THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE, Respondent

V.

Terrell McCoy, Petitioner

PCR APPEAL (SCACR 243)
Deadra Jefferson, Circuit Judge
Order NO. 2019-00-1193

PETITION FOR REHEARING

Pursuant to Rule 243(I) SCACR & 226(a), Petitioner respectfully request rehearing because Court of Appeals may have misapprehed the facts that Appellate Counsel and trial Counsel was ineffective where no probative evidence exist to support the PCR Judge ruling. Pierce V. State, 338 S.C. 139, 526 S.E.2d 225 (200). If the PCR Judge makes error of law then this Court must reverse.

(I) Did the PCR Judge err in denying relief where Appellate Counsel was ineffective for not raising nonfrivolous issues during Petitioner's first appeal as of right, when the issue had been contemporaneously preserved during trial & Petitioner repeatedly discussed the Appellate issues with Appellate

Counsel? Griffen V Illinois, 351 U.S. 12, 20 (1956); Anders V. California, 386 U.S 738 Douglas V. California, 372 U.S. 353. Strickland V. Washington, 466 U.S. 668, 104 S.Ct 2052, 80 L.Ed2d (1984); Evitts V. Lucey, 469 U.S. 387, 105 S.Ct. 850; 83 L.Ed 821 (1985); Southerland V. State, 337 S.C. 610, 626, 524 S.E.2d 833, 836 (1999).

(2) Whether there is any evidence to support the PCR Judges finding that no Brady Violation occurred? Riddle V. Ozmint, 369 S.C. 39, 44-45, 631 S.E.2d 70 (2006); Gibson V. State, 334 S.C. 515, 514 S.E. 2d 320 (1999); Kyles V. Whitley, 514 U.S. 419, 432-42, 115 S.Ct. 1555, 1565-69, 131 L.E.2d 490, 505-10 (1995); Brady V. Maryland 373 U.S 83 (1963); United States V. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 LEd 13; Berger V. United States 295 U.S. 78, 88, 55 S.Ct 629, 633, 79 L.Ed 1314 (1935); United States V. Agurs, 427 U.S. 97, 96 S.Ct 2392, 49 L.Ed.2d 342 (1976); State V. Dahlen, 322 S.C. 234, 242, 472 SE 2d 689, 693 (1996), and its progeny.

(3) Were there any evidence to support the Summary Judgment Judg ruling that Petitioner Could not raise ineffective assistance of trial counsel claims during PCR & were there any evidence to support the PCR Judges finding that Petitioner did not call trial Counsel Lorelle Proctor to testify at the PCR hearing to determine what advice she gave petitioner regarding a waiver of Constitutional rights to effective assistance of counsel? Gideon V. Wain Wright, 372 U.S. 335, 344 (1963); Strickland V. Washington, Supra. Butler V. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Cert Denied, 474 U.S. 1094, 106 S.Ct 869, 88 L.Ed.2d 908 (1986).

First, Petitioner agrees with the United States Supreme Court, and the South Carolina Supreme Court, that the burden of proof is upon Petitioner to show that counsel performance was deficient as measured by the standard of reasonableness under prevailing norms. Second, Petitioner must prove that he or she was prejudice by such deficiency to the extent of there being a reasonable probability that, but for Counsel's unprofessional errors, the result would have been different. Petitioner is entitled to the effective assistance of appellate counsel.

PCR Judge Deadra Jefferson (hereinafter called PCR Judge) committed an error of law in denying Petitioner PCR relief. Throughout the entire PCR proceeding, She commented that Petitioner had preserved issues Concerning Brady violation, and that it was Appellate Counsel duty to raise those issues during direct appeal. (Record of Appeal Appendix page 955 line 25 through page 956 line 1-14; page 957

line 3-25; page 958 line 4-25; page 959 line 1-25; page 960 line 1-25; page 961 line 1-25; and page 962 line 1-25).

