

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 13 2022

On Petition for Writ of Certiorari to Charleston County
The Honorable Bentley S. Price, Post-Conviction Relief Judge
The Honorable Clifton Newman, Trial Judge

S.C. SUPREME COURT

Appellate Case No: 2022-000028

ANTHONY MCCLAIN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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1 objection.

2 MR. MAYER: Without objection.

3 THE COURT: It's admitted.

4 [Whereupon, State's exhibit number 40 is entered
5 into evidence by the court]

6 Q. [Mr. Osborne] Who is that phone number registered
7 to?

8 A. Patricia Johnson.

9 Q. And you said that you went back three months?

10 A. Yes.

11 Q. The incident was on June the 1st so you went back to
12 March the 1st, 2015?

13 A. Yes.

14 Q. Okay. I'm going to show you a small portion of
15 those phone records and namely June the 1st because this
16 is when we would expect to find the phone call from the
17 defendant, correct?

18 A. Correct.

19 [Whereupon, the exhibit is shown]

20 Q. Tell the jury this line right here [indicates]
21 calling party number is that the person who is making the
22 call or receiving the call?

23 A. I believe that is the person that is making the
24 call.

25 Q. Okay. And the dialed digit number is that the

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1 person who is making the call or receiving the call?

2 A. That is receiving the call.

3 Q. Okay. So at the end we have making, under C we have
4 receiving. And this mobile directory this is Jennifer's
5 phone number, is that correct?

6 A. Yes.

7 Q. Okay. So the first call on the day of June the 2nd
8 is at what time?

9 A. It is at 10:26.

10 Q. Okay. This number right here [indicates] [REDACTED]
11 [REDACTED] whose number is that?

12 A. That is Justin Lawrence.

13 Q. And he testified to that, is that correct?

14 A. Yes.

15 Q. And again Justin. This number right here
16 [indicates] [REDACTED] whose number is that?

17 A. That belongs to Porsche Hernandez.

18 Q. Now did you go through -- well, let me ask you first
19 of all how do you know that's Porsche's number?

20 A. I asked Jennifer to meet me at the police station
21 and we sat in a room together and she used her speaker
22 phone on her phone and we dialed these phone numbers
23 together; that way I could listen to the conversation
24 when they first answered the phone.

25 Q. Okay. The person that was on the other end of this

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- 1 call did they sound like a female or a male?
- 2 A. Female.
- 3 Q. Young or old?
- 4 A. I don't remember that.
- 5 Q. Then she identified herself as Porsche Hernandez?
- 6 A. Yes.
- 7 Q. And I believe Jennifer testified that is her long-
- 8 time friend.
- 9 A. Yes.
- 10 Q. 860 -- okay, so that's her number. This is a voice
- 11 mail and both these numbers [indicates] are accounted
- 12 for?
- 13 A. Yes.
- 14 Q. And again that's [indicates] her number dialed and
- 15 received; maybe a voice mail?
- 16 A. Yes.
- 17 Q. Or did I skip one? Oh, I'm sorry I'm on the wrong
- 18 line, ■■■-5405 who is that?
- 19 A. That is Sekeena [phonetic] Buckner.
- 20 Q. Okay. Is that another one of Jennifer's friends?
- 21 A. Yes.
- 22 Q. Did you verify that the same way; speaker phone and
- 23 talk to her?
- 24 A. Yes.
- 25 Q. ■■■-9876 that's Justin again?

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- 1 A. Yes.
- 2 Q. This [REDACTED]-9197 whose number is that?
- 3 A. That's Kevin Johnson.
- 4 Q. And Kevin is Jennifer's brother?
- 5 A. Correct.
- 6 Q. And again Kevin and Justin again?
- 7 A. Yes.
- 8 Q. Justin again?
- 9 A. Yes.
- 10 Q. Justin again?
- 11 A. Yes.
- 12 Q. I'm just going to keep going here; all these are
- 13 Justin's. She calls Justin, is that correct?
- 14 A. Yes.
- 15 Q. Now we've got some calls between her and Justin
- 16 right around what time?
- 17 A. That's 23:54 so it would be 11:54 p.m.
- 18 Q. Some of these aren't connected calls correct with a
- 19 duration zero?
- 20 A. Correct.
- 21 Q. Now at 11:54 we have a call to [REDACTED]-3960 whose number
- 22 is that?
- 23 A. That is her mother Patricia Johnson.
- 24 Q. Okay. Mother again, Justin, and now what time are
- 25 we at now?

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- 1 A. We're now at 1:08.
- 2 Q. Okay. Now at 1:08 these are all Justin's calls?
- 3 A. Correct.
- 4 Q. Are any of them picked up?
- 5 A. No.
- 6 Q. Going down we still have Justin calling; again no
- 7 one is answering?
- 8 A. Correct.
- 9 Q. And now we have this call [REDACTED]-9197 who is that?
- 10 A. That's Kevin Johnson, her brother.
- 11 Q. And Kevin again?
- 12 A. Yes.
- 13 Q. No one is answering, is that correct?
- 14 A. Correct.
- 15 Q. And then there is Justin again?
- 16 A. Yes.
- 17 Q. Kevin again?
- 18 A. Yes.
- 19 Q. Kevin, Justin again?
- 20 A. Yes.
- 21 Q. Kevin, some more from Justin, is that right?
- 22 A. Yes.
- 23 Q. Now this number [REDACTED]-5925 who is that?
- 24 A. That belongs to Officer Polite.
- 25 Q. And that would be Officer Polite taking the missing

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- 1 person's report?
- 2 A. Yes.
- 3 Q. And then Justin is calling some more. Officer
- 4 Polite calls again?
- 5 A. Yes.
- 6 Q. Okay. And then we go on in into early morning. And
- 7 Mom calls again. Jennifer, did you have a chance to look
- 8 at her three month phone activity? Was she fairly active
- 9 on the phone?
- 10 A. Yes.
- 11 Q. If you had to estimate how many phone calls do you
- 12 think she made over a three month period?
- 13 A. Probably 2,500 or so.
- 14 Q. Over 2,000 phone calls?
- 15 A. Yes.
- 16 Q. Of those 2,000 phone calls did you see any between
- 17 herself and the defendant's phone?
- 18 A. No.
- 19 Q. Between herself and Will Cobbs' phone?
- 20 A. No.
- 21 Q. Barry Johnson's phone?
- 22 A. No.
- 23 Q. Bryan Robinson's phone?
- 24 A. No.
- 25 Q. Ant or Anthony?

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1 A. No.

2 Q. Anyone that you could associate with the defendant
3 having any communication with Jennifer?

4 A. No.

5 Q. Ms. Tisdale?

6 A. No.

7 MR. OSBORNE: No further questions, Your Honor.

8 THE COURT: We'll take a couple of minutes and move
9 into cross-examination. Let's just stretch for a moment
10 or two. We'll take a two minute break in case anyone
11 else needs to use the restroom or anything. Please go to
12 the jury room for just a couple of minutes.

13 [Whereupon, the jury exits at 12:45 p.m.]

14 THE COURT: We'll take two minutes.

15 [Whereupon, court is in recess from 12:45 p.m. until
16 12:53 p.m.]

17 THE COURT: Let's bring them on.

18 [Whereupon, the jury enters at 12:54 p.m.]

19 THE COURT: Madame Forelady, how is the jury doing?

20 THE FOREPERSON: Fine.

21 THE COURT: Good. Okay. Cross-Examination.

22 MR. MAYER: Thank you, Your Honor.

23

24

25

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1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Aaron Mayer for Mr. McClain, obviously.

4 A. Yes, sir.

5 Q. I'd like to start by just making sure I'm following
6 you on the phone records that your testimony was. Could
7 we pull those back up and maybe just go to the top column
8 which shows the different column headers to it.

9 [Whereupon, the records are shown]

10 Q. Will you just describe what each of the column
11 headers is? I guess you don't need to do each one of
12 them but it says under column F in the Excel spreadsheet
13 it says seizure D. Can you tell us what that is?

14 A. As far as looking at that without having the log
15 that comes from Verizon it's hard to know exactly.

16 Q. What do you mean a log from Verizon?

17 A. We actually get essentially a cheat sheet from
18 Verizon that tells us what each column is.

19 Q. Okay. But you've spent a lot of time with these
20 records though right?

21 A. I did.

22 Q. And is there something that you would have available
23 that you could refer to; this log that you're talking
24 about to tell this jury what these other columns are?

25 A. Not here with me, no.

1 Q. Is there a column in here that says whether the
2 phone rang when a number was dialed?

3 A. No, I don't think so.

4 Q. How about is there a column in here that says how
5 long in duration a phone call was?

6 A. No, unless that is the seizure. I'm not sure
7 without looking at the sheet that comes from Verizon.

8 Q. Okay. Is there a column on here that says if a
9 voice mail greeting was activated or something like this?

10 A. Not without looking at the sheet from Verizon.

11 Q. Okay. Now you did a report based on your analysis
12 of the phone records, correct?

13 A. Yes.

14 Q. And you entered your report as a supplemental report
15 in the police file?

16 A. Yes.

17 Q. Describe for the jury how you kind of distill the
18 information out of this huge cull of data and how you
19 distill that down to your report.

20 A. I just go through the Excel spreadsheet that was
21 just up there on the screen and pick out each number.

22 Q. And when you testified with Mr. Osborne about
23 sitting with Ms. Johnson and going through and calling
24 her call log. Was that information that you obtained
25 from that exercise incorporated into your report about

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1 this?

2 A. Yes.

3 Q. And when you drew up your report about it let me
4 give you the benefit of looking at that report.

5 [Whereupon, defendant's exhibit number 1 is marked
6 for identification only by the court reporter]

7 Q. I'm showing you what has been marked for
8 identification only as defendant's exhibit 1.

9 [Whereupon, the witness is shown exhibit]

10 Q. Do you recognize that?

11 A. I do.

12 Q. Is that the report we were talking about?

13 A. Yes.

14 Q. This report when did you do this?

15 A. When was the report written?

16 Q. Right.

17 A. It should have been sometime around the time of
18 August 4th.

19 Q. I'm reading that as September 4th. Would that be
20 accurate; 9/4/2015?

21 A. I'm seeing August 4th.

22 [Whereupon, Mr. Mayer reviews document]

23 A. That was when it was submitted I believe.

24 Q. Okay. So you wrote a month before and submitted it
25 a month later. So you wrote it in August and submitted

1 it in September, is that right?

2 A. That's what the paper is looking like.

3 Q. I don't think it's a big deal but where do you see

4 the August date or were you just doing that from memory?

5 A. No, it says right here ---

6 Q. --- in your narrative, I understand ---

7 A. --- and Friday August 4th, 2015 at the top.

8 Q. Got you. That's when you met with Ms. Johnson?

9 A. That's where I put it when the work -- the date the

10 work was done.

11 Q. Okay. So this was work that you did over a series

12 of meetings and analyses using the phone records and

13 meetings with Ms. Johnson?

14 A. Yes.

15 Q. Okay. About how many numbers did you -- if you

16 would go ahead and describe for the jury what your

17 process was for distilling down into this lower quantity

18 of phone numbers.

19 A. I identified each number and then tried to identify

20 each number.

21 Q. Okay. But this here [indicates] is about a three

22 page report that you did, right?

23 A. Okay.

24 Q. I mean is that right?

25 A. Yes.

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1 Q. Okay. And it doesn't have 2,500 numbers on it does
2 it?

3 A. No.

4 Q. And so was the way that you, describe for the jury
5 if you would, I don't know so I'm not going to lead you
6 through it, but did you use say hey, this is one number
7 for this person and this is when they called most recent
8 to the alleged incident or how did you? Let me rephrase
9 the question right. So on the Excel spreadsheet the same
10 numbers were listed multiple times.

11 A. Yes.

12 Q. Here on your distilled version if you will they are
13 listed I think just one time for the most part.

14 A. Yes.

15 Q. Okay. How did you decide where and in what order to
16 list those in your report?

17 A. That I don't know.

18 Q. So they're not in chronological order in your
19 report?

20 A. No.

21 Q. Okay. What kind of order are they in, if any?

22 A. I don't believe they are in a particular order. If
23 they would be in chronological order I imagine it would
24 list 2,500 each numbers.

25 Q. Right. And that's why I didn't know if you had just

1 listed the number of calls closest to the incident and
2 gone backwards from there. But it doesn't sound like
3 there was a rhyme or reason as to how you put this report
4 together.

5 A. I can see that the ones I listed at the beginning
6 seem to be the most often called.

7 Q. Okay. So you could have listed these in frequency?

8 A. No, the beginning ones.

9 Q. And in terms of the way that you compiled this
10 report was there any distinction made between a dialed
11 number and a received number or are they all just listed
12 as kind of call log entries?

13 A. No, I was just trying to identify who belonged to
14 what number.

15 Q. Okay. Is the way that you distilled these numbers,
16 and I'm using distilled as you know broken down, the way
17 you did that was that helpful to your investigation?

18 A. Yes, it was.

19 Q. Do you think that having the benefit of seeing how
20 you kind of distilled these down would be helpful for the
21 jury's understanding of your investigation?

22 MR. OSBORNE: Objection, Your Honor. Improper
23 question for this witness.

24 THE COURT: I sustain the objection.

25 Q. [Mr. Mayer] Would it help you to explain your

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1 testimony for the jury to be able to see the way that you
2 distilled these calls down to a call log?

3 A. Are you asking how I identified this number? Is
4 that what you're...

5 Q. I'm asking really if you think it would help explain
6 the way that you did it if the jury could look at what
7 we're looking at?

8 A. I sat in a room with Jennifer and we went through
9 the numbers and identified that were on her call log.
10 And we talked to those who answered the phone and if not
11 I searched as it said here through law enforcement
12 databases and also through social media.

13 Q. Were there some numbers that you called and you got
14 someone you said I don't know who you are; stop calling
15 me?

16 A. There were a few.

17 Q. And in the paperwork that you're looking at can you
18 see any highlighting on there?

19 [Whereupon, the witness reviews document]

20 A. I have there is an X next to one that says left
21 messages. I'm assuming you circled things on here.

22 Q. So with regards to things like you're looking at one
23 that says left messages and it says not identified,
24 right?

25 A. Yes.

1 Q. Okay. Do you know when that call would have came in
2 or went out from Jennifer's phone?

3 A. Not with -- I'd have to look at the phone records to
4 find that information.

5 Q. And what we're actually looking at is heavily
6 blacked out and it's called redacted where all these
7 numbers have been redacted by y'all, is that true?

8 A. Yes.

9 Q. So that's on I guess what's listed as page 52 that
10 first thing. And then how did you -- there is another
11 line there that talks about a debt collector. How did
12 you identify that as a debt collector?

13 A. The number called and I also searched the numbers
14 through like Google.

15 Q. Okay. And so in your methodology for identifying
16 these different numbers they who were called or called in
17 to Ms. Johnson's phone you're saying you did three
18 things, right? I mean before I heard that you sat with
19 Jennifer and asked her. And then you guys actually made
20 phone calls.

21 Q. Yes.

22 Q. And then you also looked at the phone records to try
23 and kind of balance them out and make sure that this call
24 was that number and that sort of thing.

25 A. Yes.

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1 Q. And now you're also saying that you searched the
2 Internet for these numbers?

3 A. Yes, I searched.

4 Q. And you said you just entered it into Google and see
5 what pops up for it?

6 A. Yes. And I would also try calling it myself.

7 Q. And did you do that with all the numbers or just the
8 numbers that seemed problematic?

9 A. The numbers that seemed problematic that I couldn't
10 get through with her.

11 Q. Okay. And so if you Google one of these phone
12 numbers and it popped up and said something like spoofed
13 number is that what you wrote down?

14 A. Probably so.

15 Q. And in these entries where it says stuff like spoof
16 number or scam caller or not identified are you taking
17 that information off of the Internet or from Ms. Johnson
18 or from you calling them or?

19 I guess for a given entry do you know what
20 methodology you used to come up with your
21 characterization of that number in her call log?

22 A. Not for each individual number, no. I can't say how
23 each individual number was identified.

24 Q. Okay. So it could be, and I know we're reaching
25 back a long time ago and I'm not trying to put you on the

1 spot like that at all. I'm just trying to understand
2 what the source was exactly for each of these entries.
3 And so what I'm understanding you're telling us is
4 generally you use those methodologies we talked about but
5 for any specific entry here you don't know what source
6 that came from, is that true?

7 A. Correct.

8 Q. Okay. And I just want to be real clear for the jury
9 that the entries that you are looking at there are not
10 repeat entries like it says Kevin Johnson just one time,
11 right?

12 A. [No response]

13 Q. And you listed each one, each discrete number if you
14 will just once?

15 A. Yes. Like I said if I would have had to put Kevin
16 Johnson in this report each time I would have had to put
17 him there hundreds of times.

18 Q. That would start from Verizon or AT&T.

19 A. Right. There was no need to repeat that.

20 Q. Do us a favor if you would and if you know off hand
21 then that's fine but if you don't feel free to refer to
22 your report. Tell the jury how many quote unquote scam
23 callers you identified in these phone records.

24 [Whereupon, the witness reviews document]

25 A. With a quick look I'm seeing five.

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1 Q. Okay. I looked at it a little longer. If I told
2 you six it would be right in that ballpark right?

3 A. Sure.

4 Q. And then the next category that is distinct from
5 that I think is the unidentified numbers. How many of
6 those are there?

7 A. I believe there are four of those.

8 Q. Okay. So five scams, four unidentified so that's
9 nine total if I counted correct.

10 A. Right.

11 Q. The blue Nokia with the cracked screen that's my
12 client's phone that y'all picked up in search warrant did
13 you test that to see if you could make calls from it?

14 A. I don't know if I tested it to see if it would make
15 phone calls but the screen would not work therefore the
16 phone could not make outgoing calls.

17 Q. Okay. Did you have the occasion to have the phone
18 in your presence when it was receiving a call where you
19 able to test that and see if you could answer it?

20 A. I didn't call it, no.

21 Q. Okay. You mentioned that the descriptions of my
22 client were fairly similar from the college kids as what
23 Ms. Johnson is saying. That's different than what I had
24 and I just want to ask you about that. Do you know
25 approximately how tall my client is?

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1 A. He's about six feet.

2 Q. So if I told you that Charleston County has him
3 listed as six feet one inch would that seem accurate?

4 A. One inch wouldn't make all that much difference to
5 me.

6 Q. Okay. And so isn't it true I mean we were all
7 sitting here when the college kids testified I heard a
8 range of five foot seven inches to five foot nine inches.
9 Is that what you heard in here?

10 A. It is.

11 Q. Now as far as the timing on these videos and things
12 you testified that the times were off on the video that
13 was kind of panning around King Street and Cannon Street.

14 A. Yes.

15 Q. How did you come up with that saying that was off by
16 six minutes?

17 A. I don't believe I said it was off by six minutes.

18 Q. How far did you say it was off by?

19 A. I didn't because I didn't verify it at that time. I
20 just know from experience that video can be off.

21 Q. Okay. And you were saying that by comparison the
22 video at the Stayover Lodge was pretty accurate in terms
23 of like a minute or two of the actual time ---

24 A. --- yes ---

25 Q. --- that it recorded. How did you figure that out?

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1 A. When I get to a business and I look at the video
2 surveillance typically I'll pull out my phone and compare
3 the time on my phone to the time that is on the video
4 surveillance while it is in its live feed motion.

5 A. Okay, that makes sense. And so that wasn't an
6 opportunity that you had when you were pulling the City
7 surveillance camera?

8 A. No.

9 Q. Okay. You mentioned that there wasn't a call in
10 from anybody about this alleged event where my client
11 showed a couple of guys a gun.

12 And you said that's normal in this sort of stuff
13 because they don't like to call the police. Doesn't that
14 seem awful convenient though?

15 MR. OSBORNE: Objection, Your Honor.

16 MR. MAYER: He's the case agent.

17 THE COURT: He said he's the case agent.

18 MR. MAYER: He's the case agent. He can think
19 about it.

20 THE COURT: Think about what?

21 MR. MAYER: Whether it makes sense that there is a
22 non-report.

23 THE COURT: What's the basis for the objection?

24 MR. OSBORNE: It's an improper question.

25 Convenient to what; I think Mr. Mayer needs to elaborate

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1 a little bit.

2 THE COURT: Let me hear that question again and
3 don't answer.

4 MR. MAYER: Judge, I asked him if this theory about
5 people in the area of where he is saying people don't
6 like to call the police if that theory about those people
7 there not liking to call the police is it just
8 convenient; doesn't it just conveniently fit the State's
9 theory of this case.

10 THE COURT: Objection is sustained.

11 Q. [Mr. Mayer] So you never were able to corroborate
12 Ms. Johnson's assertion that there were two other people
13 who were threatened with a gun by my client, is that
14 correct?

15 A. Correct.

16 Q. And speaking of corroboration you never were able to
17 corroborate Ms. Johnson's assertion that my client even
18 possessed a gun isn't that correct?

19 A. We never found a gun.

20 Q. And interviewing my client without his lawyer
21 present you elicited from him that he was taken to his
22 car by a woman named Rose. Did you ever follow up with
23 her?

24 A. No, I didn't.

25 Q. In your direct testimony you purported to

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1 characterize the demeanor of Ms. Johnson and my client
2 that you observed on one of these videos I think maybe
3 you were talking about the video at the Kangaroo.

4 Do you recall which video you were thinking of when
5 you were characterizing Ms. Johnson's kind of demeanor
6 and you said she seemed afraid or something?

7 A. I believe I said she appeared to be uncomfortable.

8 Q. Okay. What video were you thinking of?

9 A. At the Kangaroo.

10 Q. Did you watch that whole video with like the audio
11 and everything?

12 A. I did.

13 Q. But that hasn't been played for the jury yet,
14 correct?

15 A. I believe it has.

16 Q. You think the audio portion has been played?

17 A. There was an audio portion that was played for the
18 jury.

19 Q. Well, let me ask it like this. Is there an audio
20 portion of that video that Ms. Johnson and my client
21 aren't on for the period that elapses when they are right
22 outside the store?

23 A. Yes.

24 Q. Have you listened to that?

25 A. I don't recall if I listened to that. I was paying

1 more attention to where when they were present.

2 Q. Okay. The Kangaroo clerk who was there for about 40
3 or 45 seconds all alone with Ms. Johnson in this probably
4 high crime area did you interview him?

5 A. No.

6 Q. Don't you think it would have been interesting in
7 your investigation to see what he thought the demeanor of
8 these two people was?

9 A. I thought that the video would show enough.

10 Q. Let's see if it does. I'd like to play it for you
11 and get your perspective on it. I believe Detective that
12 I have this cued up to begin at the portion that has not
13 been played yet.

14 So I believe it should be at the beginning at and
15 you correct me if I'm wrong when it starts playing but
16 this should begin at the place where they just approached
17 the counter in their first time at the Kangaroo.

18 [Whereupon, the video plays]

19 [Whereupon, the video ends]

20 Q. I think we've seen that first part, right? But now
21 this begins the part that we didn't watch earlier, is
22 that true?

23 A. Yes.

24 [Whereupon, the video plays]

25 [Whereupon, the video ends]

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1 Q. Now did you hear what they were saying there?

2 A. The last thing I heard was something about a little
3 girl. I couldn't make out much of what they were saying,
4 no.

5 Q. What I heard there I thought was important. It
6 sounded like it said she's about to take all his money
7 tonight, that pretty little girl. That's not what you
8 just heard?

9 A. I'm not sure if that's what he said.

10 Q. Do you want to hear it again?

11 A. I can.

12 MR. OSBORNE: Your Honor, I would object to this.
13 He heard it and he said he didn't hear it. We're running
14 over material we've already covered.

15 THE COURT: What is the relevance of a statement of
16 a third party?

17 MR. MAYER: Judge, this store clerk was in direct
18 proximity ---

19 THE COURT: --- I know where the clerk was. I've
20 seen the video yesterday and today. What is the
21 relevance of the conversation of a third party?

22 MR. MAYER: Well, I feel like it has a direct
23 bearing on whether this was a tense situation that they
24 observed an armed robbery and a kidnapping or whether it
25 wasn't.

1 THE COURT: Any response by the State?

2 MR. OSBORNE: Yes, Your Honor. If he wants to know
3 how that clerk feels the clerk should be brought in here
4 to testify.

5 THE COURT: I sustain the objection as to any
6 replaying of this video.

7 MR. MAYER: I guess the video speaks for itself.

8 Q. [Mr. Mayer] You were here when we heard testimony
9 from Mr. Lawrence, Justin Lawrence about the phone calls,
10 him calling Ms. Johnson where he said the phone just rang
11 and rang, correct?

12 A. Correct.

13 Q. And you were here when Officer Polite said that she
14 tried to call Ms. Johnson's phone as well, correct?

15 A. Yes.

16 Q. And she said it just rang and rang, right?

17 A. I believe so.

18 Q. The type of phone that we're talking about here is
19 an I-phone, which you said you had been familiar with
20 that -- I think it was you or it might have been ---

21 A. --- that was Detective Tuttle.

22 Q. Detective Tuttle used that platform. Are you also
23 familiar with that platform?

24 A. I'm not.

25 Q. Okay. But there is testimony that my client made

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1 Ms. Johnson turn off her I-phone at some point around the
2 Stayover Lodge, is that right?

3 A. I remember that he took her phone; whether or not it
4 was turned off I don't know.

5 Q. Okay. Maybe we can agree that we remember that
6 differently but what I'd like to do is ask you to do a
7 little experiment with me and call an I-phone ---

8 MR. OSBORNE: --- objection, Your Honor.

9 THE COURT: I haven't heard the question.

10 Q. [Mr. Mayer] Ask you to do a little experiment with
11 me and call an I-phone that is on and see how the ringing
12 is for what the person who is calling it hears and then
13 turn that I-phone off and see how the ringing is for the
14 person who is calling that I-phone. Would you be willing
15 to do that experiment with me?

16 MR. OSBORNE: Objection, Your Honor. He's using
17 hearsay to try to corroborate this theory; the hearsay
18 being what other witnesses already testified to.

19 THE COURT: I overrule the objection.

20 MR. MAYER: Thank you, Your Honor.

21 Q. [Mr. Mayer] Would you be willing to do that little
22 experiment with me ---

23 THE COURT: --- you've asked the question and I've
24 overruled the objection. Now you're going to repeat the
25 question. I just sustained the objection.

1 MR. MAYER: Oh I'm sorry; I thought you overruled
2 the objection.

3 THE COURT: I overruled the objection so why are
4 you repeating the question.

5 MR. MAYER: Because I don't think the witness
6 answered.

7 THE COURT: Maybe we can take a break. We'll break
8 for lunch for one hour.

9 [Whereupon, the jury exits at 1:27 p.m.]

10 THE COURT: As I understand it you've asked him to
11 do an experiment and would he be willing to do this
12 experiment. The State objected. I overruled the
13 objection then you restated again would you be willing to
14 do this experiment. I overruled the objection. So I
15 don't need thank you to my ruling. Or once I've ruled
16 then it is the witness's turn; not your turn to talk to
17 the witness more.

18 MR. MAYER: Judge, I apologize. I am so sorry. I
19 thought that I needed to repeat the question.

20 THE COURT: Well, you repeated it several times so
21 maybe you can cue up whatever experiment that is so that
22 when we come back we can go into whatever it was or is.
23 Do you understand what he wants you to do?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Call somebody or something. So we're

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1 going to take one hour.

2 MR. MAYER: Thank you, Your Honor.

3 [Whereupon, court is in recess from 1:30 p.m. until
4 2:40 p.m.]

5 THE COURT: You can bring them back.

6 [Whereupon, the witness retakes the witness stand]

7 [Whereupon, the jury enters at 2:42 p.m.]

8 THE COURT: Thank you. You may continue.

9 MR. MAYER: Thank you, Your Honor.

10 CROSS-EXAMINATION (resumes)

11 BY MR. MAYER:

12 Q. I'm not sure exactly where we left off but you had
13 been talking to us about your investigation in this case.
14 I think we were talking about the phone records. I think
15 we covered those pretty thoroughly and I appreciate that.

16 As far as some of the other aspects of your
17 investigation went did you speak with the college kids
18 who said they met some assailant sort of thing?

19 A. I never did.

20 Q. Okay. Do you know as the case agent supervising the
21 investigation whether you or your colleagues attempted to
22 have any of those college kids identify Mr. McClain?

23 A. We did.

24 Q. And how many of those college kids did you ask to
25 try to identify Mr. McClain?

1 A. I believe three.

2 Q. Okay. And as part of that process y'all would have
3 actually shown those college kids a photograph of Mr.
4 McClain and said something along the lines of is this the
5 guy who did it?

6 A. Yes, we would have shown the lineup.

7 Q. Okay. And none of them said that that was him,
8 correct?

9 A. That's correct.

10 Q. One of the things that we heard about previously was
11 a claim by Ms. Johnson that my client had said some
12 statements to her while he was in the car with her about
13 having been in prison before.

14 And I'm wondering was that a statement that was new
15 here in court? Is that something that is in your records
16 from previous discussions with her?

17 A. I knew about that; whether or not it is documented
18 in the report I'm not sure.

19 Q. You would have documented somewhere interactions
20 with her and important facts and those sort of things,
21 right?

22 A. I didn't speak with her in her initial statement. I
23 basically followed up her for her phone records.

24 Q. Okay. But as the case agent you're in charge of
25 kind of the investigation in this matter, right?

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1 A. Yes.

2 Q. And you have full access to the investigative file.

3 A. Yes.

4 Q. So what I'd like you to do is take a minute if you
5 would or as much time as you need and find for us where
6 that was previously said if you would.

7 [Whereupon, the witness reviews documents]

8 A. I'm sorry; there are about 80 pages here.

9 Q. Sorry to put you on the spot.

10 [Whereupon, the witness continues to review
11 documents]

12 A. I'm not seeing where it is documented on paper.

13 Q. Okay. Do you know the effect as a police officer
14 right do you know the effects of crack cocaine usage on a
15 person's mind?

16 A. Fairly familiar, yes.

17 Q. And what is your familiarity based on?

18 A. On time on the street in patrol.

19 Q. Okay. And do you understand that crack cocaine, use
20 of crack cocaine can cause blackouts for somebody that
21 uses it like excessive alcohol use?

22 A. I was not aware of that for crack cocaine, no.

23 Q. You're aware of that for excessive alcohol use?

24 A. Yes.

25 Q. You think it's fair to interrogate someone on events

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1 that occurred during one of these blackout times?

2 MR. OSBORNE: Objection, Your Honor, relevance.

3 THE COURT: That objection is sustained.

4 Q. [Mr. Mayer] Mr. McClain explained to you during your
5 interview with him that he had smoked crack that night
6 before didn't he?

7 A. Yes.

8 Q. And he explained to you that he had drunk some
9 pretty substantial amount of alcohol, isn't that true?

10 A. Yes.

11 Q. And yet you pressed on and pressed on asking for
12 details of things that he said he didn't remember, is
13 that correct?

14 A. Yes.

15 MR. MAYER: Court's indulgence.

16 [Whereupon, Mr. Mayer confers with his client]

17 Q. [Mr. Mayer] Detective, I don't remember if you
18 recited Anthony's -- the other Anthony's phone number on
19 direct. Do you have the other Anthony's phone number
20 handy?

21 A. I do have it in here. If you will give me another
22 moment I can find it for you.

23 Q. Thank you. Please.

24 [Whereupon, the witness reviews documents]

25 A. The other Anthony's phone number would have been

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1 [REDACTED] .

2 Q. Thank you, Detective. Nothing further.

3 THE COURT: Yes, sir.

4 MR. OSBORNE: Thank you, Your Honor.

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State v Anthony McClain
Jason Jarrell-Redirect Examination by Mr. Osborne
March 15, 2017

1 REDIRECT EXAMINATION

2 BY MR. OSBORNE:

3 Q. Detective Jarrell, how many years have you been a
4 robbery detective again -- and violent crimes detective?

5 A. Robbery and violent crime combined about two and
6 half years.

7 Q. And during that time I guess you've interviewed many
8 suspects concerning various crimes?

9 A. Yes.

10 Q. Serious crimes?

11 A. Yes.

12 Q. Violent crimes?

13 A. Yes.

14 Q. Is it uncommon for a defendant's story to evolve the
15 more evidence you present to them?

16 A. Yes ---

17 MR. MAYER: --- objection.

18 THE COURT: I missed the question.

19 Q. [Mr. Osborne] The question is as a robbery detective
20 through your time have you interrogated people and if so
21 is it common for those individual's story to evolve with
22 the more evidence that you present to them.

