ORIGINAL

STATE OF MARYLAND VS. DEMETRIUS SMITH
February 16, 2015 BEFORE JUDGE BARRY G. WILLIAMS

STATE OF MARYLAND,	*	IN THE
	*	CIRCUIT COURT
V	*	FOR
	*	BALTIMORE CITY
DEMETRIUS SMITH,	*	CASE NO:
Defendant.	*	108266016-17

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TRANSCRIPT OF OFFICIAL PROCEEDINGS

(Guilty Plea and Sentencing Hearing)

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BEFORE: THE HONORABLE BARRY G. WILLIAMS, JUDGE

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HEARING DATE: February 16, 2011

APPEARANCES:

For the State: Richard Gibson, ASA

For the Defendant: Anne-Marie Gering, APD

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P R O C E E D I N G S

(On the record - 09:43:21 a.m.)

THE CLERK: All rise. The Circuit Court for Baltimore City, Part 30, will start the morning session. The Honorable Barry G. Williams presiding.

THE COURT: Good morning, everyone. Please be seated.

MS. GERING: Good morning, Your Honor.

MR. GIBSON: Good morning, Your Honor.

THE COURT: Good morning. Call the case, please.

MR. GIBSON: May I call the case?

THE COURT: Yes.

MR. GIBSON: Rich Gibson on behalf of the State calling the State of Maryland v. Demetrius Smith. Case number 108266016 and 17.

MS. GERING: Anne-Marie Gering, Assistant Public Defender, on behalf of Mr. Smith.

THE COURT: All right.

MS. GERING: Your Honor, we may have reached an agreement, if we can run it past Your Honor.

THE COURT: I'm listening.

MS. GERING: The offer was 10 years concurrent to the time he's serving now on the first-degree assault charge. I suggested to the State that if -- one of the point Mr. Smith was having a problem with, is that if he

comes back on appeal, this would be holding him up. My suggestion was to file a modification now asking you to hold it sub curia. And if the appeal was successful as fast as he thinks, we come back here in a hearing and revisit the matter.

THE COURT: State?

MR. GIBSON: The State's not opposed. However, there's a preliminary issue that has to be dealt with. And that's the issue of counsel (inaudible).

THE COURT: I'll get to that in a second, but I just wanted to know where we are.

MR. GIBSON: The State has talked to the victim in this case, who (inaudible) present yesterday. The State's offer was 10 concurrent after a homicide conviction. Nothing has changed as far as I'm concerned.

THE COURT: Okay. So but as far as filing the modification, you do not object to that?

MR. GIBSON: No, I don't.

THE COURT: And the reason I ask that, because the record needs to be clear. If it's a binding plea, then if you say not to that, then it can't be done. That's why I'm asking you up front now.

MR. GIBSON: No.

THE COURT: So there's no object to that.

MR. GIBSON: No, Your Honor.

THE COURT: All right. And you're right, Mr. Gibson. Mr. Smith. Swear Mr. Smith in, please.

THE CLERK: Swear him in?

THE COURT: Yes.

THE CLERK: Sir, raise your right hand the best you can.

(The Defendant is duly sworn, according to law, and testifies as follows:)

THE CLERK: Speak up for the record.

MR. SMITH: Yes.

THE CLERK: State your name.

MR. SMITH: Demetrius Smith.

THE COURT: All right. Let me see the court file for a second, Madam Clerk. Good morning, Mr. Smith.

MR. SMITH: Good morning.

THE COURT: Any time I ask you a question, if anyone asks you a question, sir, I need you to respond in a loud voice.

MR. SMITH: All right.

THE COURT: Because we're having the air conditioning and you're being recorded.

MR. SMITH: All right.

THE COURT: So we have to make sure. Okay. And it has to be a yes, no, or provide the information requested.

MR. SMITH: All right.

THE COURT: It can be uh-huhs and um-ums. Do you understand that, sir?

MR. SMITH: Yes.

THE COURT: Okay. Thank you. All right, sir. How old are you?

MR. SMITH: Twenty-eight.

THE COURT: How far did you go in school?

MR. SMITH: The eleventh grade.

THE COURT: Read and write the English language?

MR. SMITH: Yes.

THE COURT: Are you under the effects of any drugs or alcohol today?

MR. SMITH: No.

THE COURT: Been under the care of a psychiatrist or psychologist in the last three or four years?

MR. SMITH: No.

THE COURT: All right, sir. You heard Ms. Gering present information to the Court a few moments ago, is that correct?

MR. SMITH: Yes.

THE COURT: Indicating that there's a possibility that you want to plead guilty in exchange for a sentence of 10 years concurrent to the sentence that you are now serving. Is that correct, sir?

MR. SMITH: Yes.

THE COURT: All right. I also note that, if I look at the court file, back on September 29th, 2010, there's a note indicating that you released Ms. Gering as your attorney, effectually you wanted to fire her. Is that correct, sir?

MR. SMITH: Yeah, yes.

THE COURT: There will be no yeahs. So that is correct, at that time you attempted to do that, is that correct?

MR. SMITH: Yes.

THE COURT: All right. I will note, as I look at the court file, that there's no reference to that in the court file. But there is a reference to that on the postponement form. So out of an abundance of caution, even though there's no note from the Court stating that Ms. Gering has been fired by you, I want to ask you a few questions to make sure we're clear.

Back in September, it's my understanding, that you wanted to fire her. Is that correct?

MR. SMITH: Yes.

THE COURT: And my understanding is that you actually did fire her back in September, is that correct?

MR. SMITH: Yes.

THE COURT: All right. So from September until

now, what efforts have you made to get another attorney, sir?

MR. SMITH: My family ain't have enough money. Because they be paying another lawyer on my appeal.

THE COURT: Right.

MR. SMITH: They had to get that out of the way. So when it all boils down, my lawyer couldn't -- she told us we couldn't get no more postponements.

THE COURT: Who's she told you?

MR. SMITH: My -- we couldn't get no --

THE COURT: No, no, make the record. Who's she, who are you referring to?

MR. SMITH: Anne-Marie Gering.

