

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Kershaw County

Honorable Diane Schafer Goodstein, Circuit Court Judge

LUCRUZ MCCLOUD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-001307

AMENDED APPENDIX

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ATTORNEYS FOR RESPONDENT

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State of South Carolina

County of Kershaw

Court of General Sessions

State

v.

Lucruz Danielle McCloud

Defendant.

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Transcript of Record

2017-GS-28-0355

2017-GS-28-0356

May 15, 2017
Camden, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge.

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

Brett Allen Perry, Deputy Solicitor
Attorney for the State

Ronald Wade Moak, Esquire
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

	I N D E X	
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1 P R O C E E D I N G S

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3 LUCRUZ MCCLOUD

4 being first duly sworn, testified as follows:

5 THE DEFENDANT: Yes, ma'am.

6 MR. PERRY: Your Honor, standing before you is
7 Mr. Lucruz McCloud along with his attorney Ron Moak
8 of the Kershaw County Bar. Your Honor, Mr. McCloud
9 is charged with simple possession of marijuana for
10 which he's pleading guilty. He's also charged with
11 trafficking crack cocaine 10 to 28 grams third or
12 subsequent offense. Your Honor, he has been
13 indicted as such. He's pleading guilty to the
14 lesser included charge of trafficking crack cocaine
15 10 to 28 grams second offense for a negotiated
16 15-year sentence.

17 THE COURT: Mr. Moak, you represent Lucruz
18 Danielle McCloud?

19 MR. MOAK: Yes, Your Honor.

20 THE COURT: Have you explained to him the
21 charges and possible punishments and his rights,
22 including his right to a jury trial?

23 MR. MOAK: Yes, Your Honor.

24 THE COURT: In your opinion, does he understand
25 those things?

1 MR. MOAK: Yes, Your Honor.

2 THE COURT: How does he indicate he intends to
3 plead to possession of marijuana first offense and
4 trafficking in cocaine second offense?

5 MR. MOAK: He intends to plead guilty on both,
6 Your Honor.

7 THE COURT: Are you Lucruz Danielle McCloud?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Before I can accept your plea of
10 guilty, it's necessary for me to determine if it's
11 being given freely and voluntarily, therefore I need
12 to ask you some questions. If you do not understand
13 my questions, please let me know and I'll try to
14 explain them to you. If at any time you wish to
15 talk with your attorney, please let me know and I'll
16 allow you to do so. You understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: How old are you, Mr. McCloud?

19 THE DEFENDANT: Thirty.

20 THE COURT: How much education do you have?

21 THE DEFENDANT: Some college.

22 THE COURT: What type of work do you do?

23 THE DEFENDANT: Landscaping and
24 pressure-washing.

25 THE COURT: Today are you under the influence

1 of any medications, drugs, alcohol?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you aware of any physical,
4 emotional, or nervous problems that would keep you
5 from understanding what you're doing here today?

6 THE DEFENDANT: No, sir.

7 THE COURT: You heard your lawyer tell me he's
8 explained to you these charges, the elements of the
9 charges, your rights, including your right to a jury
10 trial, also the potential maximum punishment on
11 these charges. Has he done that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand those?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I've been handed up two
16 indictments. The first one, 2017-GS-28-0356,
17 alleges that you did, in Kershaw County, on the 26th
18 of October, 2016, knowingly and intentionally
19 possess a quantity of marijuana in violation of our
20 drug laws.

21 What is the maximum potential punishment on
22 that one, please?

23 MR. MOAK: Thirty days.

24 MR. PERRY: Thirty days or a fine of \$500.

25 THE COURT: You could receive a sentence of up

1 to 30 days and a fine of up to \$500 on that. Do you
2 understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The other indictment,
5 2017-GS-28-0355, alleges that you did, in Kershaw
6 County, on 24th of October, 2016, knowingly sell,
7 deliver, purchase, bring into the state or conspire
8 to do the same, a quantity of crack cocaine in the
9 amount of more than 10 grams but less than 28
10 grams --

11 MR. MOAK: Your Honor, I think there's
12 something wrong with the indictments because these
13 happened the same day.

14 THE COURT: That's why I read indictments, to
15 determine whether they're correct or not.

16 MR. PERRY: Your Honor, there's a scrivener's
17 error on the marijuana possession. It should be 26
18 October -- 24 October, not 26 October.

19 THE COURT: Any objections to that being
20 amended?

21 MR. MOAK: Not to the marijuana indictment
22 being amended, no.

23 THE COURT: All right. Let's go back to the
24 simple possession of marijuana, Mr. McCloud. It
25 alleges that you simply possessed a quantity of less

1 than one ounce of marijuana on the 24th of October,
2 2016. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now I'm going to start over on the
5 next indictment. 2017-GS-28-0355 alleges that you
6 did, in Kershaw County, on or about October 24th,
7 2016, knowingly sell, deliver, purchase, or bring
8 into this state, or did aid, abet, attempt, or
9 conspire to sell, deliver, purchase, or bring into
10 this state, or was in actual or constructive
11 possession or attempted to become in actual or
12 constructive possession, of a quantity of crack
13 cocaine in an amount of more than ten grams but less
14 than 28 grams, such being a controlled substance
15 under 44-53-110 of the South Carolina Code of Laws,
16 1976 as amended, such not having been authorized by
17 law, and such being the defendant's third or
18 subsequent offense in violation of Section
19 44-53-375(c)(1). That is an indictment for
20 trafficking in crack cocaine 10 grams or more but
21 less than 28 grams third or subsequent offense.

22 It appears you're being allowed to plead to
23 trafficking in crack cocaine 10 grams or more but
24 less than 28 grams second offense. What is the
25 potential penalty?

1 MR. PERRY: Your Honor, that's 5 to 30.

2 THE COURT: For which you could receive no less
3 than 5 but no more than 30 years. Do you
4 understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. McCloud, when you plead guilty,
7 you give up some very important constitutional
8 rights. First, you give up your right to remain
9 silent, that is your right to say nothing at all;
10 second, you give up your right have a jury trial,
11 that is your right to have a jury decide whether or
12 not you're guilty beyond a reasonable doubt; third,
13 you give up your right to confront and be confronted
14 by the witnesses against you, that is the right to
15 see, hear, and cross-examine any witnesses that may
16 be called against you at trial. Do you understand
17 these rights?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that when you
20 plead guilty to these charges, you give up the very
21 important constitutional rights?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is what that you want to do?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand that if you plead

1 guilty, you will not get a jury trial on either one
2 of these charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Understanding then the charge of
5 simple possession of marijuana for which you could
6 receive a sentence of up to 30 days and a fine of up
7 to \$500, how do you plead to that, guilty or not
8 guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: Understanding the charge of
11 trafficking in crack cocaine in an amount greater
12 than 10 grams but less than 28 grams second offense,
13 for which you could receive a sentence of not less
14 than 5 nor more than 30 years, how do you plead to
15 that, guilty or not guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: Are you guilty of those crimes?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Plea negotiations, Solicitor?

20 MR. PERRY: Yes, Your Honor. This is for a
21 negotiated 15 years. I also want to put on the
22 record, Your Honor, that I have been in discussion
23 with Riley Maxwell of the Fairfield County
24 Solicitor's Office. Mr. McCloud has various charges
25 pending with Fairfield as well, and Fairfield has

1 agreed to allow him to resolve those charges for
2 concurrent time. They are in the process of
3 arranging transportation after he is through with
4 the plea here.

5 And, Your Honor, while I'm not with the
6 Fairfield County Solicitor's Office, I have been
7 authorized by Riley Maxwell to put that on the
8 record because it was a part of the negotiations, it
9 was a part of the totality of the deal, if you will,
10 Your Honor.

11 MR. MOAK: And that is what Mr. Maxwell relayed
12 to me earlier today when we were discussing having
13 Mr. McCloud transported over there if he did the
14 plea this afternoon.

15 THE COURT: Is that your understanding also,
16 Mr. McCloud?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you still wish to plead guilty
19 to those two charges?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Has anyone promised you anything or
22 held out any hope of reward to get you to plead
23 guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anyone threatened you or used

1 coerce to get you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anyone used any pressure or
4 intimidation to cause you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you had enough time to make up
7 your mind?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you pleading guilty of your own
10 free will and accord?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you satisfied with the manner
13 in which your lawyer has advised you and represented
14 you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you talked with your lawyer as
17 often and for as long as you feel necessary for him
18 to properly represent you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you need any more time to talk
21 with your lawyer?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you understood your talks with
24 your lawyer?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has your lawyer done everything for
2 you that you feel he could have done or should have
3 done?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has your lawyer done anything in
6 the case that you think he should not have done?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you totally and completely
9 satisfied with your lawyer's services?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any complaints you want
12 to make about your lawyer, the solicitor, or any
13 officers involved in your cases?

14 THE DEFENDANT: No, sir.

15 THE COURT: Mr. McCloud, have you understood my
16 questions?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything you'd like to ask
19 me about what we've just been over?

20 THE DEFENDANT: No, sir.

21 THE COURT: You understand that you have a
22 right to appeal your guilty pleas and the sentences
23 of the Court and that you and your lawyer must do so
24 within ten days?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand with the plea
2 agreement it's a negotiated sentence of 15 years?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that if I accept
5 your plea, I will sentence you to 15 years? Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you still wish to plead guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Thank you.
11 Solicitor?

12 MR. PERRY: Your Honor, I defer to Agent Lawson
13 to relay the facts to the Court as well as the
14 defendant's rap sheet.

15 THE COURT: All right. Yes, sir?

16 MR. LAWSON: May it please the Court, Your
17 Honor. This incident occurred on October 24th of
18 2016 over in the Lugoff area of Kershaw County on
19 Highway 601 at the Econo Lodge hotel. On that date
20 we had been in contact with Fairfield County who had
21 an active arrest warrant in regards to drug charges
22 for Mr. McCloud.

23 Just through some investigation, we found out
24 that he was actually staying at that motel. We went
25 in and spoke with the clerk that was there and found

1 out that a couple days prior to that, he and a
2 female had rented a room, room 202, to be in fact.
3 We were able to get video footage of that. We then
4 went to that room to knock on the door. Mr. McCloud
5 was not in the room at the time, but we did find him
6 in the breezeway on the second floor just around the
7 corner from that room, and he presented himself with
8 another name, John John. We knew better than that,
9 we knew what he looked like.

10 When he was arrested and searched, he was found
11 to have a quantity of marijuana in his pants pocket
12 at the time. He also had a room key in his pocket.
13 And from what we gathered, he kept having trouble
14 with his room key because he kept having it next to
15 his cell phone and that would deactivate the room
16 key.

17 So we talked with the clerks again and found
18 out that also -- that earlier that day, the day of
19 the incident, he actually came in and signed the
20 paperwork to renew the room under the girl's name.
21 And we actually got the video footage of that, of
22 him actually signing the papers to renew and rent
23 that room again.

24 We then -- we knew what room he was staying in
25 and we asked the owner of the motel for consent to

1 walk a K-9 around the common areas of the hotel.
2 The hotel owner gave us permission to do that. We
3 then called Deputy Bass, who was one of our K-9
4 handlers. He walked his K-9 Taz around the whole
5 entire second floor of the motel. His dog did
6 indicate to the presence of narcotics being in room
7 202, which we knew to be Mr. McCloud's room.

8 From that point we did secure the room, not
9 knowing that anyone was in the room at that point
10 other than knowing that he had the room. When
11 securing the room, we did see a small amount of
12 marijuana in plain view. From that point we backed
13 out and went and obtained a search warrant for the
14 room.

15 Once that search warrant was signed, we then
16 executed the search warrant. Mr. McCloud was read
17 his Miranda rights, stated to us that he understood
18 his rights. We found numerous pieces of evidence
19 linking him to the room. There was nothing but
20 men's clothing in there, candy that we knew that he
21 had been eating because at the time of the arrest
22 his tongue was blue and all that candy was on the
23 coffee table in the room.

24 And the pizza box -- there was a pizza box in
25 there from Papa John's, I believe it was. Well, it

1 had the name John John on it, which was the name he
2 gave us in the breezeway, and it also had his cell
3 phone number on the pizza box. Well, as far as us,
4 we didn't necessarily know his phone number, but we
5 had Fairfield County narcotics officers with us when
6 we did this. Well, they had his cell phone number
7 and knew that to be his cell phone number, plus the
8 name that he had given us in the breezeway, so we
9 were able to positively link him to the room.

10 On the kitchen sink was the crack cocaine,
11 which is the issue here, which had a field weight of
12 over an ounce. It came back from SLED to be
13 approximately 14.4 grams of crack cocaine. Looking
14 at his rap sheet we did find out that it was his
15 third offense. He ended up -- again, post-Miranda,
16 he admitted that the crack cocaine was his while we
17 were in the room, and eventually admitted that the
18 room was his and all the drugs was his. And that's
19 basically the details of the case, Your Honor.

20 THE COURT: Tell me his criminal history,
21 please.

22 MR. LAWSON: From 2005 he has a conviction for
23 marijuana possession; in 2008 it looks like he was
24 charged for two counts of distribution or intent to
25 distribute cocaine. It looks like he was allowed to

1 plead both of those to possessions where he received
2 a three-year sentence suspended to one year
3 probation maybe, the way it looks. Then again in
4 2013 he was charged with a distribution or intent to
5 distribute second offense. On those he was allowed
6 to plead to a first offense where he received a
7 15-year sentence suspended upon four months active
8 and three years probation.

9 Then again in 2014 it looks like he was charged
10 again with another intent to distribute or
11 distribution of crack second offense. He was again
12 pled to a first offense. And I'm not sure how the
13 sentencing goes; it looks like they ran some of it
14 in with that prior conviction that he had -- or
15 concurrent with that. That's it for his
16 convictions.

17 And as Mr. Perry said, he does have some stuff
18 in Fairfield that is on here that is supposed to be
19 taken care of --

20 MR. MOAK: Your Honor, I believe his entire rap
21 sheet is Fairfield.

22 MR. LAWSON: Yes, sir. And the entire rap
23 sheet is nothing but drugs. There's nothing on here
24 but drugs.

25 THE COURT: Thank you.

1 MR. LAWSON: Yes, sir.

2 THE COURT: I find there's a substantial
3 factual basis for the guilty plea. The defendant's
4 decision to enter a plea of guilty was made freely
5 and voluntarily and knowingly and intelligently.
6 He's had the advice and counsel of a very competent
7 and experienced attorney with whom he tells me he is
8 satisfied. His plea is therefore accepted as to
9 both charges, trafficking in crack cocaine ten grams
10 or more but less than 28 grams second offense and
11 simple possession of marijuana.

12 Unless there's anything further, I intend to
13 follow the negotiated sentence.

14 MR. PERRY: There is nothing further, Your
15 Honor.

16 THE COURT: Mr. Moak?

17 MR. MOAK: Your Honor, I've had a lot of time
18 to talk with Mr. McCloud and actually walked him
19 through on how I imagine the trial in this case
20 would have went. And, ultimately, every time we
21 would walk him through it and we would talk about it
22 and discuss it, it all comes down to, at the end of
23 it, post-Miranda warning, was that he admitted
24 ownership of the drugs.

25 It basically goes -- he initially denied to me

1 that -- making that statement. But, like I told
2 him, if we had went to trial, that every criminal
3 trial would end up with, like, one thing that's at
4 issue, and that would be the issue of whether or not
5 they believed law enforcement or believed him, and,
6 ultimately, the answer to that question answers
7 whether or not you should plead guilty.

8 He's pleading guilty, he wants the 15-year
9 deal; he's not happy about it, but he knows it's
10 better than getting a mandatory 25-year sentence as
11 it's his third offense. Amongst things we discussed
12 was, you know, he's already at third offense, this
13 is a drug conviction, these enhance, so -- and when
14 he gets out, eventually, if he gets caught with
15 drugs again, it will be another one, and also the
16 fact that this is classified as a serious offense
17 which is a -- on the three strikes. He understands
18 that if he gets any more convictions under that
19 category, two more serious, that it's automatically
20 life. You know, he understands that as well.

21 I've talked, I've met with him. Usually when I
22 meet with him, one of his sons, I'm not sure if
23 that's the one who's usually hanging around, trying
24 to, like, eavesdrop -- you know, his kids kind of
25 know something bad's going on. They're kind of

1 looking at it -- they're trying to, like, be nosey.
2 It's kind of sad seeing him knowing that he's likely
3 to be sentenced to a lengthy sentence of
4 incarceration, but that's where we're headed.

5 He's got family support. You see that's his
6 family right there. He's got a lot of people; he's
7 got his grandmother and a bunch of other people that
8 live out there in Ridgeway on Bellfield Road. And
9 part of the thing is, you know, he actually came
10 over here because, you know, law enforcement was
11 hitting him pretty hard in Fairfield, so he was
12 trying to lay low and regroup and decide what he
13 wanted to do with his life.

14 And, you know, since he got out of jail this
15 time, as far as I know, he's actually been
16 legitimate, you know. He's actually been doing side
17 little jobs. And, you know, I don't know that he's
18 been accused of still selling or anything. From my
19 understanding, he's actually been doing the right
20 thing.

21 But we'd ask Your Honor to go along with the
22 plea negotiation. I'm not sure Mr. Lucruz wants to
23 say anything or not. I'm not sure if the family
24 wants to say anything.

25 THE COURT: Anything you'd like to say,

1 Mr. McCloud?

2 THE DEFENDANT: No. I ain't got nothing to
3 say.

4 THE COURT: Sir?

5 THE DEFENDANT: I ain't got nothing to say.

6 THE COURT: All right.

7 MR. MOAK: Your Honor, this lady is --

8 MS. TYKER: I'm his aunt.

9 THE COURT: Would you step over by the
10 microphone, please. Tell me your name, please.

11 MS. TYKER: My name is Barbara Tyker
12 [phonetic]. I'm his aunt. I know he's made some
13 wrong choices in his life, but recently I've seen a
14 change. He's been trying to work and trying to stay
15 on the straight-and-narrow, do things. And he's
16 been there for his kids, and I really love seeing
17 that. I love him.

18 And, of course, I know there's consequences
19 when we do things that are not right. I give all
20 honor to God. And I know he's first in my life, and
21 I'm praying very much that he will accept Christ and
22 he will do the right thing.

23 THE COURT: Thank you. Thank you very much.
24 Thank you for being here.

25 MS. TYKER: Yes. Thank you.

1 THE COURT: Anything further?

2 MR. MOAK: No, Your Honor.

3 MR. PERRY: Nothing from the State, Your Honor.

4 THE COURT: All right. As to 2017-GS-28-0355,
5 trafficking crack cocaine 10 grams or more but less
6 than 28 grams second offense, the defendant is
7 committed to the state department of corrections for
8 a determinate term of 15 years, credit for all time
9 served; 2017-GS-28-0356, possession of marijuana
10 first offense, the defendant is committed to the
11 county detention center for a determinate term of 30
12 days, provided upon time served, the balance is
13 suspended. Good luck to you, Mr. McCloud.

14 THE DEFENDANT: Thank you, sir.

15 MR. MOAK: Thank you, Your Honor.

16 MR. PERRY: Thank you, Your Honor.

17 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Kershaw County, South Carolina, on the 15th of May, 2017.

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

October 12, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

WITNESSES

(S) Brian Elliott
- Kershaw County Sheriff

ARREST WARRANT NUMBER

2016A2810100739

ACTION OF GRAND JURY

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS280355

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2017
K96

THE STATE
vs.

Lucruz Danielle Mccloud

Indictment for
DRUGS / TRAFFICKING IN METH OR
COCAINE BASE - 10 G OR MORE, BUT
LESS THAN 28 G - 3RD OR SUB. OFFENS

SC Code: **44-53-0375(C)(1)(c)**
CDR Code: **0452**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2017 FEB 23 AM 11:14
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
Janet C. Hasty
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on February 22, 2017,
the Grand Jurors of Kershaw County present upon their oath:

TRAFFICKING CRACK COCAINE MORE THAN 10 GRAMS, LESS THAN
28 GRAMS – 3rd & SUBSEQUENT OFFENSE

That Lucruz Danielle Mccloud did in Kershaw County on or about October 24, 2016, knowingly, sell, deliver, purchase, or bring into this state; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Crack Cocaine in an amount of more than ten grams but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-110, et.seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized [and such being the defendant's third or subsequent offense] and in violation of Section 44-53-375(C)(1), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Brian Elliott
– Kershaw County Sheriff

ARREST WARRANT NUMBER

81581GR

ACTION OF GRAND JURY

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS280356

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2017

K96

THE STATE
vs.

Lucruz Danielle Mccloud

Indictment for
DRUGS / POSS. OF 28G (1 OZ) OR LESS
OF MARIJUANA OR 10G OR LESS OF
HASH - 1ST OFFENSE

SC Code: **44-53-0370(d)(4)**
CDR Code: **0659**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2017 FEB 23 AM 11:14
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Janet C. Hasty
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on February 22, 2017,
the Grand Jurors of Kershaw County present upon their oath:

SIMPLE POSSESSION OF MARIJUANA (LESS THAN AN OUNCE) – 1ST OFFENSE

That Lucruz Danielle Mccloud did in Kershaw County, on or about October 24, 2016, knowingly and intentionally possess a quantity of Marijuana of less than one ounce, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(d)(4), S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

29

COUNTY OF Kershaw
 STATE VS.
Lucruz Danielle Mccloud
 AKA:
 Race: BLACK Sex: M Age: 30
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Ridgeway, SC 29130-8398
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2017GS280355
 A/W#: 2016A2810100739
 Date of Offense: 10/24/2016
 S.C. Code § : 44-53-0375(C)(1)(c)
 CDR Code #: 0452

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO: Drugs / Trafficking in meth. or cocaine base - 10 g or more, but less than 28 g - 2nd offense

in violation of § 44-53-0375(C)(1)(b) of the S.C. Code of Laws, bearing CDR Code # 0451
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 6991 [Signature] [Signature] 68461
Perry, Brett SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, [Signature] County Detention Center,
 for a determinate term of 15 months years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

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

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

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

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

3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (07/2016)

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court

[Signature]

☐ Appointed PD or appointed other counsel

Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]

Judge Code: 2145

Sentence Date: 5-15-2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Kershaw

VS.

Lucruz Danielle Mccloud

AKA:

Race: BLACK Sex: M Age: 30

DOB: SS#:

Address: Rd

City, State, Zip: Ridgeway, SC 29130

DL#: SID#:

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

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

☐ CONVICTED OF or ☒ PLEADS

TO: Drugs / Poss. of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense

in violation of § 44-53-0370(d)(4) of the S.C. Code of Laws, bearing CDR Code # 0659

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Perry, Brian SC Bar# 6891 Xiangmecloud Defendant Attorney for Defendant SC Bar# 6846

WHEREFORE, the Defendant is committed to the State Department of Corrections, ☒ County Detention Center,for a determinate term of 30 days/months/years ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ T/S days/months/years and/or payment

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

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

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

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

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

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

3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

INDICTMENT/CASE#: 2017GS280356

A/W#: 81581GR

Date of Offense: 10/26/2016

S.C. Code § : 44-53-0370(d)(4)

CDR Code #: 0659

SENTENCE SHEET

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

ATTEST True, Correct & Certified
Copy of Original on File in this
Court☐ Appointed PD or appointed other counsel
Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2145

Sentence Date: 5-15-2017

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Kershaw)Lucruz Danielle McCloud)2017-CP-28-745

Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

2017 AUG 18 PM 1:07

FILED FOR RECORD

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention 4344 BroadRiver Rd, Columbia, SC, 29210,
Kirkland R&E Center
2. Name and location of Court which imposed sentence Kershaw Court of
General Sessions
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-280355 and 2017-GS-280356
 - (b) _____

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
Janet C. Hasty
Clerk of Court Kershaw County

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 5-15-17 / 15 year sentence
- (b) 5-15-17 / 30 days
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel told me he would not file an appeal
- (b) _____

FILED FOR RECORD
2017 AUG 18 PM 1:07
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

FILED FOR RECORD

2017 AUG 18 PM 1:07

JANET C. HASTINGS
CLERK OF COURT
KERSHAW COUNTY, SC

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Involuntary plea
- (c) Illegal Sentence
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) conspired with solicitor and officer to coerce me to take plea
- (b) Misinforming me that the other suspect could not take the charge
- (c) sentence could not be enhanced to second without prior trafficking off
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

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2017 AUG 18 PM 1:07
JANET C. HASTY
CLERK OF COURT
Kershaw County, S.C.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) First opportunity to appeal

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? _____

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. x Ronald Moak

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Plea

ii. _____

iii. _____

FILED FOR RECORD
2017 AUG 18 PM 1:07
JANET C. HASTY
CLERK OF COURT
Kershaw County, S.C.