23 THE COURT: The nature of your objection.

24 MR. MAYER: I believe he's asking this officer to
25 testify on irrelevant material that is outside the scope

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1 of this investigation.

2 THE COURT: I overrule the objection.

3 A. Yes.

4 Q. [Mr. Osborne] All right. Mr. Mayer asked you about
5 did Jennifer mention the comment that the defendant said
6 that he had done time before during the interviews with
7 the police, correct?

8 A. Yes.

9 Q. And you looked through the reports and you didn't
10 find it, correct?

11 A. Correct.

12 Q. Now the first interview that was made with Jennifer
13 was made with Detective Ambrose [phonetic] is that
14 correct?

15 A. Yes.

16 Q. You didn't write Detective Ambrose's [phonetic]
17 report did you?

18 A. I did not.

19 Q. And you never went back and transcribed her report
20 did you?

21 A. No.

22 Q. Would it help refresh your memory regarding what was
23 said during that interview if I were to show you a
24 transcription of that interview?

25 A. Yes.

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1 MR. OSBORNE: Your Honor, may I approach?

2 THE COURT: Yes.

3 Q. [Mr. Osborne] I'm showing you State's exhibit number
4 48 for I.D. purposes alone. Just take a look at the
5 first couple of lines there.

6 [Whereupon, the witness is shown exhibit]

7 A. He said he worked at Boeing. He said he had a wife.
8 He said he had been imprisoned ---

9 MR. MAYER: --- objection, Judge. That is not in
10 evidence.

11 MR. OSBORNE: I didn't ask...

12 MR. MAYER: I'd like to see what he is reading off
13 his police report.

14 THE COURT: Yes, sir.

15 Q. [Mr. Osborne] Don't read it, Detective. Does that
16 document help refresh your recollection?

17 A. Yes.

18 Q. Okay. I'll take it back. Now do you recall
19 Jennifer making a comment to Detective Ambrose [phonetic]
20 on the night of the incident regarding a statement that
21 the defendant made to her about being incarcerated?

22 A. Yes.

23 Q. And what was that statement?

24 A. That he had been in prison for about 21 years.

25 Q. And she made that statement to the detective on the

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1 night of the incident?

2 A. Yes.

3 Q. Another thing Mr. Mayer asked there were 2,500 calls
4 and I just want to make sure the jury understands.

5 That's not over 2,000 numbers, that's over 2,000 calls
6 placed, correct?

7 A. Correct.

8 Q. Okay. And that would have been from Jennifer's
9 phone, correct?

10 A. Yes.

11 Q. And Mr. Mayer asked about phone activity on Mr.
12 McClain's call log. And I think you testified to this
13 but I want to make sure that we understand correctly.
14 Did his activity on his phone log or call detail records
15 appear pretty active up until the date of May the 27th?

16 A. Yes.

17 Q. And after May the 27th did the phone activity
18 decrease substantially?

19 A. Yes.

20 Q. But that would leave about two months in which his
21 phone appeared to work well, is that correct?

22 A. Yes.

23 Q. And again during that two month period did you see
24 any phone calls to Jennifer?

25 A. No.

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1 Q. And on her phone records did you see any phone calls
2 from her to the defendant?

3 A. No ---

4 Q. --- during that same time period. And I do want to
5 illustrate the other point that he made. The defendant
6 told you on the day of the incident that he spoke to
7 Jennifer two times, is that correct?

8 A. Correct.

9 Q. And you identified all of the phone calls for all
10 the individuals that she spoke to on that day, is that
11 correct?

12 A. Yes.

13 Q. And they were just family and friends?

14 A. Yes.

15 Q. None were identified -- or none were unidentified?

16 A. Correct.

17 Q. But you did go back and you looked at every single
18 phone call that she made over a three month period, is
19 that right?

20 A. Yes.

21 Q. And over all those phone calls there were only five
22 or six that you were unsure of?

23 A. Yes.

24 Q. And of those five or six did you feel like you had
25 definitively eliminated them?

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- 1 A. I do.
- 2 Q. And why was that?
- 3 A. A lot were people from out of town that were from
4 places that she had lived previously. And the times and
5 the amount of conversation, meaning the length of the
6 conversation, just doesn't match for someone who is in a
7 relationship where they talk two or three times a week.
- 8 Q. So the five or six phone calls they were isolated
9 calls?
- 10 A. Yes.
- 11 Q. So they weren't repetitive calls?
- 12 A. Correct.
- 13 Q. One or two times per week over three months.
- 14 A. Correct.
- 15 Q. Just go over the time, and I think you testified to
16 this but it got a little confusing during cross. The
17 time that the pointing and presenting individuals
18 reported a call, I think that was Hannah Lambert that was
19 at 12:47?
- 20 A. That's correct.
- 21 Q. And at 12:58 we saw the image of the car coming
22 through King and Cannon?
- 23 A. Correct.
- 24 Q. That is an unverified time though, correct?
- 25 A. It is.

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1 Q. 12:50 verified time we have Jennifer's car coming
2 into Exxon, is that correct?
3 A. Yes.
4 Q. So that would have been about three minutes after
5 Morris and Coming, correct?
6 A. Yes.
7 Q. Rivers Mart; that's about 1:30 verified time?
8 A. Yes.
9 Q. Stayover Lodge; 1:37 verified time?
10 A. Yes.
11 Q. And Kangaroo; 2:05 verified time?
12 A. Yes.
13 Q. Now, I do want to talk about the video that he
14 played. Let's go ahead and assume that comment was made.
15 That pretty girl gonna take all his money. Who was doing
16 the taking of the money that night?
17 A. Mr. McClain.
18 Q. And how do you know that?
19 A. It is on video of Jennifer punching in the numbers
20 at the A-T-M but then him taking the money from the A-T-
21 M.
22 Q. And whose A-T-M card was it?
23 A. It was Jennifer's mother.
24 Q. Okay. So this cashier who was laughing it up and
25 shaking hands with the defendant when he came in it was

State v Anthony McClain
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March 15, 2017

1 his perception that Jennifer was using his money, is that
2 correct?

3 A. Yes.

4 Q. I mean that's what we saw. And he was laughing it
5 up, the cashier and him, with another individual that the
6 defendant bought a beer for, right?

7 A. Yes.

8 Q. With Jennifer's money?

9 A. Yes.

10 Q. So their perception was that Jennifer was taking
11 from him, correct?

12 A. Yes.

13 Q. And that's wrong?

14 A. Correct.

15 MR. OSBORNE: No further questions.

16 THE COURT: Recross?
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1 RECROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. If this whole theory were true then the gentleman
4 who testified before this jury named Will Cobbs who was
5 riding with my client that night be just as guilty but
6 y'all didn't charge him did you?

7 MR. OSBORNE: Objection, Your Honor. That's beyond
8 the scope.

9 THE COURT: The objection is sustained.

10 MR. MAYER: No further questions.

11 THE COURT: You may step down.

12 [Whereupon, the witness is excused and exits the
13 witness stand]

14 THE COURT: You may call your next witness.

15 MR. OSBORNE: Your Honor, may we approach briefly?

16 THE COURT: Yes.

17 [Whereupon, an off the record bench conference is
18 held]

19 THE COURT: You may proceed.

State v Anthony McClain
Justin Lawrence-Direct Examination by Mr. Osborne
March 15, 2017

1 MR. OSBORNE: Your Honor, we would recall Justin
2 Lawrence.

3 MR. MAYER: I object.

4 MR. OSBORNE: We'd ask to recall him under Section
5 611(d) to reexamine him regarding new information that
6 was brought out during cross.

7 THE COURT: And the basis for the objection?

8 MR. MAYER: There is no new information, Judge.
9 And the jury heard what I heard and what Mr. Osborne
10 heard. Mr. Osborne doesn't have a right to coach his
11 witness more and then put him back up. He's already
12 testified.

13 THE COURT: Rule 611 provides a witness may be
14 reexamined in the discretion of the court and may be
15 examined on any new matter brought out on cross-
16 examination. The objection is overruled.

17 [Whereupon, Mr. Lawrence comes forward]

18 [Whereupon, the witness is duly sworn by the Clerk
19 of Court]

20 THE COURT: And for the record if you will state
21 your first and last name and spell out your last name,
22 please.

23 THE WITNESS: Justin Lawrence, L-A-W-R-E-N-C-E.

24 - - - - -

25 JUSTIN LAWRENCE,

State v Anthony McClain
Justin Lawrence-Direct Examination by Mr. Osborne
March 15, 2017

1 Having been first duly sworn,
2 Was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. OSBORNE:

5 Q. Thanks for coming back Mr. Lawrence. I'll make it
6 brief; I know you've got to go to work. On the night of
7 the incident when Jennifer did not show up at the Silver
8 Dollar you had testified earlier you called her numerous
9 times.

10 A. Yes, sir.

11 Q. Do you recall if those phone calls rang and rang and
12 went to voice mail or whether they went directly to voice
13 mail?

14 A. Yes. In the beginning they rang and rang and rang
15 and then eventually they went to voice mail.

16 Q. Directly to voice mail?

17 A. Directly to voice mail.

18 Q. Did you take notes to say this call at 2:20 rang and
19 this call at 2:15 ---

20 A. --- no sir. This incident happened two years ago
21 but I remember the specifics.

22 Q. So some of the first calls rang and some of the
23 latter calls went to voice mail?

24 A. Yes.

25 MR. OSBORNE: No further questions.

State v Anthony McClain
Justin Lawrence-Direct Examination by Mr. Osborne
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1 THE COURT: Cross-Examination?

2 MR. MAYER: No questions, Judge.

3 THE COURT: Thank you, sir.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 MR. OSBORNE: Next witness.

7 MR. OSBORNE: The State rests, Your Honor.

8 THE COURT: Ladies and gentlemen that is the
9 State's case. We need to take up a couple of matters
10 prior to proceeding if you will go to the jury room.
11 Please do not discuss the case.

12 [Whereupon, the jury exits at 3:02 p.m.]

13 THE COURT: Any matters of law?
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State v Anthony McClain
Motion for Directed Verdict-Remarks by Mr. Mayer
March 15, 2017

1 MOTION FOR DIRECTED VERDICT

2 MR. MAYER: Judge, we move for a directed verdict
3 on the pointing and presenting. This is the allegation
4 that my client had disturbed some college kids coming
5 from the Silver Dollar. There has been testimony from
6 those college kids about the alleged assailant being
7 somewhere in a completely different area code in terms of
8 height, five seven to five nine. My client is booked in
9 to Charleston County Detention Center at six foot one
10 inch.

11 Those college students testified pretty unanimously
12 that their assailant was in the mid 20's range or between
13 22 and 35 I believe was the range that they've said.
14 They testified that variously that it was that person
15 came there in no car or a red car or a silver car. They
16 testified that they were impaired to varying degrees.
17 They had all been drinking and their impairment levels
18 varied.

19 The clothes descriptions don't match to what my
20 client was wearing that night, Judge. The hair
21 description doesn't match in addition to their putting
22 their assailant between 20 and 30 years younger than my
23 client. There is testimony on this issue from Mr. Cobbs
24 who said that he was with my client and my client at no
25 point presented any sort of weapon at college students.

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March 15, 2017

1 There was not even a scintilla of evidence, Judge to make
2 an identification that my client was the assailant, the
3 alleged assailant of these college students. It's not
4 only is there ---

5 THE COURT: --- he admits to being there didn't he?

6 MR. MAYER: I'm sorry?

7 THE COURT: Didn't he admit to being there in the
8 interview at the time and place?

9 MR. MAYER: He admitted to being around through
10 there, Judge.

11 THE COURT: And said that he asked to take a
12 picture with the girls. That's corroborated by some of
13 the State's witnesses. His barber puts him there at the
14 time and place. And so it's a jury issue on
15 circumstantial and direct evidence. It can be considered
16 by the jury and is a jury issue as to whether or not he
17 is guilty of that offense. And I deny the motion.

18 MR. MAYER: Understood, Judge. And then we would
19 just renew our other previous motion for a mistrial on
20 the previously stated bases, Judge.

21 THE COURT: Any additional argument or response on
22 that issue?

23 MR. OSBORNE: No, Your Honor.

24 THE COURT: I think the court appropriately ruled.
25 It's unfortunate that the witness who was aligned with

State v Anthony McClain
Motion for Directed Verdict-Remarks by Mr. Mayer
March 15, 2017

1 the defendant would disregard the State's instruction to
2 not get into the defendant's record. And he did so
3 anyway and the defendant made that appropriate testimony
4 through his use of his record to intimidate the victim,
5 or the alleged victim as an issue; I don't know whether
6 it is true or not. Once again, it's a matter for the
7 jury but I think there is proper evidence whereas in a
8 world of perfect trials you wouldn't have any of that to
9 occur.

10 We don't have -- we're not in a perfect world and we
11 don't have perfect trials. We just deal with what we're
12 confronted with and as a judgment call you make a good
13 argument for a directed verdict. And the State made an
14 appropriate response. On balance I do not believe that
15 evidence prejudices the defendant's right to a fair trial
16 particularly considering that it would have come in any
17 way through the victim, the alleged victim.

18 In addition to that the excuses given by the
19 defendant as to why he is not guilty because he was in
20 the area to buy drugs get his drugs; he has placed his
21 own character into evidence as part of his giving various
22 conflicting stories to law enforcement. So I think -- I
23 had to deal with the issue at the point in time when it
24 was raised. The State proffered the victim's testimony
25 that supported the reason why this trial would not have

State v Anthony McClain
Motion for Directed Verdict-Remarks by Mr. Mayer
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1 been proper. And it is further supported by the
2 defendant's using his own criminal activity as a defense;
3 basically as a defense to the charges. So I stick by my
4 ruling. All right, what else?

5 MR. OSBORNE: Nothing from the State, Your Honor.

6 THE COURT: The State has rested. It is time now
7 for the defense. I need to swear Mr. McClain one more
8 time and get into with him his right to testify or not to
9 testify.

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FIFTH AMENDMENT RIGHTS

[Whereupon, the witness is duly sworn by the Clerk
of Court]

THE COURT: Mr. McClain, how you doing this day?

MR. MCCLAIN: I'm doing good.

THE COURT: We've now reached the time in this
trial where you have the right to present your defense.
And I'm going to explain to you some of your
constitutional rights now. If anything I say you don't
understand I'll be happy to explain it to you. If you
have any questions I'll be happy to answer them.

As I've indicated we've reached the stage of the
trial where you have the right to present your defense.
Now you do have the right to proclaim the protections
given to you by the Fifth Amendment to the Constitution
of the United States. Now this amendment states in part
that no person can be compelled in any criminal case to
be a witness against himself.

This means that you cannot be required to testify in
this case. You do however have the right to testify if
you want to. No one can make you testify. Whether or
not you testify is a personal right and no one can waive
that right except you. Now if you decide to testify you
will be subject to the same rules that govern other
witnesses and you may be examined and cross-examined on

State v Anthony McClain
Fifth Amendment Rights
March 15, 2017

1 any relevant issue in this case. In addition if you have
2 convictions involving dishonesty or false statements or
3 if the convictions for crimes punishable for more than
4 one year in prison and I determine that the probative
5 value of admitting this evidence outweighs it's
6 prejudicial effect to you the Solicitor then will be able
7 to introduce your record to attack your creditability.

8 Now if you decide to testify this decision on your
9 part must be a freely, voluntarily and intelligent
10 decision made by you with the knowledge of the
11 protections given to you by the Fifth Amendment and the
12 consequences of your decision to testify. Now if you
13 decide you are not going to testify I'll instruct the
14 jurors that they cannot give the fact that you did not
15 testify any consideration whatsoever and that there is to
16 be absolutely no prejudice to you because you did not
17 testify.

18 Now it is left entirely up to you whether or not you
19 testify. You may talk to your attorney, Mr. Mayer some
20 more, your family; I see Ms. Tisdale is back there,
21 friends or anyone else you would like to talk to. But
22 the final decision will be left entirely up to you. Do
23 you understand what I've explained?

24 MR. MCCLAIN: Yes, sir.

25 THE COURT: Do you have any questions about what I

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1 have explained?

2 MR. MCCLAIN: Not at this second but I may have one
3 in a minute or two.

4 THE COURT: Have you talked to Mr. Mayer about
5 whether or not you are going to take that stand over
6 there [indicates]?

7 MR. MCCLAIN: I want to discuss that with him along
8 with my family.

9 THE COURT: Okay. We'll take a break. How many
10 minutes you need?

11 MR. MAYER: Five minutes, ten minutes at most,
12 Judge.

13 THE COURT: All right. How are you going to get to
14 Ms. Tisdale back there? Is she part of who you want to
15 talk to or just the lawyer?

16 MR. MCCLAIN: Ms. Tisdale and my sister-in-law,
17 Elvira and my lawyer.

18 THE COURT: So they will work with you on that.

19 MR. MAYER: Thank you, Judge.

20 THE COURT: So we'll take ten minutes. Now aside
21 from this -- aside from his testifying or not testifying
22 do you have other witnesses to present?

23 MR. MAYER: No, Your Honor.

24 THE COURT: So we'll deal with him and testify or
25 if he doesn't testify we will be at the end so we will be

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1 ready to press on with arguments. All right.

2 [Whereupon, court is in recess from 3:12 p.m. until
3 3:41 p.m.]

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1 THE COURT: How about it Mr. McClain? Have you
2 made a decision?

3 MR. MAYER: Judge, he has.

4 THE COURT: All right. What is it?

5 MR. MAYER: Judge, he wants to take responsibility
6 for this. He wants to enter an open plea to the court.
7 I have the sentencing sheets here for him to approve and
8 we're going to pass them to the Clerk for your
9 consideration. I'd like to then just have maybe a couple
10 more minutes with him to prepare for the court's
11 questions if we could.

12 THE COURT: All right. You've heard my questions
13 of a defendant who pled guilty before?

14 MR. MAYER: I can imagine what the tenor of those
15 questions might be.

16 THE COURT: Okay. We'll take some more minutes.

17 MR. MAYER: Thank you, Your Honor.

18 [Whereupon, court takes a brief recess]

19 THE COURT: Mr. Solicitor, where do we stand?

20 MR. OSBORNE: The sentencing sheets have been
21 given. I'm not sure if they have been signed yet or not.

22 THE COURT: Mr. Mayer?

23 MR. MAYER: They have been signed, Your Honor. I
24 gave them to Mr. Don Michel.

25 CLERK OF COURT: They're on the counter.

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1	GUILTY PLEA
2	THE COURT: Mr. McClain, if you could come stand in
3	front of me. We need to talk.
4	[Whereupon, the defendant comes forward]
5	THE COURT: So Mr. McClain, you've decided you want
6	to end the trial?
7	MR. MCCLAIN: Yes, sir.
8	THE COURT: And you want to plead guilty?
9	MR. MCCLAIN: Yes, sir.
10	THE COURT: And you want to plead guilty to
11	everything that you're charged with?
12	MR. MCCLAIN: Yes, sir.
13	THE COURT: And are you guilty of all these things?
14	MR. MCCLAIN: Yes, sir.
15	THE COURT: And do you believe that if we were to
16	continue with the jury trial the jury would find you
17	guilty of all those charges?
18	MR. MCCLAIN: Yes, sir.
19	THE COURT: And Mr. Mayer you've talked with him
20	enough on this issue?
21	MR. MAYER: I have, Judge.
22	THE COURT: And do you agree with his decision to
23	plead guilty?
24	MR. MAYER: I do, Judge.
25	THE COURT: Do you also agree that if he were to

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1 continue with the trial he most likely would be found
2 guilty?

3 MR. MAYER: I would think so, Judge.

4 THE COURT: All right. Now on the issue of whether
5 or not he is subject to life without the possibility of
6 parole is that still part of the plea or not part of the
7 plea?

8 MR. OSBORNE: We're going to withdraw that, Your
9 Honor.

10 THE COURT: All right. So that's no longer a
11 consideration, is that right?

12 MR. MAYER: Yes, Judge.

13 THE COURT: Okay. Mr. McClain, of course you have
14 a right to continue with the trial. You're still
15 presumed to be not guilty of these charges. And if we
16 were to finish the trial the jurors would be instructed
17 that they cannot find you guilty unless each and every
18 one of them is convinced beyond a reasonable doubt that
19 you're guilty before they could find you guilty;
20 otherwise they would have to find you not guilty, do you
21 understand?

22 MR. MCCLAIN: Yes, sir.

23 THE COURT: Now we've just gone through your right
24 to testify or not to testify. And if we were to proceed
25 with the trial and you didn't testify the jury would be

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1 instructed that they couldn't consider that in their
2 deliberations, do you understand?

3 MR. MCCLAIN: Yes, sir.

4 THE COURT: Now when you plead guilty you give up a
5 number of important constitutional rights including the
6 right to have the jury decide the case. You give up your
7 right to remain silent, do you understand?

8 MR. MCCLAIN: Yes, sir.

9 THE COURT: And your right to present any defense
10 to these charges.

11 MR. MCCLAIN: Yes, sir.

12 THE COURT: Tell me what you did that makes you
13 guilty?

14 MR. MCCLAIN: First and foremost, Your Honor ---

15 THE COURT: --- as I say you give up your right to
16 remain silent so that clears that. So next, tell me what
17 did you do that makes you guilty?

18 MR. MCCLAIN: Your Honor, first and foremost I'm
19 guilty because I shouldn't have been at the wrong place
20 at the wrong time.

21 THE COURT: This is going to take us a good little
22 while so we're going to get to the reasons, excuses and
23 everything else. I just need to know right now what did
24 you do that made you guilty?

25 MR. MCCLAIN: I took advantage of Jennifer Johnson.

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1 THE COURT: Okay. In what way?

2 MR. MCCLAIN: I forced her to do something she
3 didn't want to do.

4 THE COURT: What did you force her to do?

5 MR. MCCLAIN: I forced her to take me to North
6 Charleston.

7 THE COURT: And pulled a gun on her?

8 MR. MCCLAIN: Yes, Your Honor.

9 THE COURT: And gave her an alternative that if you
10 don't have any money its money or sex. Did you do that?
11 Not that you meant to go through with it; I don't know
12 what was on your mind. But was that -- did you --

13 MR. MCCLAIN: Yes, Your Honor.

14 THE COURT: All right. Now as I explained to you
15 yesterday these charges some of them are pretty serious;
16 all of them are serious charges. But kidnapping carries
17 up to 30 years in prison. It is classified as a most
18 serious offense. Armed robbery carries a minimum of ten
19 years and a maximum of 30 years; that's a most serious
20 offense. And in South Carolina if you are convicted of
21 two most serious offenses on different occasions, not the
22 two at the same time, but two on two occasions then
23 that's when that life without the possibility of parole
24 kicks in. Do you understand that?

25 MR. MCCLAIN: Yes, sir.

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1 THE COURT: So as it relates to these crimes then
2 if you should ever commit any more most serious offenses
3 then you can be sentenced to life without the possibility
4 of parole.

5 MR. MCCLAIN: You don't have to worry about that.

6 THE COURT: Now the pointing and presenting and
7 possession of a weapon during a violent crime each
8 carries up to five years.

9 MR. MCCLAIN: Yes, sir.

10 THE COURT: Has anyone promised you anything to get
11 you to plead guilty?

12 MR. MCCLAIN: No, sir.

13 THE COURT: Now Mr. Mayer has been here working
14 long and hard on your behalf. Are you satisfied with his
15 representation?

16 MR. MCCLAIN: Yes, sir.

17 THE COURT: Has he done everything that you think
18 he could or should have done to represent you and help
19 you out in this case?

20 MR. MCCLAIN: Yes, sir.

21 THE COURT: Can you figure out anything else that
22 he should do or could have done?

23 MR. MCCLAIN: I mean I'm thinking anything. I'll
24 be honest -- but I can't say that he failed me.

25 THE COURT: Okay. And with regard to law

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1 enforcement do you believe that you have mistreated by
2 anyone with law enforcement, the Solicitor's office or
3 anyone in the court system?

4 MR. MCCLAIN: No, sir.

5 THE COURT: Other than interrogating you for a long
6 time and asking you questions you don't want to answer.

7 MR. MCCLAIN: No, sir.

8 THE COURT: You understand you do have a right to
9 appeal any guilty plea or sentence but you have to do
10 that within ten days.

11 MR. MCCLAIN: Yes, sir.

12 THE COURT: And whether you would be successful in
13 such an appeal who knows because I try to cover all the
14 bases to make sure that you are informed of your right to
15 have a jury trial or continue with it and no one has
16 promised you anything to make you plead guilty, that this
17 decision is a freely, voluntary decision that you are
18 making, is that right?

19 MR. MCCLAIN: Yes, sir.

20 THE COURT: So understanding the nature of the
21 charge and the possible punishment how do you plead to
22 each and every one of these charges?

23 MR. MCCLAIN: Guilty, Your Honor.

24 THE COURT: All right. So I'm going to bring the
25 jury in for them to hear the sentencing part. I've heard

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1 all the facts. There is obviously a factual basis, it
2 seems clear to me that you are guilty, that it seemed to
3 me like your debate with the police officers about
4 whether you're guilty of this or that may be your view of
5 the law or lack of understanding as to what equals
6 committing a certain crime. Kidnapping sometimes is hard
7 for a layperson to wrap their arms around as to what is
8 kidnapping. You used to have to tie people to a chair,
9 tie them up and throw them in the trunk of the car but
10 now it's by definition it's different. And what you did
11 equals a kidnapping.

12 Likewise with armed robbery the taking of property
13 from someone under force while armed with a weapon is
14 armed robbery; taking anything of value. And with the
15 testimony of everyone who had taken you from the barber
16 shop to downtown here to getting upset and having the gun
17 on those kids and young people and going around the
18 corner and abducting this young lady, Ms. Johnson. All
19 the evidence is there that shows that you are guilty of
20 those crimes under the law.

21 And possession of a weapon while committing a
22 violent crime of kidnapping and armed robbery the
23 elements are there for that as well. So I accept the
24 guilty plea. After the jurors have sat for three days
25 listening to something I like for them to know the end of

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1 it so just bring them out and let them participate in the
2 rest of this. You may have a seat.

3 [Whereupon, the defendant is seated]
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1 [Whereupon, the jury enters at 3:56 p.m.]

2 THE COURT: Madame Forelady?

3 THE FOREPERSON: Yes?

4 THE COURT: How's the jury doing?

5 THE FOREPERSON: They're hanging in but we're
6 wilting.

7 THE COURT: Wilting?

8 THE FOREPERSON: Yes.

9 THE COURT: Are y'all ready to wrap this case up?
10 Are y'all ready to get it over with? Is anyone enjoying
11 it? Jury duty is -- most times jurors don't want to be
12 on jury duty. But through the process of sitting and
13 listening to a case they learn so much about in either
14 what is going on in the community or some line of work or
15 profession that they didn't know anything about. And
16 this has been an interesting case watching all the videos
17 and police interrogation. I know juror number two on the
18 front row he's been pretty good with all this.

19 But guess what has happened in this case? The
20 defendant has decided to plead guilty. And I have
21 accepted his guilty plea and we are in the process of
22 sentencing. How many of you think he made the right
23 decision to plead guilty?

24 [Whereupon, jurors raise their hands]

25 THE COURT: One, two, three, four five. And who

1 thinks he made a bad decision to plead guilty? You think
2 he made a bad decision?

3 UNIDENTIFIED JUROR: Well, I...

4 THE COURT: You don't know whether he did or he
5 didn't. He was facing the possibility of life without
6 the possibility of parole based on his prior record. Of
7 course I had to evaluate that to determine whether it
8 applied. But he has pled guilty and he has admitted to
9 committing the crime. So you never know what jurors may
10 do. You all might have been back there eight, ten or
11 twelve hours.

12 The last jury I had in this courtroom in a trial how
13 many days was that? Four days; and they didn't come to a
14 decision so this is a guilty plea and this case is over
15 and we are pressing on with sentencing. You have no role
16 in that but most times jurors -- and of course these
17 hands that are popping up that's preliminary. They
18 haven't deliberated yet because a part of deliberation is
19 that do not hesitate to change your mind if you become
20 convinced that your decision is the wrong decision after
21 listening to other juror's opinion.

22 And that's what the whole deliberation -- and
23 actually you're supposed to go into deliberations with
24 the defendant being presumed not guilty. He's not guilty
25 until every juror says he's guilty.

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1 [Whereupon, a juror raises his hand]

2 THE COURT: Yes, sir?

3 UNIDENTIFIED JUROR: Did he plead guilty to all
4 counts?

5 THE COURT: Yes, sir.

6 UNIDENTIFIED JUROR: All counts?

7 THE COURT: Yes sir; each and every count. And
8 we're going to press on with sentencing. We'll hear from
9 the State.

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SENTENCING

MR. OSBORNE: Thank you, Your Honor. I will start by going through Mr. McClain's criminal history.

THE COURT: All right.

MR. OSBORNE: In 1986, this is a New York conviction, disorderly conduct; in 1987 tampering with a witness that related to a robbery charge robbery in the second degree. He received a one year sentence for that. He got out and in 1988 he was convicted for petty larceny. Apparently he moved to South Carolina in 1989 because he had a conviction for disorderly conduct in that year. In 1990 he had a burglary third conviction and he received a five year sentence suspended to six months.

When he got out in 1992 a grand larceny conviction; ten years suspended to five years and two years probation. It appears as though shortly after he got out for that charge he picked up an armed robbery and a carjacking. He pled in Federal Court to those charges. It was aiding and abetting a carjacking, aiding and abetting and interference with commerce by threats or violence, a felon in possession of a firearm, and aiding and abetting and the use and carrying of a firearm during and in relation to a crime of violence.

THE COURT: I'll just say for the benefit of

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1 everyone here a carjacking is a most serious offense
2 under state law?

3 MR. OSBORNE: It is, Your Honor.

4 THE COURT: So if he's convicted of armed robbery
5 or kidnapping then automatically he gets life without the
6 possibility of parole. So he said that he would plead
7 guilty on all charges. If he were found guilty of any of
8 those charges and I determine that that federal
9 carjacking amounts to the same as a state carjacking then
10 automatically he is facing life without the possibility
11 of parole.

12 So he's had a lot weighing on his mind these past
13 few days trying to figure out how far he is going to take
14 this and whether he is going to plead guilty or face that
15 possible consequence if you all say he's guilty. The
16 fact that he has pled guilty is no longer the sentence
17 because the State has decided -- he's pled guilty of all
18 charges but the State is no longer contending that the
19 federal carjacking automatically makes it mandatory for
20 him to get life without the possibility of parole. So he
21 got that out of the deal. Go ahead.

22 MR. OSBORNE: I will just say in regards to that
23 incident it was actually two separate incidents. He
24 along with other co-defendants carjacked an individual.
25 They then kicked him out of the car and they took the

1 car. This was in Orangeburg County and went to Bamberg
2 County. They then went to Bamberg County robbed a
3 business, came back to Orangeburg County and then were
4 stopped.

5 THE COURT: Came back to Orangeburg County and
6 what?

7 MR. OSBORNE: And then were stopped by the police
8 and a gun was located in the car. He was released for
9 that incident on January 27th of 2011. On August the
10 8th, six months later, he was arrested for armed robbery,
11 criminal sexual conduct in the first degree and two
12 counts of kidnapping. That's a pretty bad incident, Your
13 Honor.

14 I won't go into all the details; I will just tell
15 you that the victim was kidnapped. She was put in the
16 trunk of a car, she was forced to withdraw money from an
17 A-T-M, and she was raped; at least that was the
18 allegation. He only pled though to A & B first. And as
19 part of that plea or after pleading to that they violated
20 him because he was on federal parole and he ended up
21 going back to prison.

