

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable G.D. Morgan, Jr., Circuit Court Judge

CECIL BLACKWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001052

APPENDIX

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) COURT OF GENERAL SESSIONS

4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 VS.)
7 CECIL EUGENE BLACKWELL, JR.,)
8 DEFENDANT.) 2017-GS-11-1192

TRANSCRIPT
OF
RECORD

~~October 8th, 2018~~
Gaffney, South Carolina

BRADY W. MCBEE

2021 DEC 22 AM 11:13

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY S.C.

13 B E F O R E :
14 THE HONORABLE R. KEITH KELLY, JUDGE.

16 A P P E A R A N C E S :
17 KIMBERLY L. LESKANIC
18 ASSISTANT SOLICITOR
19 Attorney for the State
20 JOHN RECKENBEIL
21 ESQ.
22 Attorney for the Defendant

23 MIKE WATTS
24 Circuit Court Reporter

25 Transcribed by Pamela E. Green, Circuit Court Reporter

[Handwritten signatures and stamps]

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Cross-examination by Mr. Reckenbeil

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Certificate

17

1 PROCEEDINGS

2
3 SOLICITOR LESKANIC: Cecil Blackwell.

4 MR. RECKENBEIL: Judge, I'm prepared to move forward.
5 This, this is a matter where my client has been apprised of
6 this hearing. He was here this morning. We've been
7 exchanging electronic messages, and I think that this is
8 vital to get this testimony in this pretrial matter. So,
9 I'd like---

10 THE COURT: okay.

11 MR. RECKENBEIL: ---to move forward.

12 THE COURT: All right. We're here on the matter now of
13 the State of South Carolina versus Cecil Eugene Blackwell,
14 Junior. 2017-GS-11-1193 and 1192.

15 Mr. Reckenbeil, Ms. Leskanic.

16 SOLICITOR LESKANIC: May it please the Court, Your
17 Honor.

18 Mr. Blackwell's case is Number 2 on the trial docket
19 for this week. Detective Billy Anthony is scheduled to be
20 at a training this week, and upon speaking with the defense,
21 they've agreed to take his testimony out of order and out of
22 the presence of the jury. I believe it's for the benefit of
23 defense counsel and for the Defendant.

24 The Defendant was here this morning. I saw him. He
25 was present for roll call. He is now not present. But the

Billy Anthony - Direct examination
By Solicitor Leskanic

1 State is prepared to go forward, and if the Court is ready,
2 the State would call Detective Billy Anthony.

3 THE COURT: Anything, Mr. Reckenbeil?

4 MR. RECKENBEIL: No, as Ms. Leskanic has stated, that
5 is correct.

6 THE COURT: All right. Come on up, officer, and be
7 sworn.

8 BILLY ANTHONY, being first duly
9 sworn, testified as follows:

10 THE COURT: Tell us your full name and spell your last
11 name for my court reporter please.

12 THE WITNESS: Billy Anthony. A-N-T-H-O-N-Y.

13 THE COURT: Solicitor.

14 SOLICITOR LESKANIC: May it please the Court.

15 Thank you.

16 DIRECT EXAMINATION

17 BY SOLICITOR LESKANIC:

18 Q Detective Anthony, will you please state where you are
19 employed?

20 A With the Cherokee County Sheriff's Department.

21 Q All right. And how long have you been employed with
22 the Sheriff's Department?

23 A Approximately 17 years.

24 Q Okay. And what are your duties with the Sheriff's
25 Department?

Billy Anthony - Direct examination
By Solicitor Leskanic

1 A I am the evidence custodian and the crime scene
2 investigator.

3 Q Okay. And in this case against Cecil Blackwell that
4 occurred back in July of 2017, did you have those same
5 duties?

6 A Yes, ma'am, I did.

7 Q Okay. And, in this case, did you work it as a crime
8 scene investigator or primarily as the evidence custodian?

9 A Evidence custodian.

10 Q Okay. And will you please tell the Court what the
11 evidence custodian duties are that you have?

12 A What we typically do, we take any evidence that the
13 officer, suppose to be patrol officer, narcotic, our
14 investigators, they'll drop the evidence into the evidence
15 locker or to a drop box. We take the evidence from those
16 lockers or drop box, enter it into the computer system, bar
17 code it, and then we -- if it is going to SLED for analysis,
18 I transfer it to SLED.

19 Q Okay. And how was evidence left for you in this case?

20 A It was placed in our evidence drop box.

21 Q Okay. And can you please explain where the drop box is
22 located and how that works and any security measures
23 associated with that at the Sheriff's Department?

24 A Yes, ma'am.

25 Our evidence drop box is actually like a metal slot in

Billy Anthony - Direct examination
By Solicitor Leskanic

1 the wall. It's in the hallway of the secured area of the
2 Sheriff's Office. Only our officers have access to the drop
3 box itself. Every -- but it drops inside of our evidence
4 box.

5 So, once you drop anything into it, only someone that
6 has access to the evidence vault can access any evidence
7 that's in there. Currently there's only four employees at
8 the Sheriff's Office at this time that would of had access
9 to it, myself, Detective Jimmy Henson, Lieutenant Rodney
10 Bright, and the sheriff.

11 Q Okay. Thank you.

12 And what did you receive in this case and when?

13 A On July 21st, 2017, I logged in a B.E.S.T. Bag,
14 B.E.S.T. Bag Number B274146, and an envelope stated it
15 contained three empty glassen bags and one black pouch.

16 SOLICITOR LESKANIC: Okay. May I approach the witness,
17 Your Honor?

18 THE COURT: Yes, ma'am.

19 SOLICITOR LESKANIC: Thank you.

20 Detective Anthony, I'm showing you what's been marked
21 State's Exhibit 1 and State's Exhibit 2.

22 Would you please look at those and state whether you
23 recognize those?

24 A Yes, ma'am, I do.

25 Q And what are those?

Billy Anthony - Direct examination
By Solicitor Leskanic

1 A These are the two items that were placed into the drop
2 box. The B.E.S.T. kit is, when we enter it in, we affix the
3 bar code and it has our bar code the day that, you know, it
4 was logged it in at the evidence vault, and it still has the
5 same seal between that one.

6 Q Okay. And do you have your proof of chain of physical
7 custody paperwork with you?

8 A Yes, ma'am, I do.

9 Q In looking at that paperwork, can you tell who dropped
10 Item 1 and Item 2 into evidence?

11 A Yes, ma'am. It shows Rodney Skinand.

12 Q Okay. And does it tell you what day he dropped that
13 into the evidence drop box?

14 A Yes, ma'am. July 11th, 2017.

15 Q And as you stated, once he drops that into the drop
16 box, no one has access to it except the four individuals
17 previously mentioned?

18 A That's correct.

19 Q All right. So what happens on July 21st when you
20 make your next notation of -- with State's 1 and State's 2?
21 What do you do with those items?

22 A Those -- that's when we actually take it out of the
23 drop box or the next time a paper will log it in. We go in
24 the evidence vault on a daily basis through the week and
25 organize things. But because crime scenes and other calls

Billy Anthony - Direct examination
By Solicitor Leskanic

1 we may have may not be able to log it in the same date that
2 it first gets dropped.

3 We log it in. We put it into a box, the B.E.S.T. bags,
4 that have to be taken to SLED. We enter it into SLED's
5 system and then I will transport it to SLED.

6 Q Okay. And when you received State's Exhibit 1, how was
7 it packaged?

8 A It was packaged inside the inner envelope -- in --
9 inner bag and it was inside the brown manila envelope.

10 Q Okay. Was the suspected narcotics in a tamper evident
11 package?

12 A Yes, ma'am, it was.

13 Q Okay. And in looking at that, when you inspected it,
14 did you notice that it had been tampered with in any way?

15 A No, ma'am. When we log it in, if it comes in, we would
16 have to make a notation of anything that was not sealed or
17 shown that it was evidence that it had been tampered with.
18 We'd make a notation to that on the package and in our
19 paperwork.

20 Q Okay. And then would you send that to SLED or would
21 you speak with the officer about that?

22 A We would speak to the officer about that.

23 Q Okay. But there was no evidence of any tampering with
24 the B.E.S.T. Bag in this case?

25 A No, ma'am.

Billy Anthony - Direct examination
By Solicitor Leskanic

1 Q Okay. And State's Exhibit 2, what did you do with that
2 item?

3 A I logged it into the system and put it in a location in
4 our evidence locker room.

5 Q Okay. Was there an occasion when you then retrieved
6 State's Exhibit 1 back out of the evidence vault for
7 transport to SLED?