19. State clearly the relief you seek in filing this application:

Vacate conviction

20. Are you now under sentence from any other court that you have not challenged?

NO

FILED FOR RECORD
2017 AUG 18 PM 1:07
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)

County of Kershaw)

VERIFICATION

I, LUCRIZ MCCLOUD, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

LUCRIZ MCCLOUD

SWORN to and subscribed before me this 16
day of August, 2017.

Melissa Dpin (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2025

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2017 AUG 18 PM 1:05
 JANET C. HASTY
 CLERK OF COURT
 KERSHAW COUNTY, SC

I, LUCRIZ MCCLOUD, hereby apply to leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Lucriz McCloud
Applicant

SWORN or affirmed to and subscribed before me this

16 day of August, 2017.

Melissa Spigler
Notary Public

My Commission Expires: Dec. 1, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	
	)	2017-CP-28-745
LUCRUZ MCCLOUD,	)	
SCDC # 362427,	)	
Applicant,	)	
	)	AMENDED APPLICATION FOR
v.	)	POST-CONVICTION RELIEF
	)	
STATE OF SOUTH CAROLINA	)	
Respondent.	)	

FILED FOR RECORD
2019 MAY 21 PM 1:44
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

1. Place of Detention: Kirkland Correctional Institution.
2. Name and location of Court which imposed sentence: Kershaw County Court of General Sessions, Kershaw County Courthouse, Camden, South Carolina.
3. Name(s) of co-defendant(s): n/a.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
 - a. 2017-GS-28-0355 Trafficking Methamphetamine 10-28 grams 2nd offense;
 - b. 2017-GS-28-0356 Possession of Marijuana 1st offense.
5. The date upon which sentence was imposed and the terms of the sentence:
 - a. May 15, 2017 15 years on Trafficking Methamphetamine 10-28 grams 2nd offense;
 - b. May 15, 2017 30 days on Possession of Marijuana 1st offense.
6. A finding of guilty was made after a plea of guilty.
7. Did you appeal the judgment of conviction or the imposition of sentence? No.
8. If you answered "yes" to (6), list
 - a. The name of each Court to which you appealed:
 - i. n/a
 - b. The result in each such Court to which you appealed:
 - i. n/a
 - c. The date of each such result:
 - i. n/a
 - d. If known, the citations of any written opinion or orders entered pursuant to such results:

i. n/a

9. If you answered "no" to (7), state your reasons for not so appealing: Trial counsel informed the Applicant that he would not be filing notice of appeal.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- a. Trial counsel failed to review and discuss all discovery information and evidence with the Applicant;
- b. Trial counsel failed to identify, investigate, research, and make the Applicant aware of issues regarding the illegal search which could and should have been challenged during a jury trial or in pre-trial motions and failed to prepare for a jury trial and failed to advise the Applicant that he should proceed to jury trial;
- c. Trial counsel was ineffective in that he did unfairly and improperly pressure and coerce the Applicant into giving up his right to trial and accepting a plea offer;
- d. Trial counsel was ineffective in that he made promises regarding what the outcome of the case would be when he was hired and failed to uphold those promises;
- e. Trial counsel was ineffective in that he should have been able to negotiate a better plea deal on the Applicant's behalf;
- f. Trial counsel was ineffective for inaccurately explaining the plea negotiations to the Applicant prior to the plea being entered;
- g. Trial counsel failed to alert the Court regarding time the Applicant had served on this charge and time he had served on house arrest for a Fairfield County charge that could be credited to his sentence.

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

- a. As stated above;
- b. As stated above;
- c. As stated above; in addition trial counsel allowed the prosecutor to improperly pressure and coerce the Applicant into waiving his right to a jury trial;
- d. Trial counsel informed the Applicant that if he paid a down payment on a legal fee trial counsel could get the Applicant a three year sentence;
- e. As stated above;
- f. The Applicant asserts he was never informed of the Fairfield County portion of the plea deal, and he believed the Fairfield charges were being dismissed. Additionally trial counsel did not fully explain to the Applicant what a negotiated

plea involved, nor did he explain that the Applicant would be serving a "violent" sentence;

- g. As stated above.

12. Prior to this application have you filed with respect to this conviction:

- a. Any petition in a State Court under South Carolina Law? No.
- b. Any petitions in State or Federal Courts for habeas corpus or post-conviction relief? No.
- c. Any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in # 7? No.
- d. Any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- a. The specific nature thereof: n/a.
- b. The name and location of the Court in which each was filed: n/a.
- c. The disposition thereof: n/a.
- d. The date of each such disposition: n/a.
- e. If known, citations of any written opinions or orders entered pursuant to each such disposition: n/a.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Fairfield County PCR Application pending, 2018-CP-20-13.

15. If you answered "yes" to (14) identify:

- a. Which grounds have been presented: 10(a)(c)(d)(e)(f) and (g).
- b. The proceedings in which each ground was raised: Fairfield County PCR Application pending, 2018-CP-20-13

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- a. Issues were not properly preserved by trial counsel and are reflective of ineffective assistance of counsel;

17. Were you previously represented by an attorney at any time during the course of:

- a. Your arraignment and plea? Yes.

- b. Your trial, if any? n/a.
- c. Your sentencing? Yes.
- d. Your appeal, if any, from the judgment of conviction or imposition of sentence? no.
- e. Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? no.

18. If you answered "yes" to one or more parts of (17), list:

- a. The name and address of each attorney who represented you:
 - i. Ronald Wade Moak, Post Office Box 2544, Camden South Carolina 29020
- b. The proceedings at which each such attorney represented you:
 - i. Plea

19. State clearly the relief you seek in filing this application: Conviction reversed with remand for new trial. Further, Applicant would contend that if any issue justifies reversal of any Kershaw County or Fairfield County conviction, this would invalidate the entire plea negotiation encompassing all convictions in both counties.

20. Are you now under sentence from any other court that you have challenged? Yes. See Fairfield County PCR Application pending, 2018-CP-20-13

Respectfully submitted,


 Kristy Goldberg
 Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
 Phone (803) 667-6633
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 20 th day of May, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	
	)	2017-CP-28-745
LUCRUZ MCCLOUD,	)	
SCDC # 362427,	)	
Applicant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
STATE OF SOUTH CAROLINA	)	
Respondent.	)	

FILED FOR RECORD
2019 MAY 21 PM 1:45
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

I certify that on this date I served the Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this Notice to the State Attorney General's Office, by delivering a copy of this motion via U.S. Mail said copy to the Office of the Attorney General, Post Office Box 11549, Columbia South Carolina 29211.



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
Phone (803) 667-6633
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 20th day of May, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
Lucruz McCloud, 362427)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2017
2018-CP-28-0745

RETURN

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

FILED FOR RECORD
2019 JUN 19 AM 9:36

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on August 18, 2017, and amended on May 20, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. In February 2017, the Kershaw County Grand Jury indicted Applicant for trafficking cocaine base, 10 grams to 28 grams—third offense (2017-GS-28-0355); and simple possession of marijuana (2017-GS-28-0356). Ronald Moak, Esquire, represented Applicant. Brett A. Perry, Esquire, prosecuted the case. On May 15, 2017, Applicant pleaded guilty to the lesser-included offense of trafficking in cocaine base, 10 grams to 28 grams—second offense; and simple possession of marijuana before the Honorable R. Knox McMahon. Judge McMahon sentenced Applicant to a negotiated fifteen-years' imprisonment for trafficking in cocaine base, 10 grams to 28 grams—second offense, and thirty-days' imprisonment for simple possession of marijuana. Applicant did not appeal his sentence or conviction.

Applicant timely commenced this PCR action on August 18, 2017.

II. Allegations

In his amended PCR application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:

- a. Counsel failed to review and discuss all discovery information and evidence with the Applicant;
- b. Counsel failed to identify, investigate, research, and make Applicant aware of issues regarding the illegal search which could and should have been challenged during a jury trial or in pre-trial motions and failed to prepare for a jury trial and failed to advise Applicant that he should proceed to a jury trial;
- c. Counsel was ineffective in that he unfairly and improperly pressured and coerced Applicant into giving up his right to trial and accepting a plea offer;
- d. Counsel was ineffective in that he made promises regarding what the outcome of the case would be when he was hired and failed to uphold those promises;
- e. Counsel was ineffective in that he should have been able to negotiate a better plea deal on Applicant's behalf;
- f. Counsel was ineffective for inaccurately explaining the plea negotiations to Applicant prior to the plea being entered; and
- g. Counsel failed to alert the Court regarding time the Applicant had served on this charge and time he had served on house arrest for a Fairfield County charge that could be credited to his sentence.

Attached to this Return and incorporated by reference are the records of the Kershaw County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of this PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Ineffective Assistance of Counsel

Respondent submits Applicant allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so

undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

V. Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI. Request for Evidentiary Hearing

WHEREFORE, having made its Return, Respondent requests an evidentiary hearing be held on any claims so requiring one.

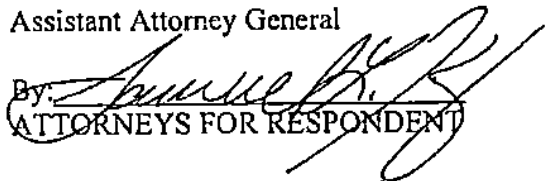
Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG
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Assistant Attorney General

By: 
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June 19, 2019

State of South Carolina)	In the Court of Common Pleas
County of Kershaw)	Fifth Judicial Circuit
	2017-CP-28-00745

LuCruz McCloud,	)
	)
Plaintiff,	)
	)
vs.	)
	)
State of South Carolina,	)
	)
Defendant.	)
	)
	)

June 19, 2019

Columbia, South Carolina

B e f o r e:

The Honorable Diane S. Goodstein, Judge

A p p e a r a n c e s:

Kristy Goldberg, Esquire
Attorney for the Plaintiff

Samuel Key, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/Mr. Key	4
DIRECT CROSS REDIRECT RE-CROSS	
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
P-1	Discovery Documents	4	16
P-2	Bond Document	4	15

1 (Pre-marked P-1, Discovery documents; P-2, Bond
2 document.)

3 THE COURT: Okay. Yes, sir.

4 MR. KEY: May it please the Court.

5 THE COURT: Yes, sir.

6 Mr. Key: This is *LaCruz McCloud vs. the State of*
7 *South Carolina*, 2017-CP-28-0745. Mr. McCloud is presently
8 confined in the Sumter -- South Carolina Department of
9 Corrections pursuant to order of commitment of the Kershaw
10 County Clerk of Court.

11 In February, 2017, the Kershaw County Grand Jury
12 indicted Mr. McCloud for trafficking cocaine base, 10
13 grams to 28 grams, third offense; and simple possession of
14 marijuana. He was represented by Ronald Moak. Brett
15 Perry prosecuted the case.

16 On May, 15, 2017, Applicant pleaded guilty to the
17 lesser included offense of trafficking cocaine base, 10 to
18 28 grams, second offense; and simple possession of
19 marijuana before the Honorable R. Knox McMann. Judge
20 McMann sentenced Applicant to a negotiated 15 years
21 imprisonment for trafficking cocaine base, 10 grams to 28
22 grams, second offense; and 30 days imprisonment for simple
23 possession of marijuana.

24 Mr. McCloud did not appeal his sentence or
25 conviction.

1 In his amended application for post-conviction
2 relief, which was filed by Mrs. Goldberg, he alleges
3 various allegations of ineffective assistance of counsel.
4 I would just ask if Ms. Goldberg is going to go forward on
5 any issues outside of the amended application as filed.

6 Ms. Goldberg: Thank you, Your Honor. At this point
7 in time, we are going forward on the amended as filed.
8 And I know that is in your packet, so without anything
9 further, I can introduce -- offer Mr. McCloud as my first
10 witness.

11 THE COURT: Thank you so much.

12 Yes, sir. Come -- come around, Mr. McCloud.

13 **LUCRUZ MCCLOUD**, having been first
14 duly sworn, testifies as follows:

15 THE COURT: All right. Mr. McCloud, I'm going to ask
16 you to state your name again. Let me tell you, it's a
17 little bit of a sound check because I want to be sure
18 everybody can hear you.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: So state your name.

21 THE WITNESS: LuCruz McCloud.

22 THE COURT: And you know you're going to get a
23 cricket in your neck. Move your chair a little bit
24 closer.

25 THE WITNESS: There you go.

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLOUD 6

1 THE COURT: Don't you think that's better? And
2 they're going help you with the microphone, okay?

3 All right. Try one more time.

4 THE WITNESS: LuCruz McCloud.

5 THE COURT: Thank you.

6 Your witness.

7 MS. GOLDBERG: All right. Thank you, Your Honor.

8 **DIRECT EXAMINATION**

9 **BY MS. GOLDBERG:**

10 Q Mr. McCloud, where are you currently housed?

11 A Kirkland Correctional Institution.

12 Q And what sentence are -- what sentence are you
13 serving?

14 A (No response.)

15 Q Let me ask it this way: You are serving multiple
16 sentences currently, correct?

17 A Yes, ma'am.

18 Q What counties do they originate from?

19 A Kershaw County, Fairfield County.

20 Q Are you currently serving any sentences out of any
21 other counties?

22 A No, ma'am.

23 Q All right. And you understand that this hearing
24 we're having today is going to be regarding those Kershaw
25 County convictions.

1 A Yes, ma'am.

2 Q Now, when were you arrested on your Kershaw County
3 charges?

4 A I think around October.

5 Q Of what year?

6 A 2016.

7 Q All right. And after you got arrested in October of
8 2016, were you able to bond out?

9 A Yes, ma'am.

10 Q When you bonded out from Kershaw, were you released
11 or did you go somewhere else?

12 A I was transported to Fairfield County.

13 Q Transported to Fairfield County for pending charges
14 there.

15 A Yes, ma'am.

16 Q And are those charges that were pending at the time
17 some of the charges that have resulted in the convictions
18 you have today?

19 A Yes, ma'am.

20 Q How long did you stay in jail in Fairfield County?

21 A Maybe like 20 days.

22 Q Ultimately, you had a bond hearing in Fairfield
23 County, correct?

24 A Yes, ma'am.

25 Q Were you given any conditions as part of that bond?

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLOUD 8

1 A Yes, ma'am.

2 Q What was that?

3 A I was on house arrest and monitoring device.

4 Q And you -- but you ultimately bonded out and were
5 able to wear the monitor and do house arrest.

6 A Yes, ma'am.

7 Q All right. And who was your attorney at that time?

8 A Ron Moak.

9 Q At the bond hearing, was it -- John Mobley was your
10 attorney?

11 A Oh, yes, ma'am.

12 Q Okay. Just at that time for the bond hearing.

13 A Yes, ma'am.

14 Q All right.

15 Ms. Goldberg: Your Honor, may I approach?

16 THE COURT: You may.

17 Ms. Goldberg: Thank you.

18 Q I'm gonna hand -- I'm just gonna hand you briefly
19 what's been marked as Petitioner's Exhibit No. 2. Do you
20 recognize that document?

21 A Yes, ma'am.

22 Q Okay. And what is it?

23 A If I'm not mistaken, it's the paper that they gave me
24 when I was -- during the bond.

25 Q It's your bond order for Fairfield, correct?

1 A Yes, ma'am.

2 Q And that would show the -- the conditions of your
3 bond; is that right?

4 A Yes, ma'am.

5 Q Okay. Now, at that time, John Mobley rep --
6 represented you on the Fairfield charges, did he represent
7 you on the Kershaw ones, too?

8 A No, ma'am.

9 Q When you got out on bond, with your monitor on house
10 arrest, did you end up having an attorney hired or
11 appointed for your Kershaw charges?

12 A I think they had appointed me one.

13 Q Who was that?

14 A Zackelbird [phonetic] -- I'm not sure his name.

15 Q Okay. Did you ever meet with that attorney?

16 A Yeah.

17 Q Did you end up hiring an attorney?

18 A Yeah.

19 Q When did you end up hiring an attorney?

20 A I think maybe a couple of days after I met with him.

21 Q Okay. Do you know what month, what year, anything
22 like that?

23 A January.

24 Q 2017?

25 A Yeah. January, 2017/.

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLOUD 10

1 Q All right. How did you end up coming in contact with
2 Ron Moak and hiring him?

3 A When I was in the county jail, I heard a couple of --
4 you know, a couple of names. They was [sic] telling me a
5 couple of people that was -- should have been pretty good,
6 and I had a couple other friends that I knew from the
7 street that told me about him and gave me his phone
8 number. So I called him.

9 Q Okay. And then what happened?

10 A He came to my apartment and he met with me.

11 Q Is that the time that you actually retained him?

12 A Yeah.

13 Q Why did you hire him?

14 A Because when I -- I talked with him and then he told
15 me the charges -- when I told him the charges and then he
16 was, like -- he asked me was I -- was I okay. Can I -- I
17 was like, "What -- can you handle these charges?" He was
18 like, "Yeah."

19 So after I told him -- when he told me yeah, I was
20 like, "Well, how -- how much it gonna cost?" And he told
21 me how much it was gonna cost. And he -- then he told me
22 it was gonna be like 500 down to retain him at that --
23 that -- the same day.

24 So he was like, I can -- "Is you okay with doing,
25 like, three years? Can you do three years?" And I was

1 like, "Yeah, I can do three years."

2 But also then I told him I had more charges after
3 that.

4 Q The Fairfield charges.

5 A Yeah. I told him I had Fairfield charges also; so
6 therefore, he was like, "Well, I gotta be retained first
7 before I can become your lawyer."

8 So I gave him some money and I signed some paperwork
9 in my kitchen. And then he just left.

10 Q He mentioned -- he -- you said that he asked you if
11 you could do three years. Did he say anything more
12 specific than that regarding outcome on that first
13 meeting?

14 A Not too much.

15 Q Did he make you any of any kind?

16 A Not really.

17 Q Did you later retain him on the Fairfield charges,
18 too, or did you retain him that day on both counties?

19 A I guess all of it was one deal because he took my
20 Fairfield County charges also.

21 Q Now, your plea ultimately was in May of that same
22 year, correct?

23 A Yes, ma'am.

24 Q Between January and May of 2017, how often did you
25 meet with Mr. Moak?

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLOUD 12

1 A I only met with Moak just to pay him money.

2 Q Just to pay money?

3 A Yeah. Maybe ...

4 Q Did you talk about the case, the plan, or the merit
5 of the case or anything?

6 A No, not really 'cause every time I meet him, he would
7 be like -- he usually was telling us, you know, that they
8 haven't -- they ain't had no evidence.

9 Q He told you they didn't have evidence?

10 A Yeah. He was like, "The evidence they got is no
11 good." So you know, we was gonna go to trial. So I'm
12 like, "Okay."

13 Q His advice was to go to trial.

14 A Yeah. But I kept asking him, "Let me see the
15 evidence."

16 Q Uh-huh.

17 A But he never showed me no evidence.

18 Q What was his response when you would ask to see it?

19 A Really he wasn't giving me a response. The only
20 thing he was worrying about was his money.

21 Q Did he ever give you a copy of the discovery or read
22 it to you or share it with you in any way?

23 A No. I never seen nothing.

24 Q In May, when you ended up pleading guilty, you were
25 actually noticed for trial; is that right, or do you know?

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLLOUD 13

1 A No. He just called me and told me that -- well, I
2 had seen him maybe a few times in between that, and he
3 told me that he was -- while he came to my house one day
4 and to pick up some money, he told me he was going back to
5 meet with, I guess, Mr. Brett Perry or somebody. And he
6 had told me that they had offered me 16 years.

7 And so he was like, "Well, I'm gonna try and go right
8 now for me to go meet with them. Imma try to get you five
9 or six years."

10 So I was like, "Well, if they offer you five or six
11 years, then just tell them I'll take the deal right now,
12 and we ain't got to go through -- you know, go through no
13 more."

14 But he never called me back with no deal or nothing
15 saying nothing happened. So I guess I waited maybe a week
16 and I called him again and asked him what happened. He
17 was like, "He not going down on a number."

18 So whenever he told me that, maybe like -- I think
19 that might have been like a Monday, and then that Friday,
20 he was calling me and telling me that we gotta be in court
21 Monday morning.

22 Q Did he tell you what for?

23 A Yeah, to go to trial.

24 Q What did you say to that?

25 A I was telling him like, "Man" -- I was asking him can

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLOUD 14

1 he get a better deal than that. And he was like, "No.
2 This is the best deal that they got." And only thing he
3 kept telling me was that -- that the people kept telling
4 him that I was bringing all the drugs in their county, and
5 I'm asking him like, "You supposed to be my attorney. How
6 is you letting these people tell you that I'm bringing
7 drugs in their town if they never seen me with no drugs on
8 me?"

9 And so he was like, "We just -- just" -- he like, "We
10 gonna go to trial or take this deal. If I was you, I
11 would rather do 15 years than 25 years."

12 Q The -- the original charges are trafficking third
13 offense, correct?

14 A Yes, ma'am.

15 Q At trial, you were facing a mandatory minimum of 25
16 years?

17 A Yes, ma'am.

18 Q All right. So that's why he said he'd rather do 15
19 than 25?

20 A Yeah.

21 Q And then as of that day, when you were talking about
22 how trial was Monday, had you seen the discovery in this
23 case yet?

24 A No. I haven't seen nothing.

25 Q Did you ever end up seeing the discovery in this

1 case?

2 A No.

3 Q Ever as of today's date, have you ever seen
4 discovery?

5 A Yes.

6 Q When did you end up being able to review the
7 discovery?

8 A Whenever you brought it to me.

9 Q After your PCR was filed?

10 A Yes, ma'am.

11 Q All right. I'm going to hand you --

12 MS. GOLDBERG: I don't remember if I admitted that
13 other exhibit into evidence. I may not have. You didn't
14 have any objection ---

15 MR. KEY: No objection.

16 THE COURT: Very well.

17 (Petitioner's Exhibit No. 2, bond document, in
18 evidence.)

19 Q I'm going to hand you actually what's been pre-marked
20 as Petitioner's Exhibit No. 1, and if you'll just take a
21 minute to look over these documents and then tell me what
22 it is.

23 A These are papers that you gave me.

24 Q Does that appear to be your discovery documents?

25 A Yes, ma'am.

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLLOUD 16

1 Q All right. That -- those are the reports regarding
2 your pending -- the charges that you had?

3 A Yes, ma'am.

4 Q All right.

5 MS. GOLDBERG: At this time I would offer this
6 Exhibit, it's Petitioner's Exhibit 1, into evidence.

7 MR. KEY: No objection.

8 THE COURT: Very well.

9 (Petitioner's Exhibit No. 1, discovery documents, in
10 evidence.)

11 MS. GOLDBERG: And Your Honor, just because we may
12 refer to it a lot, I'm gonna hand up a courtesy copy of
13 the exact same thing.

14 THE COURT: Okay.

15 MS. GOLDBERG: Just in case it helps you.

16 THE COURT: And there's several pages.

17 MS. GOLDBERG: Yes, ma'am.

18 THE COURT: So let's -- let's just count the pages in
19 case something gets separated.

20 (Brief pause.)

21 THE COURT: I think there are 24 pages.

22 MS. GOLDBERG: Thank you.

23 THE COURT: And if you refer to a page, I think maybe
24 for -- just for the record, we'll mark those pages as "A,
25 B, C."

1 MS. GOLDBERG: Okay.

2 THE COURT: Okay.

3 Q All right. And Mr. McCloud, since you've reviewed
4 that information -- your discovery information in this
5 case, was there information -- oh -- in that -- within
6 that discovery, that you were not aware of prior to your
7 guilty plea?

8 A Yes, ma'am.

9 Q Is there information in that, that makes you believe
10 that you should have proceeded to trial in this case?

11 A Yes, ma'am.

12 Q All right. Go ahead and tell the Court your concerns
13 and issues with the discovery in this case.

14 A Well, first, I was thinking that he never even looked
15 at it to any -- investigate it. He never investigated
16 nothing because if he would have seen, he would have seen
17 that it was a problem with the search.

18 Q And what do you believe the problem with the search
19 is?

20 A It's illegal.

21 Q Why was it illegal?

22 A Because -- let me go back to the page -- because when
23 he -- when he would've looked at it, he would've seen that
24 the police officers went inside of a hotel room that's not
25 registered to me, I got nothing to do with it, and they

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLLOUD 18

1 went inside of the hotel room illegally with no search
2 warrant.

3 Q And there's a copy of the hotel receipt within that
4 discovery document, correct?

5 A Yes, ma'am.

6 Q And that shows that the hotel room was not in your
7 name.

8 A Yes, ma'am.

9 Q At the time the police were on the scene, did they
10 first encounter you in that hotel room or somewhere else?

11 A Somewhere else.

12 Q Where?

13 A Outside.

14 Q Were you ---

15 A Beside a -- I was outside beside a vending machine.

16 Q By the vending machine.

17 A Yes, ma'am.

18 Q Was in like a breeze way area or a hallway?

19 A Yes, ma'am.

20 Q Was anybody in the hotel room at all?

21 A No, ma'am.

22 Q And the law enforcement -- did they ultimately find
23 drugs in the hotel room?

24 A Yes, ma'am.

25 Q Is that what you were charged with?

1 A Yes, ma'am.

2 Q All right. And I think you've explained why you
3 think the search was improper. What other issues are --
4 do you have with the discovery?