- PCR Counsel Rodney Davis then asked Petitioner, "Were you aware that discovery was requested?
- Petitioner testified he was aware that SCCrimP Rule 5 & 6 was served upon the Solicitor on April 10, 2006. (Appendix page 965 line 17-25; page 966 line 1-25; page 967 line 1-25; page 968 line 1-22; page 969, page 973; page 974; and page 979.)
- During the hearing, the State agreed that Petitioner had made pretrial motions that Solicitor failed to produce evidence. (Appendix page 932 line 16-24).
- PCR Judge Stated, "Appellate Counsel could be questioned about that, because he has reviewed the record, and there must be a reason he didn't pursue it. Either he was ineffective in failing to pursue it, or he had a good reason not pursuing it. (Appendix page 932 line 25; page 933 line 1-9)
- Appellate Counsel also testified he was not aware of any evidence by 911 call or DNA (Appendix page 945 line 5-13). He also testified He was unaware of any issues dealing with a dispatcher log that Petitioner attempted to be introduce and the State objected to. (Appendix page 944 line 11-18).
- PCR Counsel then asked Appellate Counsel about evidence requested ~~from~~ the state and it was not provided, would you agree that's a Brady violation. Appellate Counsel agreed. (Appendix page 945 line 9-25; 946 line 1-15).
- PCR Counsel finally asked "Are you aware of cases that have been -- conviction that have been reversed for a Brady Violation?" Appellate Counsel agreed. (Appendix page 947 Line 8-11)
- PCR Counsel introduced an affidavit by Chris Neely into the PCR record without objection, which shows material facts that a 911 tape existed during the time Counsel requested the 911 tape. (Appendix page 958 line 4-25; page 959 line 1-6).
- As stated earlier; the motion for evidence was made on April 10, 2006. The document was attached to Petitioner's PCR application. (Appendix page 965 line 17-25; page 1066).
- Petitioner raised pretrial motions concerning evidence never disclosed or destroyed. (Appendix page 52-85; page 639 through pages 644; page 663 line 13-25; page 664 line 1-5).
- Standby Counsel Lorele Proctor explained, she made specific request for the 911 tape. (Appendix page 642 line 12-25).
- PCR Counsel made a note for the record, that Petitioner's trial transcript would become part of the PCR record. (Appendix page 957 line 3-9) Regarding any Brady issues.

• During Petitioner's trial, Trial Judge informed Petitioner, that if he prove that any evidence was destroyed by the state, he would give a certain Jury instruction regarding any evidence destroyed. (Appendix page 77 line 14-22)

• Petitioner sought to call Jenie Fowler, North Charleston Police Dispatcher, to testify concerning the 911 call she received on March 25, 2006. The state misinformed Petitioner that the subpoena for Jenie Fowler went to another Jenie Fowler that alledgedly work at NCPD. (Appendix page 639 line 15-25; page 640 line 1-11).

• Petitioner continued, "I think its only one." (Appendix page 640 line 13).

• Standby Counsel Lorelle Proctor asked the state to stipulate regarding the contents of the 911 call in order to continue trial, while Petitioner requested the disclosure of the 911 tape,

• Petitioner stated, "I subpoena the 911 tape." (Appendix page 641 line 1-9)

• Trial Judge abused and stated, "We couldn't bring somebody in just to read what is on that." (Appendix page 643 line 21-22)

• The State's objection was based on Hearsay, the Unavailability of a witness, Jenie Fowler, and the 911 caller. See State V. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992);

• The Court held "We first adopted the rule that out of court statements against penal interest made by an unavailable declarant are admissible at trial. However, if offered to exculpate the accused in a criminal trial, they are admissible only if corroborating evidence indicates the trustworthiness of the statement. State V Forney, 321 S.C. 353, 468 S.E.2d 641 (1996).

• The dispatcher was unavailable under SCRE Rule 804(a)(5), officer Jason Ray testified concerning the dispatcher call he received. (Appendix page

• After discovered evidence revealed it was only one Jenie Fowler. (Appendix pages 855; pages 856; page 857; page 858; pages 845 through 849)

• Solicitor Burns Wetmore stated "Ive never heard a 911 tape. I know they're kept for a certain period of time, and then they're destroyed. (Appendix page 641 line 20-25 through page 642 line 1-5).

• Petitioner requested a final ruling in order to receive an adverse Jury instruction. The Trial judge stated. "There is no evidence the State destroyed anything, so your motion is denied. (Appendix page 663 line 18-25; page 664 line 1-4).