22 He was released from prison on January 2nd of 2014.
23 He was picked up in 2014 on a solicitation of
24 prostitution charge and then he picked up these charges
25 in June of 2015. The victim, Jennifer Johnson would like

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1 to address the court. The State's position is we're
2 asking for something in excess of 30 years. Thank you,
3 Your Honor.

4 THE COURT: All right. Ms. Johnson, I'll be happy
5 to hear from you, your mother, your brother, your
6 boyfriend; anyone who wants to say anything. Come on
7 around; let's hear from you a little better.

8 [Whereupon, Ms. Johnson comes forward]

9 THE COURT: Stand at the corner of the rail right
10 there where the jury is. Yes, ma'am.

11 MS. JOHNSON: My name is Jennifer Johnson. I just
12 wanted to say this was a very traumatic situation that I
13 had to go through. I also had to relive it by going
14 through this case again. And also hearing about myself
15 in third person like that was just very weird. I'm a
16 mother myself. I have a five year old daughter. I can't
17 imagine what my Mom went through learning that her kid
18 was missing. I can't imagine if that were my kid.

19 Most importantly, this also just goes beyond me.
20 Other women especially since this has happened in the
21 past just to protect other women out here in the world
22 that could potentially go through another situation like
23 this it's just very dangerous. He needs to be held
24 accountable for what he did to me. I'm still unable to
25 pretty much go anywhere without taking kind of too long

1 without my Mom or my brother or my boyfriend calling and
2 asking me oh what happened. They're nervous about when I
3 might return. And I had no escape. It wasn't like he
4 dropped me off or he said okay, you can go now. If it
5 wasn't for the spare key who knows what. My kid could be
6 motherless. I could have been raped. I could have been
7 accidentally shot; anything could have happened. He
8 hasn't even said he's sorry. Like there is no remorse
9 and that's pretty much it ---

10 THE COURT: --- I cut him off when he was ready to
11 get into his remorse. I wanted to know whether he is
12 guilty or not guilty. We're still going to hear from
13 him.

14 MS. JOHNSON: Okay.

15 THE COURT: He may or may not say that. Of course
16 it may be helpful for the victim but it's usually
17 meaningless for the Judge because in murder cases people
18 tell me how sorry they are. And I say the funeral is
19 over and they've gotten the cards and condolences and all
20 that from family friends and well-wishers and you being
21 sorry is meaningless as far as this sentence you're going
22 to get. But go ahead.

23 MS. JOHNSON: That was all I really had to say. I
24 guess now my concern is to make sure that others aren't
25 continually being affected by it; just this type of

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1 madness. That's all I have to say. Thank you.

2 THE COURT: I'll say this to you. It was fairly
3 obvious that -- I mean your character as a young,
4 intelligent, articulate person in the manner in which you
5 present yourself is no reasonable person could conclude
6 that you and the defendant had anything going on -- that
7 that was really believable so.

8 MS. JOHNSON: Thank you for that.

9 THE COURT: I hope that gives you some consolation.

10 MS. JOHNSON: Thank you.

11 THE COURT: How about mother dear. Come on Mom.

12 [Whereupon, Mrs. Johnson comes forward]

13 THE COURT: Yes, ma'am, former law enforcement
14 employee.

15 MRS. JOHNSON: All I want to say is that I hope he
16 gets a reasonable term and I was very concerned about my
17 daughter when she was gone. It was a pretty frightening
18 thing to have to go through and I'm glad it's over.

19 THE COURT: Thank you. Mr. Justin?

20 [Whereupon, Mr. Lawrence comes forward]

21 THE COURT: They have shirts now at Boeing, huh?

22 MR. LAWRENCE: Yes. I have my Boeing shirt and my
23 Boeing sweater.

24 THE COURT: Yes, sir?

25 MR. LAWRENCE: I'd just like to say that to this day

1 still if she doesn't call me ten or fifteen minutes after
2 she said she was going to I start freaking out. And it
3 is ---

4 THE COURT: --- you don't have to convince the jury
5 anymore; you have to convince me now.

6 MR. LAWRENCE: Oh, okay. I start freaking out.
7 And it kills me to say this God, I hope he gets a lot of
8 time. Unfortunately, he's just not been a decent human
9 being out here. So I just feel like he needs to get a
10 substantial amount of time.

11 THE COURT: It started in 1988. What year were you
12 born Ms. Johnson?

13 MS. JOHNSON: '90.

14 THE COURT: Yes, his escapades began two years
15 before you were born.

16 MR. LAWRENCE: To this date like she said every
17 parking lot to me late night if I don't hear from her I
18 go in that same mode of that night where I knew that
19 there was something wrong and you couldn't tell me
20 different. So now when it happens it's almost like you
21 can't tell me different even when she might just be
22 taking a nap. So just little things like that.

23 THE COURT: Did you think it was a miracle that she
24 drove up?

25 MR. LAWRENCE: Yes, when she came up and came into

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1 my arms I was very happy to see her and that she was all
2 right because I knew something was wrong.

3 THE COURT: Yes sir, thank you. And her brother
4 Mr. Johnson, what's your first name again?

5 MR. JOHNSON: Kevin.

6 [Whereupon, Mr. Johnson comes forward]

7 THE COURT: How old are you?

8 MR. JOHNSON: Twenty-three.

9 THE COURT: Twenty-three; yes, sir ---

10 MR. JOHNSON: --- twenty-four; I'm sorry.

11 THE COURT: Yes, sir?

12 MR. JOHNSON: Just to make a quick comment coming
13 from my father's family my sister is all I have. Even a
14 year prior to that event happening we had an incident
15 where a guy snuck into our house at that same location
16 and hid upstairs and was I guess going to attempt to rape
17 my mother. But long story short we got out of that.
18 That very same guy was caught maybe a couple of hours
19 later trying to force his way into a woman's hotel room
20 and I had to go identify the guy.

21 I mean that guy is the same as him. It's not in
22 particular but it's criminal and it's just kind of
23 sickening for me and for the community. Growing up in
24 Charleston I have friends that went to College of
25 Charleston. I actually have a close friend who was raped

1 on her porch by a guy that held her at gunpoint. It's a
2 lot more of a frequent thing that happens I feel like
3 more than a lot of us believe until it happens to you
4 first hand.

5 What happened to my sister honestly even now it's
6 still kind of hard to grasp it all. But it's only a
7 blessing that she's here now of course hearing his record
8 and history. So all we can do is count our blessings and
9 just grateful that she is here now.

10 THE COURT: Yes, sir. Thank you very much.
11 Anything else by the State?

12 MR. OSBORNE: The only thing I will add to that,
13 Your Honor, piggybacking off what Ms. Johnson said. And
14 I know we heard a lot of video and some of it was coming
15 and it was kind of hard to keep track. But I do want to
16 illustrate one thing that he did say that I think was
17 pretty important and I was definitely going to bring up
18 in my closing argument. He told Mr. Robinson that night
19 what his plans were for Jennifer and that he was going to
20 punish her.

21 And his interview with this man right here
22 [indicates] he said if I would have done something like
23 that she wouldn't be living; it's just that simple. I
24 think she may be right; if she would not have escaped I
25 don't think he was going to let her go.

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1 THE COURT: All right. Anything else by law
2 enforcement?

3 MR. JARRELL: No, Your Honor.

4 THE COURT: All right. By the defense.

5 MR. MAYER: Thank you, Your Honor. May it please
6 the court? Aaron Mayer for Mr. McClain, of course. I
7 have to address first this whole idea of he's going to
8 punish her. I think that is pretty clearly locker room
9 talk about sex and you know pretending ---

10 THE COURT: --- did you say locker room talk?

11 MR. MAYER: Right, Judge.

12 THE COURT: Back to the political campaign.

13 MR. MAYER: Well, I hope not but just in terms of a
14 guy bragging to another guy misrepresenting the situation
15 obviously, but having nothing to do with actually
16 intending to hurt Ms. Johnson.

17 Judge, my client you know he's had a sad life.
18 That's typically who ends up in this position as the
19 court well knows. He didn't even get through junior high
20 school without being arrested. He grew up and he never
21 knew his Dad and never knew who his Dad was. He grew up
22 on public assistance; didn't have any sort of real
23 guidance. He dropped out of high school. He tried by
24 genetics what was already in his head when he was born to
25 fit in to do what he conceived is the right thing. He

1 was very much a young man and grew up on the streets to
2 be a man on the street. He had all the problems and
3 afflictions of those folks. He had addictions. He had a
4 problem with alcohol and drug abuse without end, Judge.
5 And I would venture to guess that every single one of the
6 incidents that Mr. Osborne enumerated in my client's
7 criminal history was precipitated by drug or alcohol
8 abuse. That's not to say it's an excuse, Judge but it's
9 just to say that I think that after nearly two years
10 sober and he has been incarcerated at the Charleston
11 County Detention Center since he was arrested. And Judge
12 for your purposes that is 652 days.

13 But during that time he has had no access to drugs
14 or alcohol. He has -- he had a dry out period that was
15 very difficult. But after coming through that crucible,
16 Your Honor, he made affirmative efforts to recognize who
17 he had been on those substances and to recognize the
18 difference in his life. And the formal versions of those
19 included the DAODAS program, which is a great program and
20 all programs that the court knows at the Charleston
21 County Detention Center. He completed an anger
22 management class.

23 And Judge I really want to emphasize that this was
24 stuff that he chose to do. This wasn't lawyer directed.
25 These were things he did before I knew him. And so he's

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1 been in a coping skills class that deals with mental
2 health issues and problems and irrelevantly he was in a
3 class about how to not spend too much money. But the
4 point being, Your Honor, I believe -- Judge along that
5 same mindset he wasn't accepted and for good reason but
6 he was trying to get into the Turning Leaf program, which
7 of course would be a more intensive multi-year program
8 that would help turn his life around so to speak.

9 I can tell you that he feels a great deal of remorse
10 about his actions. He would take issue with the
11 recitation of the facts that the Solicitor set forth and
12 the plea that he took several years ago to assault and
13 battery first degree. He would take issue with the
14 criminal sexual conduct facts or allegations of that.

15 But Judge he's taken full responsibility as the
16 court heard previously for all the allegations in this
17 case. He wants to have an opportunity to apologize to
18 the court and to the victim for what he did and what he
19 put her through. And he understands that that is not
20 going to get him a reduction on the court's determination
21 for sentencing but he feels like it is important to
22 express that and for her to have the opportunity to
23 receive that, Judge. So I'd ask the court to allow him
24 the opportunity to do that. You know my client is 52
25 years old. He will be 53 this spring. I think there is

1 a lot of wisdom to the concept that we all tend to settle
2 down as we age; probably men especially.

3 THE COURT: I usually find that the case. Most of
4 the people who come as defendants here they are in the
5 range of 20 to 25 or thereabouts usually by the time they
6 hit 30 they change or do better. I guess when this
7 happened he was what 50, 52?

8 MR. MAYER: I believe he was 50. He's 52 now Judge
9 and has a birthday in three months. And so where I'm
10 going with that Your Honor is to say that I would ask the
11 court to consider almost working backwards you know.
12 We'd ask the court that a sentence not be equivalent to a
13 life without the possibility of parole, which of course
14 isn't on the table.

15 We'd ask the court to please run the sentences
16 concurrently, not consecutively. We'd ask the court to
17 design a punishment being mindful of the defendant's
18 current age, his current state of mind. He has done a
19 lot of introspection. And in these last two years Your
20 Honor he's done a lot of work on himself.

21 And it's high time for that. It's high time for
22 that and he understands that. And he also understands
23 that he's got a serious and deep debt to pay to Ms.
24 Johnson and to society. So Your Honor we would ask the
25 court to design a sentence that would allow him to have

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1 the chance to come out before he dies.

2 THE COURT: Thank you. Mr. McClain, yes sir?

3 MR. MCCLAIN: Thank you, Your Honor. With all due
4 respects to the court I want to apologize to Jennifer
5 Johnson. I'm sorry Jennifer, I'm sorry. I was wrong for
6 what I've done and I'm sorry. To Jennifer's mother
7 ma'am, I know how you felt and I'm sorry. Please take it
8 to heart and forgive me. I know you can't forget it but
9 please forgive me.

10 Justin, I understand how it feels to possibly lose
11 somebody that is special to you. And I apologize.
12 Kevin, I understand how it is to have a sister, one
13 sister, because I have a sister and I probably would have
14 felt the same way. So to the Johnson family and
15 everybody else that is with them I apologize with
16 everything I have.

17 I would like to address my fiancée, Elizabeth.
18 Sweetheart, I am sorry for doing what I've done. And I
19 have a special person in you who has broken her neck to
20 do everything possible for me. Even when I was suffering
21 in my drug addiction you was there for me and there was
22 nothing you wouldn't do for me. And I betrayed your
23 trust and I ask you to please forgive me.

24 Elvira, the same goes for you. You were a good
25 sister-in-law. You are my sister-in-law and you done for

1 me what my own family wouldn't do for me. And I thank
2 you for being there and I thank you for being here.

3 To the Solicitor's office Mr. Osborne I apologize
4 for even making you go through this when I should have
5 just took what I should have took and let it be done with
6 that. I wouldn't have put everybody through this.
7 Please forgive me.

8 To the jury, I'm sorry for wasting your time. You
9 could have been out there with your families enjoying
10 your families or whatever else you were doing. I ask for
11 your forgiveness. If you can, accept it in your heart to
12 forgive me.

13 To the court and to everybody in the court,
14 bailiffs, Judge's assistant, and stenographer I ask y'all
15 to forgive me for wasting your time too. I'm sorry.
16 Your Honor?

17 THE COURT: Yes, sir?

18 MR. MCCLAIN: What I done was a knuckle head bone
19 head move but I accept responsibility. However, I was in
20 a position, I was sick and I mean really sick. And you
21 wouldn't understand where I'm coming from because you've
22 never been a drug addict. Being a drug addict and being
23 on the drugs that I was on and I'm not using it for no
24 excuse, please don't take it as such, but I was sick. My
25 mind wasn't what it is today or if I was sober and not

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1 being on drugs. Actions that people take are not always
2 the actions that people perceive them to be. Your Honor,
3 I would have never hurt Jennifer. I don't care how
4 anybody would have, I wouldn't have hurt her.

5 THE COURT: Why is that?

6 MR. MCCLAIN: Because if I wanted to hurt her I
7 would have hurt her before. I mean I had more than one
8 opportunity to hurt her. I wouldn't have never hurt her.
9 I never perceived her -- for her to perceive that I would
10 hurt her. She knew this. I mean I was right beside her
11 yes I was in the car but I never would have hurt her. I
12 never hurted nobody, never tried to hurt nobody. And I'm
13 not going to kill nothing. I've done things and my
14 record shows that but I would never kill nobody.

15 And for what it's worth believe or not Your Honor
16 I'm scared to kill somebody. I can't do it because I
17 don't want to be killed. I don't want nobody in my
18 family to be killed so I would never take nobody's life.
19 I was sick on drugs, I wanted some money, I intimidated
20 her to get some money so I could get high.

21 When I got the money from her she drove me back to
22 my neighborhood. I went across the street, I purchased
23 drugs and she left and I got high. That's what I did;
24 that was my sole intention. I'm coming clean with the
25 court and I'm telling the court the truth. And there is

1 no lie to it I was sick. I did what I did to get the
2 drugs. Crack cocaine; it's just that simple. That's
3 what I've done. I'm sorry. I'm sorry.

4 THE COURT: You know when you had her to get out
5 the car at these various places and not say anything but
6 just get out so these people could look at her it put me
7 in the mind of a lot of cases that I've dealt with over
8 the past several years. And in North Charleston in
9 particular they have one of the first human trafficking
10 units prosecuting human trafficking cases. And you had
11 her to get out the car for these guys to look at her that
12 immediately came to my mind.

13 So when you say that you were sick and you needed
14 money and you would do -- well, you did what you did to
15 get money and she was a part of that. In my mind it was
16 fortunate that the people who you were showcasing her in
17 front of were pretty much in the same position that you
18 were in because under a separate circumstance we could
19 have something totally different. But go ahead. I'm
20 just letting you know what ---

21 MR. MCCLAIN: --- I understand ---

22 THE COURT: --- I'm thinking while I'm listening to
23 you ---

24 MR. MCCLAIN: --- I understand and I see what
25 you're going after. I want to say this to you I'm not

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1 going to go back when I'm back and forth there. When we
2 did approach my neighborhood and I asked you to get out
3 the car because I asked her to get out the car and she
4 got out the car. A young fellow came across and said
5 what's your name and she told him her name.

6 And right there immediately I told her no. And I
7 swear on everything that's what I said; no, Jennifer get
8 back in the car. No, that's one thing, it's not -- no
9 Your Honor, and I'll take that to the grave with me just
10 like I take to the grave I would never hurt nobody. And
11 I ---

12 THE COURT: --- well, you know the problem with
13 these kinds of situations is it's entirely in your hands.
14 When she got in your car and you put the gun to her she
15 thought she didn't have an option at that point.

16 MR. MCCLAIN: I know.

17 THE COURT: So the options are totally with you.
18 You're the only one with options and you own her. She's
19 your possession, your trophy so it's totally up to you.
20 So whatever flows through your mind or would have flowed
21 through your mind she would be subjected to that. That's
22 what kidnapping is all about. But go ahead.

23 MR. MCCLAIN: Nothing happened to her.

24 THE COURT: Very fortunate and I'll give you credit
25 for that; it's amazing ---

1 MR. MCCLAIN: --- nothing happened to her ---

2 THE COURT: --- she went through all that without a
3 scar, a cut. She has emotional scars and nothing
4 physical. So go ahead.

5 MR. MCCLAIN: To finish off Your Honor, I apologize
6 to Jennifer and her family.

7 THE COURT: And you understand that the effect, as
8 I said earlier about the effect of apologies and I think
9 you know people like to hear it because they want to know
10 that you're human, that you're not an animal, you're a
11 human being that you recognize the same. Yes, sir?

12 MR. MCCLAIN: Your Honor, I think that's it.

13 THE COURT: Okay. Well, Mr. McClain you're from --
14 you were born in New York?

15 MR. MCCLAIN: Yes, sir.

16 THE COURT: And your lawyer said you were
17 fatherless and you started getting in trouble when you
18 were how old?

19 MR. MCCLAIN: Around 14.

20 THE COURT: Fourteen. Was that in New York City?

21 MR. MCCLAIN: Yes, sir.

22 THE COURT: And what landed you here in South
23 Carolina?

24 MR. MCCLAIN: My mother thought if she sent me down
25 south it would eliminate me getting in trouble.

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1 THE COURT: We see that time and time again people
2 in the city saying go to the country and they'll
3 straighten you out. And grandmothers used to be able to
4 do that but now they bring the trouble and spread it
5 through here. So you came to Charleston or someplace
6 else?

7 MR. MCCLAIN: Originally Saint Matthews.

8 THE COURT: I noticed that your very first charge
9 was in Saint Matthews in 1989; 1989. You were born in
10 what year?

11 MR. MCCLAIN: 1964.

12 THE COURT: So you're 25 and hit Saint Matthews and
13 started getting in trouble. 1989 and 1990 it's
14 Orangeburg County burglary and drugs, in '95 a
15 carjacking. That's a non-conviction so that doesn't
16 count.

17 MR. OSBORNE: Your Honor, if I may?

18 THE COURT: Yes, sir.

19 MR. OSBORNE: It was Orangeburg County dismissed
20 and the feds picked that up.

21 THE COURT: Oh, that's the same federal case?

22 MR. OSBORNE: Yes, Your Honor.

23 THE COURT: Carjacking, armed robbery and he was
24 convicted of what in the end?

25 MR. OSBORNE: It was the aiding and abetting to

1 interference of commerce, aiding and abetting the
2 carjacking, felon in possession of a firearm, and aiding
3 and abetting in the use and carrying of a firearm during
4 a commission of a crime of violence.

5 THE COURT: As far as that qualifying for life
6 without the possibility of parole what was your best
7 argument on that?

8 MR. OSBORNE: Well, my best argument on it would
9 have been it is the equivalent to an armed robbery. I
10 would have ran into a little bit of difficulty in all
11 candor to you, Your Honor, I think because he could --
12 Mr. Mayer could have split them up. He could have said
13 the equivalent to what he pled to would have been
14 carjacking, strong arm robbery, felon in possession; that
15 would have been our equivalent in the state. None of
16 those would have been enhanced -- well they would have
17 been enhanced but with a single strike. I would have
18 argued that the feds ---

19 THE COURT: --- single strike as most serious or
20 serious?

21 MR. OSBORNE: Serious.

22 THE COURT: That's a serious?

23 MR. OSBORNE: That's a serious and then I could
24 have enhanced ---

25 THE COURT: --- we always split them up if they are

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1 -- that's one -- it couldn't be two.

2 MR. OSBORNE: And then my argument would have been
3 to look at the facts of the case. And the facts of the
4 case would have been an armed robbery and make that
5 equivalent to a most serious strike on our side. I think
6 you're right ultimately maybe if you strictly construed
7 the statute then I think I might have run into issues.

8 THE COURT: And back in Calhoun with the armed
9 robbery and the kidnapping -- not convicted of
10 kidnapping.

11 MR. OSBORNE: Well, we did a little research on
12 that and we thought about maybe trying to bring that in
13 through Lyle but we found out, my investigator did, that
14 the victim in that case did not want to pursue any
15 further charges. She wanted it dropped. She didn't want
16 to have anything to do with it and I think that may have
17 led to the plea to A & B first. But ultimately those
18 were the alleged facts in that case.

19 THE COURT: All right. Mr. McClain, you've had man
20 oh man how long have you gone without being in trouble,
21 without being in prison or being in trouble?

22 MR. MCCLAIN: Since 2013.

23 THE COURT: What have you been doing?

24 MR. MCCLAIN: Working.

25 THE COURT: Where?

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1 MR. MCCLAIN: I was working at Tecna [phonetic] a
2 prefab company. I was working there and then after I
3 hurt myself I stayed out of work for a while. Then I
4 started working for my nephew's moving company.

5 THE COURT: When did you get heavy into drugs?

6 MR. MCCLAIN: I've been heavy in drugs for a long
7 time.

8 THE COURT: I mean not while you were in prison or
9 in prison too?

10 MR. MCCLAIN: No.

11 THE COURT: You've been in prison long enough to be
12 straightened out, dried out, cold turkey out. What's the
13 longest stint you've served?

14 MR. MCCLAIN: Seventeen years.

15 THE COURT: Seventeen years. You shouldn't know
16 what drugs are after 17 years. Now when did you find
17 that lady back there, Ms. Tisdale?

18 MR. MCCLAIN: 2013, sir.

19 THE COURT: Seemed like she would have turned your
20 life around. She seems like such a nice lady.

21 MR. MCCLAIN: She did. She did. She did. She got
22 me in church and I got baptized. I was doing good.

23 THE COURT: Well, you sound good. You probably
24 could put on a shirt and tie and sound like -- not like a
25 lawyer but a preacher or something. I mean you look

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1 good, you sound good. You look like the kind of fellow
2 that if I bumped into you in the street I wouldn't think
3 you could mean any harm to me. You look like a normal
4 person, after all these years of incarceration and
5 everything else. That's probably what sold Ms. Tisdale
6 on you. What won you over Ms. Tisdale?

7 MS. TISDALE: I just offered him to come to service
8 after what he's been going through. I wanted him to give
9 his life up to God.

10 THE COURT: You thought that would...

11 MS. TISDALE: And I introduced him to come to church
12 with me. I asked him to turn his life around. I would
13 help him because I'm a Christian. And he did fine for
14 maybe two years ago.

15 THE COURT: Well, after he started doing fine I'm
16 sure it started costing you quite a bit.

17 MS. TISDALE: Well, I took it in prayer. I knew
18 that he was sick and I had asked God to come in and heal
19 me and him. We've done just about everything you could.
20 But God always forgives because we're only human. I've
21 done all I could.

22 THE COURT: Well, people who are strung out on
23 drugs everyone becomes a victim; especially the people
24 who live with them.

25 MS. TISDALE: Well, I didn't give up. I kept on

1 praying. Like I said I wasn't there when it happened. I
2 just ask the court for mercy. Let God be the judge.

3 THE COURT: Well, you know the Solicitor is asking
4 for 30 years. And he is contemplating pleading guilty
5 between 18 and 20 years. The Solicitor wanted 25 years.
6 So whatever he gets he's got to do 85 percent of it. Are
7 you planning on sticking around Ms. Tisdale?

8 MS. TISDALE? Sir?

9 THE COURT: Do you plan on sticking around? It
10 will be a long time.

11 MS. TISDALE: Yes sir, I am.

12 THE COURT: He'll need you for sure.

13 MS. TISDALE: I'll be in his heart.

14 THE COURT: Thank you, ma'am. All right Mr.
15 McClain go ahead.

16 MR. MCCLAIN: Your Honor, I'm done.

17 THE COURT: What was on your mind that night that
18 you decided to leave with the barber after getting your
19 hair cut celebrating your birthday that weekend and
20 rolling downtown Charleston? What was on your mind?

21 MR. MCCLAIN: Just have some fun. I didn't have no
22 intentions. I don't know but I didn't have no
23 intentions. I surely did not.

24 THE COURT: Well, why did you have the gun knowing
25 that you are a convicted felon and just done 17 years. I

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1 mean even having a gun alone if the feds were to charge
2 you with having a gun that's a pretty long federal --
3 that could be a life sentence in and of itself I believe.
4 What is the penalty for that, a convicted federal -- go
5 ahead ma'am, she's got an answer because you've
6 researched it.

7 MS. TISDALE: Judge, I'd like to say that I
8 apologize for what happened. I wasn't aware of what
9 happened. I wasn't aware of what happened and I ask for
10 your forgiveness. I wish this never would have happened.
11 I apologize.

12 THE COURT: Thank you, Ms. Tisdale. What's the
13 penalty for a felon in possession of a gun in Federal
14 Court?

15 MR. MCCLAIN: It wasn't in court. The time for a
16 felon in possession of a firearm by a convicted felon is
17 one to ten.

18 THE COURT: One to ten?

19 MR. MCCLAIN: Yes, sir. If you are caught of a
20 firearm in the commission of a violent crime it would
21 have been 25; anywhere up to 25.

22 THE COURT: So knowing that, knowing you just spent
23 17 years and even just having a gun and bothering these
24 people with a gun that you could get 25 years in the
25 federal pen what was going on with you?

1 MR. MCCLAIN: Want me to tell you the truth?

2 THE COURT: Yes sir, please?

3 MR. MCCLAIN: It wasn't a real gun.

4 THE COURT: It wasn't a real gun?

5 MR. MCCLAIN: No, it wasn't.

6 THE COURT: What kind was it?

7 MR. MCCLAIN: It was a BB gun. It was a BB gun
8 that I had like a wire on it that I could make it do like
9 laser or whatever. It wasn't a real gun.

10 THE COURT: Two of the people who testified when
11 the Solicitor asked how did you know it was a gun their
12 answer was it was a gun. You know I had the first case
13 in the State on that issue. It was an armed robbery in
14 Kingstree and a fellow came in and he put his hand under
15 his shirt and said give me the money out of the cash
16 register. His finger to the cash register -- to the
17 cashier they thought it was a gun. And his conviction
18 was reversed because it wasn't a threat. He didn't say
19 it was a gun, he just did this [indicates] and it changed
20 the law. Now if it is anything that would -- how does it
21 go Mr. Osborne?

22 MR. OSBORNE: I think the law is anything that the
23 victim would reasonably believe would be ---

24 THE COURT: --- anything that a would reasonably
25 believe because the person on the other end their life is

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1 flashing between their eyes. So whether it is real or
2 imaginary to that victim it's a gun.

3 MR. MAYER: Judge, may I inject something?

4 THE COURT: Yes, sir?

5 MR. MAYER: I believe there is a contemplation by
6 one of the victims, it might be Mr. Sebastian, in his
7 reports to the police about he didn't know if it was a
8 real gun but it looked like a gun. And for the benefit
9 of the jury, Your Honor, I'll say that this is the first
10 I've heard about that. And if I may share a little bit
11 with the jury?

12 THE COURT: Yes, sir.

13 MR. MAYER: Of course defending one of these cases
14 you guys can question how can you defend somebody who is
15 accused of X, Y, or Z? Of course, the first answer is
16 everybody is presumed innocent. And that's a really,
17 really powerful important constitutional right that we
18 all have. Thank goodness.

19 And the second sort of pre-step of defending a
20 criminal case like this is if I were to have known -- if
21 my client told me something like I did it Aaron I
22 couldn't have put on -- I couldn't have asked them the
23 questions I asked that you guys heard me ask especially
24 the victim and that sort of thing. So that's the way it
25 unfolds just so you know from my shoes.

1 THE COURT: Yes, sir. You did a good job with what
2 you had to work with. Mr. McClain, what else do you
3 think I need to know? You decided to take it out of the
4 jury's hands and put it in my hands. Of course, it
5 ultimately would have been in my hands anyway ---

6 MR. MCCLAIN: --- and regardless unless it would
7 have been a mistrial or an acquittal.

8 MR. MAYER: Judge, he felt like it was important to
9 take responsibility.

10 THE COURT: What else do I need to know before I
11 drop the hammer down on you? When I say the hammer
12 that's just a phrase; before I announce your sentence.
13 I'm not meaning put you under the jail; those various
14 phrases I'm just saying. For me the hammer is the pen.
15 So tell me what else I need to know about you? What else
16 do you want to tell me?

17 MR. MCCLAIN: I have no more --

18 THE COURT: Sir?

19 MR. MCCLAIN: I have no more bullets.

20 THE COURT: Well, it's really unfortunate. In
21 society you have people who the whole idea of jail is you
22 go to jail and you're supposed to get some kind of
23 rehabilitation, a fresh start and hopefully live a law-
24 abiding life. But after all the time you did you come
25 out and you terrorize these people. And in your mind you

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1 would have never have harmed her. I'm not sure how many
2 people you'd be able to convince of that. I'm glad in
3 your own mind you have your own thoughts and feelings
4 about it and as you said you will take that to the grave;
5 which is fine. I don't think you'll ever convince some
6 that had she not escaped then tragedy might not have
7 occurred. And it could have occurred just based on these
8 places you had her up in. It's pretty rough up there it
9 must be in those neighborhoods. Of course I'm not
10 familiar with it because I'm not from Charleston. As an
11 outsider everything looks pretty dingy and dangerous.
12 Anything else? Back to the State? Final words, anybody?

13 MR. OSBORNE: No, Your Honor, nothing from the
14 State.

15 THE COURT: Any further thoughts on the minds of
16 the Johnsons and anyone else?

17 [Whereupon, no one responds]

18 THE COURT: Well, Mr. Johnson -- I'm sorry, Mr.
19 McClain sometimes I deal with people who just kind of
20 repetitively commit crimes and we use the phrase we'll
21 put you into retirement meaning almost like you're
22 banished from society. If a person can't comply with the
23 law then they have to be separated from the people who
24 abide by the law basically so that you wouldn't present a
25 danger to them. And as well-intentioned as you sound

1 here today being off the drugs for a period of time I
2 hope that you can find a better life in some kind of way
3 for yourself. But I've got to deal with the crime and
4 everything that is concerned. At the time that you were
5 kidnapped how old were you Ms. Johnson?

6 MS. JOHNSON: Twenty-four.

7 THE COURT: Twenty-four. There is no magic --
8 there really is no magic in sentencing or trying to
9 figure out how much time or what kind of sentence you
10 should give a person. Yesterday the Solicitor was going
11 to negotiate a mandatory 25 year sentence that you
12 rejected. Today you pled guilty and the Solicitor says
13 he wants at least 30 something or 30. What did you say?

14 MR. OSBORNE: I think the starting point should be
15 30 years ---

16 THE COURT: --- the starting point should be 30
17 years. You're 52 years old. Whatever sentence you get
18 you have to do 85 percent. Yesterday, you said you would
19 plead guilty if I agree that I will sentence you between
20 18 and 20. Of course, as I indicated I don't make
21 agreements. It has to come to me.

22 And what often comes to me is ages and numbers. And
23 I'm going to pick the number 24; the age of the victim.
24 I sentence you to 24 years for the kidnapping and the
25 armed robbery. I am going to reduce that by two years

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1 because you've been a gentleman about it all and have
2 conducted yourself well. There is no reason why you
3 should be in this predicament in your life so I'm going
4 to subtract two for that reason and make it 22 years.
5 And then you get credit for the time that you have served
6 which is 652 days. That's the sentence on the two major
7 crimes to run concurrent.