5 A Well, basically that's my biggest issue, that is --
6 you know, he never investigated -- did no investigation
7 about no parts of the case.

8 Q And you're aware that there was, in fact, a search
9 warrant of the room in this case, right, ultimately?

10 A Yeah, I seen it now.

11 Q But the law enforce -- your complaint is that law
12 enforcement went into the room prior to receiving the
13 search warrant?

14 A Yeah. Which it -- it states it.

15 Q What states it?

16 A The law enforcement states it in the paper right
17 here, that they went in before getting a search warrant.

18 Q The -- the police reports say that they went in and
19 looked in the room before they got the search warrant.

20 A Yes, ma'am.

21 Q All right. Is this the reason that you think you
22 should've gone to trial?

23 A Yeah.

24 Q Are there other reasons you think you should've gone
25 to trial or is that the main one?

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLLOUD 20

1 A Well, that's my main -- that's one of my main reasons
2 that I should've went to trial.

3 Q Okay.

4 A And like -- I was thinking, like, it shouldn't never
5 went past preliminary hearing.

6 Q Did you have a preliminary hearing?

7 A Yes, ma'am.

8 Q Did Mr. Moak represent you at it?

9 A Yes, ma'am.

10 Q All right. But the case was bound over to general
11 sessions?

12 A Yes, ma'am.

13 Q All right. Did you and Moak discuss this search
14 issue at any time leading up to your trial?

15 A No, ma'am.

16 Q Any other issues that make you believe you should've
17 gone to trial that you didn't know previously?

18 A No, ma'am.

19 Q Why didn't you go to trial?

20 A Because actually I -- because basically I was forced
21 to take a plea.

22 Q Okay. Explain that.

23 A All right. When I got to court, I -- told you I seen
24 Mr. Moak. He came in and I told him -- whenever he was
25 telling me about the 15 years, I told Mr. Moak that I

1 didn't think he was representing like I needed to be
2 represented. So I told him I had, you know, called
3 another attorney and they was gonna represent me.

4 So I just had - so the -- the other attorney had told
5 me to just go in there and let them know that I was fixing
6 to retain him. And I told Mr. Moak that I was fixing to
7 relieve him from my attorney.

8 He went back in the courtroom and he went and got the
9 police who arrested me and Mr. Brett Perry, and they took
10 me into a little small -- little room and basically they
11 was telling me that it didn't matter whether I hired
12 another attorney or not. That's what Mr. Brett Perry told
13 me. They didn't hire -- it didn't -- it -- it didn't
14 matter if I hired another attorney or not, I still was
15 gonna get the same sentence. It wasn't gonna change
16 nothing. This ---

17 Q It wasn't ---

18 A He ---

19 Q It wasn't gonna change his plea offer?

20 A Yeah.

21 Q Is that ---

22 A It wasn't gonna change nothing, no situation. And if
23 I proceeded to trial, he was gonna make sure that I
24 guarantee get 30 years.

25 Q When they took you into that little room, did -- was

DIRECT EXAMINATION BY MS. GOLDBERG - LUCRUZ MCCLOUD 22

1 Moak there also?

2 A Yes, ma'am.

3 Q All right. So the Solicitor and law enforcement
4 didn't talk to you outside of his presence, they were all
5 in there together.

6 A Yeah. We all was standing there, and I was asking
7 Mr. Moak why he ain't speaking up for me. But he -- he --
8 he ain't saying nothing. And I'm telling him, "You
9 supposed to be my attorney. You supposed to be sticking
10 up for me, but you not saying nothing."

11 So you know, Mr. Brett Perry told me, "Well, this is
12 my friend, so this is what it is."

13 Q Moak is his friend?

14 A Yeah. "You either gonna take this deal or ..."

15 Then the officer said, "Well, I got four more
16 officers out front. We're going out here. If you don't
17 wanna take this deal now, we're fixing to go out here and
18 pick your jury and we gonna make sure you get 30 years."

19 So I was telling Mr. Moak like, "I really don't wanna
20 do this," but I really felt that I didn't have a choice.

21 Q Do you believe if you had had the discovery and read
22 it prior to that day, you would have made a different
23 choice?

24 A Yeah, I wouldn't never took the deal.

25 Q You would've gone to trial.

1 A Yeah.

2 Q Even though you understand if you had a trial, you
3 would've been facing that mandatory minimum 25 years.

4 A Yeah.

5 Q Now, what affect did this plea have on your Fairfield
6 County charges?

7 A Well ...

8 Q Let me -- let me -- let me re -- change that
9 sentence. Prior to entering this guilty plea, were you
10 told that Fairfield County charges were related to this
11 agreement in any way?

12 A No. Because I had told Mr. Moak that I wanted to
13 take those charges to trial anyway. But once I had signed
14 the plea deal and got in front of the judge, they told me
15 that, "Well, you know you gotta go to Fairfield County and
16 resolve the other half of this -- this deal."

17 So I was like -- I'm thinking in my head like, "What
18 kind of deal is going on?" But when I got there, Moak had
19 made a deal already of 15 years that those -- with the
20 Fairfield County and Kershaw County.

21 Q So did what happened in Kershaw affect your decision
22 to plead guilty in Fairfield?

23 A Well ...

24 Q Did it -- did it -- did it have an affect on what you
25 ended up doing?

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1 A Yeah. Because when I got there -- when I got in
2 Fairfield, Moak was like, "It really don't even matter
3 what you gonna do over here because they already gave you
4 15 in Kershaw."

5 So I was like, "Well, since that I got 15 in Kershaw,
6 even if they give me one year in Fairfield County ...", he
7 was like, "Well, you still gonna do a 15, so it really
8 ain't gonna matter."

9 So that's -- and he told me that was the part of the
10 deal, so I guess I had to sign for that, too.

11 Q But that wasn't the deal you made.

12 A No. I would've never made no deal like that.

13 MS. GOLDBERG: Beg the Court's indulgence.

14 THE COURT: All right.

15 (Brief pause.)

16 Q Did you want Ron Moak to ask the Kershaw County judge
17 to give you credit for the time you had spent on house
18 arrest for your Fairfield County -- County charges?

19 A No, I didn't get to ask him nothing. I thought --

20 Q You didn't get to ask him?

21 A Yeah. I thought that he, you know, would've did that
22 on his own since he was representing me.

23 Q So you wanted him to do that?

24 A Yeah.

25 Q You just thought he would've known to do that without

1 your asking.

2 A Yeah. That's what I was thinking since he was
3 representing me, he would've known to, you know, get me
4 all of the time served that I been serving.

5 Q All right.

6 MS. GOLDBERG: Beg the Court's indulgence.

7 THE COURT: All right.

8 (Brief pause.)

9 MS. GOLDBERG: Nothing further.

10 THE COURT: All right. Yes, sir. Cross-examination.

11 MR. KEY: May it please the Court?

12 THE COURT: Yes.

13 **CROSS-EXAMINATION**

14 **BY MR. KEY:**

15 Q Good afternoon, Mr. McCloud.

16 A How you doing?

17 Q I believe you testified earlier you only met with Mr.
18 Moak one time to discuss your case.

19 A No, we ain't even discuss my case.

20 Q Okay.

21 A I only met with him a few times to pay him.

22 Q Okay. But did you testify a minute ago that he did
23 convey to you the State's plea offers?

24 A Say that again.

25 Q You testified a minute ago that Mr. Moak told you the

1 State offered a 16-year plea deal for the Kershaw charges.

2 A Yeah.

3 Q Okay. So how did you know about that without him
4 discussing your case with you?

5 A Because we did not discuss the case. He only just
6 told me what they was offering.

7 Q Okay. And what was your response to the State's
8 offer?

9 A I was like, "Sixteen years?"

10 Q Yes.

11 A I -- I ain't want that deal.

12 Q Okay. And what did you tell Mr. Moak you would like
13 for him to go negotiate for?

14 A I didn't tell him to negotiate for nothing. He told
15 me that he was going to negotiate for five or six years.

16 Q Okay.

17 A And I told ---

18 Q And ---

19 A --- and I told him if he was gonna get five or six
20 years, then I will take the deal.

21 Q Okay. Now, you said you did not hear back about
22 that.

23 A No.

24 Q Okay. So you did not hear back about that, but you
25 knew the State was not going to go down on the number of

1 the plea offer -- the number of years?

2 A Yeah.

3 Q Okay. Now, you testified that Mr. Moak said -- said
4 you should take the plea offer, correct?

5 A Yeah.

6 Q Because 15 is better than 25.

7 A Yeah.

8 Q Okay. And you pled to trafficking 10 to 28 grams,
9 second offense.

10 A Yeah.

11 Q And that was a lesser included offense that what you
12 were indicted for.

13 A Yes.

14 Q And you were also indicted in Fairfield trafficking,
15 third offense.

16 A No.

17 Q No? Okay. But you were -- you were indicted in
18 Kershaw for third offense?

19 A Yeah.

20 Q And you plead to second offense?

21 A Yeah.

22 Q Okay. Did you ever give a statement to the police
23 after you were arrested?

24 A No, sir.

25 Q You did not.

1 A No.

2 Q Okay. Do you recall -- do you -- do you recall being
3 sworn at your plea hearing?

4 A No, I don't recall.

5 Q Okay.

6 MR. KEY: May I approach, Your Honor?

7 THE COURT: You may.

8 (Counsel approaches the witness.)

9 Q All right. Mr. McCloud, if you could turn to page 10
10 of that transcript. Oh, I'm sorry.

11 A (The witness complies.)

12 Q Okay. On pages 10 through 11, do you call -- do you
13 recall Mr. Perry conveying to the Court during your plea
14 hearing that he had been in contact with the Fairfield
15 County Solicitor's Office?

16 A I don't remember, but I guess ---

17 Q Okay. But if it's in the transcript, it happened.

18 A Yeah.

19 Q Okay. And after Mr. Perry and then Mr. Moak put on
20 the record what the Fairfield plea offer was, did the
21 Court ask you if you understood the negotiations?

22 A I really didn't understand.

23 Q You didn't understand them?

24 A No.

25 Q But you said, "Yes, sir."

1 A Well, see I only said yes to all the questions
2 because I just was agreeing to the -- the deal. And I
3 thought that, you know, in order for the deal to go
4 through, that I gotta, you know, say "yes" to all the
5 questions they asked or "no" to the ones that didn't sound
6 right.

7 Q So you did want the deal to go through?

8 A Yeah, at the time.

9 Q At the time. Okay. All right.

10 On pages 11 through 12, did the judge ask you if
11 anybody promised you anything or co -- coerced you to
12 plead guilty?

13 A Did he ask me that?

14 Q Yes.

15 A Yeah.

16 Q And you answered, "No, sir," correct?

17 A Yeah.

18 Q Okay. Why didn't you bring to the judge's attention
19 this meeting in the small room where you wanted a
20 different -- wanted to retain a new counsel at that point?

21 A Because I -- they had scared me up, and I really
22 didn't know what to do.

23 Q But you did want to take the deal.

24 A I didn't really want to take the deal. I felt that I
25 had no choice but to take the deal.

1 Q Okay. Did you tell the judge you were satisfied with
2 Mr. Moak's representation?

3 A Yeah.

4 Q Okay. Now, when you first met with Mr. Moak and he
5 said, "Could you do three years," did he promise you three
6 years?

7 A I guess it wasn't a promise.

8 Q He just said, "I think I can get you three years."

9 A Well, he told me that, you know, he -- this was
10 basically his -- he good at this county. He can get me
11 three years. And I guess that's not ---

12 Q But he did not promise you ---

13 A That ain't a promise.

14 Q Okay. Did you -- did you serve any time before your
15 guilty plea in jail on the Kershaw County charges?

16 A No.

17 Q No. You -- okay. But you did for the Fairfield
18 County charges?

19 A Well, yeah, I did serve some time in jail, just a --
20 like a week or so.

21 Q For Kershaw or Fairfield?

22 A Yeah. For Kershaw.

23 Q Okay. Were you ever on house arrest for your Kershaw
24 County charges?

25 A No.

1 Q Just your Fairfield ---

2 A Yeah.

3 Q --- charges? Okay.

4 MR. KEY: Beg the Court's indulgence.

5 THE COURT: All right.

6 (Brief pause.)

7 MR. KEY: No further questions.

8 THE COURT: All right. Re-direct?

9 MS. GOLDBERG: No -- no re-direct, Your Honor.

10 THE COURT: All right. All right. Sir, Mr. McCloud,
11 you can come on back down.

12 (The witness complies.)

13 THE COURT: All right. On behalf of the State, call
14 your first witness, please. Unless -- I -- you're done;
15 is that correct?

16 MS. GOLDBERG: Yes, Your Honor.

17 THE COURT: All right.

18 MR. KEY: The State would call Ron Moak.

19 (Brief pause.)

20 COURT CLERK: State your full name, please.

21 THE WITNESS: Ron Moak.

22 COURT CLERK: Spell your last name, please.

23 THE WITNESS: M-o-a-k.

24 **RON MOAK**, after having first been duly
25 sworn, testifies as follows:

1 THE COURT: Your witness.

2 **DIRECT EXAMINATION**

3 **BY MR. KEY:**

4 Q Thank you for being here, Mr. Moak.

5 When Mr. McCloud first hired you, did you promise him
6 you would get him a three-year deal?

7 A No. How that came out is at that time, I'm not sure
8 what a -- Solicitor Gibson's policy is, but at that time
9 if you had a trafficking charge, especially in Kershaw
10 County, all of his -- the best plea offer you could get is
11 first offense trafficking. They were -- were -- by -- by
12 office policy, refused to reduce it beyond that, and a
13 minimum for first offense trafficking is three years.

14 Q Uh-huh.

15 A So I -- so I asked him, like, if I can get it down to
16 first offense, would you -- are you okay with that? I was
17 trying to figure out what his goals were for the
18 representation.

19 Q But you did not promise him that?

20 A No. I mean ...

21 Q Okay. Did -- did you receive the State's file of the
22 discovery in this case?

23 A Yes.

24 Q Did you review that with Mr. McCloud?

25 A Yes Actually, he might remember me at the location

1 on Bellfield, I think it's his -- his grandma's house. I
2 actually had my pit bull -- my -- my Rottweiler puppy with
3 me and I had two copies, a copy for him and my copy. And
4 we went through my copy and you know, he -- he didn't take
5 his copy.

6 Q Okay. Do you recall discussing any trial defenses
7 strategy with him?

8 A Okay. Probably for -- for his benefit, I -- I'm
9 gonna say this incase she has to leave, the genesis of
10 this case is Mr. McCloud had an original trafficking
11 charge in Fairfield. That was in -- and we'll probably go
12 into that in the depth tomorrow. That was a fairly weak,
13 in my opinion, case.

14 The Fairfield County narcotics officers apparently
15 didn't think he would bond out and he bonded out. And
16 they had an even weaker case for a distribution, and they
17 did the -- a warrant for that after he bonded out.

18 And there was - basically put a BOLO out for him and
19 got with the Kershaw County narcotics officers looking for
20 him. And they went to a hotel, and said, "Hey, have you
21 seen this guy?" Like, "Yeah, there he is right over
22 there."

23 So the -- Fairfield is actually what got him arrested
24 in Kershaw. Okay

25 At that point, the time frame I think we all agreed

1 on. And -- and this is what goes into the trial strategy
2 had we went to trial because at the preliminary hearing,
3 they testified they searched the room because they took a
4 dog, and the dog alerted to that room, and they did enter
5 the room prior to search warrant to make sure nothing got
6 messed with while they got the search warrant.

7 And I asked on the -- the preliminary hearing, like,
8 "Did you search every room or whatever," 'cause it sounded
9 -- the way they worded it sounded to me like they went
10 straight to that room. And -- and that -- that's what the
11 -- how the preliminary hearing was presented.

12 So the -- with the other evidence they had tying him
13 to that room, it was almost like they found the room, him
14 in the parking lot. Then they found a room that -- that
15 positive -- tested positive -- or the dog alerted to, and
16 then they tried to tie him to the room.

17 Well, it turns out how they identify to the room is,
18 yes, the room was registered under somebody else's name,
19 and I believe he had a room at another hotel, like, across
20 the road or something, but the clerk, when they asked him
21 like, "Have you seen this guy?" "There he is," they went
22 to the camera footage.

23 I'm not sure if the camera footage would've been on -
24 - or the release -- a still of him paying for the room
25 under that name. He was the one that paid for it, okay?

1 So when the dog altered -- I'm still not sure if they
2 searched the -- took the dog to all the rooms or they took
3 the dog to that room and he was already in custody at that
4 point, and then they -- they waited for the search warrant
5 and searched the room.

6 In the room, in addition to drugs, they found -- and
7 I forget whether the color was green or blue, there was a
8 bunch -- I think it was, like, Airhead candy and it was
9 like the -- the wrappers were empty where somebody ate
10 them. There was also a picture they took of him with his
11 tonge sticking out with whatever the color was of the
12 candy.

13 There was also, like, a pizza box with a little
14 receipt where -- where they had the -- the call-in pizza
15 order was the same name that was on the room which they
16 confirmed was his.

17 Now, there were two other -- at least two other
18 occupants in the room I think they identified, that -- I
19 don't think they were there during the search. One was
20 his girlfriend who I think he's got a child with and the
21 child.

22 When you asked him about, "Did you give any statement
23 to law enforcement," that was actually a bone of
24 contention because, you know, we took the position that
25 this didn't happen, but Ryan Elliott, who is one of the

1 narcotics investigators, basically said that -- I
2 threatened to take the X-Box out of the room as -- as
3 evidence, and he claims that Mr. -- Mr. Lucruz was like,
4 "Man, why you taking my boy's stuff?"

5 And -- and they -- they were -- they were gonna
6 present that as evidence tying him -- tying him to the
7 room, okay?

8 And so that was how they tied him to the room, and
9 the room was where the drugs were. Did they have a -- did
10 they have any evidence of the drugs in his hand? No. Do
11 -- do we have some -- some -- some wiggle room to argue
12 about the pre-lim. So like, "Hey. You -- you said you
13 searched all the rooms, but -- but the dog just went to
14 that room, and you left out all this other stuff that you
15 didn't even talk about at the preliminary hearing."

16 Yeah. We had an argument about whether they were
17 telling the truth about how they got -- got to point B,
18 but the problem was whether or not the -- the jury
19 believed that they were lying on how they got there, if
20 the jury believed all that stuff.

21 He kept asking me, "What -- what do you think's gonna
22 happen?" And I -- I -- I honestly told him, "I think we
23 gonna have a problem because I think the jury is gonna --
24 if they hear all the stuff, they gonna tie you to that
25 room. And at that point, are the -- the stuff yours? Is

1 the stuff your kids?" And I -- and -- and the son was
2 roughly like, eight or nine, I mean, he's -- he's not that
3 old -- or your girlfriend -- your girlfriend. And
4 pointing the finger at the girlfriend was not discussed as
5 a viable option for a trial strategy. So at that point,
6 you know, like, what -- if they tie you to that room where
7 the drugs are at, even if the jury's not gonna hear about
8 Fairfield, not gonna hear about any priors because of the
9 rules, you know, I mean, what do you think's gonna happen?

10 Q And you discussed all of this ---

11 A Yeah.

12 Q --- with him?

13 A Uh-huh.

14 Q Okay.

15 A And -- and the thing about him saying, you know,
16 there was a trial, I remember him -- I remember him saying
17 that. Originally, after he got out of jail, he was
18 staying -- I think it was Friendwood Apartments off of
19 Highway 5 in Lugoff. And I think that might be the
20 address that they were using to send notices. But at some
21 point he ended up back over at Bellfield -- which is over
22 -- Bellfield Road is over in Fairfield County, which is
23 where his family and his grandmother live. So it might
24 have been -- that might have been what the issue was.

25 But you know, I'd met with him at the apartment two

1 or three times, and I'd met with him at Bellfield three or
2 four times. And then the weekend before trial, I think
3 that Saturday or Sunday, I met him both -- met with him
4 both days. That's when he mentioned going back to -- to
5 John Mobley and trying to get him to pick up the case.

6 And so, like -- like, you know -- and I told him,
7 like, "You know, if -- if -- if you're gonna -- if you're
8 gonna get him, you need to have him here Monday morning
9 because the judge is gonna have a problem if you wanna
10 switch attorneys and he -- who's not there; and the judge
11 isn't gonna believe you that you hired somebody if he
12 doesn't show up."

13 So that got us to Monday when the case was being
14 called, and at one -- at one point -- and I wanted to talk
15 to him and not have Perry and them listen in on it. So it
16 was my idea to go back in the jury room to meet with him.

17 And yeah, he's right. Perry did, like, burst in
18 there, like, and -- and he pretty much threatened him, and
19 you know, I didn't really see the need to, like, escalate
20 the situation. So yeah, I didn't say anything during
21 that. I waited for Perry to leave, and I said, like,
22 "This is what I'm dealing with, okay?" You know, that --
23 that -- that actually did happen, okay?

24 Other things he's talking about is the negotiation
25 because, again, the Fairfield cases, I didn't think much

1 of, okay? Perry kept wanting to tie the Fairfield into
2 our -- to the Kershaw, and I kept telling him, "No. We --
3 we want a plea offer for Kershaw. I think we can handle
4 Fairfield."

5 And at this point, he -- he kept talking about hiring
6 me on Fairfield, but I think he had a -- was it Frick,
7 William Frick, I think, was appointed to him over there.
8 I never actually got hired on Fairfield. Perry was
9 wanting, like, 15 years for Kershaw only and it was
10 negotiated and then let us deal with Fairfield.

11 You know, that -- that's -- that's what he -- what
12 Perry wanted. He wanted, you know, 5 to 10 years and you
13 know, which, I mean, he's a young guy, he -- he's got a
14 record. If I remember his rap sheet correctly, and I
15 don't know what the lay of the land is -- of Fairfield
16 County is, he had a lot more arrests than he had
17 convictions. I mean, his -- his actual criminal record is
18 not as bad as what it looked. So I mean, I -- I actually
19 thought the 5 to 10 might be -- 5 to 10 might be
20 reasonable, but you know, Perry would not move.

21 So at that point, we're looking at it, okay, if we go
22 to trial and the jury hears -- sees -- hears from the
23 Court, like, "Yeah. This is the guy in that video, that's
24 who paid for that room," they got the receipt with that --
25 that name, that receipt matched up with a pizza box with

1 the same name, they got the -- the candy wrapper, they got
2 a picture with his tounge, they got the dog alerting to
3 it, you know, if the jury agreed that that was his room
4 and he would -- you know, even though he had another room,
5 and like, he's bouncing back and forth and there's no
6 other -- other -- other -- other person to point a finger
7 at, we got a problem, and you're looking at mandatory 25
8 years.

9 So he had a 15 -- it was better than 25, like I said
10 because, I mean, it is. So you know, I was fully prepared
11 to go to trial that week, and -- and our basic argument
12 was, like -- like, all you got is a -- I mean, the clerk's
13 white, he's black. Was the clerk really -- you know, I
14 mean, he -- he might've been over there for something else
15 and the clerk might have mistaken that type thing. What
16 were the -- why is the deputy saying in the pre-lim that
17 they didn't do all that stuff, all we did is the dog, you
18 know. I mean, stuff that got left out and
19 inconsistencies.

20 But at the end of the day, you -- you know, he -- he
21 -- he kept wanting to ask me and his -- his actual kid
22 kept -- he kept telling the kid to move. The kid was
23 trying to listen to what was going on and this was at
24 Bellfield on the side of the road. You know, he -- he
25 wouldn't let me go in. So we were actually, like, I

1 staring at the truck, literally going -- like, laid out,
2 and he wouldn't let -- let me go inside -- inside the
3 house.

4 And -- and he kept asking me, like, "Can you tell me
5 for sure what's gonna happen?" And I was like, "If -- if
6 it was me, I would take the 15 because I wouldn't wanna
7 risk the 25 with this -- with this case. I mean, we have
8 nobody else to point a finger at."

9 Q Okay. Did the State ever offer -- the Kershaw
10 Solicitors Office, did they ever offer anything less than
11 15 years?

12 A Not that I remember, no.

13 Q So it's either 15 years or go to trial.

14 A Yeah. The -- the big difference that Monday that he
15 ultimately took was Perry called -- and I'm drawing a
16 blank -- his name. The guy that was the solicitor --
17 assistant solicitor over in Fairfield, said like, "Hey.
18 If he takes 15, what -- will y'all give him the same
19 thing?" And he said "yes," and they actually -- and for
20 some reason -- like, you know, sometimes Kershaw and Lee
21 County have the same week, but apparently Fairfield had
22 the same week of court, too.