8 A Yes, ma'am, I did.

9 Q And when did you do that?

10 A Took it to SLED August 23rd, 2017.

11 Q Okay. And what is the process with you dropping that
12 off with the State Law Enforcement Division?

13 A During this time, for this particular piece of
14 evidence, when I -- I would take and go in that morning, log
15 the evidence out in our evidence computer, and on the chain
16 of custody for the B.E.S.T. Bag, and I transport it to SLED.
17 Once I arrived there, they have evidence lockers that we
18 place the evidence into.

19 I placed it into Evidence Locker Number 11 at SLED at
20 8:31AM, and the evidence is -- we lock the locker and then
21 one of their technician would come and retrieve it later.

22 Q Okay. And at the time that you dropped it off with
23 SLED, again, you inspected the bag and had it been tampered
24 with in any way?

25 A No, ma'am.

Billy Anthony - Direct examination
By Solicitor Leskanic

1 Q Okay. And how did these items get returned or I guess
2 State's Exhibit 1 is the only one that went to SLED.

3 Is that correct?

4 A Yes, ma'am.

5 Q And State's Exhibit 2 remained where?

6 A It remained in the evidence vault.

7 Q Okay. Did you bring that to Court today?

8 A Yes, ma'am, I did.

9 Q Did you bring State's Exhibit 1 to Court today?

10 A Yes, ma'am.

11 Q And how did that get from SLED back to your possession?

12 A When I -- I went back to SLED on February the 15th,
13 2018, I was taking additional evidence down, and I picked
14 this piece of evidence up along with others and brought it
15 back on February 15th.

16 Q And what did you do with it upon bringing it back?

17 A We logged it into the narcotics or into the evidence
18 vault, and that's where it stayed until we bring it to Court
19 now.

20 Q Okay. Thank you. I believe that's all the questions I
21 have. Please answer any questions Mr. Reckenbeil has for
22 you.

23 CROSS-EXAMINATION

24 BY MR. RECKENBEIL:

25 Q Sir, I just want to make sure the documentation that

Billy Anthony - Cross-examination
By Mr. Reckenbeil

1 you're looking at is what I have to establish basically the
2 chain of custody.

3 From my understanding of the testimony is that you
4 would receive, in the locked evidence box, the drugs along
5 with a piece of paper?

6 A Yes, sir.

7 Q And I'm just gonna show you a piece of paper.

8 Is that the piece of paper you would be receiving --

9 A Yes, sir, it is.

10 Q -- investigator logging in obviously the drugs that he
11 says that he received that on scene and then putting it into
12 the box without your information on it?

13 A Yes, sir, that's correct.

14 Q And then -- that's the second page there.

15 Then the second piece of paper would be the one
16 that's -- your information is on it?

17 A Yes, sir, what would happen, when the evidence is
18 dropped in when they're putting all their case file together
19 once it's actually submitted, the -- that will come up with
20 the initial where it's being sent to SLED, and then once
21 everything comes back, then the, the following chain. We,
22 we don't send it up here every time the chain is signed.

23 Q Sure. Understand that.

24 But for this particular exercise that we're dealing
25 with here, that would be the document that you actually

Billy Anthony - Cross-examination
By Mr. Reckenbeil

1 would have that you would be putting your name on and you
2 would be logging in your times of your activities during the
3 chain of custody?

4 A Yes, sir, that's correct.

5 Q All right. And I'm gonna hand you another document,
6 and I want to know what that reflects.

7 A This is when the case was pre-logged. When we go on
8 the SLED's website, it's a -- we access it over the Internet
9 and we actually type all of the information into the system,
10 and this is actually the piece of or the information that we
11 entered, and then the second page is when we take it down.
12 We actually have a timestamp. We initial it, put the
13 location, the locker number under the timestamp.

14 Q Okay. So those documents reflect I think everything --
15 the steps that you were discussing, but there was one other
16 step that you discussed about you actually log in getting
17 it.

18 Is that reflected anywhere?

19 A That is the second time when I showed it from evidence
20 drop box on July the 21st, 2017, into the evidence vault.
21 That's the date and time. Since no one is there to actually
22 sign for it when it's dropped in, we don't continue because
23 I didn't receive it on this date and time. Actually drop
24 down, the actual date that---

25 Q Sure.

Billy Anthony - Cross-examination
By Mr. Reckenbeil

1 A ---actually log it in there.

2 Q Is there a central location with a log book that you
3 have all of your retrievables from that evidence locker?

4 A The -- it, it goes on this chain with each case. It
5 will stay with each case.

6 Q So there's no additional document out there that has
7 any other information regarding this case besides what you
8 have in front of you when it comes to your involvement of
9 the chain of custody?

10 I know it's others, but---

11 A Yes. No, sir, that's correct. We log it in. We store
12 all the chain of custody by case number with the case.

13 Q All right. And the only reflection that you know that
14 you're actually traveling to Columbia with it is your log in
15 on the 23rd of August---

16 A Yes, sir.

17 Q ---2017?

18 A Yes, sir, I took it down that morning in the evidence
19 vault and logged it out right at 6:30AM and actually was in
20 there at the evidence locker at 8:31.

21 Q Okay. Do you take that piece of paper that's in your
22 left-hand with you when you go to Columbia?

23 A Yes, sir.

24 Q What day is reflected back in Gaffney that you then
25 have the drugs that you're transporting?

Billy Anthony - Cross-examination
By Mr. Reckenbeil

1 What, what information would be left in Gaffney at that
2 point in time?

3 A The -- when -- the bar code that is on the envelope we
4 actually scan into the system when I scan it out. There's
5 actually a scan onto our computer to show that it's in
6 transport.

7 Q Okay. And where would that -- in other words, where is
8 that document that reflects that cause I, I figured you had
9 a scan in, scan out situation?

10 A Yes, sir.

11 Q Is there printing off that document that has a bar code
12 on it?

13 A Yes, sir.

14 Q You're scanning that piece of paper out. You literally
15 go to Columbia with it, clock it in like we do in State
16 Court where you receive---

17 A Yes.

18 Q ---a timestamp and then you, you bring it back?

19 A Yes, sir.

20 Q But is there something in the computer that reflects
21 the time in and the time out it actually being clocked in
22 and clocked out or does it appear on that document?

23 A It, it appears on the document. We can actually print
24 something off of there, but it reflects the time I scanned
25 it out --

Billy Anthony - Cross-examination
By Mr. Reckenbeil

1 Q Right.

2 A -- to go to Columbia. But there would not be anything
3 until I bring it back---

4 Q Right.

5 A ---on this date for the receipt.

6 Q All right. Thank you, sir.

7 A Yes, sir.

8 MR. RECKENBEIL: That's all the questions, Your Honor.

9 THE COURT: Anything further?

10 SOLICITOR LESKANIC: Nothing further from the State.

11 THE COURT: All right. Sir, you may step down. You be
12 careful.

13 Anything you need?

14 MR. RECKENBEIL: Nothing further, Your Honor. Much
15 appreciate the officer coming in and giving testimony.

16 SOLICITOR LESKANIC: Your Honor, the State's I guess
17 only issue at this point is if Mr. Blackwell is not here,
18 the State would either request a trial in absence when the
19 number one trial is resolved or whether I would need to
20 request a bench warrant if he does not show just so you---

21 THE COURT: We'll get, we'll get---

22 MR. RECKENBEIL: Yeah.

23 THE COURT: ---to that.

24 MR. RECKENBEIL: I'll report to Ms. Leskanic in about
25 15 minutes as to his status cause I'll be able to make a

1 phone call.

2 THE COURT: Okay. Madam Clerk, I'm gonna let you have
3 the indictment back.

4 SOLICITOR LESKANIC: Thank you, Your Honor.
5
6

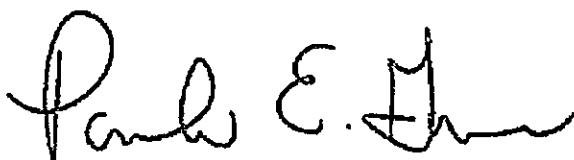
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 8th day of October, 2018.

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

June 23rd, 2021



PAMELA E. GREEN, Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE OF SOUTH)
CAROLINA)
5) TRANSCRIPT OF RECORD
6 -vs-)
7 CECIL EUGENE BLACKWELL,) 2017-GS-11-01192
JR.,) 2017-GS-11-01193
8) OCTOBER 10, 2018
DEFENDANT.) GAFFNEY, SOUTH CAROLINA

9
10 (PLEA OF GUILTY)

11 B E F O R E:

12 THE HONORABLE R. KEITH KELLY, JUDGE. ; And a Jury.
13
14
15
16

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

18 KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

19 JOHN RECKENBEIL, ESQUIRE
20 ATTORNEY FOR THE DEFENDANT
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22
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24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

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NO.	DESCRIPTION	ID.	EV.
1	(NO EXHIBITS MARKED)		
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1 (PROCEEDINGS, OCTOBER 10, 2018)

2 (Whereupon, the jury venire panel was brought into
3 the courtroom)

4 THE COURT: Good afternoon, ladies and gentlemen.
5 Thank you for being punctual in your service, as you have
6 been all week. I really do appreciate that.