8 And the sentence is five years on each of those
9 others. Now the fact that you get the concurrent
10 sentence despite what happened with those girls; of
11 course they were drunk it appears and may not have fully
12 comprehended what happened to them. At least they are
13 not here as a united front as the victim of the more
14 serious crime so I feel justified in making that so.
15 That will be your sentence; 22 years and I wish you the
16 best.

17 MR. MCCLAIN: Thank you, Your Honor.

18 THE COURT: All right.

19 [Whereupon, the jury is excused at 5:00 p.m.]

20 [Whereupon, the jury trial concludes at 5:00 p.m.]

21

22

23

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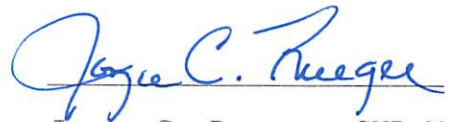
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Certificate of the Court Reporter
March 15, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth 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 Court of General Sessions for Charleston County,
South Carolina on the 15th day of March, 2017.

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

April 20, 2018



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SC 29405DL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADSTO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.☐ (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

David L. Osborne
David L. Osborne, Assistant Solicitor101325
SC Bar #Anthony McClain
Defendant81261
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS: This does not involve a sexual offense.☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Christine DaultonCourt Reporter: Joyce RuegerPresiding Judge: C. A. HemenJudge Code: 2101Sentence Date: March 15, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

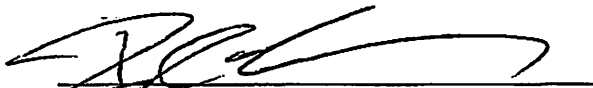
INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina on or about June 2, 2015, the Defendant, Anthony McClain, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Jennifer Johnson, without authority of law; all in violation of Section 16-3-910 of the South Carolina 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.


DAVID L. OSBORNE
ASSISTANT SOLICITOR

DLO/0305556
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2015-09142

ARREST WARRANT NUMBER

K740359

DATE OF ARREST

06/02/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

NOV 02 2015
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-05968

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

ANTHONY MCCLAIN

B/M DOB: [REDACTED]

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

601

ARREST WARRANT

K-740359

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Charleston

 THE STATE
 against
Anthony McClainAddress: North Charleston SC 29405Phone: [REDACTED] SSN: [REDACTED]Sex: M Race: B Height: 6'01" Weight: 185DL State: SC DL #: [REDACTED]DOB: [REDACTED] Agency ORI#: 0100100Prosecuting Agency: Charleston PDProsecuting Officer: [REDACTED]Offense: KidnappingOffense Code: 16-3-910Code/Ordinance Sec: [REDACTED]

This Warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
Charleston

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge _____ (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Anthony McClainon 6-3-15Signature of Constable/Law Enforcement Officer [Signature]

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of
Charleston

AFFIDAVIT

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

 Personally appeared before me the affiant Det. Jason Jarrell who
 being duly sworn deposes and says that defendant Anthony McClain
 did within this county and state on June 2, 2015 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Charleston)
 in the following particulars:
DESCRIPTION OF OFFENSE: Kidnapping
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
See AffidavitSignature of Affiant [Signature]

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of
Charleston
Affiant's Address 180 Lockwood BlvdCharleston, SC 29403Affiant's Telephone 843-577-7439

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on June 2, 2015 defendant Anthony McClain
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Charleston) as set forth below:
DESCRIPTION OF OFFENSE: Kidnapping
 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 6/2/15)
[Signature] (L.S.))

Signature of Issuing Judge

Judge Code: 6201

Judge's Address _____

Judge's Telephone _____

 Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Baldwinon 6-4-15Type and Amount: NO BOND

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

2015 JUN 18 AM 11:53
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, Jason Jarrell,who first being duly sworn deposed and says that, Anthony McClain,did within this county and state on the 2nd of June 2015 violate the criminal laws of the State of South

Carolina in the following particular:

DESCRIPTION OF OFFENSE

Kidnapping
§16-3-910

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on Tuesday, June 02, 2015 at about 12:45 a.m., while in front of [redacted] Cannon Street, which is in the City and County of Charleston, South Carolina, the above named defendant, did knowingly and unlawfully violate South Carolina Statute (§16-3-910) (Kidnapping) in the following particulars:

That the defendant did approach the victim, Jennifer Johnson, in front of [redacted] Cannon Street with the intent on depriving her of her property and depriving her of her freedom. Anthony brandished a firearm, pointed it at the victim and demanded money from her. The victim fearing for her safety complied with the defendant's demands as she handed over \$3 in US currency. The defendant then demanded that the victim get into her vehicle (green 1998 Ford Taurus); depriving her of her freedom. Once inside of the vehicle, the defendant pointed a pistol at her head and the defendant ordered the victim to drive him out of the area. The victim was under direct as she drove the defendant to multiple locations in the Cities of Charleston and North Charleston. The victim was unlawfully deprived of her freedom for about an hour and a half as she was ordered to drive the defendant around town. At one of these locations, a witness who can be named later positively identified the defendant as being in green car driven by a female.

The victim described the suspect to detectives as being a black male, medium complexion, standing about 6'00" to 6'01" in height, slender build, 40 - 50's age range, a mustache, and a tattoo on his left forearm of a word written in cursive. According to the Charleston County Detention Center records, the defendant is a medium complexion black male, 50yoa, 6'01", weighs 180 lbs., and has a cursive tattoo on his left forearm. CPD detectives presented a six pack photo line-up that contained the defendant to the victim. Ms. Johnson positively identified defendant from the line-up as the individual that robbed her.

Furthermore, the defendant was aware and knew that his actions of committing robbery and depriving the victim of her freedom are inherently dangerous and he possessed no authority of law.

The above is true and believable based on the victim's account of the incident, her subsequent positive identification of the defendant through a six-pack lineup, the witness's account and identification, and the investigations by the Charleston Police Department.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS

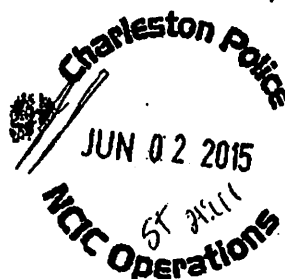
2nd DAY OF June

, 2015

Jason Jarrell
AFFIANT180 Lockwood Blvd.
Charleston, SC 29403
843-577-7434John M. Mann

(L.S.)

SIGNATURE OF JUDGE



COMPLAINT #: 15-09142

WARRANT#

INVESTIGATING OFFICER: Jason Jarrell

CPD Form OT3

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SCDL# [REDACTED]SID# [REDACTED]INDICTMENT/CASE#: 2015-GS-10-05969A/W: K740360Date of Offense: 06/02/2015S.C. Code §: 16-23-0490CDR Code #: 0549

SENTENCE SHEET

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

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

☐ CONVICTED OF or☒ PLEADSTO: Possession Of A Weapon During The Commission Of A Violent CrimeIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

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

ATTEST:

David L. Osborne, Assistant Solicitor

101325
SC Bar #Anthony McClain
Defendant[Signature]
Attorney for Defendant81261
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. (652 days credit)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 61.6 (Public Def/Prob)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ca

\$ _____

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 128.75Clerk of Court/Deputy Clerk: Christine DavisCourt Reporter: Joyce RuegerPresiding Judge: [Signature]Judge Code: 2127Sentence Date: March 15, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

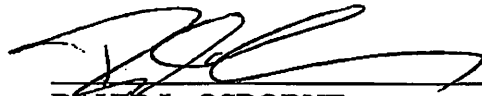
INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about June 2, 2015, the Defendant, Anthony McClain, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Armed Robbery and Kidnapping; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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



DAVID L. OSBORNE
ASSISTANT SOLICITOR

DLO/0305556
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2015-09142

ARREST WARRANT NUMBER

K740360

DATE OF ARREST

06/02/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

NOV 02 2015
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-05969

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

ANTHONY MCCLAIN

B/M DOB: [REDACTED]

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490

CDR Code: 0549

607

ARREST WARRANT

K-740360

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Charleston

 THE STATE
 against
Anthony McClainAddress: North Charleston, SCPhone: SSN: [REDACTED]Sex: M Race: B Height: 6'01" Weight: 180DL State: SC DL#: [REDACTED]DOB: [REDACTED] Agency ORI#: 0109190Prosecuting Agency: Charleston PDProsecuting Officer: [REDACTED]Offense: Poss. of a Firearm During a Violent Crime Offense Code: 16-23-490Code/Ordinance Sec: [REDACTED]

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☒ Municipality of
Charleston. The accused
 is to be arrested and brought before me to be
 dealt with according to law.

 Signature of Judge (L.S.)
[REDACTED]
Date: [REDACTED]

RETURN

 A copy of this arrest warrant was delivered to
 defendant Anthony McClain
 on 6.3.15

 Signature of Constable/Law Enforcement Officer
[REDACTED]

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Charleston

AFFIDAVIT

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

Personally appeared before me the affiant Jason Jarrell who
 being duly sworn deposes and says that defendant Anthony McClain
 did within this county and state on June 2, 2015 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Charleston)
 in the following particulars:

DESCRIPTION OF OFFENSE: Poss. of a Firearm During a Violent Crime

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

See Affidavit

Charleston Police

JUN 02 2015

NCIC Operations

Signature of Affiant

 Affiant's Address 180 Lockwood Blvd
Charleston SC 29403
 Affiant's Telephone 843-577-7434

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Charleston

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on June 2, 2015 defendant Anthony McClain
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE:

Poss. of a Firearm During a Violent Crime

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 6/3/15
 Signature of Issuing Judge (L.S.)
[REDACTED]

Signature of Issuing Judge

Judge Code: 6201Judge's Address [REDACTED]Judge's Telephone [REDACTED]
 Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Baldwin

on 6-4-15

Type and Amount: 200,00

Name of Surety: [Signature]

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

2015 JUN 18 AM 11:53
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, Jason Jarrell,who first being duly sworn deposed and says that, Anthony McClain,

did within this county and state on the 2nd of June 2015 violate the criminal laws of the State of South Carolina in the following particular:

DESCRIPTION OF OFFENSE

Possession of a Firearm During the Commission of a Violent Crime
§16-23-490

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on Tuesday, June 02, 2015 at about 12:45 a.m., while in front of [REDACTED] Cannon Street, which is in the City and County of Charleston, South Carolina, the above named defendant, did knowingly and unlawfully violate South Carolina Statute (§16-23-490) (Possession of a Firearm During the Commission of a Violent Crime) in the following particulars:

That the defendant did approached the victim, Jennifer Johnson, in front of [REDACTED] Cannon Street with the intent on depriving her of her property. Anthony brandished a firearm, pointed it at the victim and demanded money from her. The victim fearing for her safety complied with the defendant's demands as she handed over \$3 in US currency. The defendant then demanded that the victim get into her vehicle (green 1998 Ford Taurus) and pointed a pistol at her head. He then ordered the victim to drive him out of the area. The victim was under duress as she drove the defendant to multiple locations in the Cities of Charleston and North Charleston throughout the course of an hour and a half. At one of these locations, a witness who can be named later positively identified the defendant as being in green car driven by a female.

The victim described the suspect to detectives as being a black male, medium complexion, standing about 6'00" to 6'01" in height, slender build, 40 - 50's age range, a mustache, and a tattoo on his left forearm of a word written in cursive. According to the Charleston County Detention Center records, the defendant is a medium complexion black male, 50yoa, 6'01", weighs 180 lbs., and has a cursive tattoo on his left forearm. CPD detectives presented a six pack photo line-up that contained the defendant to the victim. Ms. Johnson positively identified defendant from the line-up as the individual that robbed her.

It should be noted that according to SC Code of Law §16-1-60, Armed Robbery, is defined as a violent crime and at the time of this robbery, the defendant was in possession of a firearm.

The above is true and believable based on the victim's account of the incident, her subsequent positive identification of the defendant through a six-pack lineup, the witness's account and identification, and the investigations by the Charleston Police Department

SWORN TO AND SUBSCRIBED BEFORE ME

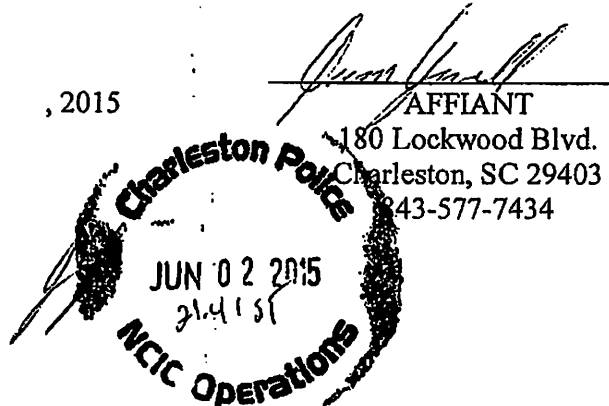
THIS 2nd DAY OF Jun, 2015

[Signature] (L.S.)
SIGNATURE OF JUDGE

COMPLAINT #: 15-09142

WARRANT#

INVESTIGATING OFFICER: Jason Jarrell



CPD Form OT3

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SCDL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Armed RobberyIn violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

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

ATTEST:

David L. Osborne, Assistant Solicitor101325
SC Bar #Anthony McClain
Defendant[Signature]
Attorney for Defendant81261
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 152 days credit☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: [Signature]Judge Code: 2121Sentence Date: March 15, 2017Clerk of Court/Deputy Clerk: Christine DavisCourt Reporter: Joyce Rueger

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about June 2, 2015, in Charleston County, South Carolina, the Defendant, Anthony McClain, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Jennifer Johnson with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina 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.



DAVID L. OSBORNE
ASSISTANT SOLICITOR

DLO/0305556
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2015-09142

ARREST WARRANT NUMBER

K740358

DATE OF ARREST

06/02/2015

ACTION OF GRAND JURY

TRUE BILL

NOV 02 2015

[Signature]
Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-05967

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

ANTHONY MCCLAIN

B/M DOB: [REDACTED]

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

613

ARREST WARRANT

K-740358

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Charleston

THE STATE
 against

Anthony McClain

Address: North Charleston, SCPhone: SSN: [REDACTED]Sex: M Race: B Height: 6'01" Weight: 160DL State: SC DL #: [REDACTED]DOB: [REDACTED] Agency ORI#: 0100100Prosecuting Agency: Charleston PDProsecuting Officer: [REDACTED]Offense: Armed RobberyOffense Code: 16-11-330Code/Ordinance Sec: [REDACTED]

This Warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
Charleston

The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (L.S.)
[REDACTED]

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered to
 defendant Anthony McClain

on 6.3.15

Signature of Constable/Law Enforcement Officer
[REDACTED]

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Charleston

AFFIDAVIT

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

Personally appeared before me the affiant Det. Jason Jarrell who
 being duly sworn deposes and says that defendant Anthony McClain
 did within this county and state on June 2, 2015 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Charleston)
 in the following particulars:

DESCRIPTION OF OFFENSE: Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

See Affidavit

Charleston Police

JUN 02 2015

ST 21:11
 NCIC Operations

Signature of Affiant

Affiant's Address 180 Lockwood Blvd
Charleston SC 29403
 Affiant's Telephone 843-577-7434

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Charleston

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on June 2, 2015 defendant Anthony McClain
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on [REDACTED]

Signature of Issuing Judge
[REDACTED] (L.S.)

Signature of Issuing Judge

Judge Code: [REDACTED]Judge's Address [REDACTED]Judge's Telephone [REDACTED]

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Baldwinon 6-4-15Type and Amount: NO BOND

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

2015 JUN 18 AM 11:53
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, Jessie Jarrell,who first being duly sworn deposed and says that, Anthony McClain,did within this county and state on the 2nd of June 2015 violate the criminal laws of the State of South

Carolina in the following particular:

DESCRIPTION OF OFFENSE

Armed Robbery

§16-11-330

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on Tuesday, June 02, 2015 at about 12:45 a.m., while in front of [redacted] Cannon Street, which is in the City and County of Charleston, South Carolina, the above named defendant, did knowingly and unlawfully violate South Carolina Statute (§16-11-330) (Armed Robbery) in the following particulars:

That the defendant did approach the victim, Jennifer Johnson, in front of [redacted] Cannon Street with the intent on depriving her of her property. Anthony brandished a firearm, pointed it at the victim and demanded money from her. The victim fearing for her safety complied with the defendant's demands as she handed over \$3 in US currency. The defendant then demanded that the victim get into her vehicle (green 1998 Ford Taurus) pointed a pistol at her head and the defendant ordered the victim to drive him out of the area. The victim was under duress as she drove the defendant to multiple locations in the Cities of Charleston and North Charleston throughout the course of an hour and a half. At one of these locations, a witness who can be named later positively identified the defendant as being in green car driven by a female.

The victim described the suspect to detectives as being a black male, medium complexion, standing about 6'00" to 6'01" in height, slender build, 40 - 50's age range, a mustache, and a tattoo on his left forearm of a word written in cursive. According to the Charleston County Detention Center records, the defendant is a medium complexion black male, 50yoa, 6'01", weighs 180 lbs., and has a cursive tattoo on his left forearm. CPD detectives presented a six pack photo line-up that contained the defendant to the victim. Ms. Johnson positively identified defendant from the line-up as the individual that robbed her.

The above is true and believable based on the victim's account of the incident, her subsequent positive identification of the defendant through a six-pack lineup, the witness's account and identification, and the investigations by the Charleston Police Department

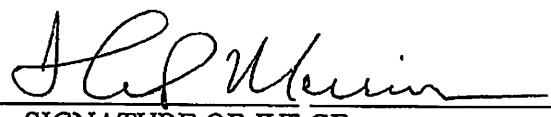
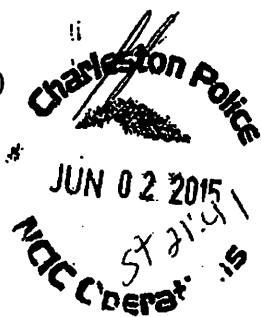
SWORN TO AND SUBSCRIBED BEFORE ME

THIS 2nd DAY OF June

2015



AFFIANT

180 Lockwood Blvd.
Charleston, SC 29403
843-577-7434
SIGNATURE OF JUI GE (L.S.)

COMPLAINT #: 15-09142

WARRANT#

INVESTIGATING OFFICER: Jason Jarrell

CPD Form OT3

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SCDL# [REDACTED]SID# [REDACTED]INDICTMENT/CASE#: 2015-GS-10-05964A/W: 2015A1010900433Date of Offense: 06/02/2015S.C. Code §: 16-23-0410CDR Code #: 0122

SENTENCE SHEET

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

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

☐ CONVICTED OF or☒ PLEADSTO: Pointing/Presenting a FirearmIn violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury.

(def.'s initials)

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

ATTEST:

David L. Osborne, Assistant Solicitor

101325

SC Bar #

Defendant

Anthony McClain

Attorney for Defendant

81261

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 652 days credit☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient: *Fine: §14-1-206 (Assessments 107.5%) §14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ §56-5-2995 (DUI Assessment)

\$12

\$ §56-1-286 (DUI Breath Test)

\$25

\$ Proviso 61.6 (Public Def/Prob)

\$500

\$ §14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00§14-1-213 (Drug Court Surcharge)

\$150

\$ §50-21-114 (BUI Breath Test Fee)

\$50

\$ §56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ 3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 128.75☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Christine DavisCourt Reporter: Joyce RuegerPresiding Judge: [Signature]Judge Code: 2127Sentence Date: March 15, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

POINTING/PRESENTING A FIREARM

That in Charleston County, South Carolina, on or about June 2, 2015, the Defendant, Anthony McClain, did present or point a loaded or unloaded firearm at Morgan Nicole Osborne; in violation of Section 16-23-410 of the Code of Laws of South Carolina, (1976) as amended.

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


DAVID L. OSBORNE
ASSISTANT SOLICITOR

DLO/0305776
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

15-09139

ARREST WARRANT NUMBER

2015A1010900433

DATE OF ARREST

06/10/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

NOV 02 2015
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-05964

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

ANTHONY MCCLAIN

B/M DOB: [REDACTED]

Indictment for

POINTING/PRESENTING A FIREARM

SC Code: § 16-23-0410

CDR Code: 0122

619

ARREST WARRANT

2015A1010900433

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Anthony McClain

Address:

North Charleston, SC

Phone: SSN:

Sex: M Race: B Height: 6 1 Weight: 180

DL State: SC DL #:

DOB: Agency ORI #:

Prosecuting Agency: Charleston City Police Department

Prosecuting Officer: P. Krasowski - 0257

Offense: Weapons / Pointing and presenting firearms at a person

Offense Code: 0122

Code/Ordinance Sec: 16-23-0410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Anthony McClain
6/9/15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant P. Krasowski who

being duly sworn deposes and says that defendant Anthony McClain

did within this county and state on or about 6/2/2015 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)

in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Pointing and presenting firearms at a person

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address 180 Lockwood Blvd.

Charleston, SC 29403-

Affiant's Telephone (843)577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/2/2015 defendant Anthony McClain

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Pointing and presenting firearms at a person

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 6/9/2015

Signature of Issuing Judge
Ellen S. Steinberg (L.S.)

Ellen Soffar Steinberg

Judge Code: 7280

Judge's Address 1720 Sam Rittenberg Blvd, Unit 11

Charleston, SC 29417-

Judge's Telephone (843)-76-6-65 x 31

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

BAIL set by

WITNESSES

620

Judge Baldwin
on 6-10-15
Type and Amount: 25,000
Name of Surety: [Signature]

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

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Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

CODEFENDANTS

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

FILED
2015 JUN 25 AM 9:49
JULIE J. ARMSTRONG
CLERK OF COURT

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, Det. Paul Krasowski,
who first being duly sworn deposed and says that, Anthony McClain,
did within this county and state on the 02 June 2015 violate the criminal laws of the State of South
Carolina in the following particular:

DESCRIPTION OF OFFENSE

Pointing Firearm at any Person
16-23-410

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth
and that such probable cause is based on the following facts:

On June 02, 2015 at approximately 0047hrs, while in front of [REDACTED] Morris Street, which is located in the City and County of
Charleston, South Carolina, the Defendant, Anthony McClain, did knowingly, willingly, and unlawfully violate South Carolina
State Statute, Pointing Firearm at any Person; 16-23-410, in the following manner:

That the Victims, Morgan Osborne, and, Sebastian Bedon, were walking on the sidewalk near [REDACTED] Morris Street with several
other friends. A red colored, older model sedan pulled up alongside them and the Driver / Defendant, Anthony McClain,
exited the vehicle and approached Morgan. The Defendant requested to take a photograph of Morgan and Sebastian told the
Defendant "No!" The Defendant became upset with Sebastian and brandished a dark colored firearm and pushed the barrel of
it against Sebastian's face and threatened to kill him because he felt disrespected.

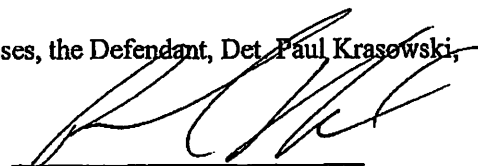
Morgan began screaming, which caused the Defendant to then press the firearm against the side of her head as he continued to
rant on about being disrespected. The Victims in fear for their lives, ran for their safety and contacted 911. The Defendant got
back into the driver's seat of the red colored sedan and fled from west on Morris Street.

Almost immediately after this incident, the Defendant exited out of a red colored, older model sedan and approached another
Victim in front of [REDACTED] Cannon Street. He robbed and kidnapped her at gunpoint; The Victim positively identified the Defendant
in that case, therefore warrants were obtained. The Defendant was arrested on June 04, 2015 and provided a post-Miranda
statement. During his statement, the Defendant admitted that before the [Cannon Street incident] he drove by a group of
attractive girls and requested to take their photograph. The group declined and he became upset with them. The Defendant
provided intimate details of this encounter that only the offender would have known. The Defendant admitted that he drove a
burgundy colored Ford Escort that night. In Addition, the two (2) incidents were within one (1) block and occurred within
minutes of each other. The Defendant fit the general physical description, as did his vehicle.

The above is true and believable based on the statements made by the Victims, Witnesses, the Defendant, Det. Paul Krasowski,
and the investigations of the Charleston City Police Department.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 9 DAY OF June, 2015



AFFIANT
180 Lockwood Blvd.
Charleston, SC 29403
843-577-7434

 (L.S.)
SIGNATURE OF JUDGE

COMPLAINT #: 15-09139
WARRANT#

INVESTIGATING OFFICER: Det. Paul Krasowski

CPD Form OT3

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African American Sex: MDOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SC [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADSTO: Pointing/Presenting a FirearmIn violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David L. Osborne, Assistant Solicitor 101325 SC Bar #

Anthony McClain
Defendant

Attorney for Defendant 81261 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 652 days credit☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

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

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/B beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

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

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Christine DavisCourt Reporter: Joyce RuegerPresiding Judge: C. W. [Signature]Judge Code: 2127Sentence Date: March 15, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

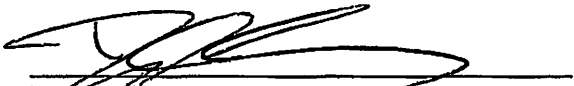
INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

POINTING/PRESENTING A FIREARM

That in Charleston County, South Carolina, on or about June 2, 2015, the Defendant, Anthony McClain, did present or point a loaded or unloaded firearm at Sebastian Bedon; in violation of Section 16-23-410 of the Code of Laws of South Carolina, (1976) as amended.

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


DAVID L. OSBORNE
ASSISTANT SOLICITOR

DLO/0305776
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

15-09139

ARREST WARRANT NUMBER

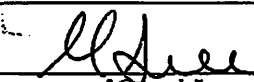
2015A1010900434

DATE OF ARREST

06/10/2015

ACTION OF GRAND JURY

TRUE BILL


Foreperson of Grand Jury

NOV 02 2015

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-05966

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

ANTHONY MCCLAIN

B/M DOB: 

Indictment for

POINTING/PRESENTING A FIREARM

SC Code: § 16-23-0410

CDR Code: 0122

625

ARREST WARRANT

2015A1010900434

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Anthony McClain

Address:

North Charleston, SC

Phone: SSN:

Sex: M Race: B Height: 6 1 Weight: 180

DL State: SC DL #:

DOB: Agency ORI #: SC0100100

Prosecuting Agency: Charleston City Police Department

Prosecuting Officer: P. Krasowski - 0257

Offense: Weapons / Pointing and presenting firearms at a person

Offense Code: 0122

Code/Ordinance Sec: 16-23-0410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant onAnthony McClain
6/9/15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Personally appeared before me the affiant P. Krasowski who

being duly sworn deposes and says that defendant Anthony McClain

did within this county and state on or about 6/2/2015 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)

In the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Pointing and presenting firearms at a person

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address 180 Lockwood Blvd.

Charleston, SC 29403-

Affiant's Telephone (843)577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/2/2015 defendant Anthony McClain

did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Pointing and presenting firearms at a person

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 6/9/2015

Signature of Issuing Judge
Ellen S. Steinberg (L.S.)

Ellen Soffar Steinberg

Judge Code: 7280

Judge's Address 1720 Sam Rittenberg Blvd, Unit 11

Charleston, SC 29417-

Judge's Telephone (843)-76-6-65 x 31

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

BAIL set by

WITNESSES

626

Judge Baldwin
on 6-16-15
Type and Amount: 25,000
Name of Surety: (Signature)

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
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Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



2015 JUN 25 AM 9:48
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, Det. Paul Krasowski,
who first being duly sworn deposed and says that, Anthony McClain,
did within this county and state on the 02 June 2015 violate the criminal laws of the State of South
Carolina in the following particular:

DESCRIPTION OF OFFENSE

Pointing Firearm at any Person
16-23-410

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth
and that such probable cause is based on the following facts:

On June 02, 2015 at approximately 0047hrs, while in front of ■■■ Morris Street, which is located in the City and County of
Charleston, South Carolina, the Defendant, Anthony McClain, did knowingly, willingly, and unlawfully violate South Carolina
State Statute, Pointing Firearm at any Person; 16-23-410, in the following manner:

That the Victims, Sebastian Bedon, and, Morgan Osborne, were walking on the sidewalk near ■■■ Morris Street with several
other friends. A red colored, older model sedan pulled up alongside them and the Driver / Defendant, Anthony McClain,
exited the vehicle and approached Morgan. The Defendant requested to take a photograph of Morgan and Sebastian told the
Defendant "No!" The Defendant became upset with Sebastian and brandished a dark colored firearm and pushed the barrel of
it against Sebastian's face and threatened to kill him because he felt disrespected.

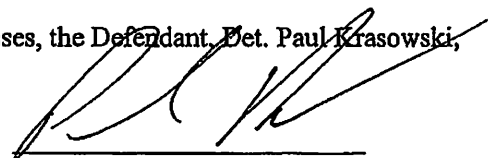
Morgan began screaming, which caused the Defendant to then press the firearm against the side of her head as he continued to
rant on about being disrespected. The Victims in fear for their lives, ran for their safety and contacted 911. The Defendant got
back into the driver's seat of the red colored sedan and fled from west on Morris Street.

Almost immediately after this incident, the Defendant exited out of a red colored, older model sedan and approached another
Victim in front of ■■■ Cannon Street. He robbed and kidnapped her at gunpoint; The Victim positively identified the Defendant
in that case, therefore warrants were obtained. The Defendant was arrested on June 04, 2015 and provided a post-Miranda
statement. During his statement, the Defendant admitted that before the [Cannon Street incident] he drove by a group of
attractive girls and requested to take their photograph. The group declined and he became upset with them. The Defendant
provided intimate details of this encounter that only the offender would have known. The Defendant admitted that he drove a
burgundy colored Ford Escort that night. In Addition, the two (2) incidents were within one (1) block and occurred within
minutes of each other. The Defendant fit the general physical description, as did his vehicle.