23 They actually had court that week. So basically,
24 Perry was like, "If he'll take it, you know, tell him --
25 we'll even, like, have the jail send him straight over to

1 Fairfield rather than keep him here."

2 And -- and -- when he ultimately said yes -- he -- he
3 wasn't happy about it, I'll tell you that, what --
4 whatsoever. When he took it, I asked him, "Do you want to
5 head -- be over there with you?" And he said, "Yeah."

6 So I don't remember if it was the next day 'cause I
7 think he -- the plea on -- on like a Monday or a Tuesday.
8 It was either the next day or the day after that we all
9 got together in Fairfield, and Frick was there and -- and
10 I actually met with him in the Fairfield jury room and had
11 -- I think I met with him before the plea 'cause he'd
12 already pled in -- in Kershaw, and went over with him,
13 like, you know, appeal and PCR.

14 And -- and I'm the one that told him, "If you -- if
15 you can find something that I did wrong, file a PCR." I
16 mean, I told him -- I told him how -- how to -- how to get
17 the paperwork, and he asked about appeal. I said, "Well,
18 your -- your -- your problem is remember the Judge asked
19 you all those questions on the record: Are you satisfied
20 with this, or you agree that you did this? The reason he
21 asked you that is, like, you're gonna have to, like, find
22 a legal reason -- a legal mistake because you just
23 admitted to all the facts."

24 And so that's why he told -- he told -- you know,
25 like, I told him, like, "You -- if you want me to file

1 appeal, I'll file it, but your best option is probably
2 gonna be PCR if you can come up with something." And then
3 -- I think that's why we're here today.

4 Q But he wanted the 15 year deal, he just wasn't happy
5 about it.

6 A Oh, no. It -- he -- uh-uh. He -- he wanted 5 to 10,
7 and -- on -- on -- on Kershaw, and he wanted to go to
8 trial in Fairfield.

9 Q But 5 to 10 was never offered.

10 A No.

11 Q Okay.

12 MR. KEY: Beg the Court's indulgence.

13 (Brief pause.)

14 MR. KEY: No further questions, Your Honor.

15 THE COURT: All right. Very well. Cross-
16 examination.

17 MS. GOLDBERG: Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MS. GOLDBERG:**

20 Q All right. Mr. Moak, I'm just gonna kind of hit the
21 highlights. I think you had testified that you did review
22 the discovery documents with Mr. McCloud?

23 A Yes, ma'am.

24 Q In person?

25 A Yes, ma'am.

1 Q And -- but you -- he didn't receive a copy?

2 A No.

3 Q What about the Fairfield discovery? Did you ever
4 have that even?

5 A He had the -- I don't think he had the complete
6 Fairfield file, but he had it with him when I met. I went
7 over that with him at the apartment on -- that was like,
8 our -- early on.

9 And again, the -- I'll go into depth on the Fairfield
10 tomorrow, but the Fairfield case, the reason I call it
11 "weak," the trafficking case, I think it was a city
12 officer saw him driving a car and I -- I guess knew he was
13 -- his license was suspended and waited for him to pull
14 into his parking spot in front of, like, his -- an
15 apartment he was staying at, let him lock the car door,
16 and then walked up to the -- basically up -- caught him at
17 the door of his apartment and then stopped him to arrest
18 him for DRIVING UNDER SUSPENSION.

19 And then he took his keys, unlocked his car and
20 searched it, found the drugs that were sub -- subject to
21 that. I don't believe they even towed the car. I think
22 they left the car sitting there. So I couldn't figure out
23 what the probable cause for that search was or -- you
24 know? And -- and again, I mean, that -- that was --
25 that's a whole completely different PCR issue for

1 tomorrow.

2 Q Now, his arrest in this case was October of 2016, and
3 the plea ended up being in May, 2017.

4 A Uh-huh.

5 Q Right? And that was a trial date. Was that his --
6 the first time he had been noticed for trial in Kershaw?

7 A That -- we -- was the first trial, the first time,
8 yeah.

9 Q That's less than a year. Why did it come up so fast?

10 A You'd have to ask Brett Perry about that because I
11 thought we had time to, like, ride it out and let -- let
12 -- let the dust settle, and you know, then I -- I don't --
13 it might be Fairfield was bugging Kershaw. I -- I don't
14 know what was going on their side, but there's a couple of
15 cases that I've seen over there that got done faster than
16 anybody else.

17 Q Did you originally tell Mr. McCloud, when you were
18 talking to him about his case, that there just wasn't any
19 evidence against him here and he should go to trial for
20 Kershaw?

21 A Well, I mean, I -- I -- I thought he should've went
22 to trial on -- on Fairfield, but you know, the -- it was
23 part of the deal and there was other issues, but ---

24 Q So if ---

25 A --- but of course ---

1 Q --- if you had said, "You need to go to trial," maybe
2 you were talking about Fairfield? Is that what you're
3 saying?

4 A Yeah. Uh-huh.

5 Q Okay. Do you remember ever telling him that about
6 Kershaw?

7 A On Kershaw, you know, he kept asking me, "Should I go
8 to trial or -- or a plea?" And I kept telling him, like,
9 "Listen. Like I just said, like, they got all this tying
10 you to the room, you know? And unless you want to, like,
11 point the finger at your girlfriend or somebody else, I
12 mean or give up a name of, like, "Well, yeah. That was my
13 room, but my girl was with some other guy in the room,"
14 you know, there was no other name.

15 "So the -- the problem was if we went to trial and
16 the jury agrees you're tied to the room and there's nobody
17 else tied to the drugs, you're not gonna point the finger
18 at the kid, you know? That -- that -- that's what your
19 problem's going to be."

20 Q Now, initially law enforcement approached the hotel
21 staff and asked if they were aware of Mr. McCloud, and the
22 hotel staff told them where Mr. McCloud was staying; is
23 that right?

24 A Yeah. It's my understanding, talking to the -- the
25 officers, like, because I -- you know, I just don't look

1 over the discovery, I actually talk to the -- the cops and
2 like, "Hey. What -- what really happened?" And sometimes
3 they'll tell me, sometimes they won't, you know? And some
4 of them tell me like -- like, listen to it in court, you
5 know.

6 But this time, they -- when I asked them, like --
7 like, "Why didn't y'all tell me all this in -- in the pre-
8 lim?" He says, "Well, the reason -- the official reason
9 we searched that room was that's where the dog alerted
10 because even though we had him tied to the room, we --
11 that was what told us there might be drugs there was the
12 dog." You know, that -- that was what -- that was their
13 explanation as to why the pre-lim left all that other
14 stuff out.

15 Q But before we even get to that point, with the hotel
16 clerk ...

17 A Uh-huh.

18 Q ... did you have any concerns that his Fourth
19 Amendment or privacy rights were violated in any way by
20 law enforcement eliciting that information from the hotel
21 regarding his housing?

22 A Well, I've never -- maybe I just never had anybody,
23 when I was a prosecutor, challenge it. And I've never
24 like, you know, crossed my mind to challenge it. When the
25 officer comes up, like -- like, "Hey. Can I see the guest

1 registry," looking for a name, it's my understanding what
2 they did was they showed him a picture of, like, a -- I
3 guess the Fairfield mugshot. "Have you seen this guy?"

4 And the guy told him which room and they looked at
5 security footage, like, 'cause they had on the wall, like,
6 what he paid for it, and actually, like, pulled the video
7 of him paying for it. And the name -- the name was
8 different, but it was, "Yeah, that's -- that's the guy."

9 Q Just none of that struck you as something problematic
10 you could challenge at trial?

11 A Not really, no.

12 Q Now, he -- the whole reason law enforcement was
13 looking for him was because he had an active arrest
14 warrant pending, right?

15 A Yeah. And again, this goes back to Fairfield. Like,
16 he made bond on that trafficking charge that I just
17 described, and I guess they didn't think he would.

18 And they -- they had a -- another case in Fairfield.
19 I don't believe he pled to the -- to this one. I think
20 this one -- I think maybe it got dismissed as part of that
21 plea where the County or -- or I guess, a task force sent
22 a SLED agent in to make a controlled buy from him. And I
23 think there was a female that kept, like, going back and
24 forth, and then stopped and acted like she knew him, and
25 he -- he allegedly -- she had like, a big, like, key ring

1 thing. He looked at it and, like, thought it was a camera
2 and was like, "This is a camera." This is what they
3 claim. Tossed it back in the car, and then still said,
4 "So -- hey, this is a camera," and then still took the
5 person -- allegedly still took the person in and made the
6 sale, which I -- I just -- I just can't imagine if that
7 was true how anybody would be that dumb to do that.

8 But that was the set of facts that was the basis of
9 the warrant that they arrested him for in the parking lot
10 of the hotel in Lugoff.

11 So I mean, I -- with -- without completely being or
12 -- or -- or have or be able to prove bad faith on the
13 Fairfield guys, I'm not sure how we would've been able to
14 effectively attack him being arrested on that warrant in
15 Kershaw County because personal -- all we know is we got a
16 valid -- valid Fairfield warrant we're serving --

17 Q Right.

18 A -- because the bad faith of Fairfield wouldn't bleed
19 over to them.

20 Q But all they had was this arrest warrant.

21 A Yeah. Uh-huh.

22 Q They don't have the search warrant at this time or
23 anything like that.

24 A Yeah.

25 Q So they take the search warrant to the hotel, they

1 locate him, they find him outside ---

2 A Uh-huh.

3 Q --- and arrest him. Would you have had an argument
4 to make in trial that that whole incident should've ended
5 right there, that they exceeded their authority by
6 continuing to try and go in the room?

7 A Yeah. Well, that -- that would've been -- that
8 would've been an argument, but that -- that's what --
9 that's what I'm telling you. Like, in the pre-lim, I
10 think the deputy said it two ways: One way he said that
11 they searched every -- they could have gone by every door,
12 and that was the -- the room that alerted just happened to
13 be the room that the clerk said he was in because the
14 clerk had already told him what room before they -- before
15 they saw him in the parking lot. The clerk -- they knew
16 the room number before that and the deputy was saying, "I
17 took my dog to all the rooms and happened -- and it
18 happened to be the same one."

19 Again, that -- that -- that was my point. That
20 would've been one of the arguments, like, "Hey, y'all are
21 just making this up," you know? I mean, that's -- that's
22 not how this happened.

23 Like, what -- like, if you can do this legally this
24 way, why are you saying it happened that way? Like, what
25 -- like, what are you trying to hide? I mean, that --

1 that would've been our best argument, I think ---

2 Q That --

3 A --- at trial.

4 Q -- that would've been your best argument at trial?

5 A Yeah.

6 Q But still, your advice to him was to plea?

7 A Yeah. 'Cause they had a -- even had the candy
8 wrappers and his tongue was -- I think it was, like, blue
9 or green or something, and it was the same color of the
10 candy wrappers where he ate all -- must have like -- I
11 think it was, like, Airheads, I think.

12 Q You mentioned that your intention and -- and Mr.
13 McCloud's intention leading up to this plea was to keep
14 the Fairfield charges separate. Did you -- were you aware
15 or was there an -- in fact, an agreement that it included
16 Fairfield at the time of the Kershaw plea?

17 A When he accepted it, yes.

18 Q When he accepted the plea --

19 A Yeah.

20 Q -- you and Mr. McCloud and the State were all in
21 agreement that Fairfield was included?

22 A Yeah. Yeah. And up -- up until Perry calling the
23 Fairfield guys that -- that day when -- and it was -- it
24 was, like, he was even going to force that they needed to
25 plea or go to trial that week and you know --

1 And again, I don't know why it was such a rush to go
2 -- to go forward that week, but you know, he -- he was --
3 it was -- he was gonna resolve that case one way or the
4 other whether we liked it or not that week.

5 Q Did you, at any time leading up to this plea, tell
6 Mr. McCloud that he was gonna serve a sentence with all
7 the same privileges that a first offender gets --

8 A No.

9 Q -- in SCDC? Do you remember talking about those type
10 of things?

11 A Yeah.

12 Q SCDC privileges or status or ---

13 A Yeah. The only thing -- only thing that came about
14 that is the -- I told him one of the advantages of
15 pleading to Fairfield, too, is I have had clients
16 previously who went to -- to SCDC on one sentence and had
17 pending charges and there was -- there was, like, you
18 know, like, jobs in -- in-house or whatever, like, some --
19 some programs they might not be eligible for and I think
20 that did come up.

21 Q But nothing else regarding whether it's a violent
22 sentence or not?

23 A Oh, I told him it would be violent, yeah.

24 Q And 85 percent and all that?

25 A Yeah.

1 Q Were you aware he was on house arrest?

2 A When you say "house arrest," okay, you gotta -- you
3 gotta remember, there is a State program where a county
4 jail can have a state-certified house arrest program and
5 it really is a house arrest program. I think Fairfield
6 and Kershaw at that time, based on all -- all that memory,
7 he had a ankle monitor. You didn't check in at the jail,
8 you didn't do all -- you know? I mean, Fairfield may
9 have. I'm not sure about Fairfield. I know Kershaw
10 didn't.

11 Q Uh-huh.

12 A I know Sumter, for example, has one where you can
13 actually ask the judge to give you credit for that time.

14 But yeah, I think you have to -- have to -- you're --
15 you're -- you're -- the program you're in has to be under
16 that state statute.

17 Q So your understanding of the law is that he wouldn't
18 have been eligible to credit for any of that time he
19 served on house arrest?

20 A Well, I mean, he wouldn't have been eligible for the
21 -- the Fairfield and the Kershaw one in the first place.
22 And ---

23 Q So --

24 A --- and -- and that -- that was the problem. Like,
25 when we got to Fairfield, I was with him, you know, and I

1 was like -- I thought I was just gonna be there to, like,
2 make sure no -- nothing got confused, but then he wanted
3 me to handle the plea and then Frick went -- Frick happily
4 bow -- bowed -- bowed out. He was like, "Hey, this is on
5 you," pretty much.

6 So I took the plea over there even though Frick was
7 actually his attorney. And now, that -- that's -- that's
8 by Mr. McCloud's request.

9 Q But you don't think you could've asked the Kershaw
10 judge to consider that time ---?

11 A I wasn't aware of the -- of the -- the Fairfield
12 house arrest. I -- I --

13 Q Oh, okay. You just weren't aware of it.

14 A No. That's what I'm saying. Like, I'm not even
15 aware of Fairfield's program, if they actually went and
16 got a program because you have to -- like, there's some
17 requirements for it.

18 I mean, Kershaw, when you -- when -- when -- house
19 arrest, basically whatever bondsman -- the bond, if you
20 gotta have to have an ankle monitor and prove that you
21 were on it. It wasn't like the official program.

22 MS. GOLDBERG: Beg the Court's indulgence.

23 THE COURT: All right.

24 (Brief pause.)

25 MS. GOLDBERG: Nothing further.

1 THE COURT: All right. Very well. Any redirect?

2 MR. KEY: No, Your Honor.

3 THE COURT: All right. Thank you. And you come --
4 come on back down, Mr. Moak.

5 (The witness returns to the audience.)

6 THE COURT: All right. Do we have any additional
7 witnesses?

8 MR. KEY: No, Your Honor.

9 THE COURT: All right. Very well. All right.
10 You're out. We're gonna -- we will reconvene tomorrow
11 morning or some time some -- tomorrow with an eye towards
12 Mr. Aiken's matter.

13 MS. GOLDBERG: Yes, Your Honor.

14 THE COURT: Okay. Very well.

15 MS. GOLDBERG: Yes, Your Honor.

16 THE COURT: Okay. Very well.

17 MS. GOLDBERG: All right. Thank you.

18 THE COURT: Thank you.

19 (Off the record at 1:19 p.m.)

20

21 -- END OF TRANSCRIPT RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court for Richland County, South Carolina, on the 19th day of June, 2019.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

September 19, 2019

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF FAIRFIELD
4 2016-GS-20-00485

5 State of South Carolina

6 vs.

7 Lucruz McCloud

8

9 Winnsboro, South Carolina

10 May 17th , 2017

11 Before the Honorable Grace G. Knie

12

13 APPEARANCES

14 For the State: Riley Maxwell

15 For the Defendant: Ron Moak

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

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NO EXHIBITS

1 MR. MAXWELL: Your Honor, this is Lucruz McCloud. Mr.
2 McCloud is represented by Ron Moak. Just to kind of clear
3 the air, Mr. McCloud has various charges. He's been
4 indicted for trafficking in cocaine base, 2016-GS-20-485,
5 he was indicted for 28 to 100 grams, he's pleading to ten
6 to 28 grams, it is a second offense reduced down from a
7 third offense. Additionally he's been indicted for
8 possession of cocaine, 2016-GS-20-486, pleading guilty to
9 possession second offense. He's also been indicted for
10 distribution of cocaine base, 2017-GS-20-27, pleading
11 guilty to distribution second offense. And per his guilty
12 pleas to those charges another distribution count is being
13 dismissed by the State. Mr. Frick was appointed on some of
14 these charges but I believe just to clear the air that Mr.
15 Moak is representing him on all of them for the plea
16 purposes today.

17 THE COURT: Is that correct, Mr. Frick?

18 MR. FRICK: Yes, ma'am, that is correct.

19 THE COURT: All right. Thank you, sir.

20 MR. MAXWELL: And also, Your Honor, Mr. McCloud pled
21 in Kershaw County Monday afternoon to, I believe,
22 trafficking --

23 MR. MOAK: I've got the sheet on that, so the
24 negotiation is concurrent so --

25 THE COURT: May I see that please?

1 MR. MAXWELL: That's correct, Your Honor. We're just
2 asking for a concurrent sentence with that, which I believe
3 is 15 years which would be on the trafficking, the
4 possession will be five years and 15 on the distribution,
5 those would be concurrent. One thing we probably need to
6 clear up, he was arrested multiple times, I'm not sure how
7 many days he's spent in the Fairfield County Jail in total
8 of all of his arrests.

9 MR. MOAK: I believe he was in jail about 32 days in
10 here.

11 THE DEFENDANT: At least 30.

12 THE COURT: At least 30.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Is everybody okay with that?

15 MR. MAXWELL: Yes, ma'am. I think ultimately that
16 would be checked on through the jail when it gets down to
17 SCDC.

18 (The defendant was sworn.)

19 THE COURT: Okay. Mr. McCloud, let me tell you at the
20 beginning, with regard to the time served, whatever I put
21 on the sentencing sheet apparently makes very little
22 difference to people that calculate that in the detention
23 facility but I do try to get it as close and accurate as
24 possible, okay?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And so from my notes I'm putting down 32
2 days.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. Now, before we get into the
5 facts surrounding the charges pending against you I have
6 some questions I need to ask you and this is only whether
7 you're here today for a plea or a trial, okay? And then I
8 am going to come back to you at the end of this and give
9 you an opportunity to address the Court with anything else
10 you want to tell me. All right?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: So sir, do you understand that the purpose
13 of you being here today is to enter a plea as opposed to
14 coming here for a trial?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And when you waive your right to a trial
17 your also waiving your right to other constitutional rights
18 and those would be to confront witnesses against you and
19 your right to remain silent, do you understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And, sir, if you were to go forward and
22 have a trial on the charges against you, the burden of
23 proof would be on the State to prove your guilt beyond a
24 reasonable doubt, you would not have to present evidence on
25 your own behalf, you would not even have to testify if you

1 did not wish to do so, do you understand?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And sir, at the conclusion of any trial a
4 jury would have to agree, all members of jury panel would
5 have to agree on your guilt, do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And you're waiving those constitutional
8 rights today in exchange for this plea?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Now, with regard to the charges
11 that are pending against you -- okay. So sir, today the
12 charges that we're addressing are your possession of
13 cocaine second offense which has a potential penalty of
14 five years, do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And sir, with regard to the second
17 offense -- to the next charge, it's distribution of cocaine
18 base second offense with a potential penalty of five to 30
19 years.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And with regard to the third indictment,
22 trafficking in meth or cocaine base 10 grams or more but
23 less than 28 second offense the potential penalty is five
24 to 30 years, do you understand?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Do you have any questions of Mr. Moak or
2 of the Court with regard to the charges or the potential
3 offenses -- I mean the penalties for those offenses?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Okay. Now, other than negotiations with
6 regard to the plea, has anybody promised you, threatened
7 you or coerced you to get you to enter a plea today?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: And don't be offended, I ask everybody the
10 next question, all right? Were you at any time when you
11 were talking to legal counsel or are you today under the
12 influence of alcohol, drugs or any intoxicants that would
13 impair your judgment?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Do you understand what you're doing?

16 THE DEFENDANT: Yes.

17 THE COURT: And are you satisfied with the services of
18 your legal counsel?

19 THE DEFENDANT: Yes.

20 THE COURT: And sir, do you wish to enter your plea at
21 this time?

22 THE DEFENDANT: Yeah.

23 THE COURT: How do you plead, sir, guilty or not
24 guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: And are you doing so freely, knowingly and
2 voluntarily?

3 THE DEFENDANT: Yes.

4 THE COURT: And sir, understand that in the event that
5 you disagree with the sentence of the Court, at the
6 conclusion of the hearing you have ten days to appeal this
7 in writing, do you understand.

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. Thank you, sir, I'll accept your
10 plea. Yes, sir, Mr. Maxwell?

11 MR. MAXWELL: Your Honor, the distribution took place
12 on July 18th of 2016. A confidential informant working
13 with both SLED and the Fairfield County Sheriff's Office,
14 they conducted controlled buy operations at Mr. McCloud's
15 family property at [REDACTED] Road in the Ridgeway area
16 of Fairfield County. The informant went to that location,
17 made contact with Mr. McCloud, from viewing the video it
18 appears those are the only two individuals visible in the
19 video and the only two people that are there at the time.
20 There's discussion about purchasing narcotics. The
21 informant asked how much for that half ounce, the -- you
22 can't quite hear Mr. McCloud's response, the informant then
23 responds, "I got 440." Mr. McCloud says, "420's will get
24 you like a quarter." And the informant later asks, "How
25 much a cookie gone cost?" Mr. McCloud responds, "You're

1 going to get this quarter." They then transact \$420 for
2 cocaine base. You also can see in the video the baggy with
3 the cocaine base in Mr. McCloud's hand and he is also
4 identifiable in the video as well. The trafficking and
5 possession charge stems from an incident on August 16th of
6 2016. A deputy with the Fairfield County Sheriff's Office
7 saw Mr. McCloud at Pop's Convenient Store, saw him get out
8 of the car, get out of the driver's seat of the car. The
9 officer knew Mr. McCloud, believed he did not have a
10 driver's license. When Mr. McCloud left driving the car
11 again the responding officer, the deputy, followed him
12 without making an initial traffic stop, did a quick check
13 for Mr. McCloud's driver's license, determined that it was
14 suspended. The deputy then activated his blue lights,
15 followed Mr. McCloud into Winnsboro Arms where Mr. McCloud
16 stopped. Mr. McCloud exited the car, admitted he did not
17 have a driver's license and gave consent to search the car.
18 He denied having anything in the car. The deputy found in
19 the glove box a large amount of cocaine base field tested
20 to be 45 grams. Mr. McCloud confirmed to the deputy that
21 it was cocaine base. There was also cocaine found in the
22 driver's side door which is the basis for the possession of
23 cocaine charge. Mr. McCloud has a prior record that
24 consists of a 2009, two counts of possession of cocaine
25 base, in 2014 he was convicted of distribution of cocaine

1 base two counts.

2 AGENT HICKS: And Your Honor, if I can add, he's on
3 supervision for those charges, we are prepared to handle
4 the violations today.

5 THE COURT: And Mr. Maxwell, it's my understanding
6 that Mr. McCloud was previously before the circuit court
7 regarding other charges and that he was sentenced on Monday
8 of this week in Kershaw County?

9 MR. MAXWELL: Yes, Your Honor, in front of Judge
10 McMahan.

11 THE COURT: And is there a recommendation?

12 MR. MAXWELL: The recommendation is a concurrent 15
13 years on the trafficking and distribution, and concurrent
14 five years on the possession.

15 THE COURT: And that would be with the other
16 indictment?

17 MR. MAXWELL: All of the indictments in Fairfield
18 together as well as with the Kershaw charges.

19 MR. MOAK: Your Honor, I believe the intent was he
20 would just get the one 15 year sentence and serve it all at
21 the same time.

