

STATE OF NORTH CAROLINA
COUNTY OF SCOTLAND

IN THE GENERAL COURT OF JUSTICE
CRIMINAL COURT DIVISION
FILE NO. 88-CRS-1422

STATE OF NORTH CAROLINA,

Plaintiff,

Vs.

CHARLES EDWARD MCINNIS,

Defendant

TRANSCRIPT OF HEARING

The hearing of Charles Edward McInnis, taken in connection with the captioned cause, on the 10th day of August, 2015, at the Superior Criminal Court Term of August 10, 2015 The Honorable Tanya T. Wallace, Judge Presiding.

APPEARANCES:

Kristy Newton, Esquire
District Attorney
Scotland County Courthouse
P.O. BOX 668
Laurinburg, N.C. 28376-0668

Jonathan McInnis, Esquire
Attorney for Defendant
P.O. Box 687
Laurinburg NC 28353-0867

On Behalf of The State

On behalf of the Defendant

Pamela W. Gray, CVR-M
P.O. Box 358, Grifton, NC 28530
(252) 514-5571

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I N D E X

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1 (August 10, 2015)

2 THE COURT: Good morning. My name is Tanya Wallace.
3 I am a Resident Superior Court Judge here in this judicial
4 district. It is my understanding you have a Motion for
5 Appropriate Relief filed in the matter of Edward Charles
6 McInnis. Is this Mr. McInnis?

7 MR. MCINNIS: Yes, Your Honor.

8 THE COURT: All right. Thank you. All right. I'll
9 let the State proceed.

10 MS. NEWTON: Your Honor, this would be in the matter
11 of State v. Edward Charles McInnis, 88-CRS-1422, 1423, and 1424.
12 Your Honor, for the Court's information, on February 23, 1988 at
13 approximately 3:15 a.m., the Laurinburg Police Department was
14 dispatched to 620 Prince Street in reference to a burglary,
15 armed robbery, and a rape of Ms. Francis Fletcher. She was 81
16 years old at the time. She was home alone. Someone broke into
17 her home and attacked her. She was stabbed in the shoulder.
18 She was originally accosted from behind, dragged into the
19 bedroom, and she was raped on the floor in her bedroom. The
20 perpetrator then took money from her and fled the residence.
21 She, of course, called for police assistance and emergency
22 assistance. Officers from the Laurinburg Police Department
23 responded. Ms. Fletcher was interviewed a total of three times.
24 During all of those interviews, she gave a consistent account of
25 what occurred indicating that she watched television until

1 approximately 12:30 a.m. until Nightline with Ted Koppel when
2 off. Then she went to bed and fell asleep. She was awakened by
3 a noise. She got up to investigate. Went to the front door and
4 turned on the porch light, looked out through the window, did
5 not see anything. She then went to the back of the residence
6 and turned on the outside lights, looked out and did not see
7 anything. She then turned to go back to the front door to turn
8 off the exterior lighting and she was attacked from behind.
9 During the initial attack, she received abrasions to her face
10 and her lip was busted. She was also stabbed in the shoulder
11 with a letter opener that actually broke off and the sort of
12 blade part of the letter opener was lodged in her shoulder. The
13 perpetrator then dragged her into the bedroom, put her on the
14 floor, anally penetrated her twice, and attempted to vaginally
15 penetrate her once. He then asked her if she had any money and
16 had rifled through her pocketbook and took money from her
17 pocketbook and fled the residence. She told law enforcement at
18 the time that she was unable to identify her perpetrator, but
19 she could give a description. She said the perpetrator carried
20 a small pin light with him, which illuminated -- partially
21 illuminated his features, but the other lighting inside the
22 house was off at the time so it was dark. She described her
23 perpetrator as a black male, late teens to early 20's. She
24 described average height and slender to average build.
25 Indicated that he was dark-complected, had short hair, and was