• This issue was properly preserved for Appellate review.

• During PCR, Appellate Counsel testified, "I can tell you if Mr. McCoy ask for that and I didn't raise it, it would kind of be my common practice to say, listen, Ive raised the issue, or issues, that I think give you the best chance of winning, and if Ive missed something there is -- your playing with a net and that net is called Post Conviction Relief. (Appendix page 943 line 14-25)

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• Petitioner has met the first requirement under Strickland V Washington, Supra. Appellate Counsel performance was deficient. Second, Petitioner was prejudice by Appellate Counsel deficient performance.

• See State V. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). ("An Appellate Court will not reverse the trial [court]'s decision regarding a Jury instruction absent abuse discretion. State V. McBride, 416 S.C. 379, 389, 786 S.E.2d 435, 440 (Ct.App 2016)("Adverse Inference Charges are rarely permitted in criminal cases".) State V. Batson, 261 S.C. 128, 138, 198 S.E.2d 517, 522 (1973). ("[W]e entertain grave doubt as to the propriety, in a criminal case, of the rule of an adverse inference....," Id. ("[A] Charge of this proposition to a Jury on behalf of either the State or the defense is not warranted except under most unusual circumstances ....") State V. Cheesebore, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001). ("The State does not have absolute duty to preserve potentially useful evidence that might exonerate a defendant.") Id at 538-39, 552 S.E.2d at 307 ("To establish a due process violation, a defendant must demonstrate (1) that the State destroyed evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means.

• In this case, (1) the 911 tape was in the State Possession before its destruction (2) Its apparent that the 911 tape possessed exculpatory value before it's destruction, it was destroyed (2) two months after trial counsel made specific request. (Appendix page 968 line 2-22; page 971 line 9-13) See Brady V. Maryland Supra, "The United States Supreme Court held," That the Suppression by the Prosecution of evidence favorable to the accused upon request, violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or Bad faith of the prosecution. The State's Suppression of favorable material evidence undermines the confidence in the Jury's verdict.

Standby Counsel made Specific request. (Appendix page 642 line 12-25). See State V. Hoover Appellate Case No. 2018-00-2040 (S.Ct. App. May 19, 2021).

• Trial Judge believed the evidence did not exist." Miss Proctor said back when she use to represent you, her office tried to obtain it, and they were informed it did not exist...." Appendix page 644 line 1-6)

• As Stated earlier, PCR Counsel introduced affidavit of Chris Neely Verifying a 911 tape did exist. PCR Counsel also introduced the dispatcher's report into the record. (Appendix page 958 Line 8-25) Attached to this petition for the Appellant Record.

The 911 Caller reference call that someone was banging on the door, the door flew open and someone was shot. She does not know who he is. (Appendix page 820). This evidence was in the possession of the State.

• PCR Counsel asked Appellate Counsel, "If there were items of evidence that Mr. McCoy -- or any defendant. If there were items of evidence that the defendant requested from the State, and it was not provided, would you agree that's a Brady violation?"

• PCR Counsel replied," If it would have assisted his defense, whatever the evidence was, yes, I would agree with that." (Appendix page 945 line 9-25; page 946 line 1)

• The State asked "If the prosecution does not possess evidence, they have no duty to turn over what they don't possess?"

• Appellate Counsel testified. "I partially agree .... evidence in the possession of say the police department .... is imputed to the State or to the Solicitor is my understanding of the law." (Appendix page 953 line 15-25)

• The State then ask, "If the police don't possess it, then the Solicitor cant possess it correct?" Appellant Counsel agreed. (Appendix page 954 line 1-7)

• In this case, police did possess the Undisclosed evidence (911 tape). See Affidavit of Chris Neely introduced into the record. (Appendix page 958 line 4 through 24; page 959 line 1-9, and attached to this Petition For Rehearing).

• PCR Judge stated "It doesn't change anything, it's a direct appeal issue .... The 911 tape you have to ask within -- I would imagine that Ms. Proctor would have asked for the 911 tape originally. Did she not? The State would have produce it at the time of the original trial, didn't they?