22 MR. MAXWELL: I don't have any problem with him
23 serving it all at the same time.

24 THE COURT: Yes, I think that was the question. Okay.
25 Mr. Moak, yes, sir?

1 MR. MOAK: Your Honor, Mr. McCloud didn't really like
2 happily plead guilty on Monday, he was actually up for
3 trial this week over in Kershaw and that's what spurred the
4 plea on Monday. During my representation of him over here
5 he also retained me on the distribution charge over here
6 and he was in the process of having me pick up the other
7 trafficking charge that he's pleading to over here today,
8 Your Honor, so I'm aware of the facts and everything from
9 both of the Fairfield arrests as well. Mr. Frick has
10 probably gone over more in detail with him the discovery
11 conversations with the trafficking but I've met with him
12 several times and discussed the Fairfield charges as well.
13 He basically got arrested on the Fairfield trafficking and
14 then it took 20 or so days to bond out, and as soon as the
15 narcs over here found out that he bonded out they
16 immediately issued the arrest warrant for the distribution,
17 and when they found him he was over in Kershaw County and
18 that actually led to the arrest that he got the trafficking
19 charge over in Kershaw County. They found him in a hotel,
20 arrested him there, ended up getting a search warrant for
21 the room and found trafficking weight there and that's what
22 he pled to over there. So these charges are all like
23 pretty much connected because he was actually under arrest
24 for -- he was being arrested for one of these charges when
25 he got charged for the Kershaw that he pled to on Monday,

1 these are all inter-related. He has family that is here,
2 Ms. Barbara -- he's got some family members here that were
3 over here in Kershaw as well for him, they spoke on his
4 behalf on Monday. He's got some small children that he --
5 his main goal -- he wasn't happy about getting 15 but
6 sometimes you have to live with things that you're not
7 happy about, but he's eager to eventually get back home and
8 be with his kids.

9 THE COURT: Yes, sir?

10 THE DEFENDANT: I don't have nothing to add.

11 THE COURT: Would any of your family members like to
12 address the Court? It may be that, ma'am, if you will just
13 stand behind that rail and speak real loudly for me, okay?
14 The clerk needs to swear you for me.

15 (The speaker was sworn.)

16 THE COURT: Yes, ma'am, if you will state your name
17 and your relationship, please, ma'am, to Mr. McCloud.

18 SPEAKER: Yes. I'm Barbara Ganzanger (phonetically)
19 I'm his aunt. Speaking on behalf of since the last arrest
20 he really have changed, he started working. And he love
21 his family, and his family have been there for him and his
22 kids, he really love his kids. And I'm praying that he
23 won't be too far away where we can't visit and I can get
24 his kids there to make sure he's still able to see his kids
25 while he's away. I know it's in your hands, you know, that

1 wherever he end up at I'm praying that he will be close so
2 I won't have to travel so far to get there with him and get
3 his kids there.

4 THE COURT: Thank you, ma'am, thank you for being
5 here. Sir, how old are your children?

6 THE DEFENDANT: I have two girls that are two, and I
7 have a son that's nine.

8 THE COURT: Have you ever been through a drug
9 treatment program?

10 THE DEFENDANT: No, ma'am.

11 AGENT HICKS: Your Honor, he was referred to drug
12 treatment through us.

13 THE COURT: Okay. But was that completed?

14 AGENT HICKS: It was not completed.

15 THE COURT: And I guess -- give me a couple of minutes
16 to complete the paperwork, sir, then we will hear from Mr.
17 Hicks, all right?

18 THE DEFENDANT: Yes, ma'am.

19 (Break in proceedings.)

20 THE COURT: With regard to these matters, Mr. McCloud,
21 it would be the order of the Court in the matter of State
22 of South Carolina, County of Fairfield versus Lucruz Daniel
23 McCloud, on indictment number 2016-GS-20-485 trafficking in
24 meth cocaine base 10 grams less than 28 second offense, the
25 Court would sentence Mr. McCloud to 15 years to the State

1 Department of Corrections, that would run concurrent with
2 the sentences signed by Judge McMahon on May 15th of 2015
3 (sic) in indictment number 2017-GS-28-0355. And Mr.
4 McCloud would be given credit for time served, which has
5 been represented to the Court to be 32 days, with the
6 special condition that while incarcerated that he be
7 enrolled in substance abuse counseling. With regard to the
8 State of South Carolina, County of Fairfield versus Lucruz
9 Daniel McCloud, indictment number 2017-GS-20-0027 as to the
10 charge of distribution of cocaine base second offense, it
11 is the order of the Court that Mr. McCloud be committed to
12 the State Department of Corrections for 15 years, that this
13 sentence would serve concurrent with indictment number
14 2016-GS-20-485 and also with Judge McMahon's sentence
15 issued on Monday, and that while incarcerated again that he
16 would undergo the substance abuse counseling. He would be
17 given credit for time served of 32 days. And on the charge
18 of possession of cocaine second offense he would -- Mr.
19 McCloud would be sentenced to five years at the State
20 Department of Corrections, that term would run concurrent
21 with the previous sentences issued and that issued by Judge
22 McMahon on Monday, that he would be given credit for time
23 served of 32 days. Are there any questions, gentlemen?

24 MR. MAXWELL: None from the State.

25 MR. MOAK: None.

1 THE COURT: Mr. Hicks?

2 AGENT HICKS: Yes, Your Honor. Mr. McCloud is being
3 supervised for the offense of manufacturing and
4 distribution of cocaine first offense, that was ordered by
5 Judge Gibbons here in Fairfield County.

6 THE COURT: When was that ordered?

7 AGENT HICKS: That was ordered on December 8th of
8 2014. He was -- he pled to 15 years with the service of 14
9 months and three years of probation. He also has another
10 manufacturing distribution charge that was suspended during
11 probation. Of course, the plea in Kershaw subsequently is
12 the violation of that supervision as well as the plea
13 today. In addition to that he failed to notify his agent
14 of the change of address, he had three positive drug
15 screens and a failure to complete the substance abuse
16 counseling. We're just recommending a revocation at Your
17 Honor's discretion to be run concurrent with both Kershaw
18 County charges and the charges that he is pleading to
19 today.

20 THE COURT: Okay.

21 MR. MOAK: Your Honor, I would ask that any revocation
22 that you revoke be run concurrent.

23 THE COURT: And, Mr. Hicks, again he was previously --
24 I don't have any of the paperwork on that, so previously he
25 was sentenced to 15 years?

1 AGENT HICKS: That's correct, Your Honor, 15 years
2 suspended upon the service of 14 months and three years of
3 probation.

4 THE COURT: And so it would be -- anything else?

5 AGENT HICKS: We don't have any process issued on him,
6 we've been monitoring the case as he approached trial. He
7 was reporting to us. Part of the conditions of his bond
8 agreement were to be GPS monitored so we have just been
9 monitoring the case as he comes to the court.

10 THE COURT: Okay. Mr. McCloud, do you understand what
11 Mr. Hicks has stated, that apparently Judge Gibbons put you
12 on probation two and a half years ago and that you have
13 violated the terms of that probation and they're asking
14 that it be revoked?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. All right. It would be the order
17 of the Court with regard to the probation violations that
18 we would revoke the probation and that he would be
19 sentenced to 15 years and that that would run concurrent
20 with his current sentences that were issued today and that
21 were issued by Judge McMahon on Monday in Kershaw; is that
22 clear?

23 MR. MAXWELL: Yes, ma'am.

24 THE COURT: Any questions?

25 MR. MOAK: No, ma'am.

1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for Fairfield County, South Carolina, on
9 the 17th day of May, 2017.

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

12

13

March 23, 2018

14

15

16


Michael C. Watkins

17

Court Reporter

18

19

20

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22

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WITNESSES

White-FCSO

Burroughs

ARREST WARRANT NUMBER/DOA

2016A2010100364 (DOA-08-16-16)

**ACTION OF GRAND JURY
TRUE BILL**

Foreperson of Grand Jury

Date: 11/29/2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-20-485

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

Lucruz Danielle Mccloud

Indictment for

**Trafficking in Cocaine Base
28 to 100 Grams**

SC Code: § 44-53-375(C)(2)

CDR Code: 0392

Class: Felony, B

2016 NOV 29 AM 11 42

FAIRFIELD COUNTY
COURT OF GENERAL SESSIONS
CLERK JO BECKHAM

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

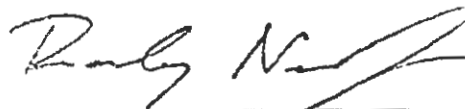
INDICTMENT

At a Court of General Sessions, convened on November 29, 2016, the Grand Jurors of
Fairfield County present upon their oath:

TRAFFICKING IN COCAINE BASE 28 TO 100 GRAMS

That Lucruz Danielle Mccloud did in Fairfield County on or about August 16, 2016, knowingly sell, manufacture, deliver, purchase, or bring into this state or provide financial assistance or otherwise aid, abet, attempt or conspire to do the same or actually or constructively possess or knowingly attempt to actually or constructively possess twenty-eight grams or more but less than one hundred grams of cocaine base, in violation of § 44-53-375(C)(2), *Code of Laws of South Carolina, (1976), as amended*.

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



Randy E. Newman, Jr., SOLICITOR

WITNESSES

FCSO-White

Burroughs

ARREST WARRANT NUMBER/DOA

2016A2010100365 (DOA-08-16-16)

ACTION OF GRAND JURY
TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: *11/29/2016*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-20-486

The State of South Carolina

County of Fairfield

2016 NOV 29 AM 11 42

COURT OF GENERAL SESSIONS

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKLEY

NOVEMBER TERM 2016

THE STATE
vs.

Lucruz Danielle Mccloud

Indictment for

Possession of Cocaine

SC Code: § 44-53-370(c), (d)(3)
CDR Code: 3011
Class: Misdemeanor, A

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

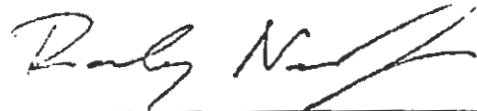
INDICTMENT

At a Court of General Sessions, convened on November 29, 2016, the Grand Jurors of
Fairfield County present upon their oath:

POSSESSION OF COCAINE

That Lucruz Danielle Mccloud did in Fairfield County on or about August 16,
2016, knowingly and intentionally possess cocaine, a controlled substance, not obtained
directly from or pursuant to a valid prescription or order of a practitioner while acting in
the course of his professional practice and not otherwise authorized by law in violation
of § 44-53-370(c), (d)(3), *Code of Laws of South Carolina, (1976), as amended*.

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



Randy E. Newman, Jr., SOLICITOR

WITNESSES

Wingo-Sled

Burroughs

ARREST WARRANT NUMBER/DOA

2016A2010100409 DOA-10-28-16)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 1-4-17

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-20-027

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

JANUARY TERM 2017

THE STATE

VS.

Lucruz Danielle Mccloud

Indictment for

Distribution of Cocaine Base

SC Code: § 44-53-375(B)
CDR Code: 3014
Class: Felony, []

2017 JAN 4 PM 3 31

FAIRFIELD COUNTY
COURT CLERK
CLERK JO BECK

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

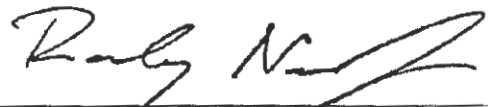
INDICTMENT

At a Court of General Sessions, convened on January 4, 2017, the Grand Jurors
Fairfield County present upon their oath:

DISTRIBUTION OF COCAINE BASE

That Lucruz Danielle Mccloud did in Fairfield County on or about July 18, 2016,
distribute, dispense, deliver, or purchase cocaine base, in violation of § 44-53-375(B),
Code of Laws of South Carolina, (1976), as amended.

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



Randy E. Newman, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Fairfield

VS.

Lucruz Danielle Mccloud

AKA:

Race: BLACK Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Rd

City, State, Zip: Ridgeway, SC 29130-8398

DL#: [REDACTED] SID#: [REDACTED]

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

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

☐ CONVICTED OF or ☒

TO: Drugs / Trafficking in meth. or cocaine base - 10 g or more, but less than 28 g - 2nd offense

in violation of § 44-53-0375(C)(1)(b) of the S.C. Code of Laws, bearing CDR Code # 0451

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ § 17-
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State

ATTEST

[Signature]
Maxwell, Riley J74878
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant[Signature]
SCBWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Centerfor a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and approved
by the State Department of Corrections. 32 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-13Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Violence)
to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

INDICTMENT/CASE#: 2016-GS-20-485

A/W#: 2016A2010100364

Date of Offense: 8/16/2016

S.C. Code § : 44-53-0375(C)(2)(b)

CDR Code #: 0000 0349

SENTENCE SHEET S-30

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒ while incarceratedRandom Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

Sentence to run concurrent w/ 140
the Kaulow sentence of J. McCloud 133
on 5/15/17 on Indictment # 2017-GS

☐ Appointed PD or appointed other counsel.
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected
 any other fees.

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
 2760
 5/17/17

STATE OF SOUTH CAROLINA

COUNTY OF Fairfield
STATE VS.
Lucruz Danielle MccloudAKA: _____
Race: BLACK Sex: M Age: 30
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED] Rd
City, State, Zip: Ridgeway, SC 29130-8398
DL#: [REDACTED] SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Drugs / possession of cocaine, 2nd offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-20-486A/W#: 2016A2010100365Date of Offense: 8/16/2016S.C. Code §: 44-53-0370(d)(3)CDR Code #: 3012SENTENCE SHEET S☐ CONVICTED OF or ☒ PLEADSin violation of § 44-53-0370(d)(3) of the S.C. Code of Laws, bearing CDR Code # 3012
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: [Signature] 74878 [Signature] [Signature] 68461
Maxwell, Riley J SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 32 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Violence)
to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP _____

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 8.25TOTAL \$ 243.25Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Mike Watkins

SCCA/217 (07/2016)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒ while in _____Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

To run concurrent with the sentence is needed.
J. Mc Mahon in Kershaw Cty. on 5/15/17
on Indictment # 2017-GS-28-0355.☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge [Signature]Judge Code: 2760Sentence Date: 5/17/17

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Fairfield
 STATE VS.
Lucruz Danielle McCloud

INDICTMENT/CASE#: 2017-GS-20-0027A/W#: 2016A2010100409Date of Offense: 7/18/2016S.C. Code § : 44-53-0375(B)(2)CDR Code #: 3015

AKA:

Race: BLACK Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] RdCity, State, Zip: Ridgeway, SC 29130-8398DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Drugs / distribution, etc. cocaine base, 2nd offense

SENTENCE SHEET S-3041☐ CONVICTED OF or ☒ PLEADSin violation of § 44-53-0375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3015

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (def...)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☒ Recommendation by the

ATTEST:

Maxwell, Riley J74878
SC Bar#Lucruz Danielle McCloud
Defendant[Signature]
Attorney for Defendant6846
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Centerfor a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed year.and/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 32 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp. Recipient: May serve W/E beginning Substance Abuse Counseling ☒ while inRandom Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

Judith M. Bonds
Mike Watkins

R. B. Smith
2760
5/17/17

☐ Appointed PD or appointed other counsel.
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

To Run concurrently with McCloud's sentence:
on 5/15/17 in Kershaw County, SC.
2017-GS-20-0355

**KERSHAW COUNTY SHERIFF'S OFFICE**Sheriff Jim Matthews 821 Ridgeway Road, Lugoff S.C. 29078
(803) 425-1512

Case P2016-04508

Printed on November 16, 2016

Status	Approved
Report Type	Patrol
Primary Officer	Brian Elliott
Investigator	None
Reported At	10/24/16 20:34
Incident Date	10/24/16 20:34 - 10/24/16 21:40
Incident Code	1118 : NARCOTICS
Location	529 HIGHWAY 601 S, LUGOFF, SC (ECONO LODGE INN & SUITES)
Zone	Lugoff
Disposition	Case Report Created
Disposition Date/Time	10/24/16 20:48
Disposition Comments	
Status Indicator	Administrative Filler
Status Change Date	10/24/16

Case Comments**Arrestee****MCCLLOUD, LUCRUZ DANIELLE**

Male, DOB [REDACTED]

[REDACTED] RD

RIDGEWAY, SC 29130

44-53-370 - TRAFFICKING COCAINE > 10G BUT < 28G
- 3RD & SUB OFFENSE - 6 counts**Offender****MCCLLOUD, LUCRUZ DANIELLE**

Male, DOB [REDACTED]

[REDACTED] RD

RIDGEWAY, SC 29130

44-53-370 - TRAFFICKING COCAINE > 10G BUT < 28G
- 3RD & SUB OFFENSE - 6 counts**Suspect****MCCLLOUD, LUCRUZ DANIELLE**

Male, DOB [REDACTED]

[REDACTED] RD

RIDGEWAY, SC 29130

44-53-370 - TRAFFICKING COCAINE > 10G BUT < 28G
- 3RD & SUB OFFENSE - 6 counts**Other**

WHITAKER, MARSHETTA MOLIVIA

Female, DOB [REDACTED]

[REDACTED] RD

RIDGEWAY, SC 29130

Contact Person: 44-53-370 - TRAFFICKING COCAINE >
10G BUT < 28G - 3RD & SUB OFFENSE - 6 counts**Primary Narrative By Brian Elliott, 10/25/16 17:02**

In October 2016 Narcotics Agents with the Kershaw County Sheriff's Office received information from the Narcotics Unit at Fairfield County Sheriff's Office that one Lucruz D. MCCloud had outstanding warrants and was possibly staying in Kershaw County South Carolina with his girlfriend Marshetta M. Whitaker. Agents were advised by Fairfield County Narcotics Agents that Mr. Lucruz D. MCCloud had warrants for Distribution of Crack Cocaine and that it was entered into NCIC. Agents were also advised that Mr. Lucruz D. MCCloud was out on bond for Trafficking Crack 2nd offense, three Distribution of Crack 2nd and possession of cocaine. On October 24, 2016 Agents received information that Mr. Lucruz D. MCCloud was staying with his girlfriend Ms. Marshetta M. Whitaker apartment at Lynwood Apartments in Lugoff, South Carolina Kershaw County. Through further investigation Agents determined Ms. Marshetta M. Whitaker to be driving a red in color Mazda Tribute. While conducting surveillance Agents observed this vehicle pulling into the apartment complex which was driven by Ms. Marshetta M. Whitaker. Agents then made contact with Ms. Marshetta M. Whitaker who stated that Mr. Lucruz D. MCCloud had just beaten her and had left the Apartment Complex. Ms. Marshetta M. Whitaker gave Agents permission to check her Apartment. Agents did so with negative results. While speaking with Ms. Marshetta M. Whitaker she repeatedly lied about having contact with him. Ms. Marshetta M. Whitaker stated that she was coming from the Pilot gas station on Highway 601. After receiving this information Agents began checking local motels/hotels. While doing so agents checked the Econolodge on Highway 601. While speaking with the clerk at the Econolodge she stated that there was a room under Ms. Marshetta M. Whitaker. The clerk stated that an unknown black male (later identified as Mr. Lucruz D. MCCloud) was currently in room 202. Agents then showed the clerk a picture of Mr. Lucruz D. MCCloud and Ms. Marshetta M. Whitaker. The clerk then positively identified Mr. Lucruz D. MCCloud as being the one currently in room 202. The clerk also stated that Mr. Lucruz D. MCCloud had renewed the room (202) a day prior and got a new key card soon before Agents arrived. Agents then went to room 202 and observed Mr. Lucruz D. MCCloud coming from between two drink machines that was on the second floor of the hotel. Agents made contact with Mr. Lucruz D. MCCloud and asked him for his name and he stated that his name was "John" at that time Mr. Lucruz D. MCCloud was detained and read his Miranda Rights moments later. While talking with Mr. Lucruz D. MCCloud Agents could smell a strong odor of marijuana coming from his clothing/person. Agents conducted a search of Mr. Lucruz D. MCCloud and recovered a bag of marijuana from his right front shorts pockets. The clerk then gave Agents consent to do a free air sniff of the common areas of the motel. Dep. Bass ran K-9 Taz around the common area of the hotel and K-9 Taz gave a positive alert on room 202. Agent then entered the room to secure the room and observed marijuana in plain view which was located on the coffee table next to the bed. Agents then retrieved a search warrant for the motel room 202. Search warrant was sign and dated by Judge Drakeford. Agents then entered the room and conducted a search of the room and recovered the following items below:

Motel room 202 at Econolodge

Marijuana located on coffee table next to bed in room.

Large bag of a white rock like substance located in basket in bathroom.

Black digital scale located in kitchen next to refrigerator.

One pizza box located in refrigerator bearing defendant fake name and his real phone number.

Black digital scale located on table next to T.V. and bed.

One whisk located in kitchen next to sink.

One box of sandwich bags located in kitchen next to sink.

One pair of boxer located under bathroom sink.

Handler: Mark Bass

Signature: 

Three soda cans located on coffee table next to bed in room.
 One phone charger located between bed in room.
 One shampoo bottle, toothbrush and deodorant located
 One straw located in soda can on coffee table next to bed.
 One white iphone located in defendants short pocket.
 One white Xbox with controller located in kitchen area.
 Six packs of Newport Cigarettes located in plastic bag behind room door.
 One Xbox video game (Mafoe III) located on top of Xbox located in kitchen area.
 \$86.00 cash located in room on coffee table.
 One room key card located in Defendants short pocket.

Agents then started asking Mr. MCCloud question about the room and things found in the room. Mr. MCCloud gave so many different stories about being in the room and not being in the room. Once Agents started taking items out of the room Mr. MCCloud asked Agent 91 why was he taking his son's Xbox and game. Mr. MCCloud begged Agents not to take his son's Xbox. Mr. MCCloud finally admitted that the room belong to him and that he was staying in the room. Mr. MCCloud was placed under arrest and charged with trafficking crack cocaine 3rd and SPMJ. Mr. MCCloud was transported to the Kershaw County Detention Center. All items collected was placed into evidence.

Supporting Narrative By Brian Elliott, 11/16/16 13:08

The Following weeks Agents of the Kershaw County Sheriff's Office Narcotics Unit went back to the EconoLodge Inn & Suites and retrieved a copy of video when Mr. MCCloud came into the EconoLodge for the first time and him renewing the room. Agents also have paperwork where Mr. MCCloud sign and paid for the room for extra days.

with Mrs. Whitaker

10-24-2016



Kershaw County Sheriff's Office
821 Ridgeway Rd
Lugoff, SC 29078
Phone 803-425-1512 Fax 803-425-6021
Jim Matthews, Sheriff

Marijuana Analysis

I am employed by the Kershaw County Sheriff's Office and certified by the South Carolina State Law Enforcement Division to perform microscopic and chemical tests on Marijuana submitted to me. I have been qualified to testify on such examinations. I tested the item(s) submitted to me (listed below) by the indicated officer or agent.

Test Date: 12/9/16

Case Number: P2016-04508

Officer(s): Elliott, Brian

Subject(s): MCCLLOUD, LUCRUZ DANIELLE

Charge(s): Simple Possession of Marijuana

Ticket/Warrant Number: 81581GR

Item(s) Submitted: SEALED PLASTIC BAG CONTAINING TWO PLASTIC BAGS FILLED WITH A GREEN LEAFY SUBSTANCE.

Incident Date: 10/24/16 20:34

Approx. Weight: TWO (2)(weight in grams)

Disposition: POSITIVE

Examination Performed by:

Kevin, Lynch
Analyst
SLED Certification #R14-025

KERSHAW COUNTY SHERIFF'S OFFICE
Forensic Drug Identification Laboratory
Jim Matthews, Sheriff

FORM A

**REPORT OF ANALYSIS FOR
 CONTROLLED DANGEROUS SUBSTANCES
 (Substance Found)**

I, Kevin, Lynch, am a Chemical Analyst employed by the Kershaw County Sheriff's Department (KCSD), certified by SLED as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 5 year(s) and 7 month(s) experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than 0 times. I have received the following training as a chemical analyst:

- Training in Forensic Chemistry at South Carolina Law Enforcement Division, Forensic Laboratory- Department of Drug Analysis.
- Training at the South Carolina Criminal Justice Academy

CASE # P2016-04508

The following item(s) was tested using the following legally accepted and scientifically reliable forensic laboratory procedures;

☐ Macroscopic Test	☐ Gas Chromatography
☒ Microscopic Test	☐ Mass Spectroscopy
☒ Chemical Test	☐ Published Literature
☐ Infrared Spectroscopy	☐ Other

I am of the opinion that the item(s) contain(s) the controlled substance(s):

SEE REPORT

(Substance(s) Found and Amount of Proportion)

Sworn to me on this 9 day of Dec. 16

[Signature]
 Chemical Analyst

[Signature]
 Notary Public of South Carolina

My Commission expires; 10/7/21

Kershaw County Sheriff's Office

Property / Evidence Summary

Printed on November 16, 2016

Property / Evidence for Case P2016-04508

Primary Officer: Elliott, Brian

Item #	Type	Status	Location	Description
P2016-04508-001	Drug	In Custody	SLED BIN	BEST KIT# B268764/ CLEAR PLASTIC BAG OF A WHITE ROCK LIKE SUBSTANCE
P2016-04508-002	Article	In Custody	M-6	SIX PACKS OF NEWPORTS CIGARETTES
P2016-04508-003	Article	In Custody	M-6	PIZZA BOX
P2016-04508-004	Article	In Custody	M-6	ONE WHITE IPHONE
P2016-04508-005	Article	In Custody	M-6	ONE KEY CARD FOR ROOM
P2016-04508-006	Article	In Custody	L-8	86.00 CURRENCY
P2016-04508-007	Article	In Custody	M-6	ONE VIDEO GAME
P2016-04508-008	Article	In Custody	M-6	TWO BLACK DIGITAL SCALES, BOX OF SANDWICH BAGS, KEY AND WHISK
P2016-04508-009	Article	In Custody	M-6	ONE PAIR OF UNDER WEAR
P2016-04508-010	Article	In Custody	M-6	SODA CAN AND PHONE CHARGER
P2016-04508-011	Article	In Custody	M-6	BODY WASH, DEODORANT AND TOOTH BRUSH
P2016-04508-012	Drug	In Custody	L-13	TWO BAGS OF A GREEN LEAFY SUBSTANCE
P2016-04508-013	Article	In Custody	M-6	ONE WHITE XBOX WITH CONTROLLER

2016A2810100739

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Kershaw

THE STATE

2016-4508

against

Lucruz Danielle Mccloud

Address: [REDACTED] Rd

Ridgeway, SC 29130-8398

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 7 Weight: 130

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0280000

Prosecuting Agency: Kershaw County Sheriff

Prosecuting Officer: Brian Elliott - 7212

Offense: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 3rd or sub. offense (Fel.,

Offense Code: 0452

Code/Ordinance Sec: 44-53-0375(C)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
1121 Broad Street
Camden, SC 29020

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

Kershaw

Personally appeared before me the affiant Brian Elliott

being duly sworn deposes and says that defendant Lucruz Danielle Mccloud

did within this county and state on or about 10/24/2016

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Kershaw)
in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 3rd or sub. offense (Fel., 25Y to 30Y)

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

That on October 24, 2016, one Lucruz Danielle McCloud did have in his custody and control a clear plastic bag containing 18 grams of a white rock like substance which field tested positive for cocaine base. The substance was found after the execution of a lawful search warrant at the defendant's room (Econo Lodge Inn & Suites Room 202). After being read his Miranda rights the defendant admitted ownership of the crack cocaine. This incident took place at 529 Highway 601 in Lugoff, South Carolina, Kershaw County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Kershaw

Affiant's Address 821 Ridgeway Rd.