7 We have been working since you and I saw each
8 other last and it's now time to pick another jury. Some of
9 your other brothers and sisters are deliberating on another
10 matter, but we are ready to move to the next case and we
11 brought you back here.

12 Once again I'll remind you that you were sworn
13 previously and you remain under oath.

14 We are now ready to begin the case in Indictment
15 2017-GS-11-1192. It is the matter of the State of South
16 Carolina versus Cecil Eugene Blackwell, Jr.. It is alleged
17 in the indictment that Mr. Blackwell did, in Cherokee
18 County, South Carolina, on or about July 11th of 2017
19 knowingly sell, manufacture, deliver, purchase, or bring
20 into this state, or provided financial assistance or aided,
21 abetted, attempted, or conspired to sell, manufacture,
22 deliver, or purchase, or bring into this state, or knowingly
23 actually or constructively possess, or knowingly attempted
24 to actually or constructively possess 10 grams, or more, but
25 less than 28 grams of methamphetamine, which is a Schedule

1 II controlled substance in violation of South Carolina law.

2 That matter was presented to the Grand Jury and
3 they returned a true billed indictment.

4 Ladies and gentlemen, I will tell you more than
5 once, and I say this often, you have already heard me say
6 it, that he has entered a plea of not guilty to this
7 indictment. He is presumed innocent. He is presumed
8 innocent of the allegations contained in the indictment.
9 The indictment is merely a piece of paper that brings him
10 before the court for trial.

11 In Indictment 2017-GS-11-1193 it is alleged by the
12 government that Cecil Eugene Blackwell, Jr., did, in
13 Cherokee County, South Carolina, on or about July the 11th,
14 2017, willfully fail to stop a motor vehicle in which he was
15 driving on a road, street, or highway of this state when
16 signaled by a law enforcement vehicle by means of a siren or
17 flashing light, in violation of South Carolina law.

18 That matter was presented to the Grand Jury and a
19 True Bill returned.

20 Once again I'll remind you that he has entered a
21 plea of not guilty to this indictment and he is presumed
22 under our law to be innocent of the allegations contained in
23 this indictment. It is a piece of paper. It brings him
24 before the court. It is not evidence against him, and I
25 will say that more as we go along.

1 Once again I'm required to ask you certain
2 questions at this time, and you remain under oath.

3 Is there -- let me do this.

4 Mr. Blackwell, sir, if you would be kind enough to
5 stand and face the jury so they can see you for about thirty
6 seconds, or less. That's good. Thank you, Mr. Blackwell.

7 Ladies and gentlemen, is there any member of this
8 panel who is now or ever has been related by blood or
9 marriage to Mr. Cecil Eugene Blackwell, Jr.? If so, please
10 stand.

11 (No response)

12 THE COURT: Is there any member of this panel who
13 has a close personal or social relationship with Mr.
14 Blackwell? You know him from work, recreation, school, some
15 way that you know him, or Facebook, social media, please
16 stand.

17 (No response)

18 THE COURT: The possible witnesses in this case
19 are Ronnie Painter.

20 Brandon Dorsett.

21 Millie Agrawal.

22 Justin Wingo.

23 Brandy Skates.

24 Billy Anthony.

25 Ashley Bell Lyles.

1 And Richard Burgess.

2 (No response).

3 THE COURT: Is there any member -- all right.
4 Thank y'all.

5 Is there any member of this panel who is now or
6 ever has been related by blood or marriage to any of the
7 potential witnesses in this case? If so, please stand.

8 (No response)

9 THE COURT: Is there any member of the jury panel
10 who has a close personal or social relationship with any of
11 the potential witnesses? If so, please stand.

12 (No response)

13 THE COURT: I'm going to ask the lawyers to
14 introduce themselves, and ladies first.

15 MS. LESKANIC: May it please the court. Thank
16 you, Your Honor.

17 Good afternoon. I'm Kim Leskanic and I'm deputy
18 solicitor here for Cherokee County.

19 MR. RECKENBEIL: May it please the court, Your
20 Honor?

21 Good afternoon. I'm John Reckenbeil. I practiced
22 out of Spartanburg for eighteen years and now I'm in
23 Greenville in private practice.

24 THE COURT: Is there any member of the jury panel
25 who is now or ever has been related to either of the lawyers

1 in this case? If so, please stand.

2 (No response)

3 THE COURT: Is there any member of the jury panel
4 who has a close personal or social relationship with either
5 of the lawyers in this case? If so, please stand.

6 (No response)

7 THE COURT: Is there any member of the panel who
8 has ever testified as a witness in a case that the Seventh
9 Circuit Solicitor's Office prosecuted? If so, please stand.
10 You were a witness for the government.

11 (No response).

12 THE COURT: Is there a member of the panel who has
13 a family member or a close friend who is employed by the
14 Seventh Circuit Solicitor's Office? If so, please stand.

15 Is there a member of the panel who has ever been
16 represented by either of the lawyers in this case? If so,
17 please stand.

18 (No response)

19 THE COURT: Is there any member of this panel who
20 has ever sought legal advice from either of the lawyers,
21 whether it might be about a real estate transaction, a
22 contract breach, a criminal case? It could have been about
23 anything, please stand.

24 (No response)

25 THE COURT: Anyone have a family member or a

1 friend that is an employee or associated with the staff of
2 Mr. Reckenbeil's law firm? If so, please stand.

3 (No response).

4 THE COURT: Is there any member of the jury panel
5 who has a member of law enforcement in your immediate
6 family; cousin, brother, sister, in-law, outlaw, please
7 stand.

8 (No response).

9 THE COURT: Is there a member of the panel who has
10 ever been a commissioned law enforcement officer, whether
11 that be with a municipality, county, a state agency,
12 includes also a military police. Please stand.

13 (No response)

14 THE COURT: Is there any member of the panel know
15 of any reason why he or she should not serve as a juror in
16 this case, please stand.

17 (No response)

18 THE COURT: Is there any member of the panel know
19 of anything whatsoever about this case, other than what I
20 have just told you? I don't. I'm just asking does anyone
21 know anything about it more than me on the panel, please
22 stand.

23 (No response).

24 THE COURT: Anything from the State?

25 MS. LESKANIC: No, Your Honor. Thank you.

1 THE COURT: From the defense?

2 MR. RECKENBEIL: Your Honor, I have one matter.

3 May I approach?

4 THE COURT: Sure.

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion).

7 THE COURT: Anything at all?

8 MR. RECKENBEIL: Nothing else from defense, Your
9 Honor.

10 THE COURT: Madam Clerk, we will have a jury.

11 THE CLERK: When I call your name, if you will
12 come forward. Please bring all your personal belongings
13 with you. If I tell you you are to take a seat in the jury
14 box, you will take a seat over here. If I tell you you have
15 been excused, you will take a seat back in the jury pool.

16 Juror 37, Tammy Hall.

17 What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. RECKENBEIL: Please excuse this juror from
21 service in the case.

22 THE CLERK: You have been excused.

23 Juror 73, Brenda McCraw.

24 What says the State?

25 MS. LESKANIC: Please excuse the juror from

1 service in this case.

2 THE CLERK: You have been excused.

3 Juror 5, Christopher Brooks.

4 What says the State?

5 MS. LESKANIC: Please excuse the juror from
6 service in this case.

7 THE CLERK: You have been excused.

8 Juror 61, Billy Leach.

9 What says the State?

10 MS. LESKANIC: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. RECKENBEIL: Please seat the juror.

13 THE CLERK: Please take a seat in the jury box.

14 Juror 93, Danny Plasters.

15 What says the State?

16 MS. LESKANIC: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. RECKENBEIL: Please seat the juror.

19 THE CLERK: Please take a seat in the jury box.

20 Juror 55, Jeremy Johnson.

21 What says the State?

22 MS. LESKANIC: Please excuse the juror from
23 service in this case.

24 THE CLERK: You have been excused.

25 Juror 24, Monique Earls.

1 What says the State?

2 MS. LESKANIC: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. RECKENBEIL: Please seat the juror.

5 THE CLERK: Please have a seat in the jury box.

6 Juror 91, John Petty.

7 What says the State?

8 MS. LESKANIC: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. RECKENBEIL: Please seat the juror.

11 THE CLERK: Please take a seat in the jury box.

12 Juror 124, Jennifer Watson.

13 What says the State?

14 MS. LESKANIC: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. RECKENBEIL: Please seat the juror.

17 THE CLERK: Please take a seat in the jury box.

18 Juror 53, Chrisie Jefferies.

19 What says the State?

20 MS. LESKANIC: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. RECKENBEIL: Please seat the juror.

23 THE CLERK: Please take a seat in the jury box.

24 Juror 34, Wendy Gibson.

25 What says the State?

1 MS. LESKANIC: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. RECKENBEIL: Please seat the juror.

4 THE CLERK: Please take a seat in the jury box.

5 Juror 42, Teresa Hamrick.

6 What says the State?

7 MS. LESKANIC: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. RECKENBEIL: Please excuse the juror from
10 service in this case.