• PCR Counsel testified it was never produced. (Appendix page 959 line 11-25; page 960 line 1-25; page 961 line 1-24)

• Appellate Counsel testified," If Mr. McCoy identified a winning issue that i didnt raise, I would have any strategic reason, not to raise something that I thought was the winning issue." (Appendix page 949 line 25 through page 950 line 1-21) (See Also page 941 line 14-17; page 942; Page 943; page 944; page 945; page 946; page 947; page 948 line 1-17)

• Petitioner was prejudice by Appellate Counsel deficient performance. See Brady V. Maryland 373, U.S. 83 (1963); Kyles V. Whitley, Supra; United States V. Bagley, Supra, Berger V. United States, Supra; United States V. Agurs; Supra; Strickland V. Washington; Southerland V. State, Supra; Riddle V. Ozmint, Supra; Gibson V. State, Supra; State V. Dohlen Supra.

• Petitioner is guaranteed the effective assistance of Appellate Counsel pursuing a first appeal as of right. Griffen V. Illionois, Supra.

• See Pennsylvania V. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed 2d 40 (1987). In Ritchie the United States Supreme Court held that defendant was entitled to have the trial court examine undisclosed evidence to determine whether it contained material information that would have change the outcome of trial. 480 U.S. at 58, 107 S.Ct at 1002; 94 L.Ed 2d at 58. (In So holding it speci-

fied that the defendant must first establish a basis for his claim that the undisclosed information contains material evidence. 480 U.S. at 58 n 15 ; 107 S.Ct. at 1002 n. 15 ; 94 L.Ed 2d at 58, n 15.)

- During the PCR hearing, Petitioner Clearly States "There existed a 911 tape never given to my attorney. It was a 911 tape that contradicts the State's witness testimony. (Appendix page 968 Line 6 through 9.
- PCR Counsel then mark the CAD report as Exhibit 1. (Appendix page 969 Line 6-25; page 970 Line 1-25; page 971 Line 9-13; pages 974; 975; 976; 977; 978; 979; 980; 981; 982; 983;)
- PCR Judge denied Relief. PCR Judges order fails to address the material evidence the state failed to disclose. No portions of the PCR Judge's order did she address the material evidence Under Brady pursuant to the prongs. PCR Judge indicated that the Brady claim has no merits although it was preserved for Appellate review. She misapplied the facts ~~by~~ stating the 911 tape was not in possession of the State, ~~although~~ PCR Counsel introduce an affidavit by Chris Neely which shows the evidence was in possession of the police.
- PCR Judge misapplied the law under Brady & Pennsylvania v. Ritchie See. Appendix page 1082 through 1086) The evidence was material because it contradicts the State theory of the crime. The evidence was exculpatory, and could have been used to exonerate the petitioner.
- PCR Counsel admitted the evidence under the Rules of Evidence pursuant to Frazier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). The Court held, "The burden of Proof is on the applicant to prove his allegations by a preponderance of the evidence. Citing Rule 71.1 (e) SCRCP.
- Under Brady, Petitioners due process was violated where the evidence is material. [redacted]
- Appellate Counsel was ineffective for failing to raise Petitioner Brady claim on appeal. See Southerland v. State, Supra; Strickland v. Washington, Supra. There is no evidence in the record to support the PCR findings. See. Pierce v. State, Supra. The PCR Judge order should be reverse and Petitioner granted a newtrial.
- Next, the State filed a Summary Judgment motion to dismiss Petitioner's claim trial Counsel gave erroneous advice to Waive his Constitutional rights to effective assistance of Counsel under Gideon v. Wainwright, Supra, See (September 9, 2015 Summary Judgment hearing transcript pages 896 through 917).
- At the Conclusion of the hearing, Judge Hyman dismiss Petitioners Claims of ineffective assistance of Counsel and granted a PCR hearing on ineffective assistance of Appellate Counsel claims and Brady violation of Appellate Counsel Claims and Brady violation Claims.
- At the beginning of the PCR hearing, PCR Counsel Stated for the record. "If you could

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give me a moment, Im letting Ms. Proctor Know that we called this one. (Appendix page 923 line 7-9).