THE COURT: Okay. So you're saying Ms. Gering told you that you couldn't get anymore postponements?

MR. SMITH: No more postponements.

THE COURT: And when did she tell you that?

MR. SMITH: Recently when I talked to her on a visit, on a phone visit.

THE COURT: Okay. So after September 29th, she told you that she did not believe that there would be anymore postponements in this case.

MR. SMITH: Yeah. She said it, yeah, there wasn't going to be no more postponements, yes.

THE COURT: Okay. So although you had fired her,

she still came to see you, is that correct?

MR. SMITH: She called me.

THE COURT: Okay. She talked to you, is that correct?

MR. SMITH: Yeah. She said -- yeah.

THE COURT: And you interacted with her even though you fired her, is that correct?

MR. SMITH: I -- she said she was assigned to the case, she's going to have to do the case, I didn't get no lawyer.

THE COURT: Well, that's why we're trying to figure this out. There's a difference between her being assigned by the State to represent you and you accepting her representation.

MR. SMITH: I didn't have no choice.

THE COURT: Yes, you did. That's why we're doing this. You did have a choice, sir. And I want to make sure that's clear on the record. You're not forced to have the Public Defender's Office represent you. You understand that?

MR. SMITH: Yes.

THE COURT: And you, at some point I am told in September, attempted to or fired the Public Defender's Office, specifically Ms. Gering.

MR. SMITH: Yes.

THE COURT: And you understand that you do not get your choice of lawyers. Once you fire the Public Defender, they are not required to represent you. Nor are they required to have anyone else represent you. Do you understand that?

MR. SMITH: Yes.

THE COURT: And you can hire an attorney if you want. And you said your family was attempting to do that, but they could not afford to hire an attorney for this trial.

MR. SMITH: No, they couldn't. Yes.

THE COURT: So you're then placed in a situation, sir, where you needed to hire someone else if you wanted to, because you already had the representation by the Public Defender's Office and you dismissed them. Do you understand that, sir?

MR. SMITH: Could you run that back past me?

THE COURT: Absolutely. The Public Defender's Office represented you.

MR. SMITH: Yes.

THE COURT: Up until September 29th. You fired them, is that correct?

MR. SMITH: Yeah, I asked them -- yeah, I asked them, yeah.

THE COURT: You asked them what?

MR. SMITH: To fire her, yeah.

THE COURT: Okay. And that's fine, because you had every right to do that. Now, between September 29th and today's date, you've not hired anyone else, is that correct?

MR. SMITH: No.

THE COURT: So here are your options right now so you understand. You can represent yourself, if you so desire. You're not required to have representation. Let me just finish and I'll ask you some questions. You're not required to have representation. You were already presented representation and you decided to fire them. You are unable to hire someone. So you're in a position where you can ask the Court for a postponement. And if you'd like to ask me for a postponement, I'll make that ruling. Is it your desire to ask for a postponement now?

MR. SMITH: No.

THE COURT: Okay. So you understand you can ask. Now, I will make a decision based on how many times this case has been postponed, how prepared the State was, how prepared your attorney was, and how prepared you are to try the case today. But today is a trial date. So you're saying you're not asking to go to Postponement Court to see if the judge would allow a postponement. Because I can't grant a postponement, but I can deny one. Do you

understand that?

MR. SMITH: Yes.

THE COURT: All right. So you're not asking to go to Postponement Court, is that correct?

MR. SMITH: Yes.

THE COURT: Okay. So you're ready for trial today, is that correct?

MR. SMITH: Yes. I'm --

THE COURT: Okay. So we're find with that. So the issue of postponement is out of the way. Now, the only issue that we have, sir, is are you going to represent yourself. Because you've already told this Court that you can not hire an attorney, because your family does not have the resources to do that, is that correct?

MR. SMITH: I mean, that would be disrespect to the Court for me to represent myself and I don't understand all of the words or the talk what you're saying.

THE COURT: Interesting that you say that. It's not disrespectful to the Court, it is what a defendant has a right to do. That whether you want to represent yourself, and you said yourself, you don't understand the law, you don't understand what's going on sometimes, because you're not a lawyer. That very well may be true.

But that doesn't mean you don't have a right to represent yourself. The question is, do you believe it's in your benefit to represent yourself or to have someone else represent you.

MR. SMITH: No, it ain't me. No, it would be in my benefit to have a lawyer represent me.

THE COURT: Okay. So you do not want to represent yourself, is that correct?

MR. SMITH: No, I can't.

THE COURT: Well, no. You say you can't.

MR. SMITH: I mean, I can. But I don't want it -- no, I --

THE COURT: You're saying you don't think it would be in your best interest to do that.

MR. SMITH: No, I don't.

THE COURT: Because the State has an attorney, who's gone to law school, has been doing this for a number of years, and you haven't. So you're right. The State, hopefully, knows the law. Just like whoever would defend you would hopefully know the law. You're acknowledging you do not know the law, is that correct, sir?

MR. SMITH: I don't know -- no, I don't.

THE COURT: Okay. So now, here's the situation you're in. You either represent yourself, because you have an absolute right to do that, or if Ms. Gering is

still willing to represent you, you can hire her again. She's not required to do that, sir. Once you fire her, she is not required to come back on your case. But I will acknowledge to you here in open court that she's made it clear that she's willing to do that, she's had discussions with the State. And if you want her to represent you, she will do that. But I'll need to ask you a few more questions beyond that. So do you want Ms. Gering to represent you?

MR. SMITH: Yes.

THE COURT: Okay.

MR. SMITH: I thought she was representing me. That's what --

THE COURT: Well, she was until you fired her. Once you fired her, she doesn't have to represent you, sir. And in fact, that's why we're going through this.

MR. SMITH: I thought when --

THE COURT: You thought when you fired her that she --

MR. SMITH: I don't know if the courts made it clear at you that she was actually fired. I didn't get no paper or nothing, you know. I thought they wasn't going to fire her until I got an attorney, right.

THE COURT: And that may be true. It's interesting you say that, because I see nothing in the

court file that indicates that she was fired. I just have the representation.

MR. SMITH: Yeah, (inaudible).

