 609);

9) Copies of any and all memoranda, reports and correspondence to and from any law enforcement agency or prosecution agency of the United States, the State of South Carolina, or any county, municipal, or local agency;

10) The name, address, phone number, and criminal history of any confidential informant, as well as any promises, rewards, consideration and compensation, monetary or otherwise, paid to or given to any informant or to be paid to or given to the informant in the future;

11) The names and addresses of any physician, psychiatrist, mental health, counseling, hospital or other treatment records, and copies of any physician, psychiatric, mental health, counseling, hospital or other treatment records, of any witness or potential witness in the case, regardless of whether the State intends to call the witness at trial.

The defendant moves that these materials be produced, regardless of materiality. The defendant and his attorney should be the judge of materiality in preparation of a defense. If the State objects to producing any item based on materiality, then the defendant requests a hearing, prior to trial, before the chief administrative judge, for the court to conduct an examination of the materials and determine disclosure should be ordered.

The defendant also moves that this information be provided prior to trial with sufficient time for the defendant to investigate the information and prepare a defense.

IT IS SO MOVED.

HAWTHORNE MERRILL LAW, LLC

By: Jane H. Merrill

Jane H. Merrill
410 Main Street
Greenwood, South Carolina 29646
(864) 229-1010
Attorney for Defendant

October 8, 2013
Greenwood, South Carolina

HAWTHORNE MERRILL
LAW, LLC

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Greenwood, SC 29646
864.229.1010

jane@hawthornemerrilllaw.com

October 8, 2013

Mr. David M. Stumbo
Eighth Circuit Solicitor
PO Box 516
Greenwood, SC 29649

Re: State v. Corey Brown, 2013A2410201005, 006, 007, and 008

Dear Solicitor Stumbo:

This letter is to advise you that I have been retained to represent Corey Brown who has a pending charge(s) in Greenwood County and I am requesting a jury trial on his behalf. Please direct all future communications to me.

Attached please find for service Rule 5 and Brady motions. By copy of this letter to the Greenwood County Clerk of Court, I am notifying the court that I have been retained to represent Corey Brown, and I am filing these motions. Thank you for your attention to this matter.

Thank you for your attention to this matter.

Sincerely,

HAWTHORNE MERRILL LAW, LLC

Jane H. Merrill

Jane H. Merrill
JHM/ainm
Enclosure
cc: Greenwood County Clerk of Court ✓
Corey Brown

State of South Carolina)
) Court of General Sessions
County of Greenwood)

2014-GS-24-01444, 01276

State of South Carolina)
vs.) Transcript of Record
)
)
Shadarron Bernard Evans)
Defendant)

August 26, 2014
Abbeville, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Aaron Taylor, Assistant Solicitor
Attorney for the State

Shane Goranson, Assistant Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

THE COURT: All right, Mr. Taylor.

MR. TAYLOR: Thank you, Your Honor, may it please the Court.

THE COURT: Okay.

MR. TAYLOR: Standing before you is Shadarron Evans. He is pleading guilty to two Greenwood County indictments. That is indictments, 14-GS-24-1444, that is conspiracy to commit grand larceny. And 14-GS-24-1276, false imprisonment. He is also waiving presentment to the false imprisonment indictment. He is represented by Shane Goranson of the Public Defender's office. And these are both straight-up pleas.

THE COURT: He was a witness at a trial.

MR. TAYLOR: He was, Your Honor.

THE COURT: I remember. Your name is Shadarron Bernard Evans?

MR. EVANS: Yes, sir.

THE COURT: I have got an indictment that has not been presented, it is for false imprisonment. And it reads that you while in Greenwood County on or about the 26th of July of '13 did unlawfully restrain or take Mr. Spearman against his will. This being in violation of the common laws in South Carolina. It is my understanding you wish to plead guilty on that indictment and waive presentment to the Greenwood Grand Jury. Is that right?

MR. EVANS: Yes, sir.

THE COURT: Also indictment 14-GS-24-1276 for conspiracy. That indictment reads that you while in Greenwood County on or about the 26th of July of '13, you did conspire with some others, having the understanding of committing the offense of grand larceny in violation of 16-17-410. It is my understanding you wish to plead guilty on that indictment as presented. Is that right?

MR. EVANS: Yes, sir.

THE COURT: Mr. Goranson, you represent Mr. Evans on both of these indictments?