- PCR Judge stated to both parties. "Did you all get Judge Hyman order?" (Appendix page 923 line 15-16)
- PCR Counsel explained he never received any order from Judge Hyman. (see Appendix page 923 line 19-24). The evidentiary hearing proceeded with PCR Counsel only allow to examine Appellate Counsel Robert Dudek. (Appendix page 920 through 1004).
- At the Conclusion of the hearing, PCR Judge denied Relief. There is no probative evidence in the record to support the PCR Judges finding that Petitioner did not call Ms. Proctor as a witness eliminating the Court's ability to make an independent factual determination as to what advice, if any, Ms. Proctor provided to the Petitioner regarding the consequences of his waiver of Constitutional rights to effective assistance of Counsel. (See Appendix page 1079)
- Petitoner filed a timely SCRCP Rule 59(e). (Appendix page 1004 - 1110) See McCray vs State 305 S.C. 329, 408 S.E.2d 242 (1991); ODom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).
- This Court has already granted, vacated, and Remanded PCR Judge's order to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented pursuant to Marlar V. State, 357 S.C. 407, 653 S.E.2d 266 (2007)
- The Judges ruling regarding trial Counsel's erroneous advice is not Consistent with Rule 56(d) SCRCP which allows for granting of Summary Judgment for some of the issues in a trial, but not all the issues.
- The rule indicate that trial shall proceed on the remaining issues, when Summary Judgment is not rendered upon the whole case or for all the relief asked a trial is necessary.
- PCR Counsel filed an Amended Application for Post Conviction Relief on December 4, 2015 requesting the Conditional order of dismissal be rescinded. (Appendix page 918-919). The State filed no response.
- Summary Judgment is proper when there is no genuine issue of material fact and the moving party is entitled to Judgment as a matter of law. Baughman V. American Tel. and Tel. Co., 306 S.Ct. 101, 410 S.E.2d 537 (1991). With respect to an issue upon which the non moving party has the burden of proof, this intial responsibilty may be discharge by pointing out to the trial Court that there is an absence of evidence to support the non moving party's case. Id. at 545. In determining whether any triable issue of fact exist, the evidence and all inferences which can be reasonably drawn therefore must be viewed in the light most favorable to the non moving party.
- Petitioner's sworn PCR application clearly states (1) Trial Counsel gave Applicant erroneous legal advice leading to Applicant's self-representation, (2) trial counsel failed to object to Judge Jefferson declaring a hung Jury during Applicant's

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first trial when the Jury did not decide whether the Applicant was innocent or guilty (3) trial counsel failed to send the Applicant to have mental health evaluation after suggested by Judge Jefferson that Applicant may suffer from bipolar disorder. (Appendix pages 868 and 869)

- Petitioner amended his PCR application and included trial counsel failure to subpoena witnesses when she was directed by Judge Dennis to do so. (Appendix page 845)
- Judge Hyman's ruling was based on Judge Dennis order. He failed to review the January 28, 2009 self-representation hearing transcript in State V. McCoy 2011-up-471 (sct ct App. filed October 26, 2011) pages 29 Line 11-18
- Judges Dennis order could not have been appealed until ten (10) days after the imposition of the Sentence. Rule 29 (a) SCR CrimP. State V. Wilson, 389 S.C. 597, 693 S.E.2d 923 (2010)
- Petitioner arguments on PCR application is trial Counsel gave erroneous advice leading to Applicant's self representation. The legal erroneous advice occured before January 27, 2009 of Judge Dennis Order.
- There is no probative evidence in the record to support the PCR Judges ruling. See Pierce V. State, Supra.
- Special reasons Justify the exercise of this Court to review the decision of the lower Court. This Court has recently granted Petitioner's writ, vacated and remanded to the lower Court with directive to make specific findings on each allegation raised by Petitioner at the PCR hearing and his rule 59 (e). Pursuant to Marlar V. State, 375 S.C. 407 (2007). The lower Court has failed to issue an order in compliance with the law of this State and United States. Therefore relief should be granted and PCR Judge finding reverse, and new trial. (Appendix page 1067 through pages 1068)
- Brady V. Maryland, 373 U.S. at 87, 83 S.Ct. 1194. Brady is a trial right, it requires a prosecutor to disclose evidence favorable to the defense. To minimize the Chance that an innocent person would be found guilty. United States V. Moussaoui, 591 F.3d 263, 285 (4th Cir. 2010) In Order to prevail on a true Brady Claim, however, it is not enough simply to say that favorable evidence was withheld. The accused must prove (1) the evidence at issue is favorable to the accused (2) suppressed by the [government] either willfully or inadverently (3) evidence is material, and prejudiced ensued. Strickler V. Greene, 527 U.S. 263, 281-82, 119 S.Ct. 1936, 144 L.Ed. 286 (1999); Giglio V. United States 405 U.S. 150, 154-55, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). Including impeachment evidence within the scope of material that Brady requires Prosecutor's to disclose. Strickland V. Washington, Supra, A Criminal defendant is Constitutionally entitled to the effective assistance of Appellate Counsel. Evitts V. Lucey, 469 U.S. 387, 398, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). However, Counsel is not required to raise every non-frivolous claim, but may select among them in order to maximize the likelihood of a favorable outcome. Appellate Counsel failed to raise Petitioner's Brady, where the evidence suppressed