THE COURT: Slow down. I'm not saying you're not going to have her. I just need this record to be clear so that later on you don't have the opportunity to say; well, Judge Williams didn't ask me, and I really didn't want Ms. Gering to represent me, and I really wanted to represent myself. I don't want that to happen. So I just want this to be clear and open, okay. All right. So, as I said before, I don't see anything in here saying that Ms. Gering has been fired. So from the perspective of the Court, she hasn't been fired. But I know that, based on what Ms. Gering believes, what Mr. Gibson believes, and what you've just told me, is that you fired her.

So that's why we're going through this. Now, like I said, she can represent you, has been prepared to represent you, has given the Court information as late as yesterday, saying that she is ready for a trial and she is not throwing your case away. She has still prepared your case, she's ready to proceed to trial, if that's what you want. She is ready to try your case. Do you understand that, sir?

MR. SMITH: Yes.

THE COURT: But as of this morning, what has been

told to me, is that there may be an agreement that's been reached between you and who may soon be your attorney, and the State, for a sentence of 10 years suspended, concurrent to what you're now serving. If your appeals are granted, as you believe they may be, then you can come back here on a modification and this Court will make a determination as to what is appropriate to do with this particular case. Do you understand that, sir?

MR. SMITH: Yes.

THE COURT: Now, was that all explained to you by Ms. Gering?

MR. SMITH: Yes.

THE COURT: Okay. So before we proceed, you've now been sworn in, but I need to know, do you want Ms. Gering to represent you?

MR. SMITH: Yes. Yeah, yes.

THE COURT: Okay. But you're saying it with some hesitation.

MR. SMITH: (Inaudible).

THE COURT: She doesn't have to represent you if you don't want her to.

MR. SMITH: I mean, I'm already capped out, right, to a plea?

THE COURT: That's what we think will happen in a few seconds, yes.

MR. SMITH: Yeah. I mean, yeah.

THE COURT: Okay. And you're satisfied with her representation up to this point?

MR. SMITH: Yeah.

THE COURT: When I say "satisfied," -- so let's be clear. I'm not saying are you happy with the fact that you lost the other trial. We're not talking about this case. We're talking about this case. Are you satisfied with the time that she's come to talk to you?

MR. SMITH: As of this -- I mean, I -- yeah -- yeah.

THE COURT: Well, but see, if you're not, sir, that's okay. And then I will tell her that she does not represent you. Because as far as I'm concerned, right now she doesn't represent you. Because everyone, including yourself, has said to this Court that she was fired. So I now have to make sure that I can let her come back into the case. The only way I can do that is for me, and only me, to be satisfied that you want her. If you don't want her, that's okay. Trust me. What will happen is, she will step aside, she'll take all of her paperwork, she'll walk out of the courtroom, and you'll be standing there. And you still take the plea. You just won't have her there to advise you as to what's going on. And so you may miss a few things, you may not. But again, that's a right

that you have.

I'm not saying that if she walks away you can't have the same plea offer. The State's going to make the same offer. It's simply a matter of will you understand what's going on. I will make sure that you understand certain things, but if you want her to help you, you can. But you don't have to. Do you understand that?

MR. SMITH: Yes.

THE COURT: Okay. So you want Ms. Gering to represent you, is that correct?

MR. SMITH: Yes.

THE COURT: Has anyone forced you to do this, sir?

MR. SMITH: No.

THE COURT: Do you feel that you have to have Ms. Gering represent you?

MR. SMITH: Yeah.

THE COURT: Well, what do you mean by -- maybe that was a bad question. Do you feel that you're required by the Court to have Ms. Gering represent you?

MR. SMITH: Uh --

THE COURT: Do you understand my question?

MR. SMITH: No.

THE COURT: Okay. Then ask questions, that's fine. You can have any attorney that you want, you can

hire anybody that you want. But you said you can't afford anyone.

MR. SMITH: Right.

THE COURT: You've already fired the Public Defender's Office. They're not going to give you another lawyer. They're not going to say; well, you don't like Ms. Gering, we'll give you Ms. Russing. You don't like Ms. Russing, we'll give your Mr. Jennejahn. You don't like -- it doesn't work that way. You get one. And if you don't like that one, you just can represent yourself or hire someone. So the position you're in now is, you can hire someone. You've told me you can't do that today. And today is the trial date.

MR. SMITH: Right.

THE COURT: Then you can represent yourself.

MR. SMITH: Which I ain't going to do that neither.

THE COURT: Okay. So then if you're not going to represent yourself, if you're not going to hire someone, then you can have Ms. --

MR. SMITH: Yeah. That's -- yeah.

THE COURT: So of the three options, you want Ms. Gering, is that correct?

MR. SMITH: Yeah, I ain't -- yeah.

THE COURT: And no one's forcing you to do this

though, is that correct?

MR. SMITH: No.

THE COURT: Okay. And you understand that you're making this decision, is that correct?

MR. SMITH: Yeah.

THE COURT: The Court's not telling you have to hire Ms. Russing. Ms. Russing, sorry about that. Ms. Gering, is that correct?

MR. SMITH: Yeah.

THE COURT: And is Ms. Gering telling you that you have to hire her?

MR. SMITH: No.

THE COURT: Okay. So you're doing this of your own accord, is that correct? Of your own free will?

MR. SMITH: Yeah.

THE COURT: Ms. Gering, what would you like to place on the record, ma'am?

MS. GERING: Your Honor, just that Judge Doory did have a conversation with him about hiring private counsel. I know that was his intent. I never filed any formal paperwork stating that there was not going to be -- they may not be able to afford another attorney. And I'm willing to go forward and I am prepared, I've got my binder, I've talked to the State. So if he wants me to represent him at this time, I will.

THE COURT: Okay. And this Court is satisfied. And the State, do you have any other questions?

MR. GIBSON: No, Your Honor. Thank you.