The above is true and believable based on the statements made by the Victims, Witnesses, the Defendant, Det. Paul Krasowski,
and the investigations of the Charleston City Police Department.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 9 DAY OF June, 2015



AFFIANT
180 Lockwood Blvd.
Charleston, SC 29403
843-577-7434

 (L.S.)
SIGNATURE OF JUDGE

COMPLAINT #: 15-09139
WARRANT#

INVESTIGATING OFFICER: Det. Paul Krasowski

CPD Form OT3

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 05/06/22

C0667

MCCLAIN, ANTHONY - FBI # 933227W2 SID# SC00673445 SCDC # 00186047

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: MACDOUGALL CORRECT INST

SECURITY/CUST.: 2 ADULT-STRAIGHT SENTENCE

CURR INCARC SENT...: 22 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: C1A0011B

RACE....: B SEX....: M

PROJ MAXOUT DATE: 02/07/2034

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: CUSTODIAL WORKER

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: WARD KEEPER WARD #1

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 57 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

00181082

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			CATEGORY
	YRS	MOS	DYS		START	V/NV		
POINTING A FIREARM	5	0	0	CHARLESTON	6/ 2/2015	N	3	
POINTING A FIREARM	5	0	0	CHARLESTON	6/ 2/2015	N	3	
ARMED ROBBERY	22	0	0	CHARLESTON	6/ 2/2015	V	4	
KIDNAPPING	22	0	0	CHARLESTON	6/ 2/2015	V	5	
FIREARMS PROVISION	5	0	0	CHARLESTON	6/ 2/2015	N	3	

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE			COUNTY	SENTENCE			CATEGORY
	YRS	MOS	DYS		START	V/NV		
ASSAULT & BATTERY 1ST	1	0	0	CALHOUN	8/ 8/2011	N	3	
GRAND LARCENY	5	0	0	CALHOUN	1/23/1992	N	2	

PRIOR COMMITMENTS OVER 90 DAYS:

2/ 4/97	POSSESS PISTOL AFTER CONV	5 YRS	0 MOS	0 DYS
2/ 4/97	FIREARMS PROVISION	12 YRS	6 MOS	0 DYS
2/ 4/97	INTIMIDATION	12 YRS	6 MOS	0 DYS
2/ 4/97	*CARJACKING	12 YRS	6 MOS	0 DYS
3/20/96	CARJACKING	17 YRS	6 MOS	0 DYS
3/20/96	POSSESSION OF WEAPON	17 YRS	6 MOS	0 DYS
3/20/96	*ARMED ROBBERY	17 YRS	6 MOS	0 DYS
8/28/91	BURGLARY-3RD DEGREE	0 YRS	6 MOS	0 DYS
12/ 1/87	COMMON LAW ROBBERY	1 YRS	0 MOS	0 DYS
11/30/87	OBSTRUCTING JUSTICE-NEC	1 YRS	0 MOS	0 DYS
6/11/87	*BURGLARY-2ND DEGREE	1 YRS	0 MOS	0 DYS
2/ 5/87	*WITNESS DECEIV./INTIMIDAT	1 YRS	0 MOS	0 DYS

DETAINEES (HOLD, WANTED, NOTIFY):

KIDNAPPING	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 5
ARMED ROBBERY	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 4
NO DETAINEES			

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

11/24/20 POSS. OR/ATTEMPT TO POSS DROPPED	MAJOR
6/ 6/20 POSS. OR/ATTEMPT TO POSS DROPPED	MAJOR
5/12/20 POSS. OR/ATTEMPT TO POSS CONVICTED	MAJOR
5/12/20 POSSESSION OF CONTRABAND CONVICTED	MAJOR
11/26/19 POSSESSION OF A NEGOTIAB CONVICTED	MAJOR
11/26/19 USE, POSS NARC, MARIJ, UNAU CONVICTED	MAJOR
8/15/19 I/M UNDER INFLUENCE/POSS	OTHER
1/ 4/19 EVADING A SECURITY DEVIC DROPPED	MAJOR
8/17/17 POSSESSION OF CONTRABAND DROPPED	MAJOR

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10/ 1/94 REFUSING OR FAILING OBEY CONVICTED MINOR

MCCLAIN, ANTHONY - FBI # 933227W2 SID# SC00673445 SCDC # 00186047 (CONTINUED)

10/ 1/94	ABUSE OF PRIVILEGES	CONVICTED	MINOR
11/29/93	REFUSING OR FAILING OBEY	CONVICTED	MAJOR
11/29/93	REFUSING OR FAILING OBEY	CONVICTED	MINOR
11/29/93	FIGHTING WITHOUT A WEAP	CONVICTED	MAJOR
6/ 3/93	USE OBSCENE, VULGAR, PROFA	CONVICTED	MINOR
7/27/92	REFUSING TO WORK	CONVICTED	MINOR
7/27/92	REFUSING OR FAILING OBEY	CONVICTED	MINOR
7/14/92	POSSESSION OF CONTRABAND	CONVICTED	MAJOR

HISTORY OF MOVEMENTS:

5/28/21	MACDOUGALL	INCARCERATED	ADMINISTRATIVE
5/28/21	CHARLESTON CO	AUTH ABSENCE (AWL)	MEDICAL
12/ 2/20	MACDOUGALL	INCARCERATED	ADMINISTRATIVE
7/10/20	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
7/10/20	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
9/30/19	BROAD RIVER	INCARCERATED	RETURN FROM COURT
9/27/19	CHARLESTON CO	AUTH ABSENCE (AWL)	TO COURT
7/22/19	BROAD RIVER	INCARCERATED	RETURN FROM COURT
7/22/19	CHARLESTON CO	AUTH ABSENCE (AWL)	TO COURT
7/19/19	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
7/19/19	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
5/21/19	BROAD RIVER	INCARCERATED	RETURN FROM COURT
5/20/19	CHARLESTON CO	AUTH ABSENCE (AWL)	TO COURT
5/13/19	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
5/13/19	KIRKLAND	INCARCERATED	MEDICAL
4/25/19	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
4/25/19	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
3/ 5/19	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
3/ 5/19	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
2/11/19	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
2/11/19	KIRKLAND	INCARCERATED	MEDICAL
1/30/19	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
11/28/18	LIEBER	INCARCERATED	ADMINISTRATIVE
11/28/18	KIRKLAND	INCARCERATED	MEDICAL
7/10/18	LIEBER	INCARCERATED	ADMINISTRATIVE
7/10/18	KIRKLAND	INCARCERATED	MEDICAL
3/22/18	LIEBER	INCARCERATED	ADMINISTRATIVE
3/22/18	KIRKLAND	INCARCERATED	MEDICAL
5/15/17	LIEBER	INCARCERATED	ADMINISTRATIVE
3/17/17	KIRKLAND	INCARCERATED	NEW SENT W/O PR/CS/SF REV
2/28/15	UNK	RELEASE	PROB/CS/EPA COMPLETE
3/ 1/12	CALHOUN CO	PROBATION	RELEASED TO PROBATION
12/19/11	KIRKLAND	INCARCERATED	NEW ADMISSION
2/ 6/97	UNK	RELEASE	PROB/CS/EPA COMPLETE
2/ 7/95	CALHOUN CO	PROBATION	RELEASED TO PROBATION
1/10/95	BROAD RIVER R&E	INCARCERATED	DISCIPLINARY
12/22/94	WATKINS	PRE-RELEASE	PRE-RELEASE
10/21/94	KIRKLAND	INCARCERATED	ADMINISTRATIVE
10/ 6/94	BYRNES CLINIC	INCARCERATED	ADMINISTRATIVE
9/13/94	KIRKLAND	INCARCERATED	ADMINISTRATIVE
9/ 9/94	COUNTY HOSP	AUTH ABSENCE (AWL)	MEDICAL
8/ 6/93	KIRKLAND	INCARCERATED	ADMINISTRATIVE
6/23/93	BROAD RIVER R&E	INCARCERATED	ADMINISTRATIVE
6/22/93	STEVENSON CORR	INCARCERATED	ADMINISTRATIVE
6/12/93	GILLIAM PSY	INCARCERATED	ADMINISTRATIVE
6/11/93	COUNTY HOSP	AUTH ABSENCE (AWL)	MEDICAL
6/ 4/93	GILLIAM PSY	INCARCERATED	MEDICAL
5/31/93	STEVENSON CORR	INCARCERATED	DISCIPLINARY
4/26/93	CAMPBELL WK-REL	INCARCERATED	ADMINISTRATIVE

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8/24/92

BROAD RIVER

INCARCERATED

ADMINISTRATIVE

5/ 1/92

STEVENSON CORR

INCARCERATED

ADMINISTRATIVE

MCCLAIN, ANTHONY - FBI # 933227W2 SID# SC00673445 SCDC # 00186047 (CONTINUED)
 4/13/92 BROAD RIVER R&E INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
CUSTODIAL WORKER	03/04/22	0/ 0/ 0		3F5
CUSTODIAL WORKER	12/09/20	3/ 3/22	CUSTODY REVIEW	5F5
CUSTODIAL WORKER	12/03/20	12/ 8/20	CUSTODY REVIEW	3F5
WARDKEEPER ASSISTANT	05/27/20	11/25/20	PLACED IN ST/SP CUSTODY	3F5
WARDKEEPER ASSISTANT	02/18/20	5/26/20	ASLT/DRUG/MAJOR DISC	2F5
WARDKEEPER ASSISTANT	02/27/19	2/17/20	POLICY CHANGE 2020	3F5
WARDKEEPER ASSISTANT	05/18/17	1/ 7/19	PLACED IN ST/SP CUSTODY	3F5
LANDSCAPE GARDENER	12/13/94	1/10/95	INSTIT TRANSFER	3F7
LANDSCAPE GARDENER	10/26/94	12/12/94	LOCKUP-INVESTIGATION	3F7
LANDSCAPE GARDENER	05/11/94	10/ 1/94	LOCKUP-INVESTIGATION	3F7
LANDSCAPE GARDENER	03/16/94	5/ 1/94	LOCKUP-INVESTIGATION	3F7
GENERAL WORKER	02/03/94	3/15/94	PROMOTION	7F7
FOOD SERVICE AIDE	01/04/94	1/21/94	UNSAT JOB PERFORM	5F7
WARDKEEPER ASSISTANT	11/02/93	11/29/93	LOCKUP-INVESTIGATION	5F7
FOOD SERVICE AIDE	09/22/93	11/ 1/93	INMATE REQUEST	5F7
SENIOR CUSTODIAN	08/30/93	9/21/93	INMATE REQUEST	3F7
WARDKEEPER ASSISTANT	08/20/93	8/29/93	PROMOTION	5F7
FOOD SERVICE AIDE	04/26/93	5/31/93	INSTIT TRANSFER	5F6
UPHOLSTERER	12/02/92	3/ 2/93	UNSAT JOB PERFORM	3F5
PAINTER HELPER	09/28/92	12/ 1/92	PROMOTION	5F5
FOOD SERVICE AIDE	05/22/92	7/27/92	LOCKUP-INVESTIGATION	5F7
LITTER CONTROL PROGR	05/05/92	5/21/92	UNSAT JOB PERFORM	2F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	12/13/94	1/10/95	INSTIT TRANSFER
BONUS 15 OR MORE	10/25/94	12/12/94	LOCKUP-INVESTIGATION
BONUS 15 OR MORE	07/22/94	10/ 1/94	LOCKUP-INVESTIGATION

***** END OF REPORT *****

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African American

Sex: M

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: North Charleston, SC [REDACTED]

DL# [REDACTED]

SID# SC00673445

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

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

TO: Pointing/Presenting a Firearm

In violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

(CSC w/minor 1* or Lowd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

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

ATTEST:

David L. Osborne, Assistant Solicitor

101325
SC Bar #

Defendant

Anthony McClain

Attorney for Defendant

81261
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 652 days credit☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: Judge Code: 2127Sentence Date: Mar 15, 2017Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ca \$ 3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Christie DanyCourt Reporter: Joyce Rueger

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SC [REDACTED]DL# [REDACTED]SID# SC00673445*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Pointing/Presenting a FirearmIn violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

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

ATTEST:

David L. Osborne, Assistant Solicitor

101325

SC Bar #

Anthony McClain

Defendant

[Signature]

Attorney for Defendant

81261

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 60 days credit☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: [Signature]Judge Code: 2121Sentence Date: March 15, 2017Clerk of Court/Deputy Clerk: Christine DavyCourt Reporter: Joyce Kueger

635

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SC [REDACTED]DI# [REDACTED] SID# SC00673445*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADSTO: Armed RobberyIn violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

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

ATTEST:

David L. Osborne, Assistant Solicitor

101325
SC Bar #

Defendant

Anthony McClain

Attorney for Defendant

81261
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center.for a determinate term of 90 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1) (Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2) (DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ TOTAL \$ 128.75☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Christina DavisCourt Reporter: Joyce RiegerPresiding Judge: [Signature]Judge Code: 2161Sentence Date: March 13, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SCDL# [REDACTED] SID# SC00673445*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADSTO: KidnapingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

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

ATTEST:

David L. Osborne, Assistant Solicitor

101325
SC Bar #

Defendant

Anthony McClain

Attorney for Defendant

81261
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS: This does not involve a sexual offense.☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk during probation.

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 167.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Christie DAWCourt Reporter: Joyce RuegerPresiding Judge: C. A. HerringJudge Code: 9131Sentence Date: March 15, 2017

637

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

ANTHONY MCCLAIN

AKA:

Race: Black/African American

Sex: M

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: North Charleston, SC [REDACTED]

DL# [REDACTED] SID# SC00673445

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

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

☐ CONVICTED OF or☒ PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

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

ATTEST:

David Osborne, Assistant Solicitor

101325
SC Bar #

Defendant

Anthony McClain

Attorney for Defendant

81261
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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

(652 days credit)

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

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

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk during probation.

Recipient: _____

*Fine: _____ \$_____

§14-1-206 (Assessments 107.5%)

\$_____

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$_____

§56-5-2995 (DUI Assessment)

\$12

\$_____

§56-1-286 (DUI Breath Test)

\$25

\$_____

Proviso 61.6 (Public Def/Prob)

\$500

\$_____

§14-1-212 (Law Enforce. Funding)

\$25

\$25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$_____

§50-21-114 (BUI Breath Test Fee)

\$30

\$_____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$_____

3% to County (if paid in installments)

\$

\$3.75

TOTAL

\$178.75

Clerk of Court/Deputy Clerk:

Court Reporter:

Presiding Judge:

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ANTHONY MCCLAIN #186047

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: Tommy A. ThomasAddress: P.O. Box 88, Irmo, SC 29063

IN THE COURT OF COMMON PLEAS

2018 - CP - 10 - 1129

CIVIL ACTION COVERSHEET

-CP -

SC Bar #: 5536

Telephone #: 803-732-5507

Fax #: 803-781-4226

Other:

E-mail: jackie@paroleme.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____ -
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: February 27, 2018

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ANTHONY MCCLAIN #186047)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2018-CP-10-1129

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Charleston County General Sessions, 100 Broad Street, Charleston, SC 29401
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-10-5968 - Kidnapping
 - (b) 2015-GS-10-5969 - Firearms Provision
 - (c) 2015-GS-10-5967 - Armed Robbery
 - (d) 2015-GS-10-5964 - Pointing a Firearm
 - (e) 2015-GS-10-5966 - Pointing a Firearm

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 17, 2017 - 22 years
 - (b) March 17, 2017 - 5 years
 - (c) March 17, 2017 - 22 years
 - (d) March 17, 2017 - 5 years
 - (e) March 17, 2017 - 5 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Involuntary Guilty Plea
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
 - (b) your trial, if any? _____
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Aaron C. Mayer, Esq., 2000 Sam Rittenberg Blvd., Ste. 2011, Charleston, SC 29407
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea and sentencing
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
New Trial
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA

County of Dorchester

)
)
)

VERIFICATION

I, Anthony McClain, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Anthony McClain

SWORN to and subscribed before me this 22nd
day of February, 2 .

Ludhean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Anthony McClain, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Anthony McClain
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of February, 2018.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

FACSIMILE:
(803) 781-4226

INMATE LINE
(803) 732-6542

February 27, 2018

Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

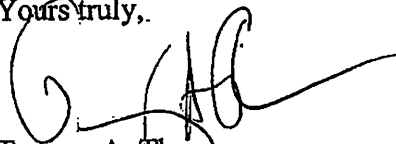
RE: Anthony McClain #186047 v. State

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of an Application for Post Conviction Relief and coversheet.

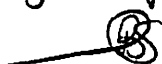
Kindly return the clocked copies to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem

3/1/18 - verified that he is
representing the plaintiff.



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Anthony McClain, #186047,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2018-CP-10-1129

RETURN

Respondent, making its Return to the application for post-conviction relief ("PCR") filed on March 1, 2018 by Anthony McClain ("Applicant"), would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the November 2015 term of the Charleston County Grand Jury for kidnapping (2015-GS-10-5968), possession of a weapon during the commission of a violent crime (2015-GS-10-05969), armed robbery (2015-GS-10-05967), and two counts of pointing and presenting a firearm (2015-GS-10-05964, 05966). He was represented on those charges by Aaron Mayer, Esquire. Assistant Solicitor David L. Osborne, Esquire, prosecuted the case.

On March 15, 2017, Applicant pleaded guilty before the Honorable Clifton Newman as indicted and without negotiations or recommendations to all charges. Judge Newman sentenced Applicant to confinement for a period of twenty-two years for armed robbery, twenty-two years for kidnapping, five years for each count of pointing and presenting a firearm, and five years for possession of a weapon during the commission of a violent crime. The sentences were to run

concurrently. As a part of his sentence, Applicant was to receive 652 days credit for time served. Applicant did not appeal.

II.

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.

Attached and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, applicant's records from the South Carolina Department of Corrections, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant information.

III.

Respondent submits Applicant's allegations of ineffective assistance of trial counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under

prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. Respondent notes Applicant advised the plea court he was fully satisfied with counsel's performance. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant further alleges that his plea was not voluntarily made. Respondent submits that this allegation is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may

collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See

Rule 11, SCRCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCRCP.

VI.

Each and every allegation contained within the post-conviction relief application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII.

WHEREFORE, the State requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RASHEEDA CLEVELAND
Assistant Attorney General

By: Rasheeda Cleveland
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 23rd, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2018-CP-10-1129
	)	
ANTHONY MCCLAIN, #186047	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy Arthur Thomas, Esquire
PO Box 88
Irmo, SC 29063

DATED this the 23rd day of April, 2018.



 Jennifer Jennison, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNT OF CHARLESTON) CASE NO.: 2018-CP-10-1129

Anthony McClain #186047,)

Applicant,)

Vs.)

State of South Carolina,)

Respondent.)

AMENDMENT TO POST CONVICTION
RELIEF APPLICATION

FILED
2019 JUL 22 PM 12:48
JULIE J. HARRIS
CLERK OF COURT
BY *SK*

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully re-alleges those allegations as contained in the original Application for Post Conviction Relief and moves to amend his original Post Conviction Relief Application.

That the Applicant proceeded to trial before the Honorable Clifton Newman, Jr. on March 13, 2017. That prior to the trial on March 10, 2017 Motions were heard before the Honorable R. Markley Dennis, Jr.

That the Applicant alleges ineffective assistance of counsel as well as involuntary guilty plea. That the Trial was started and almost completed. Just prior to the end of the trial, the Applicant entered a plea of guilty to all charges.

That the Applicant believes that Counsel was ineffective and that his plea was involuntarily given for the following reasons:

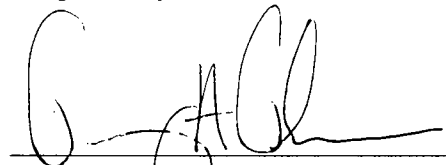
1. That the Applicant did not make bond prior to trial and that made it difficult for him to consult with his attorney. That his attorney was ineffective in not properly preparing his case for trial and/or plea.

2. That Defense Counsel did not go over, nor explain the discovery with the Applicant. The Applicant was never able to review the video clips nor his video statement. That the Applicant was unable to view and understand the State's evidence against him. Nor was there any theory of defense explained to him by Trial Counsel.
3. That there was certain mental health issues involved in this case, in that the Applicant was diagnosed with general anxiety disorder. He was on medication at the time and is currently on medication in the South Carolina Department of Corrections. He discussed this with his attorney. These concerns were never addressed by Defense counsel.
4. That Defense Counsel was ineffective in arguing and presenting Pre-Trial Motions:
 - a. To suppress the video of his statement made to law enforcement;
 - b. Regarding Maranda issues;
 - c. In his quest to sever the issues of Pointing and Presenting a Firearm from the allegations of Kidnapping and Armed Robbery.
5. That Defense Counsel was ineffective for making a determination as to whether or not the Applicant was facing life without parole due to the two-strike or three-strike statute. That this lack of information directly impacted the Applicant's ability to proceed to trial and/or enter a guilty plea.
6. Defense Counsel was ineffective regarding his failure to object and to stipulate to certain evidence being introduced at trial. This evidence being:
 - a. Bank Records;

- b. Video obtained from the physical location of the alleged crime;
 - c. Any and all phone records that were used at trial.
- 7. That Counsel was ineffective for his failure to object to or properly object to the use of alleged Lyle evidence. These being the alleged statements made by the Applicant regarding having served time before and/or that he had been physical violent to another individual at a previous time.
- 8. That Counsel was ineffective in his handling of the Motion for Mistrial based upon testimony of the previous witness at trial.
- 9. That Counsel was ineffective in his handling of the Motion to Severe the Pointing and Presenting cases from the rest of the charges. That he failed to argue that allowing the introduction of evidence in the pointing and presenting case created burden shifting. That this evidence was extremely prejudicial and had the impact of proving the fact that the Applicant was guilty of the kidnapping and Armed Robbery. That this was burden shifting by the State to the Applicant to prove that he was not guilty of these crimes.
- 10. That counsel was ineffective for not adequately pointing out the inconsistencies with the victim's previous statements and testimony at trial.
- 11. That Counsel was ineffective in discussing and advising the Applicant regarding his right not to take the stand and testify.
- 12. That Counsel was ineffective for not hiring a private expert to review the telephone records and not requiring that a custodian from AT&T appear before the Court to actually verify the telephone records and the data that was produced.

13. That the Applicant was forced and coerced into accepting the plea based upon the ineffective assistance of trial counsel. That the plea was not freely, voluntarily, knowingly or intelligently entered into.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', written over a horizontal line.

Tommy A. Thomas, Esq.
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063

July 18, 2019

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNT OF CHARLESTON) CASE NO.: 2018-CP-10-1129

Anthony McClain #186047,)

Applicant,)

Vs.)

State of South Carolina,)

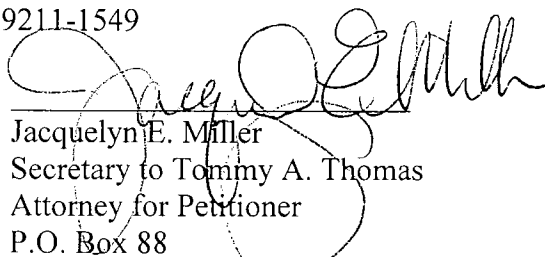
Respondent.)

Certificate of Service

FILED
2019 JUL 22 PM 12:48
JULIE J. ARNSTADT
CLERK OF COURT

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant
hereby certify that I emailed, a copy of the Amendment to Post Conviction Relief Application to
Benjamin Limbaugh, Esq. of the Attorney General's Office, at:

Benjamin Limbaugh, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

July 18, 2019

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
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PLEASE REPLY TO:
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IRMO, SC 29063

FACSIMILE:
(803) 781-4226

INMATE LINE
(803) 732-6542

July 18, 2019

Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

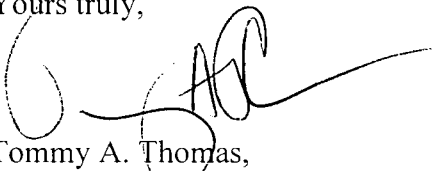
RE: Anthony McClain #186047
Case No.: 2018-CP-10-1129

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of an Amendment to Post Conviction Relief Application and Certificate of Service.

Kindly return the clocked copy to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Benjamin Limbaugh, Esq.

COUNTY OF BEAUFORT

-----)

State of South Carolina)

VS .

TRANSCRIPT OF HEARING

Anthony McClain,)

Defendant.)

July 1, 2021
Virtual Courtroom

B E F O R E:

The Honorable Bentley Price, Judge Presiding

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

Benjamin H. Limbaugh, Esquire
Office of the Attorney General
State of South Carolina
339 Heyward Street, 2nd Floor
Columbia, SC 29201

Tommy Arthur Thomas, Esquire
7588 Woodrow Street
Irmo, South Carolina 29063

ALSO PRESENT: Aaron Mayer, Esquire

Kymerlee M. Williams, CSR/RPR
Official Circuit Court Reporter III
Post Office Box 8091
Beaufort, South Carolina 29903

I N D E X

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EXHIBITS
(NONE OFFERED)

PROCEEDINGS

THURSDAY, JULY 1, 2021

CHARLESTON, SOUTH CAROLINA (VIRTUAL HEARING)

THE COURT: All right. Can everybody hear me?

MR. LIMBAUGH: Yes, Your Honor.

MR. THOMAS: Yes, sir.

THE COURT: All right. We've got to get Mr.

Ryan on.

MR. LIMBAUGH: And Mr. Mayer should be joining us. I resent him the link and he confirmed with me yesterday that he was aware that it had changed to 9:30.

THE COURT: All right.

MR. THAMS: Mr. McClain is not present?

THE COURT: It just says it on the screen. I was just mentioning who was there.

MR. THOMAS: Mr. Mayer is going to join us by WebEx?

MR. LIMBAUGH: That's my understanding.

MR. THOMAS: Okay. Good. I know at one time he was going to -- he was scheduled to call in.

MR. LIMBAUGH: I think that was going to be more if we were going to do it in person today.

MR. THOMAS: Okay. All right.

1 There he is. We just got a call from the
2 institution saying that they were getting Anthony
3 up.

4 THE COURT: Mr. McClain, can you hear us? Mr.
5 McClain? Ben, has it always been that slow at SCDC?
6 I mean, it looks like he's in slow motion.

7 MR. LIMBAUGH: It's institution-dependent
8 because the WIFI at each one is different so
9 sometimes you get it to where it gets that little
10 symbol on there and it will be okay, and then others
11 are better than ours here at the State.

12 THE COURT: He hasn't indicated that he can hear
13 us.

14 MR. THOMAS: We're calling now. The institution
15 had just called us. Jackie is calling them back.
16 I'm just wondering if they've got him on mute or
17 something.

18 THE COURT: They probably just don't have the
19 volume turned up on the actual computer so he can't
20 hear us.

21 MR. THOMAS: Maybe.

22 THE COURT: Okay.

23 MR. THOMAS: We just called the number that we
24 had, and Jackie said we had to leave a message, so
25 maybe they'll see that we called.

1 THE DEFENDANT: Can you see me?

2 MR. THOMAS Anthony?

3 THE DEFENDANT: Yes, sir.

4 MR. THOMAS: Your Honor, if it please the Court,
5 I think that if Mr. Mayer, when he joins us or if
6 he's going to join us, I can go ahead and once we
7 get this connection established, I can go ahead and
8 start with Anthony as my first witness and then what
9 I probably will do is maybe call -- well, I can
10 wait.

11 I think Ben is going to call Mr. Mayer and we
12 would have one other witness who is on stand-by. I
13 think she is maybe in as a -- not a participant, but
14 her name is Elizabeth Tisdale, and her testimony
15 would be maybe ten of fifteen minutes at the most.

16 THE COURT: All right.

17 (OFF THE RECORD DISCUSSION)

18 MR. THOMAS: Anthony?

19 MR. MCCLAIN: Yes, sir?

20 MR. THOMAS: You're working pretty well now.

21 MR. MCCLAIN: Okay. I'm right here. I'm right
22 here.

23 MR. THOMAS: Okay. You need to bring your
24 camera down just a little bit. We've only got the
25 top half -- there we go. That's much better.

1 MR. MCCLAIN: Can you hear me?

2 MR. THOMAS: Yeah. I can hear you good.

3 THE COURT: All right. Do you want to go ahead
4 and begin with Anthony, now that we have him?

5 MR. THOMAS: Sure. Yes, sir, Your Honor, I'd be
6 more than happy to.

7 THE COURT: All right. So, Mr. Limbaugh, this
8 is the PCR, correct?

9 If you'll just put everything on the record and
10 the case caption FOR the Court Reporter, please?

11 MR. LIMBAUGH: May it please the Court, Your
12 Honor.

13 THE COURT: Yes, sir.

14 MR. LIMBAUGH: This is the case of Mr. Anthony
15 McClain. Case number 2018-CP101129.

16 Applicant is presently confined in the South
17 Carolina Department of Corrections pursuant to
18 orders of commitment of the Charleston County Clerk
19 of Court.

20 Applicant was indicted at the November 2015 term
21 of the Charleston County Grand Jury for kidnapping,
22 possession of a weapon during the commission of a
23 violent crime, armed robbery, and two counts of
24 pointing and presenting a firearm.

25 Applicant was represented on those charges by

1 Mr. Aaron Mayer. Assistant Solicitor David O.
2 Osborne prosecuted the case.

3 On March 15th, 2017, applicant pled guilty
4 before the Honorable Clifton Newman as indicted and
5 without negotiations OR recommendations to all
6 charges.

7 There's a little background before that though,
8 Your Honor. They did begin the trial. I think it
9 was a couple of days at least and then right before
10 it was set to go to the Jury, the applicant decided
11 to plead guilty.

12 Judge Newman sentenced the applicant to
13 confinement for a period of 22 years for armed
14 robbery, 22 years for kidnapping, and 5 years each
15 for the pointing and presenting charges and 5 years
16 for possession of a weapon during the commission of
17 a violent crime. Sentences were to run
18 concurrently.

19 As part of the sentence, the applicant received
20 652 days credit for time served. The applicant did
21 not appeal his convictions. Applicant did file this
22 application for post-conviction relief on March 1st,
23 2018, alleging ineffective assistance of Counsel and
24 an involuntary guilty plea.

25 I believe Mr. Thomas here represents the

1 applicant as amended and I will let them espouse his
2 allegations on the record, Your Honor.

3 THE COURT: All right. Mr. Thomas?

4 MR. THOMAS: Yes, Your Honor, if it please the
5 Court.

6 Basically, what we are alleging is an
7 involuntary guilty plea, ineffective assistance of
8 counsel -- looking for -- I apologize. What we tend
9 to go through is in regards to the issue of
10 preparation for trial, what Mr. Mayer did.

11 There's also an interesting issue in here in
12 regards to a joinder of two different cases. One
13 being alleged kidnapping and another one being an
14 incident that occurred with some COC students.

15 There are some pre-trial motions that were made
16 by Mr. Mayer. Also, there's another issue in
17 regards to life without parole. There was a threat
18 of life without parole, but there seems to be some
19 concern as to whether or not it could actually, in
20 fact, be enhanced, whether or not it was two serious
21 -- two serious crimes or two most serious crimes and
22 the -- we would allege that the allegations or the
23 threat of the LWOP influenced my client into
24 accepting this guilty plea. There's also an
25 interesting situation in regards to a polling of the

1 jury, basically, by the Court, which indicated that
2 it possibly would have been a hung jury and also
3 there's an incident in regards to sentencing in that
4 Mr. McClain was actually sentenced by the Court, and
5 the way the sentence was chosen was the age of the
6 victim at the time of the incident.

7 And we would allege, of course, that all of this
8 amounts to an involuntary guilty plea as a result,
9 because he did almost at the end of the trial accept
10 a plea, which was a straight-up plea, I believe.

11 So, Your Honor, if it please the Court, we would
12 call Mr. McClain to the stand.

13 THE COURT: Mr. McClain, raise your right hand.
14 Mr. McClain, can you hear me? All right. Mr.
15 McClain, can you hear me?

16 MR. MCCLAIN: Yes, I can hear you now. Yes,
17 sir.

18 THE COURT: Do you swear and affirm that the
19 testimony you'll give will be the truth, the whole
20 truth and nothing but the truth?

21 MR. MCCLAIN: Yes, sir.

22 THE COURT: All right.

23 MR. THOMAS: Your Honor, if it please the Court.

24 THE COURT: Yes, sir. I'll be happy to hear
25 from you.

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DIRECT EXAMINATION

BY MR. THOMAS:

Q. So Mr. McClain, you are serving time for what?

A. Armed robbery, kidnapping, and pointing and presenting a firearm.

Q. Okay, and you actually had two counts of pointing and presenting?

A. Yes.

Q. And one firearm provision. So, in essence, you've got one, two, three, four, five -- five charges?

A. Yes.

Q. Tell us a little bit about this.

Mr. McClain, this arose out of two separate incidents?

A. Yes, it arose out of two separate incidents. What happened was that I was with my barber. We decided to go downtown to hang out. Downtown Charleston, to hang out for a little while.

Q. Why don't you give us kind of a brief, if you could, kind of simplify it.

A. So, what happened, to make a long story short, I ran into -- we was driving -- we drove --

1 we was seeing some college students. I seen a
2 particular female and I asked her could I take her
3 picture and she said, "Yes", they said, "No", I
4 mean, their friends said, "No", and we had a few
5 words and that was it.

6 Then all of a sudden, when this other incident
7 happened, they said that I pointed a firearm at the
8 college student, but none of the college students
9 never picked me out of a lineup and said that I did
10 it.

11 Q. All right. How about the second charges?
12 That was a kidnapping?

13 A. That was a kidnapping and armed robbery.

14 Q. All right. Did you -- you understand that
15 you're here today for a post-conviction relief
16 action?

17 A. Yes, sir.

18 Q. And you understand that what you're asking
19 for is that your conviction be set aside and for a
20 new trial?

21 A. Yes, sir.

22 Q. If that is done, you essentially go back in
23 the position that you would have been prior to this
24 trial, correct?

25 A. Yes, sir.

1 Q. And we have spoken about this. There is
2 certain exposure that you could subject yourself to,
3 should you be re-tried.