11 THE CLERK: You have been excused.

12 Juror 120, Mikayluh Walker.

13 What says the State?

14 MS. LESKANIC: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. RECKENBEIL: Please seat the juror.

17 THE CLERK: Please take a seat in the jury box.

18 Juror 54, James Johnson.

19 What says the State?

20 MS. LESKANIC: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. RECKENBEIL: Please seat the juror.

23 THE CLERK: Please take a seat in the jury box.

24 Juror 99, Clifton Redmon.

25 What says the State?

1 MS. LESKANIC: Please present the juror.
2 THE CLERK: What says the defense?
3 MR. RECKENBEIL: Please seat the juror.
4 THE CLERK: Please take a seat in the jury box.
5 Juror 81, Jackie Mullinax.
6 What says the State?
7 MS. LESKANIC: Please excuse the juror from
8 service in this case.
9 THE CLERK: You have been excused.
10 Juror 103, Jessica Safrit.
11 What says the State?
12 MS. LESKANIC: Please present the juror.
13 THE CLERK: What says the defense?
14 MR. RECKENBEIL: Please seat the juror.
15 THE CLERK: Please take a seat in the jury box.
16 Juror 58, Phyllis Ker.
17 What says the State?
18 MS. LESKANIC: Please present the juror.
19 THE CLERK: What says the defense?
20 MR. RECKENBEIL: Please seat the juror.
21 THE CLERK: Please take a seat in the jury box.
22 The next juror will be for the alternate.
23 Juror 129, Clayton Williams.
24 What says the State?
25 MS. LESKANIC: Please excuse the juror from

1 service in this case.

2 THE CLERK: You have been excused.

3 Juror 115, Edward Tubb.

4 What says the State?

5 MS. LESKANIC: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. RECKENBEIL: Please excuse this juror.

8 THE CLERK: You have been excused.

9 Juror 117, Lori Updegraff.

10 What says the State?

11 MS. LESKANIC: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. RECKENBEIL: Please seat the juror.

14 THE CLERK: Take a seat in the jury box.

15 THE COURT: Any matters for the State?

16 MS. LESKANIC: No, Your Honor. Thank you.

17 THE COURT: Any matters for the defense?

18 MR. RECKENBEIL: Nothing from the defense, Your

19 Honor.

20 THE COURT: Ladies and gentlemen who remain and
21 not selected, there is still good news still time for you to
22 be selected. We are going to move to the next case, but
23 today is Wednesday? I lose track. We get to rolling and I
24 lose track of what day it is. Yes, Wednesday, because I had
25 to take the trash out this morning. So -- it's trash day.

1 Anyway, it's still time for you to serve. I'm
2 going to ask you to call back after six p.m.. There will be
3 a number on there to call after six p.m. and it will have
4 reporting instructions for you.

5 `Again, I invite you to stay. This is your
6 courthouse, your courtroom. I just get to work here, but
7 you are not going to be required to do so. So if anyone
8 wants to leave, if you will go with the bailiffs now.
9 Otherwise enjoy the afternoon with us. Stay with us.

10 (Whereupon, the jury venire panel left the
11 courtroom)

12 THE COURT: Madam Clerk, if you will swear this
13 jury to try this case.

14 THE CLERK: Ladies and gentlemen, please stand and
15 raise your right hand.

16 Do you solemnly swear that you will truly try the
17 issues joined in this case and true verdict render according
18 to the law and evidence, so help you God?

19 JURY PANEL: (Collectively said I do).

20 THE CLERK: You may be seated.

21 THE COURT: Thank you.

22 Juror number 91, Mr. John Petty. Sir, where are
23 you?

24 Mr. Petty would you be kind enough to serve as the
25 foreman of this jury?

1 JUROR NUMBER 91: Yes, sir.

2 THE COURT: No objection?

3 JUROR NUMBER 91: No, sir.

4 THE COURT: Okay. I don't want to make you serve,
5 but it is my custom to alternate between a forelady and a
6 foreman. I have a forelady on the other jury. It's time
7 for a foreman. I just try to make it equal opportunity.

8 Before we begin -- let's see. Do we have
9 anything?

10 MS. LESKANIC: We do, Your Honor.

11 MR. RECKENBEIL: Yes.

12 THE COURT: All right. You have that room ready,
13 right, Wayne?

14 THE BAILIFF: Yes, sir.

15 THE COURT: Mr. Foreman, when we return, Mr.
16 Petty, if you would be kind enough to sit in the seat where
17 this lady on the very end is seated on the front row. That
18 is the foreperson's seat.

19 And, ma'am, you are again in the alternate's seat.

20 And I would just ask the two of you to always sit
21 in assigned seating.

22 Everyone else here is invited to switch seats,
23 move from the front to the back, from the back to the front,
24 left, right. It does not matter to me whatsoever, but, sir,
25 as the foreman you become the spokesperson for the jury and

1 when I send the jury out and bring you back, I will always
2 look to that chair. It just helps me. Some judges actually
3 appoint the seat where the gentleman in the stripe is
4 sitting, but to me when I look up I automatically follow
5 right there to that seat, but everybody else can move to the
6 front or the back.

7 I know at least one member of the panel had
8 expressed some concerns about some back issues. I invite
9 anybody here to stand, if you want. You will see during
10 this trial that I will stand a lot. It's simply because I
11 hate sitting in that chair. I don't do it. I walk around
12 up here like I'm doing right now, and you are invited to
13 stand, if you want to or need to. I only ask that if you do
14 stand, please sit on the back row so you will not block the
15 view of a fellow juror.

16 I would also tell you before I send you out here
17 momentarily that it means absolutely nothing if I'm standing
18 and a witness is testifying. It does not mean that I
19 believe or disbelieve that witness. It means that Keith is
20 tired of sitting; and if I'm sitting, I'm tired of standing,
21 and that's all it means. Okay.

22 Mr. Foreman, if you would be kind enough to take
23 your jury out. Don't talk about the case. You don't know
24 anything about it and neither do I, but we will learn
25 together.

1 (The following takes place outside the presence of
2 the jury panel)

3 THE COURT: Okay. We have some matters from the
4 State, or defense?

5 MR. RECKENBEIL: We have a matter that we need to
6 ask Your Honor about, if we can approach, if that's okay?

7 THE COURT: Sure.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 (Off the record).

11 (Back on the record)

12 CECIL EUGENE BLACKWELL, JR., having been first
13 duly sworn, testified as follows:

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Solicitor.

16 MS. LESKANIC: May it please the court.

17 Your Honor, before you is Cecil Eugene Blackwell,
18 Jr.. He is here pleading guilty on two indictments.

19 2017-GS-11-1192 is a True Billed indictment for
20 trafficking in methamphetamine. It is a third offense. He
21 is pleading guilty to the lesser included offense of
22 trafficking in methamphetamine 10 to 28 grams, second
23 offense.

24 There is a recommendation by the State in this
25 case of 15 years.

1 He is also pleading on 2017-GS-11-1193, which is a
2 True Billed indictment for failure to stop for blue light.
3 It is a second offense.

4 There is a recommendation by the State of five
5 years concurrent.

6 He is represented by John Reckenbeil on both
7 charges.

8 I have the case agent, Captain Ronnie Painter,
9 standing to my right, if the court has any questions.

10 THE COURT: Sir, you are Mr. Cecil Eugene
11 Blackwell, Jr.?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Blackwell, you are in -- you are
14 not in custody. Have you taken any medication or substance
15 that interferes with your ability to think clearly?

16 THE DEFENDANT: No, sir.

17 THE COURT: You know what you are doing here
18 today?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Reckenbeil represents you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In 2017-1193 the State says that you
23 did, in Cherokee County, South Carolina, on or about July
24 the 11th of 2017 willfully fail to stop a motor vehicle that
25 you were driving on a road, or street, or highway of South

1 Carolina when signaled by a law enforcement vehicle by means
2 of siren or flashlight in violation of South Carolina law.