THE COURT: All right. This Court is satisfied that I've gone through Mr. Smith's options with him, that he understands his options, that he's of sound mind and body, and that there are no impediments to his understanding of his right to represent himself, his right to be represented by private counsel, and his right to be represented by the Public Defender's Office after what occurred in September of 2010. Based on all of that, I am satisfied that Ms. Gering can still be his lawyer and that Ms. Gering is the person to represent him based on Mr. Smith's desires. All right. We can go through the guilty plea litany. Hold on one second. All right. Mr. Smith, you've been sworn in. I'm reminding you you are still under oath, sir. State your name for the record.

MR. SMITH: Demetrius Smith.

THE COURT: Madam Clerk. Ms. Gering.

MS. GERING: Your Honor, one thing I need to bring to your attention also. Because this is a handgun-related offense --

THE COURT: I can't hear you.

MS. GERING: Because this is a handgun-related offense, there's a form you have to fill out, it's a GORA

form. It's basically talking about anyone who's convicted of a crime in the Baltimore City area, if you get out, when you get out, if you are -- you have to go down to 601 East Fayette Street and register as to having been convicted of a person being convicted of a handgun offense, okay. And he's going to describe that form to you again. It's a requirement, it's beyond my control and the Judge's control, it's a requirement of the City, okay? I didn't want you to be surprised though when that came at the end.

THE COURT: Do you understand that, sir?

MR. SMITH: Yeah.

THE COURT: Okay. Again, you've got to --

MR. SMITH: Yes.

THE COURT: All right. Thank you. Ms. Gering, please proceed.

QUALIFICATION

MS. GERING: All right. You're 28-years-old, you went to the eleventh grade. And can you read and write the English language?

MR. SMITH: Yes.

MS. GERING: And you understand it as I speak it to you today, as the Judge spoke it to you today?

MR. SMITH: Yes.

MR. GERING: You're not under the influence of

any drugs, alcohol, or medicine that would cloud your thinking, are you?

MR. SMITH: Nah, no.

MS. GERING: You've never been a patient in a hospital and a psychiatrist or a psychologist there, have you?

MR. SMITH: No, no.

MS. GERING: At the time of this offense, were you parole or probation for anything?

MR. SMITH: No.

MS. GERING: All right. The reason I ask that is because pleading guilty to a crime that happened during a parole or probation, this happened on August 22nd of '08, could be a violation of any parole or probation. Do you understand that, sir?

MR. SMITH: Yeah, (inaudible).

THE COURT: Is that a yes or no, sir?

MR. SMITH: Yes.

THE COURT: Thank you.

MS. GERING: I just needed to let you know that that's a consequence of what you're doing today, so there's no surprises later on. If you're mistaken, that's all I'm saying. Now, you have an absolute right to plead not guilty and have a trial. You have a choice. You could have a jury trial or a judge trial. A judge trial

is where one person listens to all of the facts in evidence and makes their decision based on what they heard. It's a Baltimore City Circuit Court judge who would do that, they'd listen to all of the facts in evidence and render a decision.

A jury trial, as you know, is 12 persons selected from the voter rolls and motor rolls of Baltimore City. And all 12 people must come up with the same verdict unanimously, either guilty or not guilty. If 12 people can't agree, it's a hung jury and a mistrial would be declared. If a mistrial is declared, the State could retry you until they come up with a unanimous verdict in which they all agree. Do you understand the difference between a jury trial and a judge trial?

MR. SMITH: Yes.

MS. GERING: All right. Please understand, no matter what type of trial you chose to have, the State has the burden of proving its case beyond a reasonable doubt. To do that, they'd call witnesses live and in person to take the stand to testify. We could cross examine each and every one of those State's witnesses. You would be given a chance to present a defense on your own behalf. You'd be given a chance to present witnesses.

If we had properly summonsed those witnesses and they did not appear for us, we'd ask the Judge to issue a body

attachment, send the sheriff out after that individual, have them brought in under court order, and shackled if necessary. If you -- you could testify on your own behalf also. If you did, you'd have to answer any of my questions, the State's questions, the jury, the Judge's questions. You also could remain silent. If you chose to remain silent, the judge wouldn't use that silence against you in a judge trial. And in a jury trial, what we do is, we ask the judge to issue an instruction that tells the jurors that by law they can't use that silence against you.

At trial we also could raise certain legal defenses or factual defenses. Do you understand all these trial rights I've explained to you?

MR. SMITH: Yes.

MS. GERING: And do you understand that you're giving them up when you enter a guilty plea?

MR. SMITH: Yes.

MS. GERING: Please understand we limit our right to appeal. At a trial we could appeal on any kind of error that may have happened. Now it's only on four grounds. And they're based on this hearing we'll have in front of a judge. The first ground is jurisdiction. That is the power of the Court to hear this case. You were over 18 when this happened and it happened in Baltimore

City, correct?

MR. SMITH: Yes.

MS. GERING: The Court has jurisdiction -- based on your answers, the Court has jurisdiction over this matter, they have power over this case, and the proper courtroom. If you appealed on that ground, you would not likely be successful. The second ground that you can appeal on is that your sentence was illegal. The maximum penalty on assault first-degree is 25 years. The Judge has agreed to 10 years concurrent to what you're serving now. That's well beneath the maximum penalty, so you're getting a legal sentence on this charge. Do you understand that, sir?

MR. SMITH: Yes.

MS. GERING: The third ground you could appeal on is that you were adequately represented by an attorney.

THE COURT: Excuse me. What count are we going on?

MR. GIBSON: It's going to be Count III, Your Honor, first-degree assault.

THE COURT: Okay. Well, the only problem is, where's the GORA form in that?

MS. GERING: Because of the handgun --

MR. GIBSON: Because of the handgun. The first-degree assault is due to the fact that the Defendant shot

the victim in the leg. So a handgun was used to commit the first-degree assault and that's the GORA form.

THE COURT: Okay. Good enough.

MS. GERING: The third ground is whether you've been adequately represented by an attorney or waived your right to an attorney. The Judge has been through the questioning of you. Are You satisfied with my representation at this time?

MR. SMITH: Yes.