MR. GORANSON: Yes, I do.

THE COURT: And have you explained to him the elements of these two offenses and the potential punishment he faces?

MR. GORANSON: Yes, I have, Your Honor.

THE COURT: Do you believe the State has sufficient evidence to convict him if he went to trial?

MR. GORANSON: Yes, I do.

THE COURT: And do you agree with his plea, his decision to enter this plea today?

MR. GORANSON: Yes, I do.

THE COURT: All right. Madam Clerk, place him under oath.

SHADARRON EVANS, being

first duly sworn, testified as follows:

THE COURT: Mr. Evans, in the last twenty-four hours have you taken any alcohol, drugs or medications?

MR. EVANS: No, sir.

THE COURT: Are you clearheaded?

MR. EVANS: Yes, sir.

THE COURT: Do you suffer from any disability, whether it be mental, physical or emotional that would affect your understanding of what is going on?

MR. EVANS: No, sir.

THE COURT: Do you want a jury trial on these two matters?

MR. EVANS: No, sir.

THE COURT: Do you know that you must waive your right to confront those accusing you of this crime in order for me to accept your plea?

MR. EVANS: Yes, sir.

THE COURT: And do you wish to waive that right to confront those accusing you?

MR. EVANS: Yes, sir.

THE COURT: And you have the right to remain silent during a trial. You cannot be forced to testify in your own defense. Mr. Taylor would not be allowed to call you as a witness. You could testify but it would be your decision. If you chose to not testify you are exercising

your right to remain silent could not be used against you in any way at that trial. Do you understand?

MR. EVANS: Yes, sir.

THE COURT: Understanding these rights to defend yourself at trial do you wish to waive those rights in order to enter this guilty plea?

MR. EVANS: Yes, sir.

THE COURT: And are you waiving your right freely and voluntarily?

MR. EVANS: Yes, sir.

THE COURT: All right, Mr. Taylor, give me a brief summary of the facts.

MR. TAYLOR: Thank you, Your Honor. Both incidences are from the same incident on July 26th, 2013 in Greenwood County. Mr. Evans along with his Codefendants came from Georgia to steal cars in the Greenwood area. During that night at some point they actually, he was originally charged with kidnapping. One of the Codefendant's had a gun and kidnapped and robbed the victim, David Spearman, put him in his own car that they stole. Where Mr. Evans comes into play is he was in the original car that was leading the stolen car. They actually pulled over on the side of the road, he jumped out and went back into that car. So he took part in this kidnapping, armed robbery but we are reducing his charge to false imprisonment based

on his testimony and he is, I think, even the Defense attorneys and the Codefendants admitted, he is definitely guilty of conspiracy to commit grand larceny. So that was all in Greenwood County, it was different locations but it was all in the same county. And, Judge, once you accept the plea I would like to make a few more comments.

THE COURT: All right, Mr. Evans, is that a summary of the facts provided by the State. I was the presiding Judge of the trial so I know more detail of the facts. Are those the facts accurate to your participation?

MR. EVANS: Yes sir, it is.

THE COURT: Now, on this false imprisonment indictment which is 1444, you have not been presented to the Greenwood Grand Jury. And you initialed, let me get you to sign the waiver of presentment. What this means is you are going to skip a step in the criminal process, that being a presentation to the Grand Jury to determine whether or not a crime has been committed. And I will tell you, for the record, that the more severe charge of conspiracies are that has been presented and true billed, on your false imprisonment which is a much reduced charge as to opposed to kidnapping, you were indicted on kidnapping also. But you have got to waive presentment on the false imprisonment for me to accept your plea.

MR. EVANS: Yes, sir.

THE COURT: Are you okay with that?

MR. EVANS: Yes, sir.

THE COURT: As soon as he gets it out here I will get you to sign that. Now, also you have the right to have this matter heard in Greenwood County. We are in Abbeville County today, are you waiving your right to have your plea and/or trial heard in Greenwood and allowing it to be heard here in Abbeville here this morning?

MR. EVANS: Yes, sir.

THE COURT: And are you waiving venue freely and voluntarily?

MR. EVANS: Yes, sir.

THE COURT: Now, have any other promises been made to you and you testified in the trial, the State has given the indictment as false imprisonment and you are pleading to conspiracy to commit grand larceny. And the other related charges, the armed robbery and kidnapping will be dismissed. Any other promises been made to you to get you to plead guilty?