3 Sir, that matter was presented to the Grand Jury
4 and a True Bill was returned.

5 It is my understanding that you are pleading as
6 indicted; it is nonviolent; it carries with it up to five
7 years.

8 The government is recommending a five-year
9 sentence to run concurrent with your other indictment, and
10 this court is not bound by the recommendations. Do you
11 understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: In 2017-1192 the State alleges that
14 you did, in Cherokee County, South Carolina, on or about
15 July 11th of 2017 knowingly sell, manufacture, deliver,
16 purchase, or bring into this state, or provide financial
17 assistance, or otherwise aided, abetted, attempted, or
18 conspired to sell, manufacture, deliver, purchase, or bring
19 into this state, or knowingly, actually, or constructively
20 possess, or knowingly attempt to actually or constructively
21 possess 10 grams, or more, but less than 28 grams of
22 methamphetamine, which is a Schedule II controlled substance
23 in violation of state law. A True Bill was returned by the
24 Grand Jury.

25 I understand you are pleading to the lesser

1 included offense of 28 grams -- let's see, 10, or more, but
2 less than 28, second offense. It carries from five years up
3 to 30 years and a fine of \$50,000; it is 85 percent; it is
4 violent; and it is serious for future sentencing purposes,
5 should that become an issue.

6 And, sir, there is a recommendation by the
7 government of a 15 year sentence to run concurrent with the
8 other indictment. Once again, I tell you that this court is
9 not bound by a recommendation. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. I understand, sir, that you
12 will be taking the plea only today.

13 You have the right to a trial by jury. You know
14 that. We have now selected a jury. They have been sworn
15 and they are awaiting in this room on this side.

16 You have the right to remain silent under both our
17 state and federal government constitution.

18 You have the right to remain silent -- well, under
19 state and federal constitution.

20 And you have the right to call and confront
21 witnesses from this chair.

22 Do you understand each of your rights?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Sir, how do you plead to 2017-1192?

25 THE DEFENDANT: Guilty.

1 THE COURT: And 1193?

2 THE DEFENDANT: Guilty.

3 THE COURT: Mr. Blackwell, did anyone, such as a
4 family member, a friend, your lawyer, anyone pressure you to
5 plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: Is it your decision to do so?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Sir, have you had sufficient time to
10 talk with your lawyer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did he share all of the discovery
13 materials with you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did he do everything that he could to
16 help you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Sometimes we have these hearings
19 called post-conviction relief hearings, known as PCR
20 hearings. You may have heard about them. People come to
21 court and they swear on the Bible, they swear to God on the
22 Bible that their lawyer did something wrong. So let me ask
23 you, did Mr. Reckenbeil do everything that he could for you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did he refuse to do anything for you?

1 THE DEFENDANT: No, sir.

2 THE COURT: Did he investigate your case for you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. And isn't it true that you are
5 completely satisfied with his services?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Please listen to the solicitor.

8 MS. LESKANIC: Thank you, Your Honor.

9 This incident occurred on July 11th of 2017. It
10 was a little afternoon that day when Captain Ronnie Painter,
11 Sergeant Brandon Dorsett, Special Agent Justin Wingo, and
12 Special Agent Millie Agrawal, who are with SLED, were all
13 traveling in Captain Painter's unmarked Tahoe. Three of the
14 four officers were familiar with the defendant due to prior
15 dealings with him. They saw him at Cherokee Food Mart. He
16 was on an orange crotch rocket motorcycle. He pulled out of
17 the Food Mart. He had a female passenger on the back that
18 had a helmet on. They were just doing routine patrol and
19 Captain Painter was showing the SLED agents where the high
20 drug and crime areas were in Cherokee County. When they saw
21 the defendant, they turned around. He pulled out onto 29 or
22 Cherokee Avenue and they were behind him. He ended up
23 running the red light at Cherokee Avenue and Limestone
24 Street, at which time Captain Painter activated his siren
25 and blue lights. The defendant then pulled into 113

1 Cherokee Avenue here in Cherokee County. The officers all
2 saw him reach into his waistband. He pulled out a black
3 wallet-type pouch. He threw it under a white parked van at
4 that location; failed to stop his motorcycle. Agent Wingo
5 got out of the front passenger seat of the car, tried to
6 apprehend the defendant, but before he was able to get to
7 him the defendant took off on the motorcycle. According to
8 the female that was on the back he went very high rates of
9 speed to flee from law enforcement. They retrieved the
10 black pouch from under the van and inside that was
11 12.15 grams of methamphetamine that was confirmed by SLED.
12 Also three empty baggies. Those would essentially be the
13 facts provided by the State, Your Honor.

14 THE COURT: Okay.

15 Sir, did you hear what the solicitor told me?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is that true?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The court accepts your plea as being
20 voluntarily and intelligently given.

21 Mr. Reckenbeil, do you want to wait until --

22 MR. RECKENBEIL: Yes, sir.

23 THE COURT: Okay. Sir, I have been asked by your
24 lawyer, and I'm doing this as a courtesy to him, he and I
25 have known each other for a very long time and I believe him

1 when he says that you would return to this courthouse next
2 week on the 17th. Okay?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But you are going to be on electronic
5 monitoring.

6 THE DEFENDANT: Uh-huh.

7 THE COURT: Now, I'm telling you, and I know he's
8 already told you, but we are on the record and I'm going to
9 tell you, this court is not bound by a recommendation. And
10 in the event that you are not here on the 17th, which is
11 next Wednesday, whenever he tells you to be here, he can
12 sign up whatever time he needs to be here, but if you are
13 not here, I will not accept the recommendation. Do we
14 understand each other?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You could buy yourself a lot of time.
17 Okay. He needs to be on the monitor.

18 MS. LESKANIC: Yes, sir.

19 He will need to report to the detention center.
20 And that is home detention with the electronic monitoring,
21 is that correct?

22 THE COURT: It is. It is home detention with the
23 monitoring and the first blip Captain Padgett and his people
24 will pick him up.

25 MS. LESKANIC: Thank you, Your Honor.

1 THE COURT: And I'll impose the sentence.

2 MS. LESKANIC: He's essentially in custody at this
3 point until he can pay the fees and be placed on that
4 electronic monitoring.

5 THE DEFENDANT: Yes.

6 THE COURT: Your lawyer will help you, sir. He
7 will help you.

8 (Whereupon, the defendant was removed from the
9 courtroom)

10 THE COURT: We will have our jury.

11 (The following takes place in the presence of the
12 jury panel)

13 THE COURT: Ladies and gentlemen of the jury, your
14 foreman has done an excellent job. This case has now been
15 resolved and the defendant has entered a plea and has been
16 removed from the courtroom. He is now in custody. So Mr.
17 Foreman, I congratulate you on getting this matter resolved
18 here. Good job. Good job.

19 All right. With that I'm going to be releasing
20 you for the rest of the day. We got -- we can do a few
21 little things that don't require the jury, but I'm not going
22 to need a jury until tomorrow, at which time I am going to
23 pick a new jury tomorrow morning, ready to go at nine
24 o'clock. So you can call that number, but the message is
25 going to say to them to be here at nine?

1 THE CLERK: More than likely, Your Honor.

2 THE COURT: More than likely.

3 THE CLERK: Yeah, but if you will call that number
4 tonight after six.

5 THE COURT: Okay. Call that number anyway, but
6 more than likely I will see you again tomorrow morning at
7 nine o'clock. I will be here at eight. The lawyers will be
8 here at eight.

9 * * * * *

10 (Whereupon, proceedings were adjourned to February
11 4, 2019)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of General Sessions for Cherokee County, South Carolina, on the 10th day of October, 2018.

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

June 13, 2019



Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE OF SOUTH)
CAROLINA)
5) TRANSCRIPT OF RECORD
-vs-) 2017-GS-11-01192
6) 2017-GS-11-01193
7 CECIL EUGENE BLACKWELL,)
JR.,) FEBRUARY 4, 2019
8 DEFENDANT.) GAFFNEY, SOUTH CAROLINA

9
10 (SENTENCING)

11
12 B E F O R E:

13 THE HONORABLE R. KEITH KELLY, JUDGE. ; And a Jury.
14
15
16

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

18 KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
19 ATTORNEY FOR THE STATE

20 JOHN RECKENBEIL, ESQUIRE
21 ATTORNEY FOR THE DEFENDANT
22
23

24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

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WITNESSES

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EXHIBITS

1				
2	NO.	DESCRIPTION	ID.	EV.
3	(NO EXHIBITS MARKED)			
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(PROCEEDINGS, FEBRUARY 4,, 2019)

THE COURT: Solicitor.