THE COURT: Well, if you're not, sir, this is the time to say it. I mean, I'm not being funny at all. I don't want you thinking that you have to do this, because you don't. And I'm told Judge Doory went through this wit you and I'm willing to go through it with you, too. If You don't want to do it, sir, you don't have to. And if you don't want Ms. Gering to represent you. But I need to know not that you're happy with her services, but that you believe you've been provided adequate services for the time being. If you haven't, then you certainly have a right for an appeal issue. And I don't want to have that set up now. I just would have Ms. Gering step away and we'll just have a trial. So it's up to you.

MR. SMITH: Can you say that again? Because I didn't understand.

THE COURT: Sure, not a problem. The reason

we're asking these questions, to make sure you're satisfied to some degree with the representation that you received. If you're not satisfied, then you're not. And then you fire her. And we have a trial or we have another hearing, either way. But what I don't want to so is set up a reason for you to have an appeal. If you're not satisfied, if You think that Ms. Gering hasn't done, I won't say everything that you wanted her to do, because no one can do that. But if you don't think she's provided you competent counsel. If you don't think that, for example, she's talked to you, she's not advised you of the charges against you, that she hasn't talked to the witnesses for the State, and that she's not prepared, then --

MR. SMITH: But even if she did, if I wasn't satisfied, I just -- I'm capping out.

THE COURT: Well, no. Here's the thing. You can still take the plea. But if you're not satisfied, what you can do later, and I'll tell you this on the record. What you could do later is say, I'm in jail, and I wasn't satisfied with what she did, and therefore that's the reason I have this sentence, and I want appeal on this issue. And what we're trying to do is make sure that you can't do that. Only because I want to forestall that now. If you're saying you're not satisfied with her, if you're

just doesn't represent you; you can fire her right now.

MR. SMITH: I just trying to get this over with.

THE COURT: I understand, sir. And ultimately you may. But I just want to make sure that we, that you, I say we, that you understand. You know, I am sure you're not happy with her. I mean, she made that clear, you made that clear.

MR. SMITH: (Inaudible) say something, Your Honor?

THE COURT: Of course you -- well, do you want to say something about the case or do you want to say something about her?

MR. SMITH: It's about the case.

THE COURT: Well, no. Tell her first.

MR. SMITH: Oh, all right.

THE COURT: Quietly.

MR. SMITH: My point is that, you know, I'm copping out to something I didn't do (inaudible) regardless. I didn't do it, but I just want to get it over with you. You got this --

MS. GERING: (Inaudible).

MR. SMITH: It's bad enough I'm copping out to something I didn't do.

MS. GERING: Look (inaudible).

THE COURT: Out loud, Ms. Gering. Because of

what's going on.

MS. GERING: Okay. All I'm saying, sir, is if you want to go to trial, we can go to trial. He's asking you if you're satisfied. I know you're not happy, I know you have questions, there's things that you're upset about.

MR. SMITH: No, I wouldn't be -- I mean, I wouldn't be satisfied to go to trial. She probably is a cool lawyer, but I done been in trial with her already.

THE COURT: Um-hum.

MR. SMITH: And I -- how could I?

THE COURT: How could you what?

MR. SMITH: Go to trial again.

THE COURT: Well, you can't. And I don't mean to cut you off.

MR. SMITH: I'm in a no win situation.

THE COURT: Well, you say it's a losing situation. And I don't know what that's based on. You may know that's going on. And that's fine, sir. That's between you and your lawyer. All we're doing here is making sure that you understand your rights. We're making sure that you do not believe you're being forced to do anything. You've already said to this Court that you do not want to represent yourself. That you think that would not be in your best interest.

MR. SMITH: Right.

THE COURT: You also said that the plea that is being offered to you is something that you believe is beneficial to you, is that correct?

MR. SMITH: Yeah.

THE COURT: Okay. And you're also saying that you didn't do it. Now, if this was not presented to the Court, but since we haven't finished. Ms. Gering, if your client wants to go on an Alford Plea, I don't really care. Do you care, State?

MR. GIBSON: No, Your Honor.

THE COURT: No, good. Okay. So that's certainly fine by the Court.

MS. GERING: Okay. An Alford Plea is just saying; look, I'm not saying I did it. But I understand what the evidence is. And given the evidence, you know, I could be found guilty. I want to take advantage of this plea the State offered right now. Is that why you're pleading guilty?

MR. SMITH: Um-hum.

MS. GERING: Okay.

THE COURT: All right.

MS. GERING: So if we could, Your Honor, an Alford Plea would be -- it's still guilty, you seem to understand that. But you're saying to the world, look,

I'm not pleading guilty because I did it, I'm doing it because this is the best thing for me to do at this time. Is that the reason why you're going forward?

MR. SMITH: (Affirmative nod)

THE COURT: All right, very well. But again, we still have the same issue of whether or not you want Ms. Gering to represent you and you're satisfied with her representation. Where are we with that, sir?

MR. SMITH: I just want to do it.

THE COURT: Okay. Continue, Ms. Gering.

MS. GERING: Okay. Lastly, has anyone made any threat, promises, or inducements to get you to plead guilty, other than the plea as an inducement, has anyone forced you to do this against Your will?

MR. SMITH: No.

MS. GERING: Knowing your choices, is this what you wish to do at this time?

MR. SMITH: Yes.

MS. GERING: You also need to understand that if you're not born in the United States, if you're not a U.S. citizen, you're here on some sort of temporary visa or other papers, temporary papers, pleading guilty to this charge could subject you to deportation here. That's a consequence of a guilty plea. Do you understand that, sir?

MR. SMITH: Yes.

MS. GERING: Your Honor, subject to any questions you have.

THE COURT: Well, you may have done it. But just do it for me again, about his challenges, both factual and constitutional. You probably did it, but just do it again.

MS. GERING: I did mention that during trial you had legal rights. You can contest legal issues or factual issues. Legal issues such as the evidence doesn't support this charge, the -- something was illegally suppressed from me, or illegally taken from me during the illegal arrest, or factual defenses. I wasn't there, I was somewhere else, that wasn't me, that sort of thing. Do you understand you're giving them up when you enter a guilty plea?

MR. SMITH: Yeah.

THE COURT: Do You understand that, sir?

MR. SMITH: Yeah.

THE COURT: Advise him of the elements of the crime that he's pleading guilty to.