1 very articulate. He spoke very clearly and did not use any
2 profanity during the attack. At one during the attack, she
3 asked the perpetrator if he knew her and he said that he did not
4 and asked if she knew him and she told him that she did not.
5 But he retrieved a comforter from her bed and placed it over her
6 face during the remainder of the attack. She did tell law
7 enforcement she thought be able to recognize the perpetrator if
8 she heard his voice again, but she would not be able to
9 recognize him based on his physical appearance. She did not
10 give any description of any unique scars, marks, tattoos or
11 anything that could distinguish the characteristics she
12 described from those of another individual with similar
13 characteristics. Law enforcement began an investigation and
14 this Defendant, Mr. McInnis, was offered as a suspect by members
15 of the community. Mr. McInnis had some history of deviant
16 behaviors with regard to older women, and there were at least
17 three separate circumstances where Mr. McInnis had either broken
18 into the home of or approached older women and exposed his penis
19 or asked them for sex. And those circumstances were reported to
20 law enforcement and he actually was convicted of indecent
21 exposure for one of those incidents. That sort of put him on
22 the radar of the Laurinburg Police Department. In March,
23 specifically March 18, 1988, a confidential source of
24 information came forward to Detective Jack Poe, who was the lead
25 investigator in this matter, and gave information indicating

1 that he had seen Mr. McInnis and another individual on the
2 Saturday after Ms. Fletcher's attack and that Mr. McInnis had
3 asked him, the informant, if he had heard about the attack on
4 Ms. Fletcher and the break-in at her home. The informant
5 indicated that he had and according to the informant, Mr.
6 McInnis said, "I did that." Lieutenant Poe then secured
7 warrants for Mr. McInnis's arrest charging him with first degree
8 burglary, armed robbery, and first degree rape. The Defendant
9 was arrested on March 19, 1988. He was advised of his Miranda
10 Rights and interviewed by Lieutenant Poe and gave a statement
11 denying any involvement in Ms. Fletcher's attack. Two days
12 later, the Defendant requested to speak with Lieutenant Poe.
13 Lieutenant Poe went to the jail, re-advised the Defendant of his
14 Miranda Rights and the Defendant gave a second statement again
15 denying any involvement in the attack on Ms. Fletcher. And
16 providing a rather detailed accounting of his whereabouts on the
17 afternoon, during the evening hours of February 22nd and the
18 early morning hours of February 23rd during the attack on Ms.
19 Fletcher. At that point, Lieutenant Poe and an SBI agent set
20 about to go locate and interview the individuals the Defendant
21 claimed could account for his whereabouts. And they did locate
22 numerous people that the Defendant said would be able to account
23 for him being somewhere else. And I will tell Your Honor in
24 candor that generally speaking where the Defendant said he was,
25 there were other individuals who could verify his whereabouts.

1 Including from approximately 12:30 a.m. until at least 4:00 a.m.
2 which would cover the time of the attack on Ms. Fletcher. There
3 were two separate relatives of the Defendant who were
4 interviewed separately and interviewed almost immediately after
5 the Defendant's second statement which was in custody. And they
6 accounted for his presence elsewhere. Those individuals, both
7 female relatives of the Defendant, said that he came to his
8 niece's residence and knocked on the door between 12:30 a.m. and
9 12:45 a.m. One relative was awakened by his knocking and she
10 got up and let him in. She had to report to work early the next
11 morning and generally got up at 4:00 a.m., so she saw the
12 Defendant go into the living room and sit down and began
13 watching TV and then she went back to bed. She indicated when
14 she got up at 4:00 a.m. to prepare to go to work. The Defendant
15 was still at the residence in the living room sleeping in a
16 chair watching television. A second relative indicated that the
17 Defendant came to his niece's residence around the same time,
18 12:30 to 1:00 a.m. and that she watched TV with him until the
19 two of them fell asleep watching TV there in the living room.
20 Your Honor, obviously if the Defendant was accounted for
21 elsewhere during the time of the attack on Ms. Fletcher, it
22 would be impossible for him to have been at a different location
23 attacking Ms. Fletcher. In October of 1988, the Defendant, I'm
24 told, requested to speak to Lieutenant Poe a third time and
25 Lieutenant Poe went to the jail and interviewed the Defendant