MS. LESKANIC: May it please the court, before you is Cecil Eugene Blackwell, Jr.. He was before Your Honor on October 10th of 2018 with his attorney, Mr. Reckenbeil, when he entered a guilty plea on the two indictments and sentencing sheets that are before Your Honor for trafficking in methamphetamine and also failure to stop for blue light, second offense.

After entering his plea he was given one week to get his affairs in order and report back for sentencing on October the 17th, at nine a.m.. He was placed on home detention with electronic monitoring.

We received word the day before he was supposed to report that morning he cut that electronic monitor and he was on the run until late January, when he was captured with the help of Spartanburg County and the marshals. There had been a lot of effort placed into locating Mr. Blackwell, Your Honor.

When he was finally located he was found in possession of a substance that's believed to be methamphetamine. He was charged with either possession or possession with intent to distribute methamphetamine in Spartanburg County. That case is pending. He also will have an escape charge here from Cherokee County for cutting

1 the electronic monitor while he was on home detention.

2 As the court will recall, this incident occurred
3 back on July 11th of 2017, when officers were patrolling
4 here in Cherokee County. They saw the defendant. They
5 recognized him from past experience. He fled on a
6 motorcycle after running through a red light. He had thrown
7 a black bag out under a vehicle. And inside that bag they
8 found over 12 grams of methamphetamine, as confirmed through
9 testing at SLED.

10 He did have a recommendation at the time of
11 15 years from the State. It was only a recommendation that
12 was placed before Your Honor and then he failed to appear
13 for his sentencing.

14 He does have a considerable prior record. It
15 would have been a third offense on the drug case. We did
16 allow him to plead to a second offense trafficking.

17 THE COURT: Mr. Reckenbeil?

18 MR. RECKENBEIL: Thank you, Your Honor.

19 May it please the court. Ms. Leskanic stated the
20 facts accurately.

21 I have been informed that he would like to have a
22 family member speak, and then he's also informed me that he
23 would like to terminate my services, which I'm not really
24 sure where we go with that, but I'm happy to do whatever the
25 court needs for me to do.

1 THE COURT: Sir, you were previously sworn. You
2 remain sworn. Is there anything you would like to say?

3 THE DEFENDANT: Yes, sir, I -- I tried to get with
4 John and, you know, I said it the day before that -- at my
5 last hearing that I was so happy with his services,
6 whatever. I'm not happy with his services. It took me from
7 the day that I was -- you allowed me to go home on home
8 detention, from that Wednesday until that following Monday
9 to even get with him to try to get my motion, which I found
10 new evidence of that the methamphetamine that was weighed
11 in, the evidence had been tampered with because it was 15
12 grams weighed in by the arresting officer. And then upon
13 return from SLED it only weighed 12.5, which they did a
14 hearing -- the officer didn't even do a due process for --
15 the officer that signed the evidence out and took it to
16 SLED, he didn't even do the -- in my motion I have no
17 paperwork saying where he signed it out, but yet it was in
18 the solicitor's motion, so -- I mean, somewhere in there the
19 evidence is tampered with and I tried to get with him on it.
20 He told me to sit up in front of the jury and look pretty is
21 what he told me.

22 THE COURT: Sir, I have already taken your plea.
23 I'm not here to try the case. The plea was taken and as a
24 courtesy to your lawyer I was --

25 THE DEFENDANT: I want to withdraw that plea.

1 THE COURT: Sir?

2 THE DEFENDANT: I want to withdraw the plea --

3 THE COURT: No.

4 THE DEFENDANT: -- and take a jury.

5 THE COURT: No, sir. I am not allowing you to
6 withdraw the plea. There is no reason to allow you to
7 withdraw the plea, but you were given a seven-day period,
8 which is most unusual. I did that as a courtesy to your
9 lawyer and you didn't come back. If there had been some
10 issues, you could have come back in that seven-day period.

11 Anything further?

12 THE DEFENDANT: No, sir.

13 THE COURT: 2017-1192, the State Department of
14 Corrections for 20 years and pay a fine of \$50,000.
15 Concurrent. Credit for time.

16 2017-1193, five years Department of Corrections.
17 Concurrent. Credit for time.

18 Very best of luck to you.

19 MS. LESKANIC: Thank you Your Honor.

20 (END OF REQUESTED TRANSCRIPT OF RECORD)

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23

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25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of General Sessions for Cherokee County, South Carolina, on the 4th day of February, 2019.

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

June 13, 2019



Michael R. Watts
Circuit Court Reporter

FORM 5

020110038

STATE OF SOUTH CAROLINA)

County of CHEROKEE)Cecil E. Blackwell.# 218835)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

BRANDY W. MCBETH

2020 JAN 10 AM 11:27

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.**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 McCormick Correctional Inst.
2. Name and location of Court which imposed sentence Cherokee County Court
of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 17-GS-11-01193) Failure to stop
 - (b) 17-GS-11-01192) Trafficking in Methamphetamine

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2/4/2019) Five years concurrent
- (b) 2/4/2019) Twenty year concurrent
- (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 never inform me of appeal rights
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Guilty plea was not knowingly and intelligently
- (b) ~~made to the Court (2) Counsel was ineffective~~
- (c) ~~for failing to advise me to plea guilty~~
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) State breached the sentence agreement
- (b) ~~counsel failed to object or file motions that his~~
- (c) ~~client want to withdraw his plea and proceed to trial~~
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. _____

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) Never was informed 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? yes

(c) your sentencing? yes

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

(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. John G. Reckenbell, Esquire
P.O. Box 16735, Greenville S.C. 29606

ii. _____

iii. _____

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

i. Arraignment and guilty plea, and sentencing

ii. _____

iii. _____

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

~~Reduction in sentence to 15 yrs~~

20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, CECIL BLACKWELL, 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.

Cecil Blackwell

SWORN to and subscribed before me this 8
day of January, 2020.
Karen D. Peterson (L.S.)
Notary Public

My Commission Expires: 11/13/2024

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

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

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

Cecil Blackwell
Applicant

SWORN or affirmed to and subscribed before me this
8 day of January, 2020.

Karen D. Salomon
Notary Public

My Commission Expires: 11/13/2024

Attached Sheets

Whether Defendant's plea and waiver of appellate rights were knowing, voluntary and competent.

Was counsel ineffective for failure to file a direct appeal after he was told to.

Whether it would be against the defendant best interest to contest the plea and 3) was any issues implicating a defendant's constitutional or statutory rights that either cannot be waived or cannot be considered waived by the defendant in light of the particular circumstances. U.S. v. Gomez-Perez 215 F.3d 315, 319 (2nd Cir. 2000).

Was counsel ineffective by his failure to order a competency examine before advising him to plead guilty.

Elements of competency: Criminal defendant may not be convicted or force to stand trial unless they are mentally competent. See Pate v. Robinson 383 U.S. 375, 378 (1966)(failure to conduct hearing violate due process where evidence created sufficient doubt about defendant's competency. The Supreme Court has established a two-part test to determine competency 1. Whether the defendant has sufficient present ability to consult with his lawyer within a reasonable degree of rational understanding, and (2) whether the defendant's has a rational, as well as, factual understanding of the proceeding against him. Dusky v. United States, 362 U.S. 402 (1960).

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2020 JAN 10 AM 11:27
BRANDY W. MCBEE

Counsel was ineffective for his failure to advise me about my right to withdraw my guilty plea after my sentencing sheets were altered.

The sentencing sheets offers three alternatives to designate the nature or status of the plea. These alternatives provides that the plea (1) without negotiations or recommending (2) a negotiated sentence (3) or a recommendation by the State. State v. Rikard 638 S.E.2d 72 (S.C. Court of App. 2001).

Facts

In this instance, the option with a negotiated sentence was marked by an x and then later erase or white out. This mean the state had agreed on sentencing of 15 years and then sentenced him to 20 years. The change in the box came after the Defendant had signed to the sentencing agreement of 15 years and this was done out of the present of the Defendant. Bordeaux v State, 765 S.E.2d 143, 146 (S.C. 2014). A sentencing sheets had a sentenced of 15 years cross-out and replace with 20 years sentence.

The Appellant request a hearing pursuant to §17-27-80 of the S.C. Code of Laws.