MS. GERING: The charge -- what you're pleading guilty to is a first-degree assault. And there's two ways that the State can show a first-degree assault if it's believed by the jury. One of those ways is by pointing a

handgun at an individual and placing them in fear. And that's the theory they're -- or committing a battery by a handgun. That's what you're being charged with, that's what the facts -- the State believes the facts will support. Do you understand that, sir?

MR. SMITH: Yeah.

THE COURT: All right. Very well. I do believe the Defendant's properly qualified. I believe he's entering into this guilty plea freely, voluntarily, knowingly, and intelligently. Mr. Smith, please listen very carefully. The State's going to read into the record the facts against you. When he's done, I'm going to have some questions for You. You may proceed, sir.

STATEMENT OF FACTS

MR. GIBSON: Thank you, Your Honor. If the case had gone to trial, the State would prove through the introduction of evidence and the testimony of the witnesses the following. That on August 22nd, 2008, the victim, Clyde Hendricks, was walking home, it was a warm August night. He was walking home from the bar. As he was walking home, he was headed to his -- he kind of lived with his mother, he lived on Parrish Street.

He was walking down the street, he stopped underneath a streetlight to count out some money he had recently been paid and he was trying to apportion out a certain amount

of that money to pay his mom some rent while he was living with her. As he stood there counting his money, the Defendant approached. The Defendant would be identified as the person to my left with the white shirt on, identify the Defendant Demetrius Smith, approached, took out a gun, and said; give it up.

Mr. Hendricks has been a victim of crime before, is sort of a tougher person. And he took the approach and said; no, I'm not giving it up. The Defendant, at that point in time, shot the victim in the leg. It was a through and through wound. The victim, at that point in time, threw the money up in the air. The Defendant bent over, picked up the money, and ran across the street.

The victim, Mr. Hendricks, walked down the street, was able to get help, was transported to Shock Trauma, where he received treatment for his injuries to his leg. The detective involved in this case, (inaudible) Charles Bealefeld, who has since retired, at the time was working for the Shooting Unit. He was on call that night, responded to the scene, located a single nine millimeter casing, which is indicative of the nine millimeter handgun being used. He then also observed there was a blue light camera, a police pole camera in the area. He order that that footage be retrieved.

THE COURT: Did anybody identify the Defendant as

the shooter?

MR. GIBSON: Yes, the Defendant.

THE COURT: Via photo array?

MR. GIBSON: Yes.

THE COURT: And that was done by the victim?

MR. GIBSON: Yes, Your Honor.

THE COURT: And that will be State's 1?

MR. GIBSON: Yes, Your Honor.

THE COURT: Okay. And then the pole camera, you have the DVD for that?

MR. GIBSON: That's State's 2.

THE COURT: That's State's. 2. Any objection to State's 1 and State's 2?

MS. GERING: No, Your Honor.

THE COURT: These events occurred in Baltimore City, State of Maryland?

MR. GIBSON: That would be the State's case, Your Honor.

THE COURT: All right. Thank you. Any additions, corrections, or modifications?

MS. GERING: Yes, Your Honor. Additionally, we'd like to enter in as Defense Exhibit 1, indicating the intoxication level of the victim.

THE COURT: Okay.

MS. GERING: And it also indicates that pole

camera, while it shows Mr. Hendricks, it does not show the specificity, the face, or an exact person, of who the assailant is.

THE COURT: Okay.

MS. GERING: So it's not necessarily a positive ID. This case would rest on the ID of Mr. Hendricks solely.

THE COURT: That's fine.

MR. GIBSON: May I just -- one correction to that.

THE COURT: Um-hum.

MR. GIBSON: What the pole camera does show is the events unfolding the way in which Mr. Hendricks described. You see the individual holding the person up, you see the individual bending over and picking up money, you see the individual run across the street, you see the individual walking down the street. So that is consistent with what --

THE COURT: Well, the facts as presented to the Court are that the victim saw the Defendant, was shot by the Defendant, identified the Defendant. There's no trial. So again, those are the facts that are presented to the Court. So no addition, corrections or modifications. Mr. Smith, you heard what the prosecutor said and your attorney said. Do you agree that those are

the facts that they would present at trial, sir?

MR. SMITH: Yes.

THE COURT: All right. And having heard those facts, sir, is it your desire to plead guilty to the charge of a first-degree assault?

MR. SMITH: Yes.

THE COURT: All right. This Court is satisfied the State has shown beyond a reasonable doubt the Defendant is guilty of first-degree assault, that the Defendant has entered into this guilty plea freely, voluntarily, knowingly, and intelligently. Therefore the Court will accept the guilty plea and I do find the Defendant guilty of assault in the first-degree. State, do you want to be heard or do you submit?

MR. GIBSON: Your Honor, the State submits.

THE COURT: Thank you. Defense, do you want to be heard or do you submit?

MS. GERING: Mr. Smith, is there anything you want to tell the Court --

THE COURT: No. What about you?

MS. GERING: No, I submit, Your Honor. I apologize.

THE COURT: Thank you. No problem. Okay.

MR. GERING: Sir, is there anything you wish to say to the Judge before he sentences you? You don't have

to, you can remain silent if you wish. Is there anything you want to say? If you don't have anything to add (inaudible), then nothing, you submit.

ALLOCUTION

MR. SMITH: Nah, just that -- nah, it's about the case. So I can't --

THE COURT: What do you want to say, sir?

MR. SMITH: That -- that I didn't do that and that that wasn't me on camera.

THE COURT: Yes, you told us that.

MR. SMITH: And that the person lived across the street from me, he was my neighbor. He didn't say my neighbor did it, he didn't say well, that guy across the street did it, that I've been living across the street from him for a year.

THE COURT: Um-hum.

MR. SMITH: He said this person had distinguishing features, facial features, when he was shown the photo of me. But I've been living across the street from him for a year.

THE COURT: Okay.

MR. SMITH: So -- and he drinks a lot. And I don't understand, 3:00 in the morning, what are you doing counting the money out at 3:00 in the morning to take to your mother that's 80-years-old in the house. I don't

understand that.

THE COURT: Okay. Anything else?