MR. EVANS: No, sir.

THE COURT: Have you been threatened or coerced by anybody to get you to plead guilty?

MR. EVANS: No, sir.

THE COURT: Any complaints against the Greenwood, the Eighth Circuit Solicitor's Office and the Greenwood City

or Greenwood County law enforcement community in regard to the handling of the investigation and disposition of these cases?

MR. EVANS: No, sir.

THE COURT: Have you had enough time to speak with your lawyer?

MR. EVANS: Yes, sir.

THE COURT: Has he answered all of your questions?

MR. EVANS: Yes, sir.

THE COURT: Are you satisfied with his advice and counsel he has given you?

MR. EVANS: Yes, sir.

THE COURT: Do you need any more time with him?

MR. EVANS: No, sir.

THE COURT: Are you pleading guilty freely and voluntarily?

MR. EVANS: Yes, sir.

THE COURT: And because you are, in fact, guilty of these two offenses?

MR. EVANS: Yes, sir.

THE COURT: If you will sign this.

(Whereupon, Mr. Evans signs the form.)

THE COURT: Regarding indictment 14-GS-24-, indictment 1444. I find that Shadarron Bernard Evans has made a free, knowing and intelligent waiver to the

Greenwood County Grand Jury for the offense of false imprisonment. In addition to that indictment, also indictment 14-GS-24-1276, the offense of conspiracy. On both, false imprisonment and conspiracy, made a free, knowing and intelligent plea of guilt. The State has provided more than ample facts to support this plea. And he has entered the plea and waiver with advice and counsel of an attorney of whom he states he is satisfied. All right, who wants to go first. You want to go first, Mr. Taylor, and then I will hear from Mr. Goranson?

MR. TAYLOR: Yes, sir. I am going to be very brief. You have heard the trial, that is why they didn't go into a lot of detail in the plea. The victim did not wish to be present. Law enforcement did not wish to be present. I talked to them about this and they both understand what is happening with this plea. Judge, we have no recommendation on sentencing, we know he can get anywhere from zero to ten, fifteen and consecutive. We don't object to any sentence that you feel that is a, you know the whole facts. And also, Judge, just wanted to remind you the fact that he got up there on the stand and was completely truthful and admitted that he was involved. He could have been prosecuted fully as well with this, he went up there with no promises. So, just ask that you take that into consideration as well.

THE COURT: All right. Now, Mr. Goranson, let me hear from you and Mr. Evans.

MR. GORANSON: Thank you, Your Honor. Mr. Evans is 26 years old, he did have his birthday here recently, since he has been locked up. He has been in jail for 397 days. And Mr. Evans and I met in August of last year, I think it was, and he and I have met fairly regularly although probably not as regularly as he would like. But just from the first time I met him he was straight-up with me about what was going on and I really appreciated that. When it came down to time to make a decision about what he wanted to do in the case, pleading guilty or cooperate, he decided he wanted to cooperate. And I said, look, if you are going to do this you got to do it all the way because you don't have any deals on the table. And if you are not truthful, if you are not honest they can prosecute you fully and use your statements against you. And he said, you know what, I am going to say what happened and just come clean. And I think that has been good for him. I think it has been good for his conscious, I think it is good for the system as a whole. And since he has been in the Greenwood County Detention Center Mr. Evans has been working as a barber there. He has cut everybody's hair, people that I have talked to over there said he is the best, they want him to do it. He has got a cosmetology

license and barbers kind of have a unique place in society. They get to talk to a lot of people. And Mr. Evans has been talking to a lot of people. And he has been encouraging them to tell the truth because if they do that, if you man up and do that he says the Prosecutor is going to be real with you. So he has been really, he has been a good influence, I would say, at the jail. No trouble at all since he has been there. And really I think what happened is this was a plan gone awry, Your Honor, you have heard what happened. I think everybody was kind of shocked except for maybe Tee and Selo, the other two guys in the car. I think everybody was shocked when Mr. Spearman was in the car when it was suppose to be stolen. So, I don't think that was their plan. I don't think that is what they set out to do. Of course, there are sometimes unintended consequences of our actions. And I think that Mr. Evans sincerely regrets that. He did speak on the phone before trial without my counsel and apologized to the father of Mr. Spearman who said he really appreciate that. Of course, that statement could have been used against him too. So Mr. Evans really is remorseful. Standing here with him are his mother and his adopted father. Mr. Evans had what I would call a pretty tough up brining. I don't think I know the half of it. But Mr. Evans moved around a lot, wasn't really in a