Date

1/08/2020

Ceil E. Blackwell

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

C/A No. 020-CP-11-0038

Cecil Eugene Blackwell -- Applicant,

-VS-

State of South Carolina -- Respondent,

AMENDED POST CONVICTION RELIEF
APPLICATION PURSUANT TO RULE
15, SCRCP

BRANDY W. MCBEE

2020 JUN -5 AM 10:37

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

Cecil Eugene Blackwell
SCDC# 218835
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

Applicant,

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE)

Cecil Eugene Blackwell) C/A No.020-CP-11-0038
Applicant,)
-vs-) AMENDED POST CONVICTION RELIEF
State of South Carolina) APPLICATION PURSUANT TO RULE
Respondent,) 15 SCRCP

COMES NOW, above captioned Applicant, Cecil Eugene Blackwell, by and through attorney of record, respectfully moving this Honorable Court to amend the Original application in the above captioned pursuant to Rule 15, South Carolina Rules of Civil Procedure.

Respectfully Submitted,

/s/ Cecil Blackwell

Cecil Eugene Blackwell
Applicant,

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2020 JUN -5 AM 10:37
BRANDY W. MCBEE

ISSUE (A)

COUNSEL WAS INEFFECTIVE FOR FAILING TO
OBJECT TO THE TWENTY YEAR SENTENCE
HANDED DOWN BY THE COURT THAT WAS
CONTRARY TO THE NEGOTIATED FIFTEEN YEAR
PLEA AGREEMENT

FACTS

On October 10, 2018, Applicant proceeded to trial by a judge and jury for third offense trafficking in methamphetamine and failure to stop for a blue light. After picking out the jury Applicant decided to accept the State's recommendation and negotiated plea agreement of fifteen years for the lesser included offense of second and five years for the failure to stop for a blue light. See sentencing sheets exhibit (A) and (B). Sentencing was deferred until a later date.

On February 4, 2019, Applicant appeared before the Honorable R. Keith Kelly and Judge Kelly sentenced Applicant to twenty (20) years for the second offense trafficking and five (5) years for the failure to stop for a blue light. Sentences were ordered concurrent.

Applicant submits counsel rendered ineffective assistance when counsel failed to object to the 20-year sentence handed down by the court that was contrary to the negotiated 15-year plea agreement and recommendation of the State.

DISCUSSION

The United States Supreme Court extended the Strickland v. Washington, 466 U.S. 668 (1984) standard to the context of guilty pleas in Hill v. Lockhart, 474 U.S. 52 (1985). It is the

perogative of any person to waive his rights, confess, and plead guilty under judicially defined safeguards which are adequately enforced. *State v. Armstrong*, 263 S.C. 594, 597, 211 S.E.2d 889, 890 (1975).

A plea bargain standing alone is without constitutional significance, in itself it is a mere executory agreement which embodied in the judgment of a court does not deprive an accused liberty or any other such constitutionally protected interest. It is the ensuing guilty plea that implicates the Constitution only after the defendant pleads guilty, was convicted and it is that conviction which gives rise to due process deprivation of the defendant's liberty at issue. *Mabry v. Johnson*, 467 U.S. 504, 507, 104 S.Ct. 2543, 2546 (1984).

Once a defendant enters a guilty plea and the plea is accepted by the court, due process requir[es] the plea bargain be honored. (emphasis added and supplied).

The general rule in other jurisdictions, including South Carolina is subject to a detrimental reliance exception. Absent a plea of guilty, a defendant may only enforce an oral agreement upon a showing of detrimental reliance. Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a promise in a plea bargain could make the agreement binding. See *Reed v. Becka*, 511 S.E.2d 396, 403 (S.C.Ct.App.1996).

A defendant relies upon a solicitor's plea offer by taking some substantial step of accepting serious risk of an adverse result following acceptance of the plea. *Reed, supra* citing *State v. Vixamar*, 687 So.2d 300 (Fla.Dist.Ct.App.1997).

Detrimental reliance may be demonstrated where as here the defendant performed some part of the bargain. *State v. O'Leary*, 128 N.H. 661, 517 A2d 1174 (1986).

South Carolina case law clearly recognizes that a defendant has a right to enforce a plea agreement. See *Reed v. Becka*, 511 S.E.2d 396 (S.C.Ct.App.1996); *State v. Gates*, 299 S.C. 92, 382 S.E.2d 886 (1989) and *Jordan v. State*, 297 S.C. 52, 374 S.E.2d 683 (1988). However Gates and Jordan are distinguishable from the instant case because it was the State who reniged on the plea agreement in those cases and in the instant matter it was the Plea Court. Counsel should have objected when the Court departed from the accepted negotiated 15-year plea agreement and asked the Court to honor the State's negotiated plea agreement of 15-years which was the basis for the plea guilty in the first place. In the event the Court refused to honor the negotiation the issue would have been preserved for appellate review as a result of Applicant's detrimental reliance on the negotiated 15-year agreement.

Counsel's deficient performance is exploited to the maximum by counsel's failure to object when the Plea Court abused it's discretion by departing from the already accepted negotiated 15-year agreement between Applicant and the State when the Court injected itself taking part of the plea agreement. As this Court knows it is error for a judge of this State to become a participant in plea negotiations and must remain neutral at all times.

This Court should find plea counsel's performance deficient in failing to object and move to enforce the 15-year negotiated agreement.

CONCLUSION

Based on the foregoing, Applicant respectfully requests that this Court finds counsel rendered ineffective assistance and that Applicant is entitled to a specific sentence performance of 15-years.

Respectfully Submitted,

/s/ Cecil E. Blackwell

Cecil E. Blackwell

Exhibit (A)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2010 JUN -5 AM 10:37
BRANDY W. MCBEE

COURT OF
STATE Cherokee
VS.
Cecil Eugene Blackwell Jr
AKA:
Race: WHITE Sex: M Age: 43
DOB: -1975 SS#: [REDACTED]
Address: Goforth Drive
City, State, Zip: Gaffney, SC 29340
DL#: [REDACTED]

INDICTMENT/CASE#: 2017GS1101192
A/W#: 2017A1110100619
Date of Offense: 7/11/2017
S.C. Code § : 44-53-0375(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
TO: Trafficking in methamphetamine - 10 g or more, but less than 28 g. 2nd offense [5-30y & \$50k] **85070**
in violation of § 44-53-0375(C) 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
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State (defendant's initials)
ATTEST: LESKIANIC, KIM SCB16837 SC Bar# Reckenbelt, John G. SCB68610 SC Bar#
Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed 15 years
and/or to pay a fine of \$ 50,000; 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 CDO
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §15-13-10
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 (Carrying a Dangerous
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 \$
§14-1-211(A)(2) (DUI Surcharge) \$100 \$
§56-5-2995 (DUI Assessment) \$12 \$
§56-1-286 (DUI Breath Test) \$25 \$
Proviso (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 \$

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:

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

Clerk of Court/ Deputy Clerk Brandi V McBeal
Court Reporter: Michelle D. Gathers
SCCA/217 (04/2018) Plea only: R. Keith Kelly #2165

Presiding Judge R. Keith Kelly
Judge Code: 2165
Sentence Date: 9 February 2019

Exhibit (B)

CLERK OF COURT
CHEROKEE COUNTY, S.C.
2020 JUN -5 AM 10:30
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS.

AKA: Cecil Eugene Blackwell Jr

Race: WHITE Sex: Age: 43

DOB: -1975 SS#:

Address: Goforth Drive

City, State: SC 29340

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Failure to stop for a blue light, no injury or death - 2nd offense [0-5y]

in violation of § 56-05-0750 of the S.C. Code of Laws, bearing CDR Code # 2396

☒ 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: ESRANIC, KIM SCB16837 Defendant John G. Reckenbeil SCB68610

Reckenbeil, John G. Attorney for Defendant

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 SCDOD.☐ 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: \$ 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 (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 \$ Clerk of Court/ Deputy Clerk Brenda McBeCourt Reporter: Tricia Adams

SCCA/217 (04/2018)

Plea only: R. Keith KellyPresiding Judge R. Keith KellyJudge Code: 2115Sentence Date: 4 February 2019

INDICTMENT/CASE#: 2017GS1101193

A/W#: 2017A1110100620

Date of Offense: 7/11/2017

S.C. Code § 56-05-0750

CDR Code #: 2396

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2019 JUN 14 AM 10:30
BRANDY W. MCBE

Obtain GED ☐Attend Voc. Rehab. or Job Cog ☐May serve W/E beginning ☐Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

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

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

C/A No. 020CP-11003R

Cecil Eugene Blackwell #218835 -- Applicant,

-VS-

State of South Carolina -- Respondent,

FILED IN THE OFFICE
CLERK OF COURT
2020 AUG 31 A 11:44
BRADY W. HCBEE
CHEROKEE COUNTY, SC

MOTION AND REQUEST
TO DISMISS PCR COUNSEL OF RECORD
AND REQUEST FOR APPOINTMENT OF
SUBSTITUTE PCR COUNSEL

Other Counsel of Record

SC. Attorney General
PCR Division
P.O. Box 11549
Columbia, SC. 29211

Cecil E. Blackwell
SCDC# 218835
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

Applicant, pro-se

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE)

Cecil E. Blackwell #218835) C/A No. 02DCP-110038
Applicant,)
-vs-) MOTION AND REQUEST TO DISMISS PCR
State of South Carolina) COUNSEL OF RECORD AND REQUEST FOR
Respondent,) APPOINTMENT OF SUBSTITUTE PCR
COUNSEL

Introduction

COMES NOW, above captioned Applicant, Cecil Eugene Blackwell, pro-se, respectfully moving this Honorable Court to dismiss and relieve, PCR Counsel Rodney Richey, and requesting the Court appoint substitute PCR counsel in this matter.