Lugoff, SC 29078-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 10/24/2016 defendant Lucruz Danielle Mccloud

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

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

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 3rd or sub. offense (Fel., 25Y to 30Y)

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

on 10/25/2016

Signature of Issuing Judge (L.S.)
James E. Davis Jr.

Judge Code: 7278 7344

Judge's Address Post Office Box 1528

Camden, SC 29021-

Judge's Telephone (803)425-7226

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County of Kershaw

SEARCH WARRANT

Date: 10-24-2016

Officer: SGT. ELLIOTT

COPY

STATE OF SOUTH CAROLINA }
 }
 COUNTY OF KERSHAW }

AFFIDAVIT

Personally appeared before me, one SGT. ELLIOTT who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
 TO BE SEARCHED**

The property is located at 529 Highway 601 Lugoff, South Carolina in Kershaw County. The hotel is described as a two story brick building with the name EconoLodge Inn & Suites in the front. The room is located on the second floor of the hotel in the corner. The room has a red door with the number 202 displayed on the front of it. There is a window on the right side of the room that is viewing the parking lot area and highway. The search includes the room, people and vehicles on the property. This hotel is located in Lugoff South Carolina, Kershaw County.

DESCRIPTION OF PROPERTY SOUGHT

1. MARIJUANA AND OTHER ILLEGAL DRUGS/NARCOTICS.
2. PACKAGING MATERIALS, SCALES, AND DISTRIBUTION MATERIALS.
3. US CURRENCY AND PROCEEDS FROM THE SALE OF ILLEGAL DRUGS.
4. DOCUMENTATION RELATED TO OCCUPANTS AND OWNERSHIP INTEREST.
5. STOLEN GOODS OR STOLEN PROPERTY TRADED FOR DRUGS OR NARCOTICS.
6. ILLEGAL WEAPONS OR WEAPONS USED TO PROTECT THE INTEREST OF THE ILLEGAL DRUG TRADE
7. ANY AND ALL SAVED ARCHIVED OR DELETED DATA
8. ALL PHONES WITH TEXT MESSAGES, EMAILS OR PHOTOGRAPHS TAKEN DEPICTING CRIMINAL ACTIVITY.
9. ANY COMPUTER COMPONENTS, VIDEO CAMERAS OR STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM OR DEVICE SEIZED PERTAINING TO THIS INVESTIGATION.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISE

Sworn to and Subscribed before me

this 24th day of October, 2016

Darrell Dora (LS)
 Signature of Judge

B. Z. Egan
 Affiant

Address Kershaw County Sheriff's Department
821 Ridgeway Rd. Lugoff S.C. 29078

STATE OF SOUTH CAROLINA }
 }
 COUNTY OF KERSHAW }

AFFIDAVIT

In support of the attached Application for Search Warrant, Affiant, being duly sworn, deposes and says:

I, Brian L. Elliott, am a Narcotics Investigator with the Kershaw County Sheriff's Office. In connection with my duties, I investigate and make arrests for violations of drug offenses. I have been employed with Kershaw County Sheriff's Office since January of 2011. I have been assigned to narcotics since January of 2011. Prior to that, I was employed at Richland County Sheriff's Department for 5 years. During this time, I was part of a street level narcotics unit (Drug Suppression Unit). In the past 11 years I have attended numerous narcotic classes on the state and federal level and assisted in several drug investigations which have led to numerous arrests and convictions.

Based on my training and participation in narcotic investigations involving illegal narcotics and U.S. currency I know:

1. Drug traffickers/dealers often hold assets in nominee names to conceal any connection between any such asset and themselves, attempting in this way to avoid detection of their illegal activities by law enforcement agencies.
2. Although their assets are held in nominee names, drug traffickers/dealers use and enjoy them, exercising ultimate dominion and control over such assets.
3. Drug traffickers/dealers must maintain at ready access, large amounts of cash in order to maintain and finance their on-going drug business.
4. The trafficker's/dealers inventory of controlled substances fluctuates depending on availability and demand, and because drug traffickers commonly front drugs, or provide them on consignment to their customers, the traffickers often maintain books, receipts, notes, ledgers or some other type of record reflecting such transactions. Drug traffickers often keep their records in some secure, yet readily accessible, place where they can be used and maintained, such as in homes, offices, places of business, automobiles, safes, or safe deposit boxes. Traffickers/dealers often keep these records of their illegal activities beyond the time during which controlled substances are actually in their possession so that they can maintain contact with their criminal associates for future drug transactions and so that they can keep records of prior transactions for which they might be owed or owe inventory or money.
5. Drug traffickers/dealers commonly hide controlled substances, drug proceeds, and records of their drug transactions in secure locations, such as those mentioned in paragraph (d) above, as well as in offices or places of business, garages, or storage buildings. Similarly, the traffickers/dealers have ready access to these items, and attempt to conceal them from law enforcement agencies.
6. Drug traffickers/dealers conceal currency, financial instruments, documents relating to financial transactions, precious metals, jewelry, other items of value, and proceeds of drug transactions, all of which constitutes evidence of drug trafficking activities. Additionally, such items constitute evidence of transactions establishing the generation, transfer,

Sworn to and Subscribed before me

this 24th day of October, 2016

Daniel D. [Signature] (LS)
 Signature of Judge

[Signature]
 Affiant

Address Kershaw County Sheriff's Department
821 Ridgeway Rd. Lugoff S.C. 29078

STATE OF SOUTH CAROLINA }

AFFIDAVIT

COUNTY OF KERSHAW }

concealment, and expenditure of large sums of money made from trafficking in controlled substances. Like the items mentioned in paragraph (d) above, traffickers/dealers maintain these items in secure, yet convenient locations, such as their homes, offices, and places of business, garages, storage buildings, automobiles, and safe deposit boxes.

7. Drug traffickers/dealers commonly maintain addresses or telephone numbers in books or papers which reflect names, addresses, and telephone, beeper, or pager numbers for their drug trafficking associates. These items are sometimes in code.

8. Drug traffickers/dealers frequently have photographs of themselves, their associates, their property and controlled substances, which are usually maintained in their homes. Such photographs constitute evidence of their drug trafficking activities, establishing their connections with items of property with each other, and with drugs.

9. Drug traffickers/dealers involved in importation or transportation of controlled substances from source cities generally possess documentation, such as telephone records, correspondence, shipyard receipts, wire transfers, airline ticket receipts, and the like, which pertain to the acquisition, transportation, shipment, or receipt of, or payment for, controlled substances, and which evidences the trafficked participation in the illegal drug scheme.

10. Drug traffickers/dealers often maintain some record of the movement of money, whether it is accomplished by wire or inter-bank transfer or by a person acting as a courier. Such records, even though they may be in code, are evidence of the trafficker's/dealers illegal activities.

11. Drug traffickers/dealers often use false or fictitious names or corporations or other business entities to launder their drug proceeds and to send shipments of cash or controlled substances through the mail or other delivery services. Banks, both domestic and abroad, are sometimes utilized by traffickers/dealers or their agents through which proceeds from their illegal activities are laundered. Funds are frequently transferred between banks and various accounts to conceal their sources and origins. It is also common to obtain bearer or other negotiable instruments through foreign banks to avoid the necessity of filing currency transaction reports, in this manner concealing the fact of the transaction and the true ownership of the funds. Documents or records of any kind reflecting any connection with any such entity or transaction constitute evidence of the trafficker's participation in the illegal scheme.

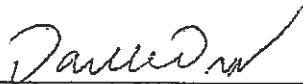
12. Drug traffickers/dealers frequently utilize a continuing pattern of activities to launder and conceal drug-generated proceeds and assets, which lasts over a period of years. Drug traffickers use these patterns or schemes to create the appearance of legitimate income so that they can eventually convert the proceeds or assets to themselves or to a nominee under their control. In this way, the traffickers can enjoy and use their properties while attempting to conceal their illegal activities, which generated the proceeds or assets.

13. Courts have recognized that unexplained wealth is probative evidence of crimes motivated by greed, which includes trafficking in controlled substances and illegal schemes to conceal drug-generated proceeds.

14. Drug traffickers/dealers who deal in illegal controlled substances often use pagers and answering machines to

Sworn to and Subscribed before me

this 24th day of October, 2016



(LS)

Signature of Judge



Affiant

Address Kershaw County Sheriff's Department
821 Ridgeway Rd. Lugoff S.C. 29078

STATE OF SOUTH CAROLINA }

COUNTY OF KERSHAW }

SEARCH WARRANT

Form approved by SC Attorney

General - Section 17-13-160

March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF KERSHAW COUNTY

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The property is located at 529 Highway 601 Lugoff, South Carolina in Kershaw County. The hotel is described as a two story brick building with the name EconoLodge Inn & Suites in the front. The room is located on the second floor of the hotel in the corner. The room has a red door with the number 202 displayed on the front of it. There is a window on the right side of the room that is viewing the parking lot area and highway. The search includes the room, people and vehicles on the property. This hotel is located in Lugoff South Carolina, Kershaw County.

DESCRIPTION OF PROPERTY SOUGHT

1. MARIJUANA AND OTHER ILLEGAL DRUGS/NARCOTICS.
2. PACKAGING MATERIALS, SCALES, AND DISTRIBUTION MATERIALS.
3. US CURRENCY AND PROCEEDS FROM THE SALE OF ILLEGAL DRUGS.
4. DOCUMENTATION RELATED TO OCCUPANTS AND OWNERSHIP INTEREST.
5. STOLEN GOODS OR STOLEN PROPERTY TRADED FOR DRUGS OR NARCOTICS.
6. ILLEGAL WEAPONS OR WEAPONS USED TO PROTECT THE INTEREST OF THE ILLEGAL DRUG TRADE
7. ANY AND ALL SAVED ARCHIVED OR DELETED DATA
8. ALL PHONES WITH TEXT MESSAGES, EMAILS OR PHOTOGRAPHS TAKEN DEPICTING CRIMINAL ACTIVITY.
9. ANY COMPUTER COMPONENTS, VIDEO CAMERAS OR STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM OR DEVICE SEIZED PERTAINING TO THIS INVESTIGATION.

This Search Warrant shall not be valid for more than ten days from the date of issuance.
A written inventory of all property seized pursuant to this Search Warrant shall be made to

Custodian of Records/Defendant(s)

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Camden, S.C.

October 24, 2016

Janell D. [Signature] (LS)
Signature of Judge

STATE OF SOUTH CAROLINA }
 }
 COUNTY OF KERSHAW }

AFFIDAVIT

maintain contact with an receive messages from their customers and suppliers and to further drug distribution activity.

I am submitting this Affidavit in support of the belief that there is probable cause to establish that property and items described herein are to be found at said hotel located at 529 Highway 601 Lugoff South Carolina, which is in Kershaw County.

In October 20016 Narcotics Agents with the Kershaw County Sheriff's Office received information form the Narcotics Unit at Fairfield County Sheriff's Office that one Lucruz D. MCCloud had outstanding warrants and was possibly staying in Kershaw County South Carolina with his girlfriend Marshetta M. Whitaker. Agents were advised by Fairfield County Narcotics Agents that Mr. Lucruz D. MCCloud had warrants for Distribution of Crack Cocaine and that it was entered into NCIC. Agents were also advised that Mr. Lucruz D. MCCloud was out on bond for Trafficking Crack 2nd offense, three Distribution of Crack 2nd and possession of cocaine. On October 24, 2016 Agents received information that Mr. Lucruz D. MCCloud was staying with his girlfriend Ms. Marshetta M. Whitaker apartment at Lynwood Apartments in Lugoff, South Carolina Kershaw County. Through further investigation Agents determined Ms. Marshetta M. Whitaker to be driving a red in color Mazda Tribute. While conducting surveillance Agents observed this vehicle pulling into the apartment complex which was driven by Ms. Marshetta M. Whitaker. Agents then made contact with Ms. Marshetta M. Whitaker who stated that Mr. Lucruz D. MCCLoud had just beaten her and had left the Apartment Complex. Ms. Marshetta M. Whitaker gave Agents permission to check her Apartment. Agents did so with negative results. While speaking with Ms. Marshetta M. Whitaker she repeatedly lied about having contact with him. Ms. Marshetta M. Whitaker stated that she was coming from the Pilot gas station on Highway 601. After receiving this information Agents began checking local motels/hotels. While doing so agents checked the Econolodge on Highway 601. While speaking with the clerk at the Econolodge she stated that there was a room under Ms. Marshetta M. Whitaker. The clerk stated that an unknown black male (later identified as Mr. Lucruz D. MCCLoud) was currently in room 202. Agents then showed the clerk a picture of Mr. Lucruz D. MCCLoud and Ms. Marshetta M. Whitaker. The clerk then positively identified Mr. Lucruz D. MCCLoud as being the one currently in room 202. The clerk also stated that Mr. Lucruz D. MCCLoud had renewed the room (202) a day prior and got a new key card soon before Agents arrived. Agents then went to room 202 and observed Mr. Lucruz D. MCCLoud coming from between two drink machine that was on the second floor of the hotel. Agents made contact with Mr. Lucruz D. MCCLoud and asked him for his name and he stated that his name was "John" at that time Mr. Lucruz D. MCloud was detained. While talking with Mr. Lucruz D. MCCLoud Agents could smell a strong odor of marijuana coming from his clothing/person. Agents conducted a search of Mr. Lucruz D. MCCLoud and recovered a bag of marijuana from his right front shorts pockets. The clerk then gave Agents consent to do a free air sniff of the common areas of the motel. Dep. Bass ran K-9 Taz around the common area of the hotel and K-9 Taz gave a positive alert on room 202. Agent then entered the room to secure the room and observed marijuana in plain view which was located on

Sworn to and Subscribed before me

this 24th day of October, 2016

Daniel D. Webb

(LS)

Signature of Judge

B. L. Sear

Affiant

Address Kershaw County Sheriff's Department
821 Ridgeway Rd. Lugoff S.C. 29078

STATE OF SOUTH CAROLINA }
COUNTY OF KERSHAW }

AFFIDAVIT

the coffee table next to the bed. Based on the above facts and circumstances of this activity leads one to believe that narcotics are being bought, sold, used and are present at the location/property described above.

COPY

Sworn to and Subscribed before me

this 24th day of October, 2016



(LS)

Signature of Judge



Affiant

Address Kershaw County Sheriff's Department
821 Ridgeway Rd. Lugoff S.C. 29078

RETURN

I received the attached Search Warrant October 24, 2016 and have executed it as follows:
 On October 24, 2016 at 2:40 o'clock 7 M, I searched
 (The person) described in the warrant and (the premises)

I left a copy of the warrant with LUCY D. McCLOUD and Marshall's M.
 Name of person searched or "at the place of search" with. Whitaker
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- ① Marijuana located on coffee table next to bed in room = B. Larson
- ② Bag of a white rock like substance located in Bathroom area
in Pocket = B. Larson
- ③ Black Digital Scales located in Kitchen next to Refrigerator =
B. Larson
- ④ One Pizza Box located in Refrigerator ^{Take} containing Defendants name and
his real phone number = L. Young
- ⑤ One Black Digital Scale located on table next to T.V and Bed = J. Spivey
- ⑥ One Whisk located in Kitchen next to sink = J. Spivey
- ⑦ One Box of Sandwich Bags located in Kitchen next to Sink = J. Spivey
- ⑧ One pair of Boxers located under Bathroom Sink = J. Spivey
- ⑨ Three Soda cans located on coffee table next to bed in room = J. Spivey
- ⑩ One phone charger located between Beds in Room = J. Spivey

This inventory was made in the presence of B. Larson, Justin Spivey, Brian Elton
 AND Leellang (Fairfield) Sparks, (Fairfield) Cooper, (Fairfield) Melton

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.
(Fairfield) BARRON

SWORN to before me this 20th }

day of October, 2016 }

[Signature] (LS) }

Signature of Judge

[Signature]

(Signature of Officer Executing Warrant)

RETURN

I received the attached Search Warrant October 24, 2016 and have executed it as follows:

On October 24, 2016 at 21:40 o'clock P M, I searched
(The person) described in the warrant and (the premises)

I left a copy of the warrant with LIVER D. McCLOUD and MARSHETTA M.
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized. White

The following is an inventory of property taken pursuant to the warrant:

- 1) Shampoo, toothbrush and Deodorant located in Bathroom area = J. Spring
 - 2) One Steam located in Sofa Car on coffee table next to bed = J. Spring
 - 3) One white iPhone located in Defendant's shirt pocket = B. Lanson
 - 4) One white Xbox with Controller located in kitchen area = B. Clinton
 - 5) Six packs of Newport Cigarettes located in plastic bag behind room door = B. Clinton
 - 6) One Xbox video game (Mario III) located on Xbox located in kitchen area = B. Clinton
 - 7) One cash located in room of coffee table = B. Clinton
 - 8) One Room Key Card located in Defendant's shirt pocket = B. Lanson
- End of Search Warrant

This inventory was made in the presence of Brian Lanson, Justin Spring, Brian Clinton,
AND Lee Young (Fairfield), Sparks (Fairfield), Cooper (Fairfield), Melton

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.
Fairfield) B. Poughs

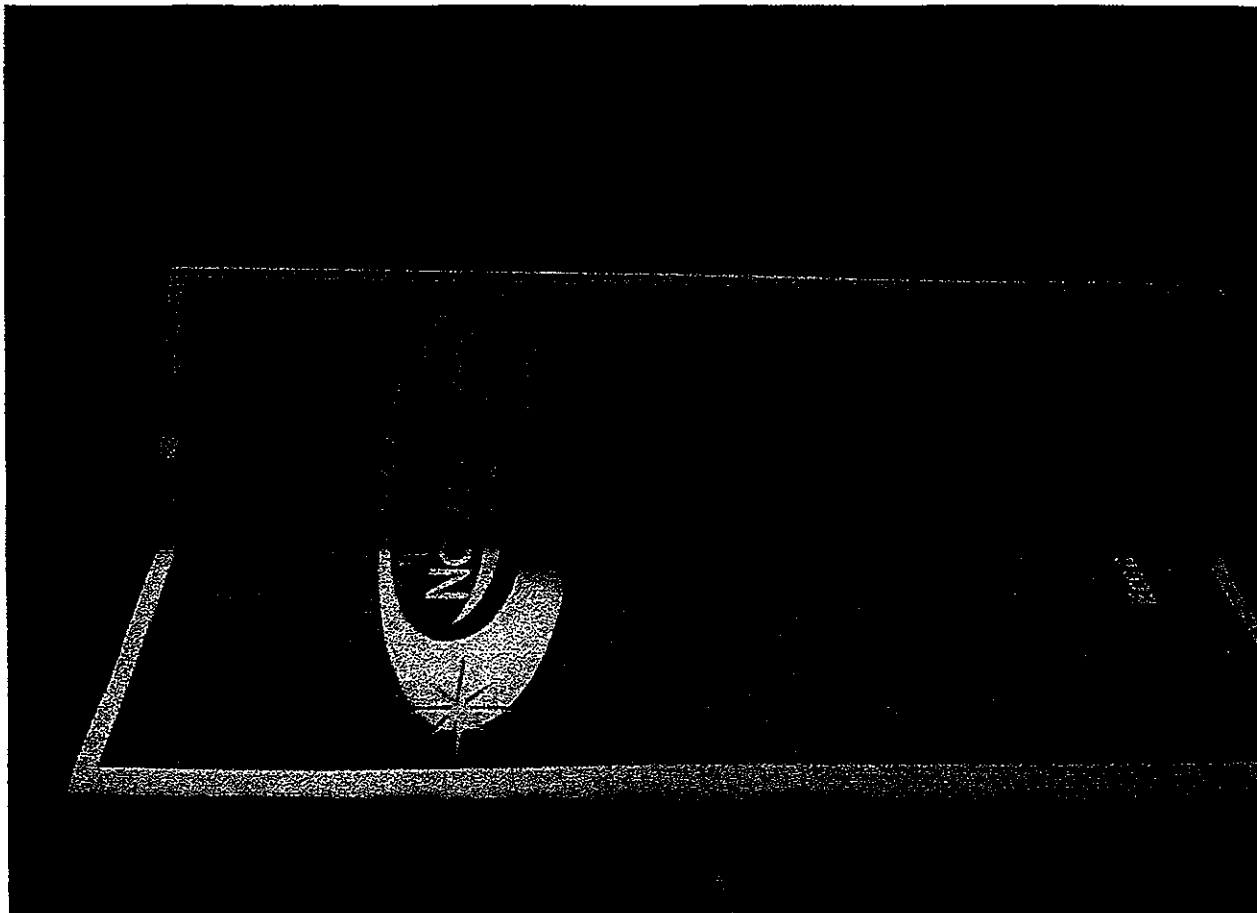
SWORN to before me this 25th }

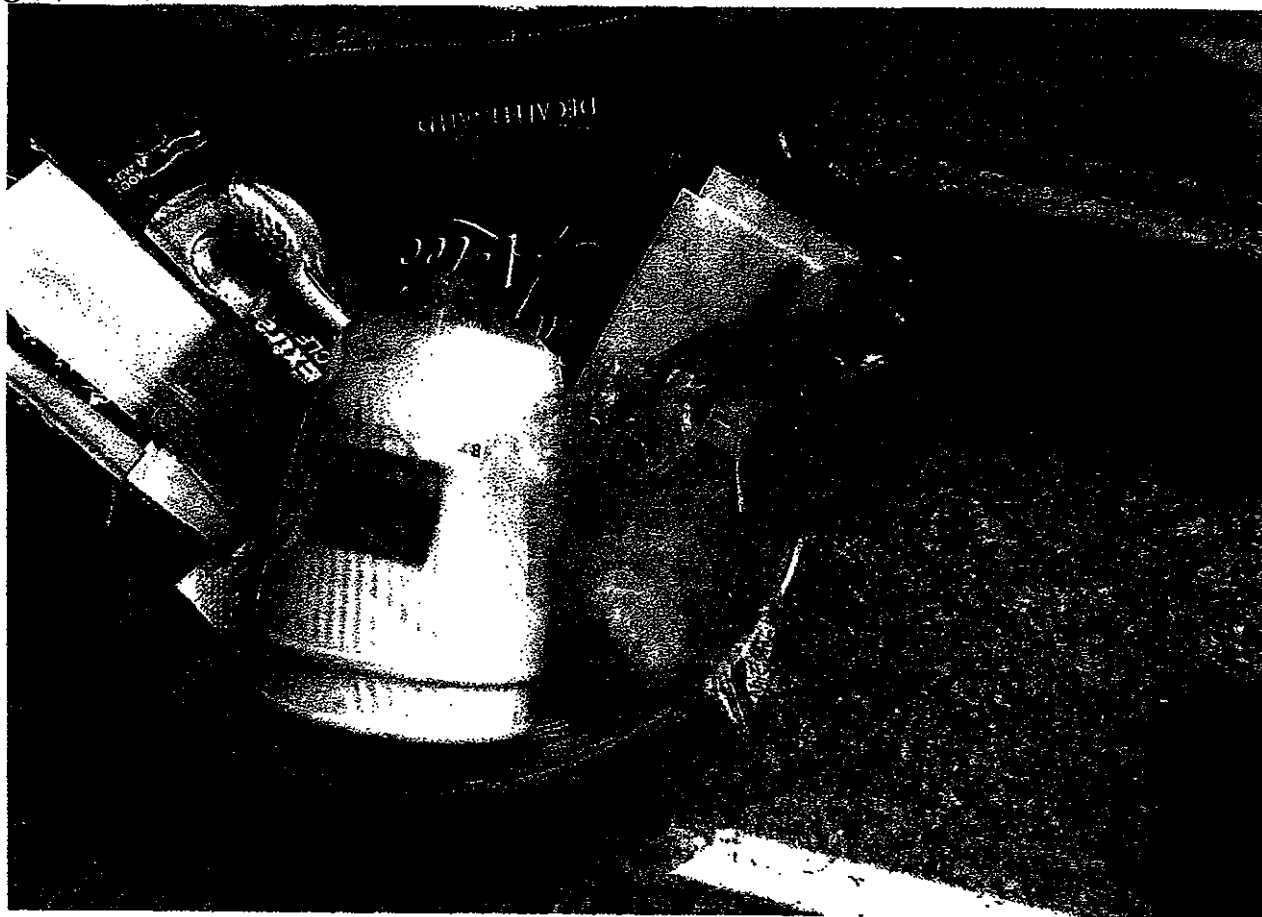
day of October, 2016 }

B. L. Spring

(Signature of Officer Executing Warrant)

Signature of Judge





Whitaker, Marshetta Room: 202

Elite Status:

Arrival: 10/23/16 Account: 491168315

Departure: 10/25/16 Adults: 2

Room Type: SNQQ Children: 0

Your rate(s) are as follows

From	To	Rate
10/23/16	10/24/16	71.99

Rate is based on length of stay. Additional charges may apply for early departure.