1 for a third time. I spoke to Lieutenant Poe last week. I will
2 tell Your Honor in candor that I was in high school at the time
3 this happened. I was certainly not here in the D.A.'s office
4 and did not prosecute this case. But in preparing to answer the
5 Defendant's claim of innocence, I did secure the original police
6 investigative file from the Laurinburg Police Department and I
7 did review that file in its entirety. What is not in the file
8 is the identity of the informant who gave information
9 implicating Mr. McInnis. As Your Honor knows, it was very
10 common back during this time that law enforcement did not have
11 to record the identity of an informant. They did not have to
12 disclose it to the prosecution and I have no idea who that
13 person was. It is also not clear from the file how it is that
14 Lieutenant Poe went to the jail in October of 1988 to speak Mr.
15 McInnis. It simply reads in a narrative fashion that the
16 Defendant asked to speak to him and Lieutenant Poe went to the
17 jail. I asked Lieutenant Poe how that came about and he told me
18 that the case was being called for trial. That there was a
19 session of a Superior Court ongoing. That he was informed by a
20 bailiff that the Defendant had requested to speak with him.
21 That he was in the courtroom at the time along with the
22 Defendant's attorney. That he, Lieutenant Poe, made the
23 Defendant's attorney aware of the bailiff's communication to him
24 that the Defendant had requested to speak with him. That the
25 Defendant's attorney attempted to speak with the Defendant and

1 the Defendant declined to speak to his attorney requesting to
2 speak solely to Lieutenant Poe. That Lieutenant Poe then went
3 to the jail, re-advised the Defendant of his Miranda Rights and
4 took a third statement from him. In this third statement, the
5 Defendant confesses essentially. He makes a statement to the
6 effect that he is responsible for breaking into Ms. Fletcher's
7 home and raping her. He gives some detail. Again Your Honor
8 knows this is prior to the requirement for recording and the
9 interview is not verbatim. It is essentially a paraphrase
10 presented in the investigative report in a narrative fashion.
11 But having done this for 20 years, it's pretty clear to me that
12 there was a question/answer dialogue between Lieutenant Poe and
13 the Defendant. When questions were asked of the Defendant about
14 the specific details of the attack on Ms. Fletcher, his answers
15 do not match what Ms. Fletcher describes having occurred.
16 Specifically, the Defendant is unable to explain how entry was
17 gained into Ms. Fletcher's home. Entry was gained, Your Honor,
18 through a bedroom window and it appears that the perpetrator
19 exited through the back door. The Defendant gives both answers
20 at various times in his interview and then ultimately says he
21 has no idea how he got into the residence. When asked about the
22 attack on Ms. Fletcher, which we know both from the physical
23 evidence and the location of blood inside the residence and Ms.
24 Fletcher's description in three separate interviews with law
25 enforcement, that the attack started in the living room near the

1 front door. But the Defendant's answer to those questions is
2 that the attack occurred in the bedroom. Also, Your Honor, I
3 would tell the Court that as I indicated earlier Ms. Fletcher
4 was anally raped twice and she was -- there was attempted
5 vaginal penetration one time. The physical evidence in this
6 case does come from rectal swabs. The Defendant just gives a
7 very generic description of rape. In fact, he really doesn't
8 give a description at all. He just uses the general word that
9 he raped her. He offers no information about the attack and
10 certainly does not make reference to the specifics of how that
11 assault occurred against Ms. Fletcher. In any event, the
12 Defendant appeared in Superior Court in Scotland County
13 represented by counsel on October 25, 1988 and he entered a plea
14 of guilty. Those documents should be before Your Honor.

15 THE COURT: They are.

16 MS. NEWTON: But I did attach them to the Motion for
17 Appropriate Relief that's filed in this matter. The Defendant
18 received a sentence of life in prison followed by a consecutive
19 sentence of 20 years and he was sent to the Department of
20 Correction. My first contact with this case, Your Honor, came
21 about five years ago and at that time, I first became aware of
22 this Defendant, this case, and that there was a claim of actual
23 innocence. In March of this year, the North Carolina Innocence
24 Inquiry Commission, who have representatives present in court
25 today, came to me and -- well, notified by letter that this

1 Defendant had filed a claim with that agency making a claim of
2 factual or actual innocence. Chief of Police Darwin Williams,
3 who's seated next to me, and Assistant Chief Cliff Sessoms and I
4 then met with representatives from the North Carolina Innocence
5 Inquiry Commission in the District Attorney's Office. And the
6 Laurinburg Police Department turned over items of physical
7 evidence that had been collected in this case back in 1988 to
8 representatives from the Commission for the purpose of securing
9 DNA testing. I will tell Your Honor that there was a diligent
10 search by these individuals seated next to me to locate that
11 evidence. We had been told by a prior administration that the
12 evidence no longer existed and had been destroyed. There was a
13 Destruction Order in place from 2001 that covered some items of
14 evidence, but not all of them. And I was told initially when
15 this Defendant came forward claiming that he was innocent by
16 prior administration at the Laurinburg Police Department that
17 the evidence no longer was in the care, custody, and control of
18 the Laurinburg Police Department. When the Innocence Inquiry
19 Commission contacted me in March, I made Chief Williams aware of
20 the Defendant's claim and the Commissions inquiry and Chief
21 Williams indicated to me that he did not want to rely on
22 representations made by those who preceded him and wanted to
23 make his own independent search of the evidence facility. And
24 he and his entire investigative unit from the police department
25 engaged in a very arduous task of searching every box within, I