4 A. Yes, sir.

5 Q. You understand that exposure, and you're
6 willing to accept that risk?

7 A. Yes, sir.

8 Q. You wish to go forward today on your post-
9 conviction?

10 A. Yes, sir.

11 Q. Okay.

12 Now, Mr. McClain, you filed your post-
13 conviction.

14 A. Yes, sir.

15 Q. And you understand, and we just spoke about
16 the risk. So, do you know roughly when you were
17 arrested?

18 A. I think it was June 3rd, 2015.

19 Q. What were you arrested for? Which one of
20 those allegations of crime?

21 A. Armed robbery and kidnapping.

22 Q. Okay. And this would involve someone that
23 you knew or who was this?

24 A. Yes, it was a female that I had met months
25 ago and we were friends, you know, it wasn't no

1 constant thing, but we -- I would call her from time
2 to time or she would call me, and then just a
3 particular time that I happened to have been
4 downtown or was driving towards the bar and I seen
5 her and I was driving past and I stopped and I
6 talked to her.

7 Q. Okay. So, it was your contention in this
8 with Mr. Mayer all along that you were not guilty of
9 any of these crimes?

10 A. Right.

11 Q. Okay. Now, you were arrested, and did you
12 make bond?

13 A. No. The bond was too high.

14 Q. Okay. So, you stayed in the County
15 detention center until this case went to trial?

16 A. Yes, sir.

17 Q. Did that impair your ability at all to
18 speak with Mr. Mayer in regards to these cases?

19 A. Yes, I mean, he wouldn't -- I would call
20 and call and call and he'd say he was coming, and he
21 wouldn't come. He said he was coming, and then it'd
22 be three weeks later I'd call him back and he would
23 say he's coming and he's never coming, you know.

24 Q. So, how many times do you remember meeting
25 with Mr. Mayer?

1 A. Out of all the time, about maybe twice.

2 Maybe twice.

3 Q. And I have that you were in the detention
4 center for 652 days. Is that correct?

5 A. Yes, it is.

6 Q. All right. So, was Mr. Mayer -- was he
7 appointed or was he retained?

8 A. He was retained.

9 Q. Do you remember what the fee was?

10 A. The fee was \$8,000.

11 Q. And this included a trial?

12 A. This included the trial.

13 Q. In talking with Mr. Mayer, I guess this
14 case was always going to be a trial because you were
15 -- it was your contention that you were not guilty
16 of these crimes?

17 A. Right. I always -- right.

18 Q. You were going for a trial?

19 A. Yes.

20 Q. So, in essence, Mr. Mayer would have been
21 preparing your case for trial?

22 A. He's supposed to have been.

23 Q. Okay.

24 Do you know how he prepared your case for trial?

25 A. No, I don't, because when I did see him, he

1 asked me, "What are we going to do?"

2 I told him I'm paying him to represent me.

3 "You're the lawyer. I don't know this".

4 Q. Okay.

5 A. Just as well as when he told Elizabeth the
6 same thing, help him to do the case and she was
7 like, "But you're the lawyer. We're paying you to
8 represent me".

9 Q. Who is Elizabeth?

10 A. Elizabeth Tisdale is my fiancé`.

11 Q. Fiancé'. Okay. And you knew Ms. Tisdale
12 when this arrest happened and when you were going
13 through this?

14 A. Yes. We were living together.

15 Q. Okay. Did she meet with Mr. Mayer, to your
16 best knowledge?

17 A. Yes, she did. She was the one that was
18 taking him the payments.

19 Q. She was making the payments for you. Okay.
20 Now, we've talked about -- you know what discovery
21 is?

22 A. Yes.

23 Q. Did you ever see a copy of any of the
24 discovery or did Mr. Mayer send you the copies of
25 the discovery?

1 A. Mr. Mayer never sent me a copy of the
2 discovery. At first, I had a Court-appointed
3 lawyer. He sent me a copy of it.

4 Q. All right.

5 In preparing this case for trial, did you
6 get an opportunity to sit down with Mr. Mayer at the
7 County detention center and go over what evidence
8 they had against you?

9 A. No, because he never would show up when he
10 said he was coming.

11 Q. So, normally, you know, for trial and even
12 for a plea, the Defense attorney will establish some
13 sort of theory of defense, how he was going to
14 defend you.

15 Did he ever tell you how he was going to
16 defend you?

17 A. The only thing that I know that he was
18 saying he was going to do is -- Friday, he came to
19 see me that Friday before the trial -- that Monday.

20 He came to see me that Friday and said we're
21 going to trial. And I said, "How are you going to
22 defend me?", and he said something to talk about
23 some drugs or something, something, something and I
24 said, "I don't know". Man, it was crazy, because he
25 was asking me --

1 Q. Were you charged with any drugs?

2 A. -- to give him pointers.

3 Q. Were you charged with any drugs? Were you
4 charged with any drugs?

5 A. No, I wasn't. No, I wasn't. No.

6 Q. Okay. Now, were there statements that Mr.
7 Mayer had that were written by witnesses or the
8 victim?

9 A. Did he what?

10 Q. Were there any statements? Any written
11 statements?

12 A. There was supposed to be statements by the
13 victim, Jennifer Johnson and the college students,
14 but the college students literally said they
15 couldn't point me out. Even in trial, they said,
16 no. They couldn't point me out.

17 Q. They couldn't identify you?

18 A. No, they could not identify me in none of
19 the lineups and when I was at trial they couldn't
20 identify me, but they said -- because one was saying
21 I was 5'6'. One was saying I was 20 years old. One
22 was saying I was 6'3', you know, they had it all
23 mixed up, you know, and none of them was accurate,
24 so they were like, "No, no, it's not him". They
25 could not identify me.

1 Q. Did you ever pull a gun? Did you ever pull
2 a gun on those folks?

3 A. No, I never had a gun.

4 Q. Okay. Now, you have a diagnosis with an
5 anxiety disorder?

6 A. Yes.

7 Q. Did you speak with Mr. Mayer about that?

8 A. Yes. I specifically told him that when I
9 talked to him on the phone and the very first time
10 he ever came to see me, I told him about this. I
11 told him about this, and he was aware of it.

12 Q. Did that have a -- Anthony, can you hear
13 me?

14 A. I can hear you now. I didn't hear the last
15 question.

16 Q. Okay. Did your anxiety disorder have a
17 play in you being able to kind of understand what
18 was going on in regards to the trial or the plea?

19 A. Yes.

20 MR. THOMAS: Jackie? Can you call corrections
21 again?

22 A. I'm here.

23 Q. Okay. Are you here? I can see your lips
24 moving, but I couldn't hear anything.

25 A. I can hear you. It was going in and out.

1 Q. Okay. So, let me ask you that question
2 again.

3 Did the anxiety disorder have any play in
4 understanding what was going on in regards to the
5 trial or the --

6 A. Yes.

7 Q. Okay.

8 A. Yes, because I was under the influence of
9 medication when I went to trial.

10 Q. And you're still taking that medication at
11 SCDC?

12 A. Yes, yes.

13 Q. Okay.

14 A. Yeah, right now, yes.

15 Q. Now, there were pre-trial motions made.
16 Were you present when those motions were made?

17 A. Was I presented?

18 Q. Were you there?

19 A. Oh, no. No. No, I wasn't there.

20 Q. You were not there.

21 Did you talk to Mayer about them being the --

22 A. He was telling me something about some of
23 the things he was doing and the only thing I
24 remember telling him was, I kept telling him that
25 the charge with the student, with the College of

1 Charleston student should be dropped. It should go
2 away and get that dropped. You know, them
3 identifying me as the person. He was supposed to
4 contact them and he never did nothing.

5 Q. Okay. Do you remember, did you talk to him
6 at all about a motion to suppress?

7 A. Suppress?

8 Q. Statements. Did you make statements? Did
9 you make a statement?

10 A. I talked to the detectives on the day they
11 arrested me.

12 Q. And you gave them a statement?

13 A. Yeah, well, I told them I didn't -- we knew
14 each other, but I, you know, not like --

15 Q. Anthony, you're still -- you're still
16 breaking up. Is the lady for from SCDC there?

17 A. Yeah, it's -- officer, excuse me. Can you
18 call Ms. Harrington so she can possibly move me to
19 the other room? She said she was going to move me
20 to the other room. Thank you.

21 Q. Okay. Let's see if this will hold while
22 they're getting her, as far as the connection.

23 A. Hold on. She's telling me to come out
24 here.

25 Q. Okay.

1 MR. THOMAS: Your Honor, I'm sorry.

2 THE COURT: Nothing we can do about it. That's
3 all right.

4 MR. THOMAS: I know.

5 MR. MCCLAIN: Can you hear me now?

6 MR. THOMAS: Yeah.

7 MR. MCCLAIN: Okay. I guess.

8 MR. THOMAS: No, you're still breaking up.

9 MR. MCCLAIN: Hold on. Hold on.

10 MR. THOMAS: Okay.

11 (Interruption in proceedings.)

12 BY MR. THOMAS:

13 Q. All right. Can you hear me?

14 A. Yes, sir. I can hear you.

15 Q. Good. Now, so pre-trial motions, were you
16 there for the pre-trial motions?

17 A. I don't remember. I don't think so. I
18 think the only one I -- I don't remember for sure.
19 The only thing I think I kind of remember was I
20 think when we was at trial he tried to ask something
21 about something being suppressed, but he didn't do
22 nothing else.

23 Q. Okay. Were mirandarized? Do you know what
24 the Miranda Rights are?

25 A. Yes, yes.

1 Q. So, you did receive Miranda Rights read?

2 A. Yes.

3 Q. How about this thing about the motion to
4 sever? Do you know if he made a motion to sever
5 those cases?

6 A. I'm not sure. I don't even know what that
7 is.

8 Q. Okay. For the C of C case to be tried
9 separately from the kidnapping case.

10 A. Only thing I remember is again in trial he
11 said something about it, but I don't remember him
12 doing it, you know, I don't remember him doing it
13 before that. But I've been asking him, you know,
14 I've been asking him to go there and ask to get it
15 thrown out. They didn't have nothing.

16 Q. Right. Can you move just a little bit,
17 Anthony? You're not quite -- You're not quite as
18 good as you were.

19 A. Okay, because I'm inside a cell, I mean, a
20 holding cell.

21 Q. Yeah.

22 A. So, I'm gonna try to go this way. How
23 about now?

24 Q. Yeah, that's good. You need to lower your
25 camera a little bit.

1 A. I'm coming closer to the window. Let me
2 see. How about now?

3 Q. That's good. That's good. Can you lower
4 your camera just a little? There you go. That's
5 better.

6 A. Okay.

7 MR. THOMAS: Your Honor, just for the Court's
8 information and just for that purpose, I can give
9 you the pages of the transcript on the pre-trial
10 motion on the suppression. It's pages 3 and 4,
11 lines 21 through 24 and 1 through 25. The motion to
12 sever is page 5 through 6, lines 14 through 25 and
13 also page 7.

14 BY MR. THOMAS:

15 Q. Now, Anthony, how about this issue of the
16 life without parole? What happened with that?

17 A. Okay. What happened was -- you want to
18 know what happened when they did -- at sentencing?

19 Q. Well, let me ask you about it.

20 MR. THOMAS: Your Honor, that is in the
21 transcript, page 16, lines 9 through 18.

22 BY MR. THOMAS:

23 Q. So, were you -- you were told that you
24 could be life without parole?

25 A. Yes. Matter of fact, that Friday Aaron

1 came to see me. About an hour later, I guess the
2 prosecution came to see me and they served with me
3 papers.

4 Q. Okay. So, you were noticed with life
5 without parole?

6 A. Yeah, an hour after -- when he told me we
7 was going to trial, so technically before that, we
8 was going to trial, Aaron told me that he actually -
9 - he said, "How would you feel if I can get you ten
10 years?".

11 I said at that time, you know, at that time when
12 he said that, I said, "Sure, if you can get it, I'll
13 probably take it". You know? But he never said
14 nothing. It was two weeks later that he came back
15 and said, "We're going to trial". So, I said,
16 "Going to trial?", I said, "But you told me you was
17 gonna come back and give me some news about the ten
18 years".

19 Q. Right.

20 A. He said -- he didn't say no more, so we're
21 going to trial". So, I was like -- and that's when
22 he was asking me, you know, what you gonna do?

23 I'm like, "You're the lawyer", you know, and I
24 told him, I said, "I paid you a whole lot of money
25 for you to defend me and you're not, you know,

1 you're not doing nothing".

2 So, as far as the trial, when we got to court
3 and when I stopped the trial because Aaron had --
4 during the recess, Aaron had went to Elizabeth and
5 her sister and told them, he said, "You need to get
6 him to stop the trial. Get him to stop the trial
7 because he's gonna lose. He's gonna lose.".

8 And I kept telling them I didn't want to stop
9 the trial. I said, "But I don't want to stop the
10 trial". He said -- so he talked to my fiancé' and
11 her sister and was, like, "Get him to stop the
12 trial".

13 So, during the recess, they called to the back
14 and put him to the window and they talked to him
15 through the window telling me, "Stop the trial".
16 I'd rather you get this -- I'd rather you get this
17 time than you have a life without parole.

18 Q. So you were thinking you would get ten
19 years?

20 A. Right. I told him, I said, "Well, I don't
21 think I'm gonna get life without parole, because I'm
22 gonna beat this case", and I knew I was gonna beat
23 it, but when he did that, Elizabeth started crying
24 and her sister started crying and it kind of weighed
25 on me, so I said -- that's how the whole trial got

1 stopped, because of what Aaron did when he went and
2 talked to Elizabeth and her sister.

3 Q. Okay. Did you know that there was a
4 weakness in the State's case for life without
5 parole?

6 A. I kind of felt that they couldn't give it
7 to me. See, what happened was, when they -- when
8 they was talking about sentencing, the judge, Judge
9 Newman said, "That is a question of a doubt if I can
10 give him life without parole", because what happened
11 was, they tried to use a felony charge that I did
12 federal time for to try to get that enhanced, but
13 they couldn't because I had an aiding and abetting,
14 instead of the crime itself, so that's when the
15 question came in and he said, "I don't think I can
16 sentence him -- get him on life without parole".

17 Q. And that was --

18 MR. THOMAS: Your Honor, that's page 526 and 527
19 of the transcript.

20 BY MR. THOMAS:

21 Q. So, you didn't really find out that there
22 was some potential weakness in the LWOP case until
23 you were in court?

24 A. Right, right. Right until I was -- right
25 before sentencing.

1 Q. So, you had already pled when you found
2 that out?

3 A. What happened was -- it was during the time
4 -- yeah, cause he was -- cause when he said
5 something, he was like, "Well, I don't think I could
6 have gave it to him", you know.

7 Because he asked him, he asked -- the judge
8 asked him, he said, "What are you talking about this
9 plea?". He said, "Well, since he's pleading, I'm
10 going to take life LWOP off the table". Judge
11 Newman came back and said, "Well, I didn't think I
12 could get him to it anyway". That was a matter that
13 had to go even a little further.

14 Q. Right.

15 A. So, that's when he said something about,
16 you know, because of the aiding and abetting,
17 instead of the crime itself.

18 Q. So, when you decided to stop the trial and
19 enter into the plea, you thought there was a good
20 chance that you could receive life without parole?

21 A. Yes, I could have -- I thought I was.

22 Q. You thought you were going to receive life
23 without parole?

24 A I thought I was, but then, you know, during
25 the time after when he said, well, the judge asked

1 him what he thinks and he said, "Well, I'm going to
2 take it off the table". And then he asked for 30
3 years.

4 Q. Right. Okay. Now, you may or may not know
5 the answers to these questions, but Mr. Mayer is not
6 here. Mr. Mayer made some stipulations. In other
7 words, he agreed to some evidence coming in at your
8 trial.

9 A. Did he agree to what?

10 Q. Did he agree to certain evidence coming in
11 the trial? Do you know?

12 A. Certain evidence?

13 Q. Yeah, you know, like the bank records and
14 the video from the store.

15 A. You know what. It was never nothing --
16 never nothing. Even the person that -- when I was
17 talking to you and I said the person, the cashier at
18 the store that night.

19 Q. Yeah.

20 A. He was supposed to have talked to and
21 supposed to have came to court. Both cashiers at
22 both stores. The one on Beach Street downtown and
23 the one in North Charleston.

24 Both the cashiers talked to them, which is in --
25 one of them was in the statement, when the first

1 cashier said that she didn't see nothing wrong.

2 That I was -- we was talking.

3 When she was at the window and I was in the car
4 with my head -- talking to another person at the
5 window, I mean, at -- I was standing in the line of
6 what to buy, and he was asking about a drink and I
7 was telling him about, "Would it be a good drink to
8 buy at the store?".

9 Q. Okay, so the problem with the kidnapping
10 case was that her behavior was more like she was a
11 willing participant and being in your company,
12 rather than being kidnapped?

13 A. I never kidnapped her. She agreed for me
14 to get in her car. If you look at the statements,
15 Your Honor, and Mr. Thomas, if you look at the
16 statements, she will tell you -- she tells you in
17 the statement that, "I tell him to eat and get in
18 the car", so, if you tell me I can get in your car,
19 how can I kidnap you?

20 Q. Okay. Now, you did not testify at this
21 trial?

22 A. No, sir.

23 Q. Why didn't you testify?

24 A. Because he told me not to.

25 Q. Mr. Mayer told you not to?

1 A. Yes, sir.

2 Q. Did he give you a reason?

3 A. Excuse me, excuse me, excuse me.

4 Q. Oh, I'm sorry.

5 A. Excuse me, Your Honor.

6 Q. It's okay. We're going to walk it through.

7 A. All right. Let's go. I'm ready.

8 Q. Okay. So, Mr. Mayer advised you not to
9 testify?

10 A. Yes.

11 Q. Do you know why?

12 A. He told me it didn't make no sense and I
13 told him, "I want to fight for my life".

14 Q. Right.

15 A. You know? Because I know I didn't do this.

16 Q. Okay. Now, in regards to this decision to
17 plea, we've talked a little bit about this. We've
18 spoken about your plea and do you believe that your
19 plea was freely and voluntarily given?

20 A. No, my plea wasn't voluntary. It was
21 forced.

22 Q. Okay. And the other part is, knowingly and
23 intelligently given. In other words, did you have
24 enough information to make this decision?

25 A. No. No, I didn't.

1 Q. Okay. And you saw, or Mr. Mayer was
2 telling you that you were going to get life without
3 parole?

4 A. There was a strong possibility.

5 Q. Okay. And that was probably the factor in
6 you making this decision to enter into the plea?

7 A. Yes, besides some coercing my finance' and
8 her sister.

9 Q. They were concerned about you.

10 A. Yes, but he had no right doing that because
11 I told him one thing and he went and did something
12 else.

13 Q. Okay.

14 A. I told him I wanted to fight to the end.

15 Q. Right. Anthony, let me ask you about your
16 sentence. You have how many years?

17 A. Twenty-two.

18 MR. THOMAS: Your Honor, this is pages 536 and
19 537 of the transcript.

20 BY MR. THOMAS:

21 Q. Do you know, how did you get -- how the
22 number of 21 years was derived?

23 A. Okay. This is what happened. When it was
24 time for sentencing, he asked -- Judge Newman asked
25 Jennifer how old she was. She was 24 at the time.

1 He said, "I'm going to give you 24 years and I'm
2 going to suspend it to 22".

3 Q. Okay.

4 A. He said, "I'm going to give you each -- I'm
5 going to give you a year for each year. I'm going
6 to give you a year for each year for, you know, each
7 thing of her age and I'm going to suspend it to 22.

8 Q. Yeah. Now, I understand you're not asking
9 for more time at the time, but what had you been
10 told by Mr. Mayer that you were going to receive if
11 you entered into the plea?

12 A. He told me -- okay, again, I'm going to go
13 back. He said that he was going to go to the
14 solicitor and talk about a deal, because, he said
15 the solicitor was talking to him about a ten-year
16 deal.

17 I told him to make it happen. If he could make
18 it happen, then I'll go ahead and take it for the
19 sake, you know, of my family. Because I've been in
20 this long, I said, I could probably ride it out.
21 You know? Which he never carried it -- he never
22 said nothing else back to me or nothing. So, I was
23 under the understanding that I would get ten years.
24 Ten years or under. That's what I was fighting for.

25 Q. And that's what you were -- is that what

1 you were thinking when you entered into your plea?

2 A. When I -- yeah, when the judge gave me --
3 when Judge Newman gave me a chance to speak, and I
4 spoke and I asked him, I said, "Your Honor, I didn't
5 do this, but I'm taking the plea". I told him I
6 didn't do it and I said, "Sir, if you can give me
7 ten years or under" -- that's what I was looking
8 for.

9 I asked him, I said, "If I can get ten years or
10 under, I'm good with that and I'd do that". And the
11 reason why that I, you know, said I would accept
12 this deal was that I was stupid.

13 I should have been -- I should have been home
14 with my family. But I didn't do nothing wrong. I
15 didn't hurt nobody. I didn't touch -- if you can --
16 Your Honor, anybody, y'all read your transcripts,
17 there wasn't no physical, there wasn't nothing
18 physical in the case, nothing physical in the case
19 and I let the girl drop me in front of my door and I
20 -- somebody or robbed them with a gun? -- Oh, my
21 God. Man, it's --

22 Q. So -- and this will be my last question in
23 regards to this plea. At the time when you were
24 standing there in court, did you believe that your
25 options were trial with the good likelihood of life

1 without parole?

2 A. That's what it was. That's the only thing
3 it was.

4 Q. And accept the plea with a possibility of
5 ten years?

6 A. Yeah.

7 Q. Okay. And you were given this information
8 by Mr. Mayer?

9 A. Right before sentencing. Before we came
10 out in the courtroom.

11 Q. All right. And you later determined or
12 found out that Mr. Mayer was wrong?

13 A. Yes. Yes. I later found out. I mean, it
14 was obvious when right after that I tried to talk to
15 him. I tried to call him and he wouldn't take my
16 calls or nothing, because I was like, he told me one
17 thing but it's another thing.

18 Q. Okay. Do you remember the judge asking the
19 jury about -- basically, in other words, whether or
20 not it was a good deal for you to accept the plea?

21 A. What the judge -- what the judge asked was
22 -- when he called the jury back in, he asked the
23 jury, he said that the case, you know, that the
24 trial had stopped and they was like, "Aw, and one of
25 the jurors said, "Why did he stop the case? Why did

1 he stop?", and he said, "Well, it's not relevant
2 right now", he said, "But I'm going to ask you to
3 sequester". He had said, "I'm going to ask you to
4 sequester". How many found him guilty? I think 7 -
5 - I mean, how many found him not guilty? I think 7
6 or 8 raised their hands and he said, "How many found
7 him not guilty?", and 3 raised their hands and 1 was
8 like, they wasn't sure.

9 Q. Right.

10 A. Something like that. I know it's in the
11 records.

12 MR. LIMBAUGH: For the record, it says that you
13 agree to this decision to plead guilty. Something
14 along those lines, not do you find him guilty or not
15 guilty.

16 MR. THOMAS: Right. And then, Your Honor,
17 that's pages 503 and 504.

18 THE COURT: Mr. McClain, had you already been
19 sentenced when Judge Newman asked that question?

20 MR. MCCLAIN: No, I wasn't sentenced yet.

21 THE COURT: All right.

22 BY MR. THOMAS:

23 Q. Now, Anthony --

24 A. Yes, sir.

25 Q. I believe that we've covered everything.

1 Just a couple of questions.

2 Do you feel like Mr. Mayer provided you adequate
3 or proper defense in this case?

4 A. No. No. No.

5 Q. Do you think he was prepared to do -- I
6 mean, was he prepared for this trial?

7 A. No, he wasn't.

8 Q. Okay. Did you have any confidence in him?

9 A. When I first hired him I did, but as time
10 was going by, it went to -- because somebody else I
11 know had him too.

12 Matter of fact, he's the person that told me
13 about Aaron and he took his money back, you know,
14 because you already have my \$8,000.

15 Q. Okay. All right. And was that the deal
16 that you had with Mr. Mayer, was that he was going
17 to represent you for \$8,000?

18 A. Yes.

19 Q. Was there ever an incident where he asked
20 for some more money?

21 A. Yes, there was.

22 MR. LIMBAUGH: Objection, Your Honor.
23 Relevance? Their pay negotiations don't have any
24 relevance to this.

25 THE COURT: Yeah, I'm more worried about the

1 plea negotiations.

2 MR. THOMAS: Your Honor, if I may, I might be
3 able to link some of the last or the second fee
4 request to some concern about Mr. Mayer's
5 representations. So, it's really more about what
6 Mr. Mayer was promising for the \$2,000 versus just
7 the \$2,000 being \$2,000.

8 THE COURT: All right. I'll allow a couple of
9 questions.

10 MR. THOMAS: Okay. Thank you, Your Honor.

11 BY MR. THOMAS:

12 Q. Anthony, what was the deal with the \$2,000?

13 A. Okay. Which I found out later, Aaron
14 called Elizabeth and told Elizabeth if he can give
15 her -- if she can give him 2,000 more dollars, he
16 would give it to Jennifer, so she won't show up for
17 trial.

18 Q. Okay. But you don't know anything else
19 about that?

20 A. I don't know nothing about that.

21 MR. LIMBAUGH: Again, that's hearsay, Your
22 Honor. Objection.

23 THE COURT: I understand. I'll sustain the
24 objection. I won't take it into consideration. I
25 understand.

1 MR. LIMBAUGH: Thank you, Your Honor.

2 BY MR. THOMAS:

3 Q. Mr. McClain, is there anything else? We've
4 talked about this, and I don't believe there's
5 anything that I have left out or forgotten, but this
6 is your day in court.

7 Is there anything else that you would like to
8 say to the Court or anything that you feel like that
9 I might have overlooked or that you would like to
10 bring to the Court's attention?

11 A. Not -- I can't think of nothing right on
12 one hand, but, you know, but I will say this. With
13 all due respect to Your Honor, I'm here today to
14 fight for my life. You see what's going on, Your
15 Honor, you know, that's all I can say, you know.
16 I'm not saying I'm the perfect person, because I'm
17 not, but this I didn't do.

18 That paperwork itself can tell you, the
19 statements, everything can tell you I didn't do
20 this. I wasn't represented right and all I asked
21 for is another day in court and if I have to go back
22 to trial a new trial again, that's what I would want
23 to do, because I know I would win it. That's all I
24 ask. That's all I ask. Thank you.

25 THE COURT: All right. When they served you

1 with a notice of LWOP, what did they indicate was
2 your most -- your prior most serious offense in the
3 State?

4 MR. MCCLAIN: What did they do? You say what
5 did they do?

6 THE COURT: Right. When they served you with a
7 notice of LWOP, what did they consider was your
8 previous most serious offense in the State system,
9 not the federal system, the State system.

10 MR. MCCLAIN: They never told me. He never told
11 me what was my most serious. The only thing my
12 serious was, at -- I think with the probation people
13 was there for the charges that I had -- the charges
14 that I pled to, was the most serious.

15 THE COURT: Well, that's correct, but you can't
16 get LWOP if you don't have a prior most serious
17 offense, so did they indicate what your prior most
18 serious offense was?

19 MR. MCCLAIN: No, sir. I didn't -- no, sir.

20 THE COURT: Did you have a prior most serious
21 offense?

22 MR. MCCLIAN: Only on most -- only thing that I
23 had was in the feds was --

24 THE COURT: I'm not worried about the fed
25 system, I'm talking about --

5 THE COURT: All right. Well, if it was old and
6 -- that's common law misdemeanor, so that would not
7 have applied.

10 THE COURT: Correct. Back in the day ABHAN
11 wasn't a serious offense, it was just a common law.
12 All right. Mr. Limbaugh, do you have any question?

15 THE COURT: Yes, sir.

17	CROSS EXAMINATION
----	-------------------

19 Q. Good morning, Mr. McClain.

21 Q. So, you testified earlier that you wanted
22 to take this case to trial the entire time?

24 Q. But then you also testified to multiple
25 times, to questions from Mr. Thomas, that you were

1 willing to accept a guilty plea?

2 A. That's when he brought it -- that's when
3 Aaron brought it to me.

4 Q. Why, if your contention is that you are
5 innocent, were you willing to accept a guilty plea?

6 A. And again, like I said, I wanted to get it
7 done and over with. I have a family and like I
8 said, I was out there at the wrong place at the
9 wrong time, so I could accept my punishment as far
10 as that.

11 And like I said, I was trying to get ten
12 years or under if I could have got it because he
13 brought it to me. If he wouldn't have ever asked me
14 about it, the trial was all that it was. He brought
15 it to me. I didn't ask for it.

16 Q. You understand that's not what you're doing
17 when you plead guilty, right? You're admitting that
18 you committed the offenses and you're guilty of what
19 you're pleading guilty too, right?

20 A. No. Actually, I pled guilty because he
21 convinced my fiancé' and my sister to get me to
22 plead guilty because he said he was going to lose
23 the trial and I was going to get LWOP. That's why I
24 pled it.

25 Not that I -- I told you I was not guilty

1 and I told them and I kept continue telling them,
2 "No, I want to finish the trial", but until he went
3 to my fiancé' and her sister, "Get him to plea, get
4 him to plea because we're going to lose the trial".

5 What do you say for a lawyer like that? That
6 means he gave up on me. That's what that's telling
7 you.

8 Q. So, in an open court like this, in front of
9 a judge like Judge Price here, you said that you're
10 pleading guilty because you were guilty and that you
11 committed the offenses. Do you remember doing that?

12 A. No. What I'm telling you is, I did not --
13 I told you I did do this. I kept saying I didn't do
14 it.

15 Q. You told the Judge you were guilty.

16 Do you remember doing that?

17 A. Yeah, because I was -- because my family
18 was coerced. See, you're trying to twist it up,
19 sir. You can't do that. I said what I said and
20 that's what it was.

21 Q. No, I'm just trying to get out, Mr.
22 McClain, why Judge Price or anyone else in this
23 courtroom should believe what you're saying now as
24 opposed to what you were saying then.

25 A. Because if Judge Price looked at the

1 paperwork, he could see for himself. That's why.

2 Also, since you brought that up, sir, how many times
3 Aaron has not appeared in court? How many times has
4 he emailed him? How many times has it had to be
5 done over? Is he here now?

6 MR. LIMBAUGH: Your Honor, that's not responsive
7 to my question.

8 THE COURT: I understand. All right. So, Mr.
9 Limbaugh, just rephrase the question for Mr.
10 McClain.

11 BY MR. LIMBAUGH:

12 Q. In court you testified and answered
13 questions from the judge during your guilty plea.
14 Correct?

15 A. Yes. I understand what you're saying.

16 Q. And what is the difference between -- why
17 should we believe your answers to questions now in
18 court versus when you were telling the court then
19 that you were guilty and that you committed the
20 crimes and that you wanted to plead guilty?

21 A. And again, I'm going to say it again.
22 Aaron went to my family and told my family to get me
23 to plea because if we go to trial, and I was going
24 to get life without parole.

25 Q. Okay. My understanding is that it still

1 was possible that you could have gotten life without
2 parole, it's just the interpretation of the car
3 jacking statutes from the federal charge. Is that
4 accurate?

5 A. No, not in the aiding and abetting, sir.
6 When you get aiding and abetting, no. It's not.
7 No. If you get car jacking itself in the federal,
8 that's different.

9 But aiding and abetting doesn't consist of
10 that, I later found out. That's why Judge Newman
11 said he couldn't -- he wasn't sure that he could
12 give me the life sentence because he was trying to
13 use the federal charge so I could get life without
14 parole. That's what he tried to get me life without
15 parole on.

16 Q. Okay. Let's see. How many times again did
17 you say that you met with Mr. Mayer?

18 A. About two times at the most.

19 Q. You were saying that he was asking you to
20 help with your trial. Was he asking you to help
21 with the defense, trying to provide representation?

22 A. Well, when he was asking me -- yeah, asking
23 me to help with the defense, I said, the defense --
24 when I told you the story and I told you I didn't do
25 it. You've got the whole room, five in your hand.

1 I kid you not, if people had investigated it the
2 correct way, like I asked him to, none of this would
3 even have been up because you would have been on top
4 of this case and he would have done it, you know,
5 but obviously he didn't.