stable place. Things were out of hand enough when he was 13 to the point where Mr. Bureau decided to take Mr. Evans in and help raise him. Mr. Evans is a, as I said, a talented barber. He has goals and aspirations in the future, he wants to be a welder. He has accomplished as a rapper, positive stuff though, positive stuff. And also I would like the Court to take into consideration the fact that you can see Mr. Evans tattoos. He made the decision to testify in that trial and in so doing really turned his back on where he came from and what he has been doing for the past couple of years. I think that has exposed him to some possible retribution, I think there may have been some threats against him already against his family. So we ask that you take that into consideration, the risk that he put out there in doing that. I think what that is going to do is push him in more a positive direction for the rest of his life. So I think that Mr. Evans has put a considerable effort to rehabilitate himself thus far. And that any sentence that you impose I hope will further that. I hope that it is calculated, Mr. Evans asked me to suggest a sentence of ten years suspended to three years in prison followed by a term of probation set by Your Honor. If you are not comfortable with that he would ask that you set a sentence a little more than five years, given all of the good things that he has done. With that

I would like to let Mr. Bureau or Ms. Evans address the Court if they care to.

THE COURT: Yes, sir.

MR. BUREAU: Frank Bureau. And I would like to say, as he said, I started teaching school in 2000 and that is when I met Shadarron. And he has never lied to me, not once. And I can't say that about any other kid that I have ever dealt with, not even my own child, my biological child. And when he is allowed to get out, I will give you my word and I will do my best to take care of him which I kind of, should have done a better job of in the last two years. We kind of, we lost touch, we didn't stay in touch as much as we used to. And I would probably, hopefully maybe stop him from getting involved in some of this stuff because he listens to me, I think, a little bit, a little bit more than other kids do. So I think I will do a good job in trying to keep him out of trouble.

THE COURT: Okay.

MS. EVANS: Christine Evans, I am his Mom. And I really like you to take into consideration that he has two daughters. And I need him home.

MR. TAYLOR: Judge, I would also like to add one thing. He lives in Georgia, I am not sure how tough that is going to be getting probation and sending it back over. Actually Georgia is difficult for us to deal with a lot of

times, especially the probation department. So I am not objecting to that, I just wanted to point that out.

MR. GORANSON: I think Mr. Evans wanted to address the Court.

MR. EVANS: First I want, I want to apologize to the victim on the record. It was never my intention to commit this crime, you know, I had no knowledge of what they was thinking. Like I said, I take full responsibilities for my actions and I make no excuses for my actions. I just want to apologize to them on the record. I also want to apologize to the State of South Carolina, the County of Greenwood for my intention to come up here and commit a crime. I would ask the Court to forgive me. I also want to apologize for putting my family through this too.

THE COURT: All right. Anything else from the State?

MR. TAYLOR: No, sir.

THE COURT: All right, Mr. Evans, I commend you for what you are trying to do to turn yourself around. I heard three different talents that you have, that you can turn into a real positive way to influence people like you have been. It is a gift of communication to help others to not make the same mistake you did. In any event, I wish you all the hope that you can do that for the balance of your life and not get in trouble again. Anyway, on indictment 14-GS-24-1276, that is conspiracy. The

sentence of the Court is that you be confined to the Department of Corrections for four years. Given credit for 397 days you have done to date. On the false imprisonment, sentence of the Court is that you be confined for eight years and that is suspended to forty-eight months of probation. Now, probation on that case is going to start when you get out. So four years on one, you will come out with eight years hanging over your head. That will give you the incentive to keep doing the right thing, keep your life focused on where you need to go and achieve your goals. Okay. Do you understand?

MR. EVANS: Yes, sir.

THE COURT: All right, good luck.

MR. GORANSON: Thank you, Judge.

MR. TAYLOR: Thank you, Your Honor.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Greenwood, South Carolina on the 25th day of August, 2014.

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

January 5, 2019

Joy Holston

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

CERTIFICATE OF COUNSEL

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.

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February 25, 2020