1 think, four separate evidence facilities at the Laurinburg
2 Police Department and located the rectal swabs. And that is how
3 we were able to surrender them to the Innocence Inquiry
4 Commission and get the DNA testing that has now exonerated this
5 Defendant. I do have a copy of the DNA report, Your Honor. I
6 have it marked as State's MAR 1. I will tender that to Your
7 Honor. I would indicate that we became aware of the results of
8 this DNA testing last Wednesday on August 5th. I received phone
9 call on Monday from Sharon Stellato with the North Carolina
10 Innocence Inquiry Commission indicating that she needed to meet
11 with me in person. We met on Wednesday morning here in the
12 District Attorney's Office in Laurinburg and the results were
13 shared with me. It is very clear from a review of the results
14 that this Defendant does not match the DNA profile of the person
15 that rape Ms. Fletcher. There has never been any indication
16 that there was more than one perpetrator. I went back through
17 this file again very meticulously looking for any indication
18 that there could have been two perpetrators. And there's simply
19 no reference to that. Ms. Fletcher in all three of her
20 interviews describes on perpetrator, only one person being
21 inside her residence, and any witness that gave information and
22 the informant that gave information referred to a sole actor.
23 So, there is no evidence available to the State at this time to
24 indicate that more than one person committed this crime. And it
25 is clear from the DNA evidence that this Defendant did not. I

1 began, on that same day August 5th, trying to secure the release
2 of this Defendant as I believe as a minister of justice, it is
3 the only fair thing to do and I filed a Motion with the Court on
4 my own accord, a Motion for Appropriate Relief asking for this
5 Defendant's immediate release as it is my contention that based
6 on all the facts that are known to the State at this time that
7 this man is innocent. The Court appointed Mr. Jonathan McInnis
8 to represent the Defendant and Mr. McInnis and I then worked
9 closely together to file a Consent Motion for Appropriate Relief
10 requesting an immediate hearing and mutually agreeing that this
11 Defendant should be released from custody. So before Your Honor
12 today is a request by the State and by the defense that the
13 Court vacate these convictions, set them aside, and that this
14 Defendant be released from custody. May I approach with the
15 Exhibit?

16 THE COURT: Assuming there's no objection.

17 MR. MCINNIS: No objection, Your Honor. I have a
18 copy.

19 MS. NEWTON: Your Honor, I believe that would be a
20 sufficient basis. I'll be happy to answer any additional
21 questions you may have.

22 THE COURT: And I believe I have -- was concerned
23 earlier about the fact that there were actually three charges,
24 not just the -- the rape or sexual assault. And you have
25 clarified my mind that there was only one perpetrator ever

1 spoken of or elicited. I also was concerned initially I didn't
2 know -- I assumed that these -- I had gotten an idea of what the
3 results were from your application for a Motion for Appropriate
4 Relief. I was concerned as to how obviously on any rape victim
5 there's two potential DNA profilings always, hers and his. And
6 I understand that this is a Y analysis and so they're able to
7 screen out the victim and so that's how we came to this
8 conclusion. I see in the conclusions that Edward McInnis is
9 excluded as a contributor of the male DNA taken from the victim.
10 Mr. McInnis, do you wish to be heard?