6 Q. Or he did and there was just --

7 A. Okay, so when -- okay, sir. Since you said
8 that, with all due respect to you, Your Honor, where
9 does it say in any of the paperwork that we had an
10 investigation? Where does it say that at?

11 I mean, he did not have an investigator to
12 investigate nothing in the case. So, if he was so
13 much on his case, we would have had this situation.
14 Listen, if I would have been represented right and
15 everything would have been done, I would have laid
16 down and do my time, but if I'm being done wrong, I
17 have a right to fight it, and this is what I'm going
18 to do. With all due respect to you, sir.

19 Q. You could have proceeded with your trial
20 and finished it and fought your case, could you not?

21 A. Because he coerced my wife to get me to
22 plea and that's it.

23 Q. What did your wife do, Mr. McClain? Did
24 she threaten to harm you? Did she threaten to take
25 the kids away? What did she do?

1 A. How do you feel when your wife cries or
2 your mother cries? To see a close family member
3 cry, that's close and dear to you? And they tell
4 you, "Take the plea because I don't want to see you
5 behind life -- I don't want to see you get life".
6 How do you think that feels?

7 Have you ever been in them shoes? I'm not
8 saying I'm perfect, but I didn't do this. That's
9 what I'm saying to you, sir.

10 Q. What you're saying now and at the time, you
11 said you did it. Is that not accurate?

12 A. I have said I did it to get -- to plea. I
13 had to say that, but that don't mean that it was
14 correct. That don't mean that I did it voluntary.
15 That doesn't mean that.

16 That means that I took the plea because I
17 was told to do so by my attorney who coerced my
18 fiancé' and her sister to get me to plea.

19 Q. And your goal -- you did try and -- during
20 pre-trial to suppress statements. Do you remember
21 that? Was that in your transcripts?

22 A. I don't remember. Like I said to him, I
23 was not there when he did this.

24 Q. But you were aware that he did try to
25 suppress statements?

1 A. That's what I said. I wasn't there when he
2 did this. See, that's when I was at trial, the one
3 of the two that he did at trial. The other ones, I
4 was not there, I was not informed of it.

5 Q. Okay.

6 A. Because he never came to see me.

7 Q. He did see you when he -- at the end of
8 your trial to try and get the incident with the
9 College of Charleston students thrown out. Do you
10 remember that?

11 A. Excuse me?

12 Q. Remember when Mr. Mayer moved for a
13 directed verdict and tried to get the incident with
14 the college students thrown out?

15 A. No, I don't remember that.

16 Q. Okay. It did occur. I'll pull it up for
17 reference, Your Honor. Sorry. And you mentioned a
18 lot of the things that you mentioned earlier today,
19 you know, where the college students couldn't
20 identify you, that they testified that they were
21 5'7' to 5'9 when I think you were booked in at about
22 6'1'?

23 A. Yes.

24 Q. A lot of the things that you're saying that
25 you wish you would have done, you actually did do.

1 Do you not remember that?

2 A. Say that again?

3 Q. So, one of the things that you said earlier
4 that you wish you had brought up about not being
5 able to identify you, you actually did bring those
6 up. Do you not remember that happening?

7 A. No. I do not remember that happening. But
8 if he did, that's good. At least he did do that,
9 but my point is, it shouldn't have -- for one, the
10 case shouldn't even have -- that shouldn't even have
11 been a case. That should have been thrown out.

12 How are you going to have me going to trial
13 with something that a person didn't do? That don't
14 sound right.

15 Q. Again, you also pled guilty to that one,
16 did you not?

17 A. You know I did, sir. Because Aaron coerced
18 by fiancé' and my sister to get me to plea.

19 Q. That's all I have, Your Honor.

20 THE COURT: All right. Mr. Thomas, was there a
21 Biggers hearing that was held prior to this trial
22 for the eye-witness account?

23 MR. THOMAS: Let me look and see, Your Honor. I
24 believe that there was a -- let's see what the pre-
25 trial motions were. There was a motion for the

1 State to turn over the videos. There was very
2 briefly raised the thing about the issue with
3 Miranda, although the Court raised that issue.
4 There was a motion to sever and there was some
5 discussion of the plea offer, Your Honor, and that's
6 everything that I have.

7 THE COURT: All right. Well, Mr. Thomas,
8 anything as a follow up, because Mr. Mayer isn't
9 here.

10 MR. THOMAS: Yes, sir. Just one or two.

11 ***

12 RE-DIRECT EXAMINATION

13 BY MR. THOMAS:

14 Q. Yes, sir. Just one or two. Anthony, did
15 you talk with Mr. Mayer about an Alford plea, or do
16 you even know what an Alford plea is?

17 A. Only thing that, like I said, he came to me
18 and asked me would I take this because he said that
19 the -- I think we talked about, but I was -- that's
20 what I know. As far as the solicitor offering me a
21 plea, at first, I think -- at first, when he came to
22 me, I think I had a public defender, if I'm not
23 mistaken. I think he said something like 30 or 25
24 years or something.

25 Q. Okay. But I'm asking about -- an Alford

1 plea is basically saying that you're not guilty but
2 there's concern that there's sufficient that you
3 could be convicted at trial.

4 A. No. I never remember no --

5 Q. Okay. So, y'all didn't talk about that at
6 all?

7 A. No. No.

8 Q. And you feel like, or what your testimony
9 is, is that you were coerced by Mr. Mayer into
10 entering into this plea?

11 A. Yes.

12 Q. Okay. I have no further questions, Your
13 Honor.

14 THE COURT: All right. When you pled guilty,
15 was the jury deliberating at the time?

16 MR. MCCLAIN: No, sir. What he did -- what
17 happened was, remember I told you they called a
18 recess?

19 THE COURT: Okay. It was a recess?

20 MR. MCCLAIN: It was a recess and that's when
21 Aaron went to say something to my fiancé' and her
22 sister. During the recess, they came back to the --
23 I was in a holding cell.

24 THE COURT: Right. I know where you were.

25 MR. MCCLAIN: Right, and they came to the glass

1 and that's when he -- he come in there with them and
2 they were like, "Aaron said plea because he said we
3 were going to lose the trial", and I would be
4 looking at life without parole, and I was --

5 THE COURT: But you pled straight up, with no
6 negotiation or recommendation to every single
7 indictment that you were on trial for?

8 MR. MCCLAIN: Excuse me, sir?

9 THE COURT: Your pled straight up to every
10 single charge that you were indicted, that you were
11 at trial for though, correct? Without a
12 recommendation for negotiation.

13 So, you could have received up to -- I
14 can't add them all up, it would be like, 60 -- it
15 would be like 85 to 90 years for all those charges.
16 But you pled straight up, correct? They didn't give
17 you any benefit or recommend any time for you to
18 judge or anything? You just pled straight up,
19 correct?

20 MR. MCCLAIN: The judge, I think the judge said
21 something to him -- said something to David Osborne
22 about --

23 THE COURT: But I'm saying, they didn't dismiss
24 any of your charges for you to plead guilty, did
25 they?

1 MR. MCCLAIN: No, they didn't, sir.

2 THE COURT: They didn't make you an offer to
3 allow you to get a lesser sentence if you pled
4 guilty, did they?

5 MR. MCCLAIN: No, sir.

6 THE COURT: They didn't negotiate a sentence
7 whereby you knew what sentence you were going to
8 get, did they?

9 MR. MCCLAIN: No, sir.

10 THE COURT: All right. Mr. Thomas, have you got
11 any other questions?

12 MR. THOMAS: No, Your Honor, I have nothing
13 further.

14 THE COURT: All right. Mr. Limbaugh, anything
15 else?

16 MR. LIMBAUGH: Not for Mr. McClain, Your Honor,
17 but I do think Mr. Mayer actually has just called
18 in, so the State would call him, if the Defense
19 rests.

20 THE COURT: All right.

21 MR. THOMAS: Your Honor, I have one very, very
22 brief witness. I don't see her. Elizabeth Tisdale.

23 THE COURT: All right. Is she calling in? How
24 is she going to participate?

25 MR. THOMAS: I thought that she had logged in

1 through the court system. If I could beg the
2 Court's indulgence, let me just see.

3 (Discussion off the record.)

4 MR. THOMAS: Your Honor, if it please the Court,
5 if Mr. Mayer is on the line, let's go ahead and take
6 him. If I could take Ms. Tisdale out of turn? I
7 only have two or three questions for her.

8 THE COURT: All right.

9 MR. THOMAS: Your Honor, we'd call Mr. Mayer to
10 the stand first.

11 THE COURT: Mr. Mayer, do you swear and affirm
12 that the testimony that you'll give will be the
13 truth, the whole truth and nothing but the truth?

14 MR. MAYER: Yes, Your Honor.

15 MR. THOMAS: Your Honor, if it please the Court?

16 ***

17 DIRECT EXAMINATION:

18 BY MR. THOMAS:

19 Q. Mr. Mayer, you were retained in this case
20 to represent Anthony McClain?

21 A. Yes, sir.

22 Q. How long before the trial were you
23 retained?

24 A. I believe it was a fair amount of time
25 beforehand.

1 Q. The question is, you had enough time to --
2 you feel, to adequately prepare this case?

3 A. I feel like I had enough time. Yes, sir.

4 Q. Okay. How did you put this case together
5 for trial?

6 A. Can you be more specific? I'm not sure how
7 to respond.

8 Q. Sure. In putting this case together for
9 trial, did you hire an investigator?

10 A. I do not believe so. That was not my
11 practice at the time.

12 Q. Right. Were you concerned about possibly
13 having an investigator look at the situation with
14 the COC case, and/or the kidnapping case?

15 A. I'm not sure I know what you mean. I
16 looked at the evidence myself.

17 Q. Okay. What was your impression of the
18 incident?

19 A. Well, it was a mix, right? I mean, from --
20 as a lawyer, I always try to believe in my clients
21 and believe what they're telling me, right? I think
22 that's one of our fundamental duties, is to be on
23 their side in that kind of deep way.

24 So, when the evidence, as the evidence
25 comes out or develops or is shared from the State,

1 it was always my practice to read through there and
2 study it and see what areas might be weak or missing
3 from the case. So, that was my practice generally
4 and that's certainly what I did here.

5 Q. Okay. And I know this trial has taken all
6 of our memories back quite some time.

7 Were you able to make a determination in
8 regards to the strength of the COC case or even the
9 strength of the kidnapping case?

10 A. Yeah, I felt like the COC case was a little
11 bit stronger, as I recall, because it had multiple
12 witnesses in the State's favor and then the -- there
13 was -- I feel like there was a photograph for -- a
14 still frame from a surveillance video where my
15 client, Mr. McClain, had something in his hand that
16 looked a lot like a gun.

17 I remember that was a concern, but it
18 wasn't clearly a gun, but it was very -- a black
19 pistol, as I recall. So, that was a concern.

20 I recall going to the Charleston County
21 Detention Center, several times discussing the
22 evidence with Mr. McClain and kind of preparing
23 either for a settlement, a plea deal or a trial.

24 Q. All right. Second, you did have -- was it
25 three pre-trial motions?

1 A. I usually had an omnibus motion, but then
2 there may have been a couple of other specific ones
3 as well to the case.

4 Q. Okay. I think that you had a -- you had a
5 motion for suppression of the statement on her
6 video?

7 A. That sounds right.

8 Q. And the video was a video in the kidnapping
9 case?

10 A. Yes.

11 Q. From the convenience store?

12 A. There was the convenience store video and I
13 feel like there was either video or still frame
14 evidence from the place they wound up for some time
15 that night. It was a friend's apartment or
16 something, with the victim sitting in the car.

17 Q. Okay. Now, that was denied by the court?
18 The suppression video?

19 A. I believe that's accurate.

20 Q. Now, the motion to sever, which is one --
21 it's a situation that concerns me. The COC case and
22 the situation with kidnapping, what was your theory
23 on that in regards to sever?

24 A. Oh, well, the -- my concern was that Mr.
25 McClain was looking at so much time and it was one

1 of many concerns in the case, right? But the idea
2 that it was two separate occurrences, the COC
3 students, I guess they were, and the other
4 kidnapping of Ms. Johnson. I felt like there was
5 opportunity there to weaken the cases by having them
6 tried separately and not having the evidence of the
7 students going against Mr. McClain in his trial
8 about the Johnson matter and vice versa, because as
9 I recall, the student identifications in the photo
10 lineups were not as accurate as Ms. Johnson's
11 identification and so, again, that would be -- the
12 severance would be a way to kind of keep the State
13 from bootstrapping the two cases together.

14 Q. Right, right. And I think that in looking
15 at it, that the Court rules on page 13 and it makes
16 reference to a Simmons case, so the Court found that
17 there was some relationship between the two?

18 A. I believe that's right.

19 Q. Okay. One thing that I saw, and I don't
20 know if you talked about this or not, did you see
21 any potential burden shifting argument in here in
22 regards to, one, the Court made a determination that
23 they could be joined, but it seems to me that the C
24 of C case, basically, you admit to win this case at
25 trial, you had to prove him not guilty of the C of C

1 case to be able to even move on to getting a shot at
2 a not guilty verdict on the kidnapping. They were -
3 - they way the court set it up, it seems to me that
4 you were going in with almost a burden shifted in
5 regards to that.

6 A. That could well be, I mean, that seems to
7 be a good perception, but I don't remember being
8 aware of that at the time.

9 Q. Okay. How about the life without parole?
10 What do you remember about that?

11 A. I'm sorry. Say that again?

12 Q. The life without parole? What do you
13 remember about that?

14 A. Well, he was eligible for LWOP. The State,
15 at some point, went and proceeded down that road
16 and, you know, Mr. Osborne was saying all along that
17 he was going to do that, and he felt like Mr.
18 McClain was a real danger to society and this sort
19 of stuff and just, it raises the anti on -- the
20 stakes, right?

21 It raises the stakes. It raises the
22 pressure and everything else. In looking back
23 through the case was that I didn't have much
24 experience and that's probably even an
25 overstatement. I had very little experience in

1 picking a jury and the way that this kind of came
2 down was, we were along in the trial, pretty well
3 along in the trial and I think Mr. McClain felt like
4 we didn't have a good jury and he was probably
5 exactly right about that, and he decided in the
6 middle of the trial that he'd probably be better off
7 throwing himself at the mercy of the Court. So,
8 that's what stuck out at me as the biggest thing.

9 Q. In regards to -- I've taken this out of
10 order a little bit, in regards to the jury and this
11 is page 503 and 504 of the transcript, do you
12 remember the judge asking the jurors about the
13 question of guilt or innocence?

14 A. Yeah, yeah. I mean, and the transcript
15 refreshed my memory of that. There was a gentleman
16 who had come up to a side bar, initially, right, and
17 basically said it for all the jurors, "I don't want
18 to incriminate him, but" -- and then he walked up
19 and spoke in secret to the judge and to the lawyers
20 and then he's excused, so you never know what might
21 taint the jury pool but that certainly didn't help.

22 Q. Okay. But, I mean, Judge Newman on page
23 503 of the transcripts, asks, "How many of you think
24 he made the right decision to plead guilty?", and
25 there's one, two, three, four, five. Then you

1 thinking he made a bad decision -- and one of the
2 unidentified jurors say, "Well", so it appeared that
3 maybe it wasn't quite as bad as the jury's pick
4 because it looks like you had the potential for a
5 hung jury.

6 A. Yeah, I mean, I don't know. I certainly --
7 I remember crossing Ms. Johnson and in retrospect,
8 it was probably one of the most awful things I've
9 ever done because I, you know, basically was
10 insinuating that she was making it up or confused or
11 just wrong and then here we have this guilty plea in
12 front of the jury and I just -- I felt like any
13 credibility I had vanished in that moment, but I
14 don't know prior to that.

15 It could be -- you could be right. It
16 could be that we had a couple on our side. I just
17 don't know. We're not allowed to talk with them too
18 much afterwards.

19 Q. Let me kind of get back to the LWOP. Did
20 you have a clear understanding of whether or not he
21 could have been subject to LWOP or whether or not he
22 was not subject to LWOP?

23 A. Well, according to the State's argument, he
24 was. I didn't have much experience in assessing
25 those things. I forget if -- I had assessed with

1 some detail in one case and I think that it was a
2 case prior to this one. I think I drew on some of
3 that information to try and figure it out. I don't
4 recall -- I don't recall him being LWOP'd, right,
5 because the sentence was not life.

6 Q. No, he wasn't LWOP'd, because he entered
7 into the plea.

8 A. Right, right. I think that was -- I think
9 that was one of the considerations for entering the
10 plea.

11 Q. Let me ask you this. Do you remember on
12 the LWOP issue, Judge Newman going back -- it's kind
13 of in two different parts. The pre-trial discussion
14 at the beginning of the trial on page 16, but then
15 on 526 and 527, Judge Newman kind of steps into that
16 area of LWOP and makes a statement -- well,
17 actually, it was a statement by Mr. Osborne that
18 says, "I think you're right.

19 Ultimately, maybe if you strictly construed
20 the statutes, then I think I might have run into
21 issues", and Judge Newman appears to be saying that
22 there is some concern that there's a possibility
23 that he's not subject to LWOP.

24 I was just wondering if you were able to
25 make some sort of informed decision in regards to

1 what the chance of that was, going into trial?

2 A. Well, it was hazy. I would say it was
3 hazy, you know, to be completely straight-forward
4 about it. I didn't have -- I didn't have a lot of
5 clarity on how that would go. I had high hopes that
6 it wouldn't be an LWOPA and we certainly made those
7 arguments, but it wasn't the type of thing -- it
8 wasn't an aspect of law where I would think, "Oh,
9 this is a slam dunk for us", you know, like, "No
10 problem. We've got this. Not a concern", or
11 anything like that. It wasn't clear to me like
12 that.

13 Q. How about -- did you have a Biggers
14 hearing? I was just curious about that.

15 A. A what?

16 Q. A Biggers hearing?

17 A. A Biggers hearing? I didn't see it in the
18 stuff that I reviewed for this. I don't know. I
19 don't have a separate memory of it.

20 Q. Okay. But you had a Biggers hearing?

21 A. I believe so.

22 Q. All right. Now, in regards to plea offers,
23 can you remember what was received as a plea offer
24 prior to trial?

25 A. I want to say it was 15 years. I just -- I

1 don't recall. It was a lot of time.

2 Q. Right. And you conveyed those to Mr.
3 McClain?

4 A. I'm sure I would have.

5 Q. Okay. In regards to the decision to end
6 the trial and him to plea, was it your
7 recommendation that he enter into the plea?

8 A. You know, my memory of that is, I was
9 surprised that he went in to enter into the plea,
10 but I also wanted to be supportive of him because,
11 again, you might -- you can't -- you don't know.
12 You don't know -- it was always hard for me to know
13 how the trial was going.

14 I remember there was one gentleman on that
15 jury who I felt like was probably on our side, but
16 then all the rest of them, I just -- I felt like
17 they were against us. So, in terms of recommending
18 that he take the plea or what I did along those
19 lines, you know, I would have informed him what I
20 knew about the law and what I thought about the
21 facts, but I don't -- I don't recall saying, "Oh,
22 you really ought to take the plea", although I could
23 have. I could have said that to him, because, you
24 know, there was a lot on the line.

25 Q. Do you remember talking to his family and

1 talking to Elizabeth Tisdale during the recess in
2 regards to Anthony's plea?

3 A. I'm sure Ms. Tisdale was there. She's very
4 caring and loving about Mr. McClain. I don't -- I'm
5 sure I talked to her. I don't recall specifically
6 what we would have talked about.

7 Q. Okay. But, you don't remember --

8 A. I don't want to speculate. I mean, if
9 there's a topic -- if there's something I said, you
10 know, I'd be happy to think about it, if that sounds
11 like something I would say.

12 Q. Yes, sir. Let me ask you about the
13 sentencing. I just thought this was unusual.

14 From what I've been able to determine,
15 sentencing basically has kind of two components, the
16 concept of sentencing. One is that it's punishment
17 and two is protection of society -- the public.

18 What did you think about the way the
19 sentence was derived in this case with it being the
20 age of the victim, then giving credit for time
21 served and is reduced with a number of years?

22 A. Well, I always feel -- I was a defense
23 attorney, right, so I always feel like the sentences
24 are draconian and excessive in our country. But, in
25 terms of how it was derived, I mean, at the point

1 that you plead guilty, all you can do is try to
2 offer some evidence of mitigation, right?

3 Q. Yes, sir.

4 A. And it was really -- it's -- there was a
5 lot of poison in the water, right, because there was
6 this woman who was kidnapped for hours at gunpoint
7 and so, I'm sure we put on some mitigating evidence,
8 right? That he was working and trying to be a good
9 citizen and maybe went to church occasionally and
10 helped people out occasionally and those kinds of
11 stuff, but it was -- it was -- once you plead guilty
12 to these heavy, heavy charges, it's out of our
13 hands, really.

14 Q. Okay. Thank you for calling in today. I
15 don't think that I have any other further questions.

16 THE COURT: All right. Mr. Limbaugh, anything?

17 MR. LIMBAUGH: Yes, sir. If it please the
18 Court, Your Honor?

19 THE COURT: Yes, sir.

20 ***

21 CROSS EXAMINATION

22 BY MR. LIMBAUGH:

23 Q. So, Mr. Mayer, you -- did you look into the
24 LWOP issue at all? I believe you testified that
25 you'd had some experience with it and you kind of

1 had questions, but did you look into it at all?

2 A. Yes, sir. I did.

3 Q. Could you still have challenged the
4 sufficiency of the LWOP notice at the point in the
5 trial where Mr. McClain had pled guilty?

6 A. Oh wow. I don't know. I don't know the
7 definitive answer to that, Mr. Limbaugh. I would
8 think you could.

9 I would think you could still challenge it
10 at that point. I thought that we had challenged it
11 at every stage, you know. One thing I was surprised
12 about in going back and reading through the
13 transcript, was this late-noticed Charleston County
14 deputy, who I guess wasn't on the State's witness
15 list and then seems to have been added the day of
16 the trial.

17 I just don't recall if there were prior
18 disclosures of that person or not. There certainly
19 must have been because I was upset to see that I had
20 just kind of accepted that and didn't even object.
21 So, there must have been some prior disclosure, but
22 in terms of the LWOP challenging and stuff and
23 strenuously arguing against that, I think we were
24 pretty consistent and strong on that.

25 Q. What were your conversations with Mr.

1 McClain like, just prior to him deciding to plead
2 guilty? Do you recall?

3 A. Well, they would have been during the
4 trial, right? My set up at the time was probably
5 really abhorrent to a lot of people, but I didn't
6 have a trial partner.

7 I didn't have -- I didn't have another
8 lawyer who was working the case up with me or trying
9 the case with me. So, I was a one-man band there,
10 which meant that during trial, I was super busy with
11 regard to managing the exhibits and the potential
12 witnesses and, you know, there's just so many moving
13 parts. It's really a two-person job that at the
14 time I was making do with just me and it probably
15 wasn't sufficient and it certainly wasn't sufficient
16 to give me much time during the trial to talk to the
17 client.

18 Q. I guess my question was, were you
19 recommending that he plead guilty or were you
20 recommending that he proceed forward with the trial?
21 What was that conversation like?

22 A. Oh boy. As we went through, you know, as
23 we went through the trial, I kind of -- I didn't
24 expect to still be talking about the plea, honestly,
25 so when I think -- whenever it came up, whenever Mr.

1 McClain brought it up, I was surprised by it, but I
2 also kind of felt like it might be the right thing,
3 because I felt like we had a lot of haters on the
4 jury and I felt like I hadn't done much of a good
5 job of sorting through their biases and trying to
6 get them off for cause. So, I felt like we had a
7 rough jury and probably when he said, "Hey, I think
8 I want to take a plea deal", I felt like that was
9 going to save us from suffering a big punch in the
10 gut on the verdict.

11 Q. So, you don't really recall the
12 conversations with his family member, taking the
13 plea and trying to convince him to take the plea?

14 A. I don't recall it, but it's entirely
15 possible that those occurred.

16 Q. Okay. But you didn't ask her to put any
17 undue pressure on him or anything of that nature,
18 did you?

19 A. Are you talking about Ms. Tisdale?

20 Q. Yes.

21 A. Well, you know, my friend, I can't imagine
22 being in the shoes of a gentleman like Mr. McClain
23 during that time, right. I mean, you're looking at
24 life without parole. You're looking at 20 years or
25 more in prison and the pressure of the decisions

1 made in that situation are not decisions that a
2 person should have to make, right? I mean,
3 determining the rest of their life, basically.

4 So, I would have been very patient, and I
5 would not have been trying to force my will on
6 anyone. I would be very surprised if I did that in
7 any way. Obviously, I was a bundle of nerves about
8 this too because I wanted to do the best that could
9 be done for Mr. McClain and there were so many -- as
10 I said before, so many moving parts, so many things
11 to keep track of and make sure don't go wrong.

12 It's immense pressure on one person, so --
13 both on the client and on the lawyer, so is it
14 possible that I was excited about a plea deal? I
15 guess so, in a selfish way. But I also might have
16 been excited about it for him. It's possible that I
17 would have expressed that. It was a very tough --
18 it was a very tough case.

19 Q. And of course, there's going to be pressure
20 when you've been indicted for armed robbery and
21 kidnapping of an innocent person, but to which you
22 also pled guilty to, right? And the Court went
23 through this entire colloquy asking Mr. McClain if
24 he wanted to plead guilty and was guilty and admit
25 to his crimes.

1 Is that accurate, to your recollection?

2 A. I remember that, yeah.

3 Q. But you do have to admit guilt when you
4 plead guilty. Is that correct?

5 A. That's my understanding.

6 Q. That was -- actually, that's all I have at
7 this time, Your Honor.

8 THE COURT: Anything as a follow-up, Mr. Thomas?
9 You are muted.

10 MR. THOMAS: I was trying to cut back on the
11 feedback. I thought that might have been good. No,
12 I have nothing further, Your Honor.

13 THE COURT: All right. Mr. Mayer, thank you
14 very much for being here. You may be excused.

15 MR. MAYER: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. THOMAS: Your Honor, if we could, if we
18 could hear briefly from Ms. Tisdale? I don't know
19 if she was able to get through.

20 THE COURT: To be honest with you, Mr. Thomas,
21 nothing she's going to say is going to affect or
22 change my mind at this point, but if you want to
23 give me a quick closing, I'd be happy to hear from
24 you. If not, then I'm ready to render my decision.

25 MR. THOMAS: All right, Your Honor.

CLOSING REMARKS

MR. THOMAS:

I believe this case, in regards -- in it's simplest, is a situation where the plead was not freely and voluntarily entered into. To me, I think you would have to have -- there's an answer to that LWOP issue. And if you look through the transcript, there is -- even coming from the solicitor, there is a number of cues coming up that indicate that there is a problem with that federal conviction being a most serious charge under South Carolina State law.

If it's not and the solicitor says, if it's a kidnap -- not a kidnapping, but a carjacking, then it is a serious charge, which doesn't put him in the LWOP situation. I think counsel was deficient and even he admits on the stand that he didn't really know the answer to that and was somewhat deficient in being able to understand or analyze these LWOP issues because of a lack of experience.

I think that should have been done and I don't understand how Anthony could have made a decision to enter into a plea freely and voluntarily without that information. It changes -- although he could have received, in essence, an LWOP case, he could have, you know, he could have gotten to 80 or

1 90 years or whatever, it takes away the certainty,
2 almost, of the LWOP, and I think he needed to have
3 that information and know that information prior to
4 entering into making a decision about the trial and
5 the plea.

6 Just listening to Mr. Mayer testify, there
7 are a couple of instances in which he says this was
8 a two-person trial, he wasn't able to speak with
9 Anthony while he was trying the case, that he really
10 needed some help, someone else to be there with him
11 and I think that -- and he also says that maybe he
12 did, and that would have been Ms. Tisdale's
13 testimony, was that he came in and persuaded them
14 and emphasized that Anthony needed to accept the
15 plea.

16 I think that there -- not only does this
17 case meet the criteria for not freely, knowingly and
18 -- freely and voluntarily entered into, but I also
19 think there's some deficiencies as well, and these
20 are evident in the transcript that we have tried to
21 highlight. I think there was ineffective assistance
22 of counsel in Mr. Mayer, Your Honor.

23 THE COURT: Mr. Limbaugh?

24 MR. LIMBAUGH: May it please the Court, Your
25 Honor?

1 THE COURT: Yes, sir.

2 ***

3 CLOSING REMARKS

4 MR. LIMBAUGH: For an involuntary guilty plea,
5 Mr. McClain has to prove that he had the
6 information, he wouldn't have proceeded forward with
7 the trial.

8 Mr. McClain testified on multiple occasions
9 that he was looking to get a guilty plea before the
10 trial and during the trial but just for a shorter
11 amount of time and that did not burden for prejudice
12 under involuntary prejudice, Your Honor.

13 His testimony would have to have been
14 consistent that if you'd had the information, you
15 would have proceeded forward with the trial and
16 that's not what we got today, Your Honor.

17 All he testified to was that he was looking
18 for less time, and that is not what we have here.
19 There was a discussion about how the State was going
20 to try and argue that, and it still could have been
21 challenged and Mr. McClain made the involuntary
22 decision. Yeah, there's pressure in that situation.
23 I don't know that pressure. None of us here,
24 fortunately, know that pressure, other than Mr.
25 McClain, but having a family member ask you to take

1 the guilty plea to potentially save your life is a
2 pressure that happens in almost every single one of
3 these cases. That's not coercion.

4 So, Mr. Mayer said that he looked into some
5 of the things that Mr. McClain had asked him to,
6 looked at the evidence, tried to present the best
7 defense he could. He challenged things pre-trial,
8 he did a directed verdict. That was denied and
9 Judge Newman told Mr. McClain that if he wanted to
10 appeal his guilty plea, he had the right to and that
11 did not happen, Your Honor.

12 So, the State would argue that Mr. McClain
13 has not met his burden for involuntary guilty plea
14 and since he ended up pleading guilty, there is no
15 deficiency as to what Mr. Mayer did during the
16 trial, because the trial didn't finish, so the State
17 rests, Your Honor.

18 THE COURT: Thank you very much, Mr. Limbaugh.
19 All right. I'm going to ask you to mute, everybody.
20 All right. It was just reverbing back a little bit.
21 Mr. McClain, can you hear me? All right. Mr.
22 Thomas, can you hear me?

23 MR. THOMAS: Yes, Your Honor.

24 MR. MCCLAIN: I did.

25 THE COURT: All right. Now, you can hear me?

1 MR. MCCLAIN: I can hear you.

2 THE COURT: Okay. Well, the issue of the LWOP
3 is obviously the biggest issue. Going to your
4 client and saying that you're going to face life
5 without parole, which, in fact, Mr. Mayer has
6 already conceded that he didn't know whether in fact
7 he was going to be facing life without parole. He
8 just said that he was scared that he'd be facing all
9 this time.

10 Mr. McClain was always going to be facing
11 all that time and the fact that -- one of the most
12 telling things to me is that Mr. McClain walked in
13 there with Counsel at trial and pled straight up
14 with no recommendation or negotiation whatsoever.

15 Mr. McClain, you don't know me. I used to
16 be a defense attorney. I've also been where Mr.
17 Limbaugh is sitting. I've been a prosecutor. I've
18 been a judge for 15 years. I've been in that same
19 room that you're talking about with my client, but
20 when I'm in that room, I'm telling them to take a
21 deal because they are facing life and I just got
22 them 10 years and if they want to admit to guilt and
23 they want to say that they did it, it's for some
24 benefit that they would receive, either from the
25 State or from the defense, I find it highly

1 ineffective that he allowed you to go in there and
2 plead straight up to these charges while you were
3 already at trial. All right?

4 So, for those reasons and more, I'm going
5 to put on the record that Mr. McClain, he started
6 this previously, as you are aware. I stopped it
7 because Mr. Mayer, even though Mr. Limbaugh had sent
8 him all the information, had not been prepared
9 whatsoever. I thought that that was deficient in
10 itself, not even being prepared to defend himself
11 and yourself.

12 So, I had Mr. Limbaugh send it to me so I
13 have read all the information Mr. Thomas. I think
14 you know that. Right? I had Mr. Limbaugh send it
15 to me. So, I've read everything. I had the
16 opportunity to read it. It's been about a month
17 ago, I think, when I read it, but I am fully aware
18 of what's going on in this case.