MR. SMITH: No, that's it.

THE COURT: Okay. All right.

SENTENCING

THE COURT: The Court has agreed to impose a sentence of 10 years on the charge of first-degree assault. And then based on the guilty plea and based on the agreement between counsel, that is the sentence that will be imposed. The sentence is 10 years. Advise him of the GORA form, please.

MR. GIBSON: Your Honor, may I have a moment? (Inaudible) GORA form, unfortunately,

THE COURT: All right.

MS. GERING: And that's concurrent, Your Honor?

THE COURT: Yes, I was going to say that, too. But I was going for the GORA.

MR. GIBSON: Ten years concurrent (inaudible).

THE COURT: That is correct. No, I understand.

MR. GIBSON: (Inaudible).

THE COURT: All right. And so the record is clear, any other counts are closed by operation of law. Madam Clerk.

MS. GERING: Do you want me to advise him of his rights or just wait until the GORA form is (inaudible).

THE COURT: Wait til the GORA form.

(The Court briefly handles an unrelated matter)

MS. GERING: Shall I just read it to him, Your Honor?

THE COURT: The State should.

MS. GERING: Okay.

MR. GIBSON: The Court should have produced the Baltimore City Code Article 19, Section 60, is to notify you that you must register as a gun offender with the Baltimore Police Department. By signing (inaudible) you acknowledge that it's your duty to register and the following requirements were explained to you. That you must personally appear before the Baltimore Police Gun Offender Monitoring Unit, 2100 Guilford Avenue, Room 111, Baltimore, Maryland, 21218, within 48 hours of your release. If you are in imprisoned (inaudible) 48 hours after (inaudible), (inaudible). You must verify your address (inaudible) photographed.

You're required to appear in person at the Gun Offender Monitoring Unit, 2100 Guilford Avenue, Room 111, Baltimore, Maryland 21218 (inaudible) six month anniversary of your initial registration date for the period of three years upon your date of registration. If you move from (inaudible) to another in the City of Baltimore, or move into the City of Baltimore from outside

of the City of Baltimore, you must personally appear at the Gun Offender Monitor Unit located at 2100 Guilford Avenue, Room 111, Baltimore, Maryland, 21218, within 10 days to verify and update your address. Before you move from an address within the City of Baltimore to an address outside the City of Baltimore, you must personally appear at the Gun Offender Monitoring Unit, 2100 Guilford Avenue, Room 111, Baltimore, Maryland 21218, to provide your new address.

A violation of the Gun Offender Registration Act is a misdemeanor punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both. Each violation of the Gun Offender Registration Act is a separate offense. A violation may also be the basis of revocation of parole or probation. Under the penalties of perjury, you certify that you have been advised of your responsibilities under the Gun Offender Registration Act and the penalties for violating it. (Inaudible).

MS. GERING: They're going to take it to lockup to sign it.

THE COURT: No, he can sign it right there. Just hold it up for him. Just put it on the pad and just hold it up. There were go.

MS. GERING: Shall I advise him of his rights, Your Honor?

POST-SENTENCING RIGHTS

MS. GERING: Sir, you have 90 days to ask the judge for a modification of sentence. I am going to file that modification, again, asking him to hold it sub curia until your appeals are finished and see what happens with those. You also have 30 days to file an application for leave to appeal on those four grounds we spoke about during the litany. You have 30 days to ask a three-judge-panel to review your sentence. Judge Williams won't be a part of that panel, but he (inaudible) asked about why he made the decision he did. You need to be careful about that though, because they could raise your sentence, as well as decrease it. And once you --

THE COURT: And 10 days for a new trial.

MS. GERING: -- file it you can't withdraw it. And you also have 10 days to request for a new trial. Do you understand?

THE COURT: Is that a yes or no, sir? Do you understand?

MR. SMITH: Yes.

THE COURT: All right. And understand, the State has already agreed that if there's a change in your case, that this matter could come back for a hearing, but no promises have been made. Do you understand that, sir?

MR. SMITH: There are no promises made?

THE COURT: Right. No promises were made as to what would happen. But the agreement was that -- so you understand. They don't have to agree to allow you to file to have a hearing on the modification. But they've already agreed that on the appeal, if you are successful, that it will come back and we'll having a hearing. That they've already agreed to that. But again, no promises have been made as to what will be done. But I certainly will take it into consideration. Do you understand that, sir?

MR. GIBSON: (Inaudible). I'm not binding myself (inaudible).

THE COURT: Make it loud. Because, again, this is why we're doing the record. There's no quiet talking.

MR. GIBSON: The State never bound itself to say that if there was an appeal that this would automatically go away. All I said was, you have the right to file a belated appeal upon -- you have the right to file a post-trial petition upon your appeal being granted. In other words, if for some reason the Court says that the homicide trial had to be retried, you have the right to bring this in for modification and I won't stop you in any way. I have the right to stop you if (inaudible). I won't stop you if you bring it in. But I haven't said to the Court or to anyone --

THE COURT: That was my understanding.

MR. GIBSON: -- that if it comes in for modification, that modification will be granted. I haven't promised that at all and never did.

MS. GERING: I thought you said that also that it would be suspended. That's what I thought I heard you say.

THE COURT: Well, the sentence is concurrent. I didn't say anything about a suspended sentence.

MS. GERING: Right. But if it comes back and he's successful on appeals, and at that time, this is the only thing holding him in, I thought we could come back and suspend the balance.

THE COURT: That was not what you said to me. Now, that may be what you expected. And I certainly will take that into consideration. And I thought it was strange anyway, but no, I've not promised anything. And if you want to withdraw this because of the misunderstanding, that's certainly fine. I have no problem with that. And as I said, I will certainly take it into consideration. I understand that this plea, and I make this clear on the record. I understand that this plea, from the defense standpoint, is contingent upon the issue with the appeal in the murder case. And I understand that the plea has been taken because Mr. Smith

believes that's in his best interest now. I will take that into consideration, I'm just not making any promises now. But again, and Mr. Smith, I'm really dealing with you directly.