11 MR. MCINNIS: Just briefly, Your Honor. I have met --
12 as Ms. Newton indicated, I was appointed on Thursday. I
13 arranged a visit with Mr. McInnis at Roundtree Correctional on
14 Friday morning. The assistant superintendent Dalrimple was very
15 helpful in arranging a day that's normally not scheduled. I met
16 with him after speaking with Ms. Newton, after speaking with the
17 North Carolina Innocence Inquiry Commission, associate director
18 Sharon Stellato who is here today. And if I may also Sara Riney
19 and please forgive me I mispronounce any of these. The
20 investigators are here today. There are also other staff
21 members from the Commission here, Catherine Mantoian, staff
22 attorney, Lindsey Smith associate counsel, Ed Brooks,
23 investigator, Aschante Pretty paralegal, and Jason Fitts case
24 coordinator. Sharon and Sarah were the two lead staff working
25 on the case. I spoke with them on Thursday and went and spoke

1 with Mr. McInnis on Friday morning. In addition, I've spoken
2 with other esteemed colleagues in the -- in the judicial system,
3 attorneys and spoke with Mr. McInnis and have spoke with him in
4 depth on Friday as well as this morning prior to court. It is
5 Mr. McInnis's request to proceed with the MAR and to ask -- and
6 join in with the District Attorney's requests and has absolutely
7 no objections to that. In addition, I have covered with him the
8 two possible options that he would have. One being the Consent
9 MAR that is before the Court that he is here to do. I have also
10 spoken with him in reference to the Innocence Commission's --
11 Innocence Inquiry Commission's investigation into the case.
12 We've spoken in depth and if anybody can please correct me if
13 I'm incorrect about any of the procedures. Once this hearing is
14 concluded today, the investigation will at that point stop. Mr.
15 McInnis is aware of that. He is also aware that I believe the
16 information from the Commission will be turned over to the
17 District Attorney's Office for their decision on whether it
18 should be further investigated or not. I have spoken with him
19 in -- in depth about the entire procedure that would need to
20 take place -- that could take place not through the Innocence
21 Inquiry Commission and also the avenues that he would possibly
22 have by going forward with the MAR today as far as his decision
23 to seek a pardon and/or compensation at some point and time. I
24 know, Your Honor, when we met in chambers that was a query that
25 you asked. I've talked to him and my investigator has spoken to

1 him this morning and as I indicated I talked to him on Friday
2 and we'd ask the Court to -- to grant the Consent Motion.

3 THE COURT: All right.

4 MR. MCINNIS: Thank you.

5 THE COURT: Thank you. That's what I wanted to know.

6 MS. NEWTON: Your Honor, if I may, I did neglect to
7 mention to you that there are two of Ms. Fletcher's relatives
8 that did make it here this morning for the hearing, a niece and
9 nephew.

10 THE COURT: Okay. And it's my understanding Ms.
11 Fletcher is no longer with us, is that correct?

12 MS. NEWTON: That's correct, Your Honor.

13 THE COURT: All right. I wish I had something
14 profound to say to everybody. There is nothing. I'm a Judge,
15 I'm not God. I'm so sorry for your aunt and what she had to go
16 through. Certainly, I don't think anyone's questioning that
17 that indeed happened and there's somebody out there. On this
18 side is another victim and a lot of other victims of that person
19 that may -- that's still out there. I will say a lot of people
20 invested a lot of time and effort when there was a possibility
21 that a wrong had been committed. Didn't care where it ended up
22 and still proceeded. And every one of these people should be
23 thanked and commended. So, --

24 MR. MCINNIS: Your Honor, may I?

25 THE COURT: Sure.

1 MR. MCINNIS: I apologize. I do want to mention that
2 he has a relative here, his niece, Brenda McInnis.

3 THE COURT: I can tell.

4 MR. MCINNIS: She's -- she is here. She has stood by
5 him from my understanding the entire time and he has had family
6 members pass away while he has been in the Department of
7 Corrections as well. She has stood beside him. I met her for
8 the first time this morning and she's going to be a big part of
9 him being back out into the community.

10 THE COURT: All right. I'm going to try -- I have
11 reviewed the file and I'm going to try to do this off the top of
12 my head. I will ask that an entire transcript of today's
13 proceeding be actually transcribed. All right. In the matter
14 of State of North Carolina versus Charles Edward McInnis, this
15 matter coming on to be heard and being heard by the Honorable
16 Tanya Wallace and upon a Consent Motion for Appropriate Relief
17 by Kristy Newton, District Attorney for Judicial District 16A
18 and Jonathan McInnis, Public Defendant for Judicial District 16A
19 pursuant to N.C.G.s 15-1411 through 1420(e) and the Court makes
20 the following findings: Defendant was arrested on March 19,
21 1998 by officers with the Laurinburg Police Department.
22 Defendant was charged with the offenses of first degree rape,
23 first degree burglary, and armed robbery. That attorney Charles
24 Floyd was appointed to represent the Defendant. That the
25 Defendant appeared before the Honorable Robert Hobgood in the