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by the government inadvertently and willfully. Solicitor Burns Wetmore clearly Stated He nor his office had Suppoena the 911 tape from North Charleston Police Department.

• Also trial Counsel was ineffective by given Petitioner erroneous legal advice to Waive his Sixth Amendment right to Counsel provided by Gideon v. Wainwright, Supra, "Indeed the right to Counsel is the foundation for our adversary system. Defense Counsel test the prosecution's Case to ensure that the proceeding serve the function of adjudicating guilt or innocence, while protecting the rights to the peison charged.

• When a defendant lacks knowledge of material evidence in the prosecution's possession, the Waiver of Constitutional rights cannot be deemed Knowing and Voluntary. "The governments obligation to such disclosures [of Brady material] is pertinent not only to an accused preparation for trial but also to his determination of whether or not to plead guilty. The defendant is entitled to make that decision willfully awareness of favorable material evidence known to the government. United States v. Avellino, 136 F.3d 249, 255 (2nd cir. 1998)

• These claims have been preserved, As a right, Petitioner is entitled to present his appeal with the effective assistance of Appellant Counsel. and the effective assistance of trial Counsel. Petitioner should be granted a new trial on the Brady issues, where Newly discovered evidence is presented. During Petitioners first trial, Trial Judge did not believe a 911 tape existed. PCR Counsel introduced Affidavit by Kriston Neely which proves a 911 tape existed. The evidence is exculpatory and contradicts the witness testimony. This witness is an untruthful witness and gave inconsistent theories. Had the evidence been disclosed it would have raised doubt, and exonerate the Petitioner. The existence of the 911 tape was discovered on December 11, 2015, and presented at Petitione PCR hearing. See S.C. Code 17-27-20 (a)(1)(4). Petitoner has met his burden of proof.

5-31-22

Pro se

The South Carolina Court of Appeals

Terrell McCoy, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2019-001193

ORDER

This matter is before the court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief. Based on the vote of the panel, the petition for a writ of certiorari is denied.

FOR THE COURT

BY V Claire Allen
CLERK

Columbia, South Carolina
May 18, 2022

cc:
Clarissa Warren Joyner, Esquire
Samantha Jo Weidauer, Esquire
Terrell McCoy, #256070
The Honorable Deadra L. Jefferson

Exhibit 3

AFFIDAVIT OF KRISTON D. NEELY

I, Kriston D. Neely, after being duly sworn, say:

I am employed with the Legal Department for the City of North Charleston, South Carolina.

In that capacity, I was involved in litigation with Terrell McCoy in his claim against the City and the North Charleston Police Department (Civil Action #: 2013-CP-10-06876).

In the course of that litigation, the City admitted that a 911 recording and CAD report pertaining to Mr. McCoy's criminal trial (CADOPERATION REPORT #: 2006036162/ Indictment #: 2006-GS-10-4987) was destroyed on (Recording) June 25, 2006, and (CAD Report) March 25, 2009, in compliance with the retention policies of the State of South Carolina and the City of North Charleston.

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME
This 11th day of December, 2015

Teresa B. Woodall
Notary Public for North Carolina

My Commission Expires: 11-24-2024

DEFENDANT'S EXHIBIT