X Rate Acceptance: MW

GTD/Payment: Cash

Rewards Program ID:

Address: [REDACTED] River Rd.
Ridgeway, SC 29130

Company:

Guest ID: 102756893

This rate is eligible for partner rewards. If this rate is changed, you may no longer be entitled to partner rewards.

Notice to Guests: This property is privately owned and the management reserves the right to refuse service to anyone. Management will not be responsible for items left in the room. No refund after 15 minutes of check in. If payment is by credit card you are authorized to charge my account for all charges incurred, including any and all damages incurred. I agree that the sole purpose of renting the room is for my own residency only.

I agree that my liability for this bill is not waived and agree to be held personally liable in the event that the indicated person, company, or association fails to pay the full amount of these charges.

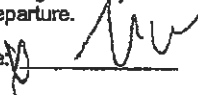
X Guest Signature: [Signature]

Sign on 10-24-2016

Whitaker, Marshetta Room: 112
Elite Status:
Arrival: 10/22/16 Account: 491120540
Departure: 10/23/16 Adults: 2
Room Type: QQ Children: 0
Your rate(s) are as follows

From	To	Rate
10/22/16	10/22/16	61.99

Rate is based on length of stay. Additional charges may apply for early departure.

Rate Acceptance: 

GTD/Payment: Cash

Rewards Program ID:

Address:  Rd.
Ridgeway, SC 29130

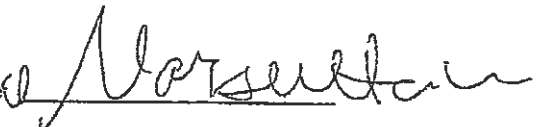
Company:

Guest ID: 102756893

This rate is eligible for partner rewards. If this rate is changed, you may no longer be entitled to partner rewards.

Notice to Guests: This property is privately owned and the management reserves the right to refuse service to anyone. Management will not be responsible for items left in the room. No refund after 15 minutes of check in. If payment is by credit card you are authorized to charge my account for all charges incurred, including any and all damages incurred. I agree that the sole purpose of renting the room is for my own residency only.

I agree that my liability for this bill is not waived and agree to be held personally liable in the event that the indicated person, company, or association fails to pay the full amount of these charges.

Guest Signature: 

Sign on 10.22.2016



KERSHAW COUNTY SHERIFF'S OFFICE

Physical Address

821 Ridgeway road
Lugoff, SC 29078

Mailing Address

P.O. Box 70
Lugoff, SC 29078

Contact Number

Phone: 803-425-1512



K-9 "Taz" Utilization Record Narcotics

Date: 10/24/2016	Notified Time: 1700	Deployed Time: 1730	☒ Day ☐ Night
Location: Econolodge Motel, Lugoff, SC			
Type: ☒ Building ☐ Vehicle ☒ Open Area ☐ Packages ☐ Luggage ☐ Other:			
Weather: ☒ Clear ☐ Cloudy ☐ Rain		Wind: ☒ Calm ☐ Windy Temperature: 75	
Person Requesting K-9 Search: Lt. Brad Lawson			Case # 2016-04508

Find #	Substance Found		Substance Location
	Type	Amount	
1	Crack	18 gr.	Inside of room 202
2	Marij.	2 gr.	Inside of room 202
3			
4			
5			
6			
7			
8			
9			
10			

Areas searched by K-9 with no alerts : Numerous room doors on the second floor

Narrative

On 10/24/2016 I was requested by Narcotics Lt. Brad Lawson to meet with the Narcotics officers at the Econolodge in Lugoff, SC in reference to an area search of the Econolodge. On arrival I met with Lt. Lawson and he advised me that he had gotten permission from the hotel personnell to have a K9 do a free air sniff of the common areas. I deployed my K9 (Taz) on the second floor and began doing an area search on the balcony and around the doors. Once around the area of room 202 and 204 I noticed Taz's behavior change. Her tail began to wag, her body got rigid, and her breathing was fast and shallow. Once she reached the door to room 202 she put her front feet up on the door working the door seam as far as she could reach. She then sat at the door with her nose on the door seam.

Form S-438
Rev. 9/10STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF <u>Keeshan</u>		VERSUS	
FIRST NAME <u>LUCAS</u>	MIDDLE NAME <u>DANIELLE</u>	LAST NAME <u>McCLAD</u>	
STREET AND NO. <u>[REDACTED]</u>		CITY <u>Keeshan</u>	STATE <u>SC</u> ZIP CODE <u>29130</u>
STATE LICENSED <u>SC</u>	DRIVER'S LICENSE NO. <u>[REDACTED]</u>	CDE ☐ YES ☒ NO	ORI. LIC. CLASS <u>0</u>
VEH. LIC. NO. <u>None</u>	STATE <u>None</u>	MAKE OF VEH. YEAR <u>None</u>	COM. VEH. ☐ AUTO ☐ 16 PSGR. VEH. ☐ COMB. ☐
		HAZ. MT. ☐ MOPED ☐ MTRCYCL. ☐ OTHER ☐	
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT			
NAME OF TRIAL COURT <u>Todd</u>		STREET AND NO. <u>1121 Broad Street</u>	
DATE OF TRIAL <u>12/20/16</u>	TIME OF TRIAL <u>9:30</u>	CITY <u>Candler</u>	STATE <u>SC</u> ZIP CODE <u>29020</u>
VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO		VIOLATION SECTION NO. <u>44-53.370</u>	
OWNER OF VEHICLE <u>None</u>		DATE OF ARREST <u>10/24/16</u>	
ADDRESS OF OWNER <u>[REDACTED]</u>		DATE OF VIOLATION <u>10/24/16</u>	
BAIL DEPOSITED <u>Jail</u>	NAME OF ARRESTING OFFICER <u>B. Elton</u>	RANK <u>Sgt</u>	

PRESENT THIS SUMMONS TO THE
TRIAL COURT SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

OF LONG M337

SEE IMPORTANT INFORMATION ON
THE REVERSE SIDE OF THIS TICKET

COUNTY <u>Keeshan</u>	NUMBER <u>1</u>														
BADGE <u>21</u>	TROOP <u>28</u>														
<table border="1"> <tr> <td>D</td><td>S</td><td>T</td><td>W</td><td>T</td><td>F</td><td>S</td> </tr> <tr> <td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td> </tr> </table>		D	S	T	W	T	F	S	1	2	3	4	5	6	7
D	S	T	W	T	F	S									
1	2	3	4	5	6	7									
TIME OF VIOLATION <u>21:40</u> WEATHER <u>CL</u>															
DISTANCE IN FEET FROM INTERSECTION <u>500 Highway</u>															
MILES <u>6.01</u>	N E S W														
HWY NO. <u>1</u>	CITY <u>Keeshan</u>														
Lat. <u>34° 15' N</u>	Long. <u>79° 15' W</u>														
OFFENSE CODE <u>659</u>	B.A. LEVEL <u>1</u>														

81581 GR

Case# 2016-4508
VIOLATOR'S COPY

POLICE

Initial Transaction:

QWA.SCO28013N.NAM/MCCLLOUD, LUCRUZ.DOB/[REDACTED]

Response:

----- HIT NOTIFICATION -----

----- RUN BY USER: STARR -----

KERCC204. TO: KERCC204-144388 20161025 16:55:48 00067CCAB1
FROM: NC2K-8178305 20161025 16:55:48 02DF00E5C4
1L0102DF00E5C42QWA
SCO28013N

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.

MKE/WANTED PERSON

CMC/01 - OTHER

EXL/4 - NO EXTRADITION - INSTATE PICK-UP ONLY. SEE MIS FIELD FOR LIMITS

ORI/SCO200000 NAM/MCCLLOUD, LUCRUZ DANIELLE SEX/M RAC/B POB/SC

DOB/[REDACTED] HGT/502 WGT/125 EYE/BRO HAI/BLK FBI/632256HCL

MNU/DA-SC01620308 SOC/[REDACTED]

OLN/[REDACTED] OLS/SC OLY/2016

OFF/DANGEROUS DRUGS

DOW/20160915 OCA/16-007687

WNO/2016A2010100409

MIS/DRUGS DISTRIBUTION COCAINE BASE 2ND OFFENSE SUBJ IS PROHIBITED FROM

MIS/POSSESSING OR ACQUIRING FIREARM OR AMMUNITION

DNA/N

ORI IS FAIRFIELD CO SO WINNSBORO 803 635-4141

AKA/MCCLLOUD, LUCRUZ

AKA/MCCLLOUD, LUCRUZ NMN

AKA/MCCLOUD, LUCRUZ

NIC/W077305435 DTE/20160923 1904 EDT DLJ/20160924 1000 EDT

IMMED CONFIRM WARRANT AND EXTRADITION WITH ORI

Solicitor: R. Maxwell
Attorney: J. Mobley

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

STATE OF SOUTH CAROLINA

vs.

Lucruz McCloud

Defendant

IN THE COURT OF GENERAL SESSIONS

2016 NOV 16 PM 10:24
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO DEONHAM

BOND ORDER

Case Numbers/Charges:

2016A2010100409 Dist. Crack Cocaine 2nd**I. The issue before the Court regarding Bond:**

- (X) This is an initial setting of Bond
- () The Defendant/State seeks reconsideration of Bond set by Summary Court
- () The Defendant/State seeks reconsideration of Bond set by Summary Court upon prima facie showing of a material change in circumstances since Circuit Court denied first reconsideration
- Amount of Bond set by Summary Court _____
- () The Defendant seeks reconsideration of Bond due to Defendant being held for trial more than six months
- () The State seeks to revoke Bond
- () Other: _____

II. The Court directs and so orders based upon the below:

(☒) Cash in Lieu of Bond in the total amount of 60,000, or

(☒) Surety Bond, acceptable to the Court, acknowledging an indebtedness to the State in the amount of 60,000.

The option of posting 10% cash in the amount of \$ _____ in Lieu of Bond is (☐) granted (☒) denied.

(☐) The above Bond is total/cumulative as to all charge(s). If the Clerk of Court is required to, for computer entry purposes, show a bond amount for each charge then an equal division for each charge, based upon the total/cumulative amount, shall be permitted. If prior to the posting of the total/cumulative Bond by the Defendant, a dismissal of any charge is made by the Solicitor or Court, the above total/cumulative amount of the Bond shall remain in full force and effect as to the remaining charge(s).

(☐) That the Defendant be held without Bond.

(☐) That the Defendant be held without Bond but Defendant can seek a review of this matter by any Circuit Court Judge if the case is not disposed of _____

(☐) That modification of Bond is denied but Defendant can seek a review of this matter by any Circuit Court Judge if the case is not disposed of _____

(☐) Personal Recognizance without cash or surety in the amount of _____.

(☐) Prior Bonds _____

#2
10/3/84

III. The Court has considered:**A. Allegations against the Defendant by the State:**

() Seriousness of Crime(s) charged: _____

(X) Flight Risk: Defendant did not stay in touch with Law enforcement as asked

() Prior Record of Flight to Avoid Criminal Prosecution;

() Prior Record of Failure to Appear in Court;

() Defendant is an alien unlawfully in the United States and poses a substantial flight risk due to this status.

(X) Danger to Community and/or Individual: _____

(X) Prior Record: _____

(X) Pending Charge(s) not subject to this Bond: _____

() Incident Report(s) _____

() Defendant appears in SLED state gang database: _____

() Defendant allegedly commits a violent crime (defined in Section 16-1-60) while out on bond for a previous violent crime and subsequent violent crime did not arise out of same series of events as prior crime:

() Bond hearing on subsequent offense is held within thirty days of arrest on subsequent charge.

() Other Defendant on probation

#3
DJO

B. The Defense has asserted:

- (X) The Defendant is 30 years old;
- () The Defendant resides at _____;
- () The Defendant's education level is _____;
- (X) The Defendant's work history is: Premiere Washing _____;
- () The Defendant arranged to surrender to law enforcement;
- (X) The Defendant's Family Ties _____
- () The Defendant's Character/Mental Condition _____
- () The Defendant's Financial Resources _____
- (X) The Defendant has been detained for 12 Days _____;
- () Other: _____

IV. The Court has also considered everything herein and so orders:

() Existence of above evidence or factors showing that the Defendant is a danger to the community/individual and no conditions imposed will alleviate this danger and bond should be _____ denied or _____ revoked.

() Existence of above evidence or factors showing that the Defendant is a flight risk and no conditions imposed will alleviate this risk and bond should be _____ denied or _____ revoked.

(X) That it is likely/unlikely the Defendant is a danger to the community/individual and Bond should be granted as the following conditions should reasonably alleviate the existence of any danger.

(X) That it is likely/unlikely the Defendant is a flight risk and Bond should be granted as the following conditions should reasonably alleviate the existence of any risk.

Handwritten signature and initials, possibly reading "#4" and "JMO".

V. If Bond is granted, the following conditions apply that will reasonably assure the Defendants' appearance and/or reasonably alleviate any danger to community:

() The Defendant is to have no contact, directly or indirectly, with the victim or the victim's family. The Defendant may not use third parties to make contact directly or indirectly with the victim or the victim's family. The Defense attorney(s) may contact the victim or the victim's family, if necessary to defend the case;

() The Defendant cannot be within a _____ radius of the victim's or victim's family member's home or place of work;

() The Defendant is to have no contact, directly or indirectly, with the co-defendant(s). The Defense attorney(s) may contact the co-defendant(s), if necessary to defend the case but with the permission of the co-defendant's attorney(s);

(X) The Defendant must reside at [REDACTED] Rd Apt 11 Winnsboro, SC

(X) The Defendant is placed on curfew between the hours of 7pm-6am

(X) The Defendant is on house arrest and can leave the home only (house arrest does not automatically impose GPS monitoring) unless checked below:

(X) work

(X) doctor/dentist

(X) lawyer's office

(X) church

(X) court

() other _____

() Defendant must be accompanied by _____ for all of the above activities.

The Defendant is required to go directly to and from the above activities.

() The Defendant cannot be alone with any minor:

() female, except his/her own children;

() male, except his/her own children;

() and have appropriate adult supervision of in the presence of such minors.

5
TJMS

() The Defendant cannot exercise any supervisory role over any minor children, other than his/her own; may not teach religious/church school classes for minors; may not serve as a chaperone or advisor or supervisor or engage in a similar role for any youth group or individual minor, other than his/her own children.

() The Defendant must adhere to any plan developed by the Department of Social Services.

(X) The Defendant cannot consume any alcoholic beverage; nor be in or about any establishment that has as its primary function the sale or consumption of alcoholic beverages; nor be in the bar area of any restaurant.

(X) The Defendant is not to consume any drug that is not prescribed for him/her by a licensed medical professional, except legitimate over-the-counter medications (this does not include any medications that contain ephedrine/pseudoephedrine) taken for an appropriate purpose and which is not a narcotic.

(X) The Defendant cannot possess any firearm or ammunition, actually or constructively.

() The Defendant must adhere to any mental health treatment regimen established, including attending counseling sessions and taking medications as prescribed.

() The Defendant must attend and successfully complete the following program(s):

(X) The Defendant cannot leave the State of South Carolina, except _____

() Extradition is waived now and Defendant will not contest being returned to South Carolina if Defendant leaves the State. (Acknowledgment to be signed by Defendant).

(X) The Defendant shall be subject to GPS Electronic Monitoring at his/her expense.

() Other: _____

#6
10/20/18

() The Defendant must attend the next appearance date at the _____
County Courthouse/Judicial Center at _____ am/pm on _____.

OR

(X) The Defendant must attend the next appearance date as instructed by the Magistrate and/or his/her attorney.

-THE DEFENDANT MUST REPORT AT ALL SUBSEQUENT HEARINGS AND TRIALS AND AT SUCH TIMES AND PLACES AS ARE DESIGNATED TO TRACK AND PREPARE THE CASE BY THE SOLICITOR'S OFFICE, DEFENSE COUNSEL, ANY BONDING COMPANY OR SURETY, OR THE COURT.

() Was there any information from Law Enforcement not available at the Hearing and the reason given for why such information was not available. If so, the Court finds no reason to postpone or delay the hearing.

-THIS ORDER SHALL BE SERVED ON/PROVIDED TO SOLICITOR, DEFENSE COUNSEL, DEFENDANT, AND MAGISTRATE AND SHALL BE ON FILE IN THE CLERK'S OFFICE.

ANY VIOLATION OF THIS ORDER CAN RESULT IN BOND FORFEITURE, BOND REVOCATION AND/OR CONTEMPT SANCTIONS.

FAILURE TO APPEAR AT TRIAL WILL RESULT IN A TRIAL IN DEFENDANT'S ABSENCE

#7
BMS

AND IT IS SO ORDERED.



DONALD B. HOCKER
PRESIDING JUDGE

 SOUTH CAROLINA

DATE: 11-14-16

Note: Any Bond is subject to the standard conditions, as well as special conditions set forth herein, and the Magistrate shall complete the paperwork necessary to effect release.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Lucruz McCloud, #362427,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2017-CP-28-0745

ORDER OF DISMISSAL

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

2021 OCT 27 PM 2:06

FILED FOR RECORD

This matter comes before the Court by way of Applicant Lucruz McCloud's application for post-conviction relief (PCR) filed August 18, 2017, and amended May 20, 2019. A hearing convened at the Richland County Courthouse on June 19, 2019, at which time Applicant was present in court and represented by Kristy Goldberg, Esquire. Assistant Attorney General Samuel L. Key represented the State. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Ronald Moak, Esquire.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. In February of 2017, Applicant was indicted by the Kershaw County Grand Jury for trafficking cocaine base, 10 grams to 28 grams – third offense (2017-GS-28-0355), and simple possession of marijuana (2017-GS-28-0356). Ronald Moak, Esquire ("Plea Counsel"), represented Applicant, and Deputy Solicitor Brett Perry prosecuted the case. On May 15, 2017, Applicant pled guilty to the lesser-included offense of trafficking in

ATTEST: True, Correct & Certified
Copy of Original on File in this
Court

Janet C. Hasty

Clerk of Court Kershaw County

cocaine base, 10 grams to 28 grams – second offense, and simple possession of marijuana before the Honorable R. Knox McMahon. Judge McMahon sentenced Applicant to a negotiated fifteen years' imprisonment for trafficking in cocaine base, 10 grams to 28 grams – second offense, and thirty days' imprisonment for simple possession of marijuana to run concurrently. Applicant did not appeal his sentence or conviction, but timely commenced this PCR action on August 18, 2017.

FACTS

The charges stem from an incident that occurred on October 24, 2016, at the Econo Lodge hotel on Highway 601 in Camden. Applicant was out on bond, but he had an active arrest warrant for additional drug charges in Fairfield County. Law enforcement learned Applicant was staying at the hotel and after speaking to the clerk, found out he rented room 202 and viewed video footage of Applicant initially renting the room, and signing paperwork to renew the room under the name of the woman he was with (Plea Tr. 15). Officers went to the room and knocked on the door, but Applicant was not inside at the time. They found Applicant on the breezeway just around the corner from the room, where he told officers his name was John John (Plea Tr. 15). The officers recognized Applicant by sight, placed him under arrest, and conducted a search of Applicant's person. They found a small quantity of marijuana and a room key in his pocket. Officers received permission from the hotel owner to walk a K-9 around the common areas and the entire second floor of the hotel. The K-9 then alerted the officers to the presence of narcotics in room 202, which was Applicant's room (Plea Tr. 16). Officers entered the room to secure it and observed a small amount of marijuana in plain view; they then exited the room to obtain a search warrant (Plea Tr. 16).

After executing the search warrant, Applicant was Mirandized and officers found several pieces of evidence connecting Applicant to the room including men's clothing, a pizza box with his cell phone number and "John John" on it, and Airhead candy that matched the color of Applicant's tongue (Plea Tr. 16-17). Officers found approximately 14.4 grams of crack cocaine on the room's kitchen sink. Applicant admitted post-Miranda that the drugs and room were his (Plea Tr. 17).

ISSUES RAISED

In his *pro se* application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Conspired with solicitor and officer to coerce me to take plea;
2. Involuntary plea;
 - a. Misinforming me that the other suspect could not take the charge;
3. Illegal sentence;
 - a. Sentence could not be enhanced to second without prior trafficking off.;

Through counsel, Applicant amended his application to include the following allegations:

1. Ineffective assistance of counsel:
 - a. Counsel failed to review and discuss all discovery information and evidence with the Applicant;
 - b. Counsel failed to identify, investigate, research, and make Applicant aware of issues regarding the illegal search which could and should have been challenged during a jury trial or in pre-trial motions and failed to prepare for a jury trial and failed to advise Applicant that he should proceed to a jury trial;
 - c. Counsel was ineffective in that he unfairly and improperly pressured and coerced Applicant into giving up his right to trial and accepting a plea offer;
 - d. Counsel was ineffective in that he made promises regarding what the outcome of the case would be when he was hired and failed to uphold those promises;
 - e. Counsel was ineffective in that he should have been able to negotiate a better plea deal on Applicant's behalf;
 - f. Counsel was ineffective for inaccurately explaining the plea negotiations to Applicant prior to the plea being entered; and

- g. Counsel failed to alert the Court regarding time the Applicant had served on this charge and time he had served on house arrest for a Fairfield County charge that could be credited to his sentence.

At the evidentiary hearing, PCR counsel for Applicant proceeded on the allegations raised in the amended application, which encompasses and expands upon the allegations in Applicant's original application.

SUMMARY OF RELEVANT TESTIMONY

Applicant's testimony

At the evidentiary hearing, Applicant testified he was represented by a different attorney during his bond hearing. Applicant then chose to hire Plea Counsel in January 2017 after he heard from several people that Plea Counsel was "pretty good." (PCR Tr. 10). Applicant stated he and Plea Counsel met at Applicant's apartment where they discussed the charges, and Applicant retained Plea Counsel for \$500. Applicant stated he asked Plea Counsel if Plea Counsel could handle the charges, and at one point, Plea Counsel asked Applicant if he was okay with doing three years, and Applicant said he was. (PCR Tr. 10). Applicant testified he told Plea Counsel about the pending charges in Fairfield County.

Applicant initially testified that between January and May of 2017 he only met with Plea Counsel to pay him, and they did not talk about evidence, the plan for resolving the case, or merits of his case (PCR Tr. 11-12). Applicant testified he was never given a copy of the discovery or saw any evidence against him until he filed his PCR application (PCR Tr. 14-15). However, on cross-examination Applicant admitted he saw Plea Counsel a few times between January and May, and that during one meeting Plea Counsel conveyed that the solicitor had made a plea offer of sixteen years (PCR Tr. 25-56). Applicant testified he told Plea Counsel he

did not want to accept that plea deal, but he never gave Plea Counsel a range for further negotiations. (PCR Tr. 26).

Applicant alleged Plea Counsel told Applicant he was going to try to negotiate the plea to five or six years, and he told Plea Counsel to accept if the solicitor agreed. According to Applicant, the next time they spoke, Plea Counsel informed Applicant the solicitor was not willing to offer anything lower, and fifteen years was the best deal offered (PCR Tr. 13). Applicant testified that when he voiced complaint about the deal, Plea Counsel said they would either go to trial or accept the plea agreement. Applicant testified Plea Counsel advised that if he were in Applicant's position, he would rather do fifteen years than the twenty-five years Applicant faced if he went to trial (PCR Tr. 14). Applicant testified the original charges were for a third trafficking offense, which raised the mandatory minimum to twenty-five years, although he eventually pled guilty to a second offense.