1 Superior Court of Scotland County on October 25, 1988 and that
2 the Defendant was duly sworn before the Clerk of Superior Court
3 and entered pleas of guilty to the aforementioned charges. That
4 the Defendant signed and executed a plea transcript on that
5 date. Defendant was sentenced on October 25, 1988 by the
6 Honorable Robert Hobgood according to fair sentencing and from
7 the presumptive range to active term of imprisonment in the
8 North Carolina Department of Adult Corrections of life for the
9 offense of first degree rape followed by a consecutive term of
10 20 years for the offenses of first degree burglary and armed
11 robbery. That based on the Defendant's pleas of guilty on
12 October 25, 1988 and the corresponding judgment of the Superior
13 Court, the Defendant is currently imprisoned at Brown Creek
14 Correctional Institution through the North -- North Carolina
15 Department of Adult Correction. That the Defendant's claim of
16 actual innocence came to the attention of the North Carolina
17 Innocence Inquiry Commission and with the cooperation of the
18 District Attorney of Judicial District 16A and the Laurinburg
19 Police Department, items were submitted for DNA testing. That
20 although the Laurinburg Police Department requested DNA testing
21 from Cellmark Diagnostics in 1988, due to the technology
22 available at the time no DNA profile could be generated. That
23 using current technology, Cellmark Forensics analyzed certain
24 items of physical evidence and using Y STR SNA analysis has
25 determined that the Defendant is excluded as a contributor of

1 the male DNA from the sample. That members of the North
2 Carolina Innocence Inquiry Commission disclosed the results of
3 the testing to District Attorney Kristy Newton on August 5,
4 2015. That according to the prosecutor in court today, one
5 perpetrator and only one perpetrator was ever suggested by the
6 victim for any of the crimes for which the Defendant pled
7 guilty. Based on the above, the Court finds and concludes that
8 certain new evidence is available that has a direct and actual
9 bearing upon the Defendant's guilt or innocence. At this time,
10 it is ordered that the Defendant is entitled at a minimum to a
11 new trial for the charges and is released forthwith. All right,
12 Ms. Newton, you had something further?

13 MS. NEWTON: Yes, Your Honor, I have prepared
14 dismissals dismissing the charges of first degree rape, first
15 degree burglary, and robbery with a dangerous weapon in 88-CRS-
16 1422 through 1424. I have provided a copy to Mr. McInnis on
17 behalf of Mr. McInnis and I have the original to tender to the
18 Court.

19 THE COURT: Okay. Thank you. And there are no other
20 charges for which the Defendant is now awaiting trial, is that
21 correct?

22 MS. NEWTON: That is correct, Your Honor.

23 THE COURT: All right. The Court having declared that
24 the evidence presented today entitles him to be released of all
25 the charges and the State having taken a dismissal in all of

1 those charges and the Court understanding there are no other
2 charges appearing before this time for Mr. McInnis, he is hereby
3 released from the custody of the Department of Corrections or
4 Adult Corrections or whatever the name is now and may leave this
5 courtroom as he so wishes.

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(End of hearing.)

CERTIFICATION

STATE OF NORTH CAROLINA
COUNTY OF PITT

I, Pamela W. Gray, CVR-M, officer before whom the proceeding was taken, the foregoing pages 1 - 20 and is a true and accurate transcript of the hearing had.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

Pamela W. Gray, CVR

Pamela W. Gray, CVR-M
P. O. Box 358
Grifton, NC 28530

STATE OF NORTH CAROLINA
COUNTY OF SCOTLAND

IN THE GENERAL COURT OF JUSTICE
CRIMINAL COURT DIVISION
FILE NO. 88-CRS-1422

STATE OF NORTH CAROLINA
Plaintiff,

Vs.

CERTIFICATE OF DELIVERY

CHARLES EDWARD MCINNIS,
Defendant.

The above entitled transcript was mailed and sent via email on the 2nd of October, 2015 and to requesting attorneys.

APPEARANCES:

Kristy Newton, Esquire
District Attorney
Scotland County Courthouse
Laurinburg, NC 28353

Jonathan McInnis, Esquire
Attorney for Defendant
P.O. Box 687
Laurinburg NC 28353-0687

On Behalf of State of North Carolina

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P.O. Box 358, Grifton, N.C. 28530