If based on that you choose now to withdraw your guilty plea in this case, that's fine. We'll just have a trial. That's really up to you. Again, I can't make -- I shouldn't say I can't. I'm not going to make any promises, but I am clear on the fact of what Ms. Gering, because I know her well, in what she has presented to the Court as to what her hopes are. I understand what the State's hopes are, but candidly speaking, the State's hopes are sort of irrelevant under these circumstances, because I understand what's going on. But I'm not making any promises. So if that's unclear, great. And we'll just -- I'll let you withdraw your guilty plea now and we'll just proceed to trial.

MS. GERING: Can I ask the State one question?

THE COURT: Yes, sure.

MS. GERING: Are you saying that if we come back here you're objecting to the (inaudible) at all or are you saying --

MR. GIBSON: I'm not committing one way or the other to any result, other than saying if the appeal is granted, the State is saying -- as opposed to saying I'm

blocking you from filing, I'm all for it. You can come back before the Court and, you know, put it before the Judge and the Judge can do whatever he's going to do with it. No disrespect.

THE COURT: No, I understand.

MS. GERING: Okay.

THE COURT: So Mr. Smith, what do you want to do?

MR. SMITH: I'm good.

THE COURT: I can't hear you, sir.

MR. SMITH: I'm good.

THE COURT: Okay. Thank you.

MS. GERING: So it's not been blocked.

MR. GIBSON: (Inaudible) GORA form.

MS. GERING: I'm sorry, I totally misunderstood. Okay. Thank you. (Inaudible) is required to have a hearing (inaudible) judge. (Inaudible) he's saying (inaudible) promises that he (inaudible).

THE COURT: Ms. Gering, out loud.

MS. GERING: Oh, I'm sorry, Your Honor. I was just saying we have to have -- the State can block us from filing by saying they're not going to agree. And then it's just dead in the water, we don't have anything. He's saying he's not going to do that. So we can file.

THE COURT: Well, no. Well, you can always file it. You always have a right to file. The question is, at

the hearing, because this is an ABA plea, the State has to agree for any changes. What's going on now is, the State is agreeing that they're not using that right that they have to say no, no matter what, we don't want you to do this.

They may argue that, but they understand that as a matter of right, they can not come in and say to the Court; Judge, this is an ABA plea, and therefore we have a right to say that you can not change the sentence. And they would generally have that right. He's giving that right up to say to this Court, Judge, you can not change it. He now has acknowledged on the record that I have a right. And as he said, it will be up to me to make a decision. The State is now -- so that's what they're giving up. They're giving up the power to say to the Court; Judge, he took the plea and you can't change it no matter what you want to do. No matter what happens, Judge, you can not change it based on the law. This is one of those legal issues. They're now giving that up. So it is now back to me to make a decision, if in fact you are successful on an appeal, to suspend your sentence as Ms. Gering said that she's going to ask me to do pending the appeal, to get rid of the entire sentence, or say no, I think he still should serve the sentence.

So that's what they've given up in order to go with

this guilty plea. Do you understand that, Mr. Smith? Yes or no?

MR. SMITH: Yes.

THE COURT: Okay. So knowing that, do you want to walk out of here now knowing what's going on or do you want to withdraw your guilty plea?

MR. SMITH: I'm good, I know what's going on.

THE COURT: I can't hear you.

MR. SMITH: I'm good, I know what's going on.

THE COURT: Okay. Thank you.

MS. GERING: Okay. I'll file this and I'll send you a copy.

MR. SMITH: All right.

THE COURT: Thank you everyone.

(Off the record - 10:34:44 a.m.)

TRANSCRIBER'S CERTIFICATE

This is to certify that the proceedings in the matter of State of Maryland v. Demetrius Smith, case 108266016-17, heard in the Circuit Court for Baltimore City on February 16, 2011, was recorded on digital media with video.

I hereby certify that the proceedings herein contained were transcribed by me or under my direction. That said transcript is a true and accurate record to the best of my ability and constitutes the official transcript thereof.

In witness thereof, I have hereunto subscribed my name on April 18th, 2015.

Sherry R. Miller, President

EXHIBIT K

AFFIDAVIT OF Dawn Whitehead

I, Dawn Whitehead, attest to the following facts based on my personal knowledge of the events described in this affidavit.

1. I am over 18 years of age and competent to testify to the matters recited herein.
2. On August 22, 2008 at approximately 2:30-3:00 a.m., I was in the vicinity of the 400 Block of S. Parrish Street in Baltimore.
3. While there, I met a man, and we had a sexual encounter in an alley not far from the 400 block of S. Parrish Street. Following this activity, each of us walked off in different directions down the alley and I then walked down Ramsey Street. While on Ramsey Street I heard a loud noise I recognized as a gunshot. Immediately after I heard the gunshot, I saw the same man run from the direction of the gunshot.
4. Later that same day, I was interviewed by Detective Charles Bealefeld of the Baltimore City Police Department. Detective Bealefeld wanted me to tell him about what I had witnessed and told me that I had been seen on a police camera meeting the man I had sex with in the alley that day right before I heard shots fired. In the course of that interview, I was shown a photograph of the area I was in that night. I was in the photograph, and the man I saw that night was also in that photograph. I described the man I saw running away from the shooting that night to Detective Bealefeld as 5'4" in height, with a shaved head, wearing a black tee shirt and jeans.
5. Detective Bealefeld showed me a sheet of paper with photographs of six different men. He insisted that one of the photographs was the man I was with and that I saw running

from the shooting. He kept pointing to this photograph and saying "That's him, isn't it?"

6. I explained to him that the photograph was not the same man I was with and that I saw running from the shooting. He continued to press me to identify this photograph and got angry with me when I told him that the man he was referring to was not the same man that I had.

7. Eventually, Detective Bealefeld threatened to arrest and charge me. I was afraid that I would be locked up and so I finally signed the array as he had directed me.

8. The person that I identified in the photo array was not the person I was with on August 22, 2008, and was not the person I saw running from the shooting.

I solemnly affirm under the penalties of perjury that the above statement is accurate to the best of my knowledge and belief.

Dawn Whitehead

Signature

6/26/13

Date

Dawn Whitehead
Printed Name