Applicant further testified that after reviewing the discovery in his case, he now believed the search was illegal because the hotel room was not registered in his name and because police initially entered without a search warrant (PCR Tr. 17). Applicant stated he thought Plea Counsel did not investigate his case based on Applicant's issues with the execution of the search warrant, and he believed the case should have gone to trial because the police entered the hotel room before obtaining a search warrant (PCR Tr. 19-20).

Applicant testified he felt his case should not have gone further than a preliminary hearing, but he never discussed the search with Plea Counsel. Applicant stated he did not go to trial because he was "basically forced to take a plea" (PCR Tr. 20). Applicant alleged that when Plea Counsel told him about the fifteen-year offer, he told Plea Counsel he did not think Plea Counsel was representing him properly and he was going to hire another attorney (PCR Tr. 21).

Applicant testified this other attorney told him to let the court know that Applicant was retaining him and wanted to relieve Plea Counsel. According to Applicant, Plea Counsel and the solicitor took Applicant to a jury room where the solicitor told him it did not matter whether he hired another attorney or not, Applicant would get the same sentence and the solicitor would not change the plea offer (PCR Tr. 20). Applicant alleged the solicitor told him that if Applicant proceeded to trial, the solicitor would make sure he got thirty years. Applicant indicated Plea Counsel was present for this discussion, and when he asked Plea Counsel why Plea Counsel did not stand up for him, the solicitor responded that they were friends and the situation "is what it is." (PCR Tr. 22). Applicant testified he did not want to plead guilty and would have not accepted the plea offer and would have instead gone to trial if he had read the discovery prior to that date, even though he was facing a mandatory minimum of twenty-five years at trial (PCR Tr. 22-23).

On cross-examination Applicant acknowledged that during the plea colloquy he was asked whether he understood the plea negotiations, and he responded "Yes, sir" – despite now claiming that he did not understand (PCR Tr. 28-29). Applicant testified he was agreeing to the deal so he said "yes" to the questions that sounded correct and "no" to the questions that did not (PCR Tr. 29). He conceded that, at the time, he wanted the plea court to accept the plea (PCR Tr. 29). Applicant acknowledged he answered "No, sir" when asked by the judge whether he had been coerced to plead guilty, and he could not articulate why he did not bring up the meeting in the small room and his desire to retain new counsel at the time (PCR Tr. 29). Applicant testified he did not want to take the deal, but he felt he had no choice. Applicant acknowledged that he told the judge he was satisfied with Plea Counsel's representation, and he understood his first discussion with Plea Counsel about possibly negotiating a sentence of three years did not

constitute a promise (PCR Tr. 30). Applicant testified he served approximately one week of time in jail for the charges prior to the plea hearing (PCR Tr. 30).

Plea Counsel's testimony

Plea Counsel testified he never promised a three-year deal; rather, he explained, the policy at the time the minimum for a first trafficking offense in Kershaw County was three years (PCR Tr. 32). Plea Counsel testified he asked Applicant if he would agree to a three-year sentence, if the State agreed the charges could be brought down to the first offense, in an attempt to figure out his goals for the representation. Plea Counsel testified he received discovery and reviewed it with Applicant at Applicant's grandmother's home (PCR Tr. 32-33). Plea Counsel testified he brought two copies and went through his own copy with Applicant, but Applicant did not take his copy.

Plea Counsel explained he had to reassess the case and discussing trial strategies and defenses with Applicant after the State presented its evidence at the preliminary hearing tying Applicant to the hotel room by multiple means, including: the positive identification from the hotel clerk, camera footage, colored candy in the room, and the pizza box with Applicant's phone number on it (PCR Tr. 34-37). Plea Counsel testified the only other occupants of the room were Applicant's girlfriend and son, and a significant defense challenge would have been disputing whether Applicant gave a statement to law enforcement (PCR Tr. 36). Plea Counsel indicated investigators told him that when they were considering removing an X-Box from the room as evidence, Applicant asked investigators why they were "taking his boy's stuff," which would have additionally been used to connect him to the room (PCR Tr. 36). Plea Counsel testified he told Applicant they had some scope to question the investigation, but ultimately the problem was whether the jury would believe the officers were lying about how they got into the

room, and if after hearing all the evidence, the jury would tie Applicant to the room (PCR Tr. 37). Plea Counsel testified he spoke to Applicant about the reality of the jury tying him to the room with all of his stuff in it, and pointing the finger at Applicant's girlfriend and eight-year-old son was not a viable defense or trial strategy (PCR Tr. 37).

Plea Counsel testified he met with Applicant at an apartment two or three times, and at Applicant's grandmother's home an additional three or four times (PCR Tr. 37-38). He stated that the weekend before trial, he met with Applicant on both Saturday and Sunday. Plea Counsel affirmed that Applicant mentioned hiring different counsel, and he told Applicant that if he were seeking new representation, the other attorney would have to be ready Monday morning because the judge would not allow Applicant to change attorneys if the other counsel was not present (PCR Tr. 38). That Monday, Plea Counsel testified, he wanted to speak to Applicant privately so he took Applicant to the jury room where the solicitor came in. Plea Counsel corroborated Applicant's testimony that the solicitor said he was not going to offer a lower deal to another attorney, and he did not interject because he did not want to escalate the situation (PCR Tr. 38). Once the solicitor left, Plea Counsel indicated he told Applicant that interaction was representative of the solicitor's attitude toward the case since the case began, which made it difficult to negotiate. Plea Counsel testified he was not initially hired to handle the Fairfield charges; however, during the course of his the negotiations for the Kershaw charges, the solicitor expressed an intent to tie the counties together (PCR Tr. 39). Ultimately, Plea Counsel resolved both cases and represented Applicant in Fairfield County.

Plea Counsel testified that, in his opinion, after reviewing the evidence in the case, Applicant did not have any viable third-party at whom to the defense could point the finger, and Applicant would be facing a mandatory twenty-five years at trial (PCR Tr. 40). Plea Counsel

stated he was prepared to proceed with a trial, but he ultimately advised Applicant to accept the fifteen-year offer instead of risking a twenty-five year sentence given the evidence in this case (PCR Tr. 40). Plea Counsel testified the solicitors' office never offered anything less than fifteen years, and the solicitors from Kershaw and Fairfield agreed that if he accepted a plea for fifteen years in one county, the other county would agree to run any sentences concurrently (PCR Tr. 41). Plea Counsel testified that after the plea in Kershaw County, Plea Counsel met with Applicant in Fairfield County and reviewed the appeal and PCR processes with Applicant. (PCR Tr. 42). Plea Counsel testified he told Applicant how to obtain the paperwork to file a PCR, and Applicant asked about an appeal.

Plea Counsel testified Applicant wanted five to ten years on his charges in Kershaw County, and then to go to trial on the Fairfield case, but the solicitor never offered anything in that range. (PCR Tr. 43). Plea Counsel stated he felt there were issues with the charges in Fairfield that could have been brought to trial, but the charges were ultimately included in the negotiated plea along with the Kershaw County charges. Plea Counsel testified that based on his experience, the information officers gave him about how they learned the Applicant was staying at the hotel and found his room raised no Fourth Amendment privacy violations that could be successfully challenged at trial (PCR Tr. 47-48). Because of the great weight of evidence against the Applicant in Kershaw County, Plea Counsel advised Applicant it was in his best interest to plead guilty. (PCR Tr. 50-51).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony.

accordingly in its discussion below. This Court finds the combined record of the plea transcript and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raises several allegations arguing Plea Counsel was ineffective in his representation. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 344 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise

of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted

on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusive, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also *Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty

plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Plea Counsel and any prejudice therefrom. This Court finds the Applicant freely and voluntarily entered a guilty plea. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

Failure to review and discuss all discovery information and evidence

Applicant alleges Plea Counsel was ineffective for failing to discuss all discovery information and evidence with him. This Court finds Applicant failed to meet his burden. *Hill* makes clear that the prejudice prong ordinarily requires "something more" than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial. *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (citing *Hill*, 474 U.S. at 58-59).

In order to prevail upon a claim that counsel did not adequately prepare a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

This Court finds Plea Counsel credibly testified he brought over the discovery for the case to Applicant's grandmothers home and reviewed the file with Applicant on at least one occasion. Plea Counsel indicated Applicant did not keep his copy of the discovery. Plea Counsel also credibly testified that the issues of the evidence and facts surrounding Applicant's case were discussed frequently and repeatedly in order to determine the best course of representation, particularly due to the challenge in developing a viable trial strategy or defense. Applicant's own testimony corroborates that he and Plea Counsel engaged in discussion of the evidence, his case, and the reality of pursuing a jury trial when he received the initial plea offer.

This Court finds Plea Counsel was not deficient because he adequately reviewed discovery in Applicant's case both independently and with Applicant. As such, Applicant has failed to meet his burden of proving either prong of *Hill*. Applicant failed to present any testimony establishing that *but for* Counsel's alleged failure to review discovery, he would not

have pled guilty and instead would have insisted upon going to trial. *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to investigate

Applicant alleges Plea Counsel was ineffective for failing to investigate his case and uncover what Applicant believes was an illegal search. This Court finds this allegation is without merit and relief should be denied as to this issue.

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense. *Harrington*, 562 U.S. 86 (2011).

This Court finds Applicant has failed to meet his burden of proving Plea Counsel failed to investigate any issue that could have affected the outcome of the case. Plea Counsel credibly testified he spoke to investigators and officers about the details of the case numerous times, and that ultimately, the evidentiary support for the charges was an obstacle that could not be overcome. Plea Counsel testified numerous pieces of evidence tied Applicant to the hotel room containing the drugs, with no other individual to hold responsible as pointing the finger at

outside of the Applicant's girlfriend or young son, which was not a reasonable trial strategy. As stated above, Applicant also made post-*Miranda* admissions connecting him to the room.

This Court finds Plea Counsel was not deficient in determining further investigation of the search issue would be futile and would not result in the development of a viable defense for trial. Plea Counsel credibly testified that based on the facts of the investigation, none of the actions taken by law enforcement, including the initial warrantless entry of the hotel room, appeared to be sufficient to raise a meritorious Fourth Amendment challenge. As discussed during the plea hearing, Fairfield County had an active arrest warrant for Applicant at the time officers located Applicant at the Econo Lodge hotel. (Plea Tr. 14-15). Officers spoke to the clerk, learned Applicant and a woman had rented a room, and viewed video footage of the transaction. When officers found Applicant in the breezeway of the hotel, he was arrested and searched pursuant to the active warrant, and officers found a quantity of marijuana and a hotel room key on Applicant's person. (Plea Tr. 15). Officers then obtained consent from the owner of the motel to walk a K-9 around the common areas and the entire second floor of the facility. (Plea Tr. 15-16). The K-9 alerted officers to the presence of narcotics in room 202, which belonged to Applicant (Plea Tr. 16). Officers secured the room, and upon entry, saw marijuana in plain view (Plea Tr. 16). Officers then backed out of the room and obtained a search warrant, which they subsequently executed, locating the remaining narcotics in the kitchen sink of the room (Plea Tr. 17).

This Court finds Plea Counsel credibly testified that after Applicant was arrested pursuant to a valid warrant, marijuana was located on his person and a K-9 indicated the presence of narcotics in Applicant's room after being walked around common areas and the entire second floor of the motel. The Court additionally finds credible Plea Counsel's testimony that after entry

to the room, officers then observed contraband in plain sight and did not need a warrant to conduct a search, but instead combined this observation with the lawful arrest, marijuana resulting from the search of Applicant's person, and positive alert from the K-9, to support the search warrant ultimately obtained.

Based on these facts, this Court finds Counsel's strategic decision not to pursue a challenge to the search was reasonable¹. Moreover, Applicant failed to present any evidence or testimony to establish he had a meritorious defense to the search that Counsel failed to present. Petitioner must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. *See Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing);

Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); *Skeen v. State*, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Further, Plea Counsel testified that despite the weight of the evidence, he was prepared to proceed to trial, but he advised Applicant that agreeing to the plea offer was in Applicant's best interest. Therefore,

¹ "[T]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011).

because Applicant has failed to prove deficiency or prejudice, relief is denied and this allegation is dismissed with prejudice.

Plea Counsel was ineffective for unfairly pressuring Applicant to accept plea

Applicant alleges he did not plead guilty freely and voluntarily because Plea Counsel allegedly “improperly pressured and coerced” him to plead guilty and give up his right to a trial. After review of the record and testimony, this Court finds this allegation meritless. Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both.” *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the trial judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” *Dover*, 304 S.C. at 434–35, 405 S.E.2d at 392. However, the trial judge “does not have to direct the defendant's attention to every consequence of his plea

provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998). The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres v. Leake*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea with the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. at 20; 546 S.E.2d at 419. Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and will be treated as such.

While Applicant now alleges he did not plead guilty freely and voluntarily, Applicant's testimony regarding his plea was inconsistent and conflicting. He first alleged he did not want to plead, but did so because the solicitor told him appointing new counsel and pursuing a trial would not help him. On cross-examination Applicant then testified he answered the plea colloquy in the manner he felt was most likely to secure the plea, and, at the time, it was what he wanted. The Court finds the plea colloquy is dispositive as to this conflicting testimony. The plea court expressly asked Applicant whether he was threatened or coerced to plead guilty, to which he responded "No, sir" (Plea Tr. 11-12).

Additionally, the Court finds Applicant failed to present any valid reason why he should be able to depart from the truth of his statements made during his guilty plea. See *Dalton*, 376

S.C. at 137-38, 654 S.E.2d at 874. The plea court asked Applicant several times if his plea was entered voluntarily and whether he had been coerced in any way (Plea Tr. 11-14). The plea court also inquired with Applicant as to whether he was satisfied with the work of his attorney, and whether they had discussed with the elements of the crimes in which he was indicted and any defenses he may have. Applicant indicated to the plea court that he was entering his plea freely and voluntarily, and he was completely and totally satisfied with Plea Counsel's performance (Plea Tr. 13). Applicant further told the plea court that he had no complaints to make about Plea Counsel, the solicitor, or any of the officers in his case (Plea Tr. 13). At the PCR hearing, Applicant did not allege any facts that would have prevented him from informing the plea court his attorney coerced him into pleading guilty or that he needed more time to explore the possibility of going to trial.

The Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Therefore, the Court finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Applicant plead guilty freely and voluntarily. Accordingly, this allegation must be denied and dismissed with prejudice.

**Plea Counsel was ineffective for promising a lower sentence,
thus rendering Applicant's plea unknowing and involuntary**

Applicant alleges Plea Counsel was ineffective for making promises regarding the case outcome and failing to uphold those promises, resulting in Applicant entering his guilty plea involuntarily. This Court finds this allegation meritless.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975).

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin*, 395 U.S. at 241; *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755. The standard for determining the validity of a guilty plea is "whether the plea represents a voluntary and

intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). Where a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56.

This Court finds credible Plea Counsel's testimony that he never made promises regarding possible outcomes or negotiations of the case. Plea Counsel testified he asked Applicant if Applicant would agree to a three-year sentence specifically because Plea Counsel knew that to be the minimum offer the Solicitor's Office would make for a first trafficking offense in the county (PCR Tr. 32). Plea Counsel testified he did not promise he would be able to obtain that deal for Applicant or be able to reduce the charges to that degree. Further, Applicant acknowledged Plea Counsel's inquiry during their first meeting did not constitute a promise to achieve that outcome (PCR Tr. 30). A review of the transcripts from the guilty plea hearing and PCR hearing demonstrates Applicant knowingly and voluntarily entered a guilty plea, and understood the possible sentencing range for his charges. During the plea colloquy Applicant was asked whether he understood that the potential penalty for pleading to the trafficking offense was no less than five but no more than thirty years (Plea Tr. 8-9). Applicant responded, "Yes sir." (Plea Tr. 9). Shortly after, the solicitor informed the court that Applicant was pleading guilty to a negotiated fifteen years to run concurrent with Applicant's pending charges in Fairfield County (Plea Tr. 10-11). The court asked Applicant if he understood the plea agreement and negotiated sentence of fifteen years which Applicant indicated "Yes, sir." (Plea Tr. 14). Applicant was again asked if he understood that if the court accepted the plea, Applicant would be sentenced to fifteen years. (Plea Tr. 14). Applicant responded that he understood (Plea Tr. 14).

As such, any alleged deficiency on behalf of Plea Counsel in discussing the possible sentence was cured by the plea colloquy where the court explained and asked Applicant whether he understood he was getting a fifteen-year sentence three separate times. This Court finds Applicant has failed to meet his burden of proving Plea Counsel made any promises regarding the case outcome that lead Applicant to enter his plea unintelligently and involuntarily. Therefore, relief is denied and this allegation is dismissed with prejudice.

Failure to negotiate a better plea

Applicant alleges Plea Counsel was ineffective for failing to negotiate a better plea on his behalf. This Court finds this allegation is without merit and accordingly denies relief.

"Prosecutors have broad powers in the plea bargain process[.]" *Reed*, 333 S.C. at 684, 511 S.E.2d at 400. "Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case." *Id.* (quoting *State v. Thrift*, 312 S.C. 282, 291-92, 400 S.E.2d 341, 346-47 (1994)). Prosecutors may pursue a case to trial, plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety. *Id.* at 684, 511 S.E.2d at 400-01. "[A] defendant has no constitutional right to plea bargain." *Id.* (citing *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff'd as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)). Further, a trial judge is not required to accept a plea. *Id.* (citing *Santobello v. New York*, 404 U.S. 257 (1971)).

Plea Counsel testified he conveyed all plea offers to Applicant from the State, including the final offer of fifteen years (PCR Tr. 40). Additionally, Applicant testified Plea Counsel tried to negotiate a five- or six-year plea agreement, but he told Applicant the solicitor refused to offer anything other than fifteen years. This Court finds credible Plea Counsel's testimony that the

solicitor never extended a plea offer to less than fifteen years, and Applicant's desired five-to-ten-year range was never an option due to the State's extensive evidence against him (PCR Tr. 43). Counsel could not force the State to make a more generous plea offer, and Applicant presented no evidence to show that Counsel could have done anything further to prompt the prosecution to extend a more favorable plea offer. To the contrary, a fifteen-year negotiated plea to run concurrent with Applicant's Fairfield charges was the best offer available when the Kershaw charges as indicted held a mandatory minimum of twenty-five years. This Court finds Counsel capably negotiated to obtain a favorable plea offer to a lower sentence and to run the Kershaw and Fairfield charges concurrently; he could do no more. Accordingly, this Court finds Applicant cannot meet his burden of proof as to deficiency or prejudice on this allegation, and his request for relief is denied and dismissed with prejudice.

Failure to explain the plea negotiations

Applicant alleges that prior to the plea hearing, he was not aware of the terms of Plea Counsel's negotiated agreement with the solicitor resulting in the fifteen-year sentence. However, this Court finds Applicant has failed to meet his burden of proving his allegation Plea Counsel was ineffective for inaccurately explaining the plea negotiation prior to entering the plea. Rather, this Court finds Plea Counsel credibly testified he conveyed the plea offer to Applicant from the State, including the negotiated agreement of fifteen years to run concurrent with Applicant's charges in Fairfield County, which Applicant ultimately accepted. This Court finds credible Plea Counsel's testimony that anything lower than fifteen years was never in contention due to the strength of the State's evidence. Accordingly, this Court finds relief should be denied and this allegation shall be dismissed.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin*, 395 at 243. A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."

Ray, 310 S.C. at 437, 427 S.E.2d at 174; *see also Wolfe*, 326 S.C. at 164, 485 S.E.2d at 370 (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the trial judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover*, 304 S.C. at 434-35, 405 S.E.2d at 392. However, the trial judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter*, 329 S.C. at 362, 495 S.E.2d at 776.

This Court finds Plea Counsel's advice to Applicant regarding the plea negotiations and risks and benefits of going to trial versus entering a guilty plea was within the range of reasonableness under professional norms, and none of Plea Counsel's actions in this regard were deficient. Moreover, during the plea colloquy the judge asked Applicant if he understood the terms of the plea deal including the negotiated concurrent sentence with the Fairfield charges, and the nature of transport to that county after his plea, to which Applicant responded "Yes, sir." (Plea Tr. 11). Applicant additionally answered in the affirmative when the judge asked if he had enough time to make up his mind as to whether to accept the plea offer, and if Applicant had talked with his lawyer as often and for as long as necessary for proper representation (Plea Tr.

12). Applicant further responded "Yes, sir" when asked whether he understood his talks with his attorney (Plea. Tr. 12). Applicant also answered in the affirmative when the judge asked if he understood the negotiated plea agreement would result in a fifteen-year sentence, and again when asked a final time if he still wished to plead guilty (Plea Tr. 14).

The Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. Any alleged deficiency regarding Counsel not fully explaining the nature of the negotiated sentence was cured by the plea colloquy. See *Wolfe*, 326 S.C. at 164, 485 S.E.2d at 370 (stating any possible misconceptions due to counsel's alleged deficiencies can be cured by the plea court's colloquy). The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Therefore, the Court finds the combined record from the plea hearing and the evidentiary hearing clearly establishes that Plea Counsel effectively communicated the details of the plea agreement, and Applicant pled guilty freely and voluntarily. Accordingly, this allegation must be denied and dismissed with prejudice.

Failure to alert Court of time served to be credited to sentence

Applicant alleges Plea Counsel was ineffective for failing to alert the plea court of time Applicant had served for the charges in Kershaw County, and time spent on house arrest for charges in Fairfield County to be credited toward his sentence.

This Court finds Applicant has failed to meet his burden in proving counsel was ineffective and any resulting prejudice. The South Carolina Supreme Court has defined "time served," as it is used in section 24-13-40, as "the time during which a defendant is in pre-trial confinement and charged with the offense for which he is sentenced (so long as he is not serving

time for a prior conviction)." *State v. Higgins*, 357 S.C. 382, 384, 593 S.E.2d 180, 181 (Ct. App. 2004) (citing *Blakeney v. State*, 339 S.C. 86, 88, 529 S.E.2d 9, 10-11 (2000)). Further, the Court found it would be illogical to credit a defendant for time served while released on bond, as the statute intended to award sentencing credit only for time spent in a penal institution. *Id.* In June of 2017, the South Carolina Legislature amended section 24-13-40 to give judges discretion to award credit for time served when a defendant is on monitored house arrest, stating: "In every case in computing the time served by a prisoner, full credit against the sentence *must* be given for time served prior to trial and sentencing, and *may* be given for any time spent under monitored house arrest." (emphasis added).

While Applicant alleges Plea Counsel did not alert the court to time served while in jail to be credited toward his sentence, this Court finds a review of the record, as well as transcript from Applicant's plea hearing in Fairfield County conclusively refutes this claim. During Applicant's second plea hearing, Plea Counsel addressed the court regarding time served and stated Applicant had served approximately thirty-two days, and Applicant agreed (Fairfield Plea Tr. 4). Applicant's testimony at the evidentiary hearing was that he spent twenty days in jail in Fairfield County, and a week in jail in Kershaw County, which equals approximately the same amount of time served that Plea Counsel reported to the court. The court then confirmed thirty-two days were being recorded as time served to be credited towards Applicant's sentence (Fairfield Plea Tr. 5, 14). Moreover, Applicant's sentencing sheets for both Kershaw and Fairfield have the relevant box giving credit for time served checked. Accordingly, Applicant has failed to establish that Plea Counsel was deficient in any way, relief is denied, and this allegation is dismissed with prejudice.

CONCLUSION

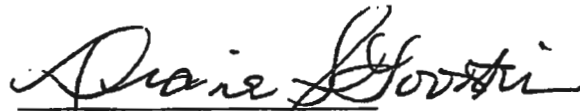
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. The Court finds Applicant knew the meaning and consequences of pleading guilty to the charge against him and was fully aware of the meaning of the negotiated sentence. The Court further finds Applicant voluntarily pleaded guilty. His voluntariness is evinced by the plea transcript and testimony given at the PCR hearing.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 7 day of Oct., 2021.



DIANE S. GOODSTEIN
Presiding Judge
Fifth Judicial Circuit

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2017-CP-28-0745

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS

LUCRUZ MCCLOUD, #362427

Applicant,

v.

STATE OF SOUTH CAROLINA,

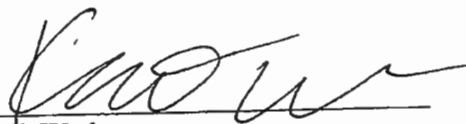
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Kristy G. Goldberg, Esquire
Willson Jones Carter & Baxley, P.A.
3600 Forest Drive, Suite 204
Columbia, SC 29204

This 29th day of October, 2021.



Katie Wade
Legal Assistant for Respondent

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S.C. SUPREME COURT