19 I know Mr. Mayer was in over his head. I
20 think he admits that here today, that back then he
21 certainly was over his head, and I don't believe
22 that this was a freely and voluntarily given plea.
23 I think there was misinformation given to Mr.
24 McClain that would induce him to plead guilty, so
25 I'm going to grant you PCR. All right?

1 MR. MCCLAIN: Thank you. Thank you.

2 THE COURT: Good luck.

3 MR. MCCLAIN: Thank you.

4 (At 2:30 p.m. the proceedings were concluded.)

5 ***

6 END OF TRANSCRIPT

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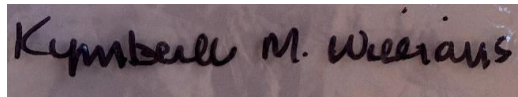
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CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the Sixteenth 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 and evidence introduced in the trial of the captioned case, relative to appeal, in the Family Court for Greenville County, South Carolina, on the 1st day of July, 2021.

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

This, the 30th day of August, 2021.

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and reads "Kymberlee M. Williams".

KYMBERLEE M. WILLIAMS, CSR/RPR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
Anthony McClain,	)	
Applicant,	)	
	)	ORDER GRANTING
	)	POST-CONVICTION RELIEF
Vs.	)	
	)	
State of South Carolina,	)	
Respondent.	)	Case No.: 2018-CP-10-01129

FILED
 2021 NOV 10 AM 9:56
 JUDIE J. ARMSTRONG
 CLERK OF COURT

The above-captioned matter comes before the court via an application for post-conviction relief filed by Anthony McClain on March 1, 2018. This court convened an evidentiary hearing into the matter on July 1, 2021 by way of a virtual courtroom before the Honorable Bentley Price. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire, and Benjamin H. Limbaugh, Esquire of the South Carolina Attorney General's Office represented Respondent.

The court had the opportunity to listen to testimony and rule on the witnesses' credibility. This court also had before it a copy of the trial transcript, the record on appeal, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter.

PROCEDURAL HISTORY

Applicant was indicted at the November 2015 term of the Charleston County Grand Jury for kidnapping, possession of a weapon during the commission of a violent crime, armed robbery, and two counts of pointing and presenting a firearm. He was represented on these charges by Aaron Mayer, Esquire, and Assistant Solicitor David O. Osborne prosecuted the case. Trial was commenced before the Honorable Clifton Newman, but Applicant pleaded guilty before the case went to the jury. On March 25, 2017, Applicant pleaded guilty as indicted on all charges without

negotiations or recommendations. He was sentenced to 22 years for armed robbery, 22 years for kidnapping, and five years each for the pointing and presenting charges and five years for possession of a weapon during the commission of a violent crime. The sentences were set to run concurrently, and Applicant received credit for 652 days' time served. Applicant did not appeal his convictions or sentences.

ALLEGATIONS

Applicant alleged the following grounds at the PCR hearing:

1. Ineffective Assistance of Counsel
 - a. Failure to adequately prepare for trial
 - b. Failure to review and explain discovery with Applicant
 - c. Failure to discuss Applicant's mental health issues with him
 - d. Failure to appropriately argue and present pre-trial motions
 - e. Failure to object to certain evidence being introduced at trial, including Lyles evidence
 - f. Failure to provide advice regarding life without parole (LWOP)
 - g. Failure to effectively argue against joinder of cases
 - h. Failure to properly handle motion for mistrial
 - i. Failure to adequately point out inconsistencies with victim's previous statements and testimony at trial
 - j. Failure to adequately advise Applicant regarding right not to testify
 - k. Failure to hire a private expert to review telephone requires and failure to subpoena a custodian from AT&T
2. Involuntary Guilty Plea

TESTIMONY ADDUCED AT TRIAL

Applicant, Anthony McClain

Applicant, Anthony McClain, was the first witness, and began by testifying that he always intended to go to trial because he was innocent of the charges. He could not afford his bond, so he spent 652 days in the county detention center, during which time trial counsel only visited twice. This prevented him from reviewing his discovery with trial counsel or developing a theory of defense.

Applicant further testified that he informed trial counsel he had an anxiety disorder; however, he believed trial counsel did not appreciate and allow for how this affected him, including that Applicant was under the influence of medication at trial and at this hearing.

Factually, the charges arose from an incident where he had a verbal altercation with College of Charleston students. There was also a second incident when Applicant was said to have pointed a firearm at a college student. Applicant testified that there were supposed to be written statements from the victim, but she and other witnesses could not identify him. Applicant maintained that he never had a firearm.

Applicant could not recall if he was present for pre-trial motions, though he testified he remembered a motion for suppression was discussed with trial counsel. He also testified that he was aware of a motion to sever the two cases because of lack of evidence. He further testified regarding his understanding of his eligibility for a sentence of LWOP. Approximately two hours after meeting with trial counsel one day, during which trial counsel asked how Applicant would feel about getting ten years, Applicant was notified of the State's intention to seek LWOP. At this point, Applicant felt that he had to make the legal decisions in his case because trial counsel was not assisting him. He further testified that trial counsel advised Applicant's fiancé and sister to get Applicant to stop the trial and plead because he was going to lose. Applicant thought he would get ten years if he took the plea, and that seemed like a reasonable amount rather than risking LWOP. He later learned that the State was attempting to use a federal felony charge for aiding and abetting (rather than the crime itself) to qualify for LWOP and the trial judge was uncertain if that would work.

Even though Applicant took a guilty plea, he testified that he did not enter into it freely and voluntarily. He felt like he was forced because of threat of the LWOP. Before pleading, Applicant

asked trial counsel to work out a deal, especially as trial counsel reported the solicitor was still talking about ten years. Applicant informed trial counsel he would take that offer, but otherwise he wanted to fight for his life against the charges. However, he ultimately felt that he should not have taken the plea because he was not guilty – he was willing to take a set, lower sentence in order to get it over with.

During trial, trial counsel failed to subpoena the cashiers from the convenience stores involved, both of whom said they did not see a crime occur. In fact, the statements reflect that the kidnapping victim invited Applicant to get in her car rather than him forcibly taking her. Applicant did not testify to this at trial because trial counsel told him not to testify on his own behalf. Applicant also did not recall trial counsel's motion for a directed verdict when he attempted to have the incident with the college students thrown out because they could not identify him.

At the end of direct examination, the court questioned Applicant what his most serious offense was to make him eligible for LWOP. He testified that he did not have a most serious offense – the worst state offense was assault and battery of a high and aggravated nature. Further, at the end of redirect examination, the court questioned Applicant about the circumstances of his plea, during which he stated he plead straight up with no offers, negotiations, or dismissed charges.

Aaron Mayer, Trial Counsel

Mr. Mayer, who called in late to the virtual hearing, was questioned first by Mr. Thomas on behalf of Applicant. He began by testifying that he did not hire an investigator to research the facts and charges because it was not his practice at the time. After reviewing the evidence himself, he felt that the College of Charleston case was a little bit stronger because it had multiple witnesses in the State's favor, along with a photograph in which it appeared Applicant was holding a gun.

Trial counsel testified he typically filed an omnibus pretrial motion, but “there many have been a couple of other specific ones as well to the case.” He recalled that there may have been a motion for suppression of the statement on the victim’s video from the convenience store, which was denied by the court. There was also a motion to sever the two cases, which trial counsel felt showed an opportunity to weaken the cases by having them tried separately and keeping the evidence separately. Trial counsel was questioned about the potential for having the burden shifted against Applicant because, by trying the two cases together, the court essentially required Applicant to be found not guilty of the College of Charleston case to be able to even get a shot at a not guilty verdict on the kidnapping. He stated that he saw how that could be possible, but was not aware of it at the time.

When questioned about the possibility of LWOP, trial counsel testified that Applicant was eligible and the solicitor said all along he would serve the notice, which he felt raised the stakes. He testified that he did not have much experience in assessing whether a defendant was eligible for LWOP. He stated that it was not a slam dunk issue for him and he was unsure whether the argument would be successful. On cross-examination, trial counsel testified that he was unaware if he could have challenged the LWOP notice at the time of Applicant’s plea. He thought he had challenged it at every stage, otherwise.

Trial counsel further testified he had very little experience in picking a jury, which led Applicant to lose faith in the jury and decide to throw himself at the mercy of the court. Trial counsel then testified that he felt awful for cross-examining the witness and insinuating that she made up or got wrong the facts of her allegations, which caused him to lose credibility with the jury.

Trial counsel was unclear whether he had a Biggers hearing before trial but believed that he did.¹ Regarding plea offers, trial counsel recalled a 15-year offer, but was not positive on the number. He felt sure that he would have conveyed the offer to Applicant.

As for Applicant's decision to plead, trial counsel stated he was surprised but wanted to be supportive and thought it was hard for him to know how the trial was going. He did not recall providing specific advice about taking the plea but could have because there was a lot on the line. He also did not recall speaking with Ms. Tisdale or any other family members about anything in specific. When asked about his thoughts regarding Judge Newman sentencing Applicant to the age of the victim, he felt like there was not much that he could do because of the entry of the guilty plea.

Trial counsel testified on cross-examination that he was hampered by trying the case alone when most attorneys would have had a second chair or assistant. He admitted that it probably was not sufficient, as it was a two-person job, "and it certainly wasn't sufficient to give me much time during the trial to talk to the client." This came up in relation to whether he had spoken with Applicant about taking a plea, to which he also testified that he was surprised when it came up, but also "felt like it might be the right thing because I felt like we had a lot of haters on the jury and I felt like I hadn't done much of a good job of sorting through their biases and trying to get them off for cause." Otherwise, he did not recall specific conversations with Applicant or his family members.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the

¹ There was no Biggers hearing because trial counsel stated there was no reason to refute the identification because it was recorded, and Defendant/Applicant admitted to his presence at the scene. Pre-trial Tr. p. 20.

witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). Where an application for post-conviction relief alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. 466 U.S. at 686; see Butler v. State, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 691. The applicant must overcome this presumption in order to receive relief. Bell v. State, 321 S.C. 238 (1996); see also Cherry v. State, 300 S.C. 238 (1989); Rule 71.1(e), SCRPC.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18.

Failure to appropriately review and challenge the State's notification of LWOP

The court finds that trial counsel provided ineffective assistance to Applicant regarding the issue of Applicant's notification that he faced a sentence of LWOP if convicted. Though trial counsel filed a motion to challenge the validity of an LWOP notification, he failed to inform himself in order to appropriately argue the motion. Further, he failed to argue the issue at every appropriate opportunity. When it was initially considered pre-trial, trial counsel did not even speak on his own motion, instead allowing the trial court and the solicitor discuss the classification of Applicant's prior charges. Pretrial Tr. p. 13, line 15 – p.20, line 5.

If a defendant is actively misinformed about parole eligibility, he must prove he relied on this information in order to receive post-conviction relief. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983); *see* Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) (relief granted on this ground). Most case law in this realm considers whether a trial judge gave incorrect sentencing information that a defendant relied upon, which is not at issue here. Instead, Applicant has only to prove that he relied on active misinformation, as normally parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised. Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004).

In the current case, trial counsel was clearly aware that the LWOP notice was based on a charge that may not rise to the level of a "most serious" charge needed to trigger LWOP. He was concerned enough about this to file a pre-trial motion to have the notice set aside. However, as stated above, he did not argue his own motion, nor did he challenge the LWOP notice at any other point in the trial. Instead, the idea of LWOP hung over Applicant's head as the trial proceeded. Further, on pages 526-7 of the trial transcript, both the State and trial court admitted that, if Applicant had proceeded with trial rather than pleading, they "might have run into some issues"

in construing Applicant's prior charges to fit the criteria for enhancement to LWOP. Tr. p. 527, line 7.

Trial counsel's failure to argue this issue appropriately is ineffective assistance of counsel. His performance was deficient under the first prong of Strickland because he failed to provide Applicant with accurate information regarding whether he qualified for a LWOP sentence, as well as failed to argue that issue on Applicant's behalf. This clearly caused Applicant prejudice under Strickland's second prong as it caused him to plead guilty without negotiations in order to avoid risking the receipt of an LWOP sentence at trial. If trial counsel had performed his duties effectively, Applicant may have finished out his trial and received a shorter sentence than he did by pleading. Therefore, because of Applicant's showing of prejudice due to erroneous advice and ineffective assistance of counsel, relief on this allegation is **granted** and Applicant's sentence is **vacated**.

Involuntary Guilty Plea

Applicant entered an involuntary guilty plea because he was misinformed and inadequately represented regarding whether the notification of an LWOP sentence was appropriate under the law. Applicant underwent several days at trial laboring under the delayed ruling by the trial court as to whether his LWOP notification was appropriate based on his prior convictions. Ultimately, Applicant pleaded guilty because trial counsel could not satisfactorily inform him or receive a ruling that LWOP would not be on the table. As such, despite the fact that he maintained his innocence, he elected to plead guilty without negotiations for a sentence that would be lower than life in prison.

A general idea in this state has been that, in order to reverse a guilty plea, an applicant must prove "something more" because "it would be wholly impractical to maintain a rule which requires

the automatic reversal of a guilty plea without something more.” Hunter v. State, 316 S.C. 105, 109, 447 S.E.2d 203, 205 (1994). Hunter and the “something more” idea have been repeatedly cited in challenges of guilty pleas when it comes to satisfying the second prong of Hill, being that Applicant would have proceeded to trial but for counsel’s errors. Hill, 474 U.S. at 595. This was expressly adopted by South Carolina in Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). It is abundantly clear that, in this matter, the erroneous advice of counsel induced Applicant to plead guilty. Therefore, because of Applicant’s showing of prejudice due to erroneous advice and ineffective assistance of counsel, relief on this allegation is **granted** and Applicant’s sentence is **vacated**.

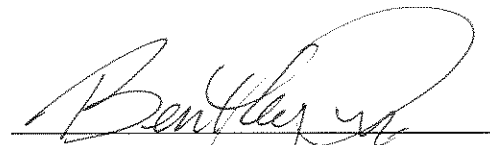
CONCLUSION

Based on the totality of information and evidence before this court, it is clear that Mr. Mayer’s level of representation fell below that required by prevailing professional norms and that he provided ineffective assistance of counsel to Applicant. As such, Applicant was induced to enter an involuntary guilty plea because he could not make it in a knowing, voluntary, intelligent, or free manner. Therefore, this court grants relief on both counts, vacates the conviction and sentence of the plea court, and remands Applicant and this charge to Charleston County for further proceedings.

IT IS THEREFORE ORDERED:

1. This court grants relief on the allegations of ineffective assistance of counsel and involuntary guilty plea;
2. Applicant’s conviction and sentence are vacated; and
3. Applicant and these charges are remanded to Charleston County for further proceedings.

AND IT IS SO ORDERED this 7th day of November, 2021.


THE HONORABLE BENTLEY PRICE
Presiding Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Anthony McClain, #290065,	)	
Applicant,	)	Case No.: 2018-CP-10-01129
	)	
v.	)	RESPONDENT'S MOTION TO
	)	RECONSIDER, ALTER, OR AMEND
State of South Carolina,	)	PURSUANT TO RULE 59(E), SCRC
Respondent.	)	
	)	

This matter comes before this Court by way of an application for post-conviction relief filed on September 19, 2018 by Applicant Anthony McClain. Respondent, the State of South Carolina, made its return to the application and requested an evidentiary hearing to resolve the claims as set forth in the application. A hearing on this application was held virtually on July 1, 2021 via Webex Application before the Honorable Bentley S. Price, circuit court judge. By written order filed November 10, 2021, and received by Applicant on November 12, 2021, this Court granted the post-conviction relief and remanded the matter to the Charleston County Court of General Sessions for a new trial, finding Counsel's inability to determine whether or not Applicant's prior federal charges would be enough to enhance to his current charges to require a sentence of a life without parole pursuant to §17-25-45 of the South Carolina Code or argue this issue on his behalf was constitutionally deficient. Order Granting Relief, p. 7. Further, this court determined that Applicant entered into an involuntary guilty plea relying on *Roscoe v. State*¹, because "the erroneous advice of counsel induced Applicant to plead guilty." Order Granting Relief, p. 10.

Respondent, by and through undersigned counsel, making tis Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRC, would respectfully show this Court:

¹ *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001).

FACTUAL SUMMARY GIVING RISE TO CONVICTIONS

The faOn June 2, 2015, Applicant drove his vehicle in Downtown Charleston. Applicant proceeded to an intersection, he slowed his vehicle and allegedly asked to take a picture with College of Charleston students. One member of the group of students refused and when they refused, he placed a gun to the back of one of their heads and to the forehead of another. The students ran and one proceeded to scream, "He has a gun."

When Applicant left that incident, to continue his birthday celebration, he then drove two blocks and saw the second victim. He slowed his vehicle and asked the victim for directions to North Charleston. The victim gave Applicant the directions, and proceeded to get in her vehicle. Applicant walked up to victim's vehicle and pointed a handgun, and demanded money. After telling the victim told him she had a small amount of money on her, he demanded that she go to several convenient stores. Ultimately, Applicant told victim to withdraw money from an ATM. While searching for her bank card, she discovered a spare key. The Victim withdrew \$100 from an ATM that she gave to Applicant. Applicant demanded she take him home, which she complied. Once Applicant exited the vehicle, she used the spare key she found in her purse, got in the driver's seat of the car, and escaped.

State's Pre-Trial Brief p. 2-3.

PROCEDURAL HISTORY

Applicant is presently confined within the South Carolina Department of Corrections. During Applicant the November 2015 term, the Charleston County Grand Jury indicted Applicant for kidnapping (2015-GS-10-5968), possession of a weapon during the commission of a violent crime (2015-GS-10-05969), armed robbery (2015-GS-10-05967), and two counts of pointing and presenting a presenting a firearm (2015-GS-10-05964; 2015-GS-10-05966). Applicant was

originally represented by John Kozelski, Esquire. At trial, Aaron Meyer, Esquire represented Applicant. Assistant Solicitors David L. Osborne, Esquire, and Alex Ginsburg, Esquire of the Ninth Circuit Solicitor's Office prosecuted the case.

On February 17, 2017, Solicitor Osborne filed a notice and attempted to serve an intention to seek sentence of life without parole due to a prior federal charge for carjacking, which would be a most serious offense pursuant to §17-25-45 of the South Carolina Code. When being served, Applicant refused to sign for the notice. Applicant was again served on February 22, 2017 and accepted service. Counsel for Applicant subsequently filed a motion to set aside the life without parole. In addition to the issue regarding life without parole, there were several pre-trial issues that needed to be determined such as the State's motion to join both sets of charges into one trial, a hearing pursuant to *Jackson v. Denno*² to determine if Defendant's video statements were voluntarily waived under his rights to *Miranda*³, and the admissibility of prior bad acts pursuant South Carolina Rules of Evidence rule 404(b) and *State v. Lyle*⁴. Furthermore, a hearing determining if Applicant's identification procedure was unduly suggestive pursuant to *Neil v. Biggers*⁵, the admissibility of evidence of excited utterances was necessary, a suppression hearing on any evidence allegedly obtained in a manner that violates defendant's constitutional rights, and whether or not Applicant could be impeached through his prior convictions.

On March 10, 2017, pre-trial motions were heard before the Honorable R. Markley Dennis. In regard to the motion to seek life without parole, Judge Dennis asked Solicitor Osborne to explain

² *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964)

³ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

⁴ *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923)

⁵ *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972)

to the Court how the State is entitled to a notice of life without parole. Solicitor Osborne explained that Applicant's 1995 federal aiding and abetting carjacking would be a most serious offense that would warrant life without parole while admitting that he was not completely sure if a conviction could have been enhanced by the federal charge and that it should be an issue taken up with the sentencing judge. Judge Dennis ruled that this matter should be before the sentencing judge for his interpretation during sentencing, and that he would not rule on the propriety of the life without parole notice. Specifically, Judge Dennis said:

It's left to the discretion of the Judge whether or not it's met. And I won't expedite it but that hearing really comes only after he's convicted because there is no question at this point it has to be an interpretation that for the life without parole to apply. If he says no, he can sentence him in accordance with penalties that he is facing for these crimes, okay.

Pretrial Tr. p. 18.

Judge Dennis further explained to Applicant that he could receive a *de facto* life sentence based on the severity of his charges and the term of years he could receive for each conviction, but still deferred to the discretion of sentencing judge and did not rule on the merits. Pretrial Tr. p. 19.

On March 13, 2021, Applicant proceeded to trial in front the Honorable Clifton Newman, circuit court judge. After three days of testimony, Applicant pleaded guilty to all charges. Assistant Solicitor Osborne subsequently revoked the consideration of life without the possibility of parole pursuant to Section 17-25-45. Judge Newman immediately began sentencing and asked the State to read Applicant's extensive criminal history, including the federal aiding and abetting carjacking. Judge Newman stated for the record that carjacking was a most serious offense and that if Applicant was found guilty of any of those charges and he determined the federal carjacking equated to the South Carolina equivalent, that Applicant would automatically face life without parole pursuant to Section 17-25-45. He continued by saying "He's pled guilty of all charges but

the State is no longer contending that the federal carjacking automatically makes it mandatory for him to get life without the possibility of parole. So he got that out the deal.” Judge Newman sentenced Applicant to confinement for twenty-two years for the armed robbery, twenty-two years for kidnapping, five years for each count of pointing and presenting and five years for possession of a firearm during a violent crime, to be served concurrently.

Applicant did not appeal his conviction or sentence.

CURRENT APPLICATION

Applicant timely commenced this PCR action on September 19, 2018. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea.

On February 18, 2021, an evidentiary hearing was convened before the Honorable Bentley S. Price, circuit court judge. Applicant was present and represented by Tommy A. Thomas, Esquire. The State was represented by Assistant Attorney General Benjamin Limbaugh. During the initial hearing, Judge Price stayed the proceedings to allow for Applicant’s trial counsel to review the transcript.

On July 1, 2021, a second evidentiary hearing was convened before Judge Price. Applicant and his former counsel, Aaron Meyer both testified. At the close of the evidentiary hearing, this Court orally granted Applicants post-conviction relief and requested Applicant’s counsel prepare a proposed order for the Court’s consideration.

On November 10, 2021, this court granted the post-conviction relief and remanded the matter to the Charleston County Court of General Session for a new trial, finding Counsel ineffective for failing to investigate and properly argue against the notice of the life without parole

and due to trial counsel's ineffectiveness and erroneous advice Applicant pled guilty involuntarily. This motion to reconsider, alter, and amend pursuant to Rule 59(e), SCRCP, follows.

Attached to and incorporated herein is the State's Pretrial Brief and Motion to Set Aside LWOP Notice.

ARGUMENT IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief because Applicant failed to meet his burden establishing counsel was constitutionally ineffective and his guilty plea was not involuntary. Respondent respectfully asserts this Court erred as a matter of law in determining Applicant meet his requisite burden of proof as to establishing both deficiency and prejudice necessary to for a finding of constitutional ineffectiveness.

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d

813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690-95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation [—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable

miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial

inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the

judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.” *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Moreover, to collaterally attack a plea entered into on the advice of counsel, a PCR applicant must show (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 34 S.E.2d 427 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel’s advice was not “within the competence demanded of attorneys in criminal cases.” *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. *Crawford v. U.S.*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

In its order granting relief, this Court found counsel ineffective for failing to adequately investigate and argue against the State's intention to seek life without parole notice on Applicant. This court found counsel was deficient because "he failed to provide Applicant with accurate information regarding whether he qualified for a life without parole sentence, as well as failed to argue the issue on Applicant's behalf" and prejudiced Applicant as required by *Strickland* because "it caused him to plead guilty without negotiations in order to avoid risking the receipt of an life without parole sentence at trial." Order Granting Relief, p. 8-9. Furthermore, this Court found Applicant involuntarily entered into his guilty plea due to the "erroneous advice of counsel." Order Granting Relief, p. 10. Respondent respectfully asserts this Court's order is based on legal and factual errors and that this Court's grant of post-conviction relief should be reconsidered and relief should be denied.

Applicant Failed to Establish Trial Counsel's Performance was Ineffective.

In its order granting relief, this Court found Counsel was constitutionally ineffective for failing to provide Applicant with accurate information on possible qualification for a life without parole sentence and failing to argue on Applicant's behalf. Respondent respectfully asserts this Court's finding that trial counsel was deficient and that Applicant was prejudiced for receiving "inaccurate" information from trial counsel is inconsistent with the record and case law on this matter because the State's intention to seek a life without parole sentence was proper.

Here, trial counsel was not deficient in his representation regarding the life without parole notice. Initially, he filed a pretrial motion on Applicant's behalf seeking to set aside the notice of life without parole. In its Order granting relief, this Court notes that trial counsel did not argue the motion during pretrial or any other appropriate time during trial. However, Judge Dennis specifically asked Assistant Solicitor Osborne – not trial counsel—to explain how life without

parole would be proper in this case. Pretrial Tr., p. 13. Moreover, Judge Dennis determined that life without parole eligibility would not be determined until at the time of sentencing with the trial judge, and, accordingly, arguments on the propriety of the life without the possibly of parole notice were premature at that time. Pretrial Tr. p. 18. Accordingly, trial counsel would not have been able to argue on Applicant's behalf regarding the propriety of the notice until sentencing. However, at the time of sentencing, Applicant had changed his plea to guilty and the State had withdrawn its notice to seek life without parole pursuant to Section 17-25-45.

Furthermore, trial counsel was also not deficient and Applicant was not prejudiced because the State properly sought and serviced Applicant with its intention to seek life without parole based on his prior convictions. In Section 17-25-45 of the South Carolina Code, a solicitor is entitled to seek an invocation of sentence of life without parole if upon a conviction of a most serious offense if that person has either one or more prior convictions of most serious offense or a federal or out-of-state conviction for an offense that would be classified as a most serious offense. *See* S.C. Code Ann. § 17-25-45. There are several offenses listed in the statute. However, the State argued that carjacking would be the offense closest to his 1995 aiding and abetting carjacking conviction. In South Carolina, a person is will be guilty of carjacking if they take or attempt to take "a motor vehicle from another person by force or violence or by intimidation while the person is operating the vehicle or while the person is in the vehicle." S.C. Code Ann. §16-3-1075. Similarly, Applicant's charge of aiding abetting carjacking requires that

"Whoever, with the intent to cause death or serious bodily harm takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so" be fined or imprisoned under the guidelines of the statute."

18 U.S.C.A §2119.

Furthermore, in the federal system, a person who commits and offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as the principal. 18 U.S.C.A §2. Similarly in South Carolina, a person is guilty in of the felony of carjacking, when they take or attempt to “take a motor vehicle from another person by force and violence or by intimidation while the person is operating the vehicle or while the person is in the vehicle.” S.C. Code Ann. §16-3-1075(B). Analogously, in South Carolina, “a person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony... is guilty of a felony, and upon conviction, must be punished in the manner prescribed for the punishment of the principal felon.” S.C. Code Ann. §16-1-40.

Here, trial counsel’s performance was not deficient and Applicant cannot establish any prejudice as required by *Strickland* because the notice of life without parole was proper. South Carolina’s carjacking statute and the federal carjacking statute are strikingly similar, and would be interpreted to be a most serious crime that would be enhanced by Applicant pleading guilty to armed robbery, thus, he was properly served with the life without parole notice. Furthermore, while this Court points to the Assistant Solicitor admittedly saying during pre-trial motions that he was not completely sure if an LWOP notice was proper (which is a stark difference from the pre-trial brief he filed, and is attached to this motion), Judge Dennis ruled that the sentencing judge should make the final determination. Pretrial Tr., p. 13. Additionally, Judge Newman agreed during sentencing that carjacking was a most serious crime and his conviction for armed robbery would result in an automatic sentence of life without parole under Section 17-25-45, but that was irrelevant because the State withdrew its notice of intention to seek life without parole once Applicant agreed to change his plea to guilty. Trial Tr., p. 507. Accordingly, Applicant cannot establish that counsel was deficient or that that he was prejudiced by the actions of his attorney as

required by *Strickland*, because the results of being eligible for life without parole would not been different but for trial counsel's alleged ineffectiveness.

Therefore, Respondent submits this Court erred as a matter of law, because Applicant cannot establish either constitutional deficiency or prejudice as a result of counsel's performance, as the State properly served him with the notice to seek life without parole was proper. Accordingly, Respondent asks this Court to reconsider its ruling granting post-conviction relief.

Applicant Entered Into a Voluntary, Knowing and Intelligent Guilty Plea

In its order granting relief, this Court found Applicant pleaded guilty involuntarily due to erroneous advice given counsel regarding the possibility of life without parole. *See* Order Granting PCR Relief, p. 9. Respondent respectfully submits that Applicant's plea was a voluntary, knowing and intelligent guilty plea to avoid a properly served and issued notice of life without parole, or in the alternative, a de facto life sentence based on the sentencing range he faced for each charge.

To collaterally attack a plea entered into on the advice of counsel, a PCR applicant must show (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 34 S.E.2d 427 (2001).

As noted earlier, trial counsel was not ineffective because he filed a pretrial motion to set aside the notice of life without parole and never had the opportunity to address the court regarding the life without parole notice because it was withdrawn by the State before sentencing, which would have been the appropriate time to argue on its behalf. Furthermore, Applicant was not prejudiced by the alleged ineffectiveness because due to the seriousness of his prior federal charge and current charges, Judge Newman could have deemed Applicant eligible for life without parole. Furthermore, in a colloquy with Judge Dennis about his age at the pre-trial motion hearing,

Applicant was apprised that he may get a *de facto* life sentence due to the amount of time the armed robbery and kidnapping charges carried.

Furthermore, the Defendant admitted he would have pled guilty if he deemed the plea favorable to him. At the evidentiary hearing, Applicant denoted that he wanted to plead guilty if he was given a ten year deal. PCR Hearing Tr. p. 32. Additionally, Applicant denoted he was surprised when trial counsel stated he would continue to trial the following week, because he wished to plead guilty. PCR Hearing Tr. p. 24. Furthermore, at trial, Applicant told Judge Newman that he was not promised anything for taking plea and wanted to plead guilty because he was guilty of the crimes he was charged with. Trial Tr. pp. 498-502.

In conclusion, Respondent respectfully submits Applicant has failed to show how counsel was constitutionally deficient, and that his plea was involuntary due to that deficiency because his trial counsel was not ineffective, and his plea was voluntary as he would have pled and admitted guilt.

CONCLUSION

Based on all the foregoing, Respondent respectfully requests this Court reconsider its prior ruling and deny its previous grant of post-conviction relief and remand of this case back to the court of general sessions for a new trial.

Respectfully submitted,

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Attorney General

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By:



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November 22, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Anthony McClain, #186047	)	
	)	Case No.: 2018-CP-10-1129
Applicant,	)	
	)	
v.	)	Certificate of Service by Mail
	)	
State of South Carolina	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e), SCRCP, in the above captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, SC 29063

DATED this 22nd day of November, 2021.



Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Anthony McClain, #290065

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-01129

**ORDER DENYING RESPONDENT'S
MOTION TO RECONSIDER**

FILED
DEC 16 AM 11:38
CLERK OF COURT

The Respondent State of South Carolina filed a motion asking this Court to reconsider its September 19, 2021 Order.

STANDARD OF REVIEW

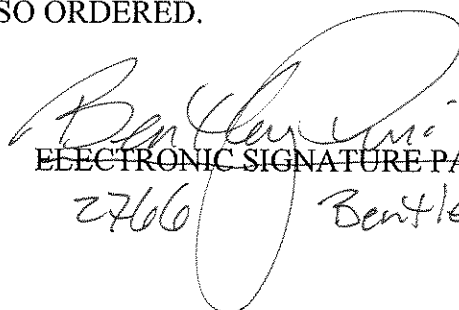
Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson

¹ Rule 59 is substantially the same as the Federal Rule. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Respondent’s motion, the Court hereby DENIES Respondent State of South Carolina’s Motion for Reconsideration.

AND IT IS SO ORDERED.

 12.9.21
ELECTRONIC SIGNATURE PAGE TO FOLLOW
2766 Bentley Price