In support of this Motion and Request, Applicant would respectfully show unto this Court the following:

(1). Applicant is presently confined in the South Carolina Department of Corrections serving a twenty-(20)-year sentence.

(2). Applicant filed a pro-se application for post conviction relief and Rodney Richey was appointed as PCR counsel to represent Applicant in the collateral matter.

(3). As this Honorable Court very well knows, a PCR applicant in South Carolina only gets one bite of the apple. With that bite also means a PCR applicant present all of his available claims in one application.

(4). With that in mind, Applicant is challenging a guilty plea based on a plea agreement and the enforceability of such, both oral and in writing.

(5). However, after Rodney Richey was appointed and before even receiving my case file informed me via written correspondence, that my issue will not help me, when in fact as a matter of law in this State Mr. Richey is wrong and does not have my best interest in hand from the onset and I strongly feel there is a conflict of interest and the attorney client relationship is beyond repair. I do not trust Rodney Richey as his track record speaks volumes. I have also been informed by numerous individuals whom Rodney Richey has represented and all have informed me of his numerous reprimands for attorney misconduct from Disciplinary Counsel.

(6). Therefore, in the interest of justice and fundamental fairness to myself and to Mr. Richey, the Applicant herein respectfully asks this Court to relieve Rodney Richey as PCR counsel of record and that this Court would respectfully appoint substitute counsel to ensure Applicant receives his one and only full bite of the apple.

Respectfully Submitted,

/s/ Cecil E. Blackwell

Cecil E. Blackwell

Applicant, pro-se

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

C/A No. D20CP-110038

Cecil Eugene Blackwell #218835 -- Applicant,

-VS-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

FILED IN THE OFFICE
CLERK OF COURT
2020 AUG 31 A 11:44
BRANDY W. MCBEE
CHEROKEE COUNTY, SC

The undersigned hereby certifies he has served a true and correct copy of the enclosed Motion and Request to Relieve PCR Counsel on the persons whose names and addresses appear below by placing the aforesaid in properly addressed, first-class postage affixed envelopes and placed in the U.S. Mail this 28th day of AUG, 2020.

Those Served:

Mrs. Brandy W. McBee, Clerk
Cherokee County, Clerk's Office
P.O. Box 2289
Gaffney, SC. 29342

SC. Attorney General
PCR Division
P.O. Box 11549
Columbia, SC. 29211

Mr. Rodney Richey
Richey and Richey, PA.
Attorney at Law
P.O. Box 10916
Greenville, SC. 29615

Respectfully Submitted,

/s/ Cecil E. Blackwell
Cecil E. Blackwell, pro-se
SCDC# 218835
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

SWORN TO AND SUBSCRIBE BEFORE ME

THIS 28 DAY OF August, 2020

Tamara Conwell
NOTARY PUBLIC

My Commission Expires
September 25, 2023

RECEIVED

AUG 28 2020

RC.I. MAILROOM

Cecil E. Blackwell
SCDC # 218835 Q1A118
Perry Corr. Inst
430 Oaklawn Rd
Pelzer, SC.
29669

RECEIVED

AUG 28 2020

P.C.I. MAILROOM

LEGAL
MAIL

Mrs. Drancy W. McLean
Cherokee County Clerk of
Po Box 2289
Gaffney, SC
29347

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Cecil E. Blackwell, #218835,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-11-0038

RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT

BRANDY W. MCBEE

2020 JUN 17 AM 10:53

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on January 10, 2020 by Cecil E. Blackwell (hereafter "Applicant"). Respondent offers the following in support of its Return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its September 2017 term, the Cherokee County Grand Jury indicted Applicant for trafficking methamphetamine, between ten and twenty-eight grams (2017-GS-11-01192) and failure to stop motor vehicle when signaled by officer (2017-GS-11-01193). Applicant was represented by John Reckenbell, Esquire. Assistant Solicitor Kimberly L. Leskanic of the Seventh Circuit Solicitor's Office prosecuted the case. On October 10, 2018, Applicant appeared before the Honorable R. Keith Kelly, circuit court judge, and pled guilty to the lesser included offense of trafficking methamphetamine ten to twenty-eight grams, second offense, to a recommended sentence of fifteen years on the drug charge and to a recommended sentence of five years of on the failure to stop for a blue light, second offense, to run concurrent with the drug charge. Kelly sentenced Applicant to twenty years' imprisonment for the drug charge and five years for the failure to stop

charge, sentences running concurrently. Applicant did not pursue a direct appeal.

II. Statement of Facts

On July 11, 2017, four officers with SLED were travelling down the road when they saw Applicant at Cherokee Food Mart. (Plea Tr. 24). Three out of four of the officers recognized Applicant from prior dealings. (Plea Tr. 24). When they noticed Applicant, they began following him. (Plea Tr. 24). Applicant ran a red light, at which an officer activated the blue lights on the police vehicle. (Plea Tr. 24). Then, the officers saw Applicant reach into his waistband. (Plea Tr. 24-25). Applicant pulled out a black wallet-type pouch and threw it underneath a white parked van. (Plea Tr. 25). Applicant failed to stop his motorcycle. (Plea Tr. 25). One officer got out of the car, trying to apprehend Applicant, but Applicant took off on his motorcycle before the officer could reach him. (Plea Tr. 25). His passenger later told the police that Applicant travelled at a high rate of speed to get away from law enforcement. (Plea Tr. 25). Officers retrieved the black pouch and found 12.15 grams of methamphetamine and three empty baggies. (Plea Tr. 25). This was confirmed by SLED. (Plea Tr. 25).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons:

1. Defense counsel was ineffective for:
 - a. "failing to advise me to plea[d] guilty."
 - b. "counsel failed to object or file motions that his client want[ed] [that would allow him] to withdraw his plea and proceed to trial."
2. "[The] [g]uilty plea was not knowingly and intelligently made to the court."
3. "State breached the sentence[ing] agreement."

Applicant submitted an amendment to his PCR application, filed June 5, 2020. In this amendment, Applicant alleged:

1. Counsel was ineffective for failing to object to the twenty year sentence handed down by the Court that was contrary to the negotiated fifteen year plea agreement.

Attached to and incorporated herein are Applicant's Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the

scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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.

Regarding guilty pleas specifically, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty

but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). The applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness inherently included in the plea's judicial procession. *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."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *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)).

Invalid Guilty Plea

Applicant's allegations that the plea was invalid, Counsel was ineffective for failure to object to the sentence, and that the State allegedly breached the sentencing agreement likely lack merit. For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (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 the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea 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.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leake*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Based upon the plea transcript, Respondent contends the plea was most likely freely, voluntarily, knowingly, and intelligently entered. Applicant stated he was not on any substances that impeded his ability to think clearly, that he knew he was at court to plead, that Counsel represented him, and that the Court was not bound to the recommended sentences in the case. (Plea Tr. 20-22). Applicant stated he understood he was giving up his rights to a jury trial, to remain silent, and to call and confront witnesses. (Plea Tr. 20-22). After being told the charges, sentences, and indictments he was pleading to, Applicant pled guilty. (Plea Tr. 22-23). Applicant stated it was his decision to plead, he had sufficient time to speak with his attorney, that Counsel shared discovery materials with him, and that Counsel did everything he could to help him and to investigate the case. (Plea Tr. 23-24). Thus, Applicant freely, voluntarily, knowingly, and intelligently and cannot withdraw it now.

Additionally, the plea transcript clearly shows that Applicant entered the plea knowing that he was entering a plea without negotiations, but instead with recommendation that the judge confirmed Applicant knew the judge was not bound to twice. (Plea Tr. 20-22). Further, he was told he was subject to a sentencing range of five to thirty years. (Plea Tr. 22). Applicant stated he understood the range. (Plea Tr. 22). Applicant seemingly knew that the sentence could be higher than the recommendation and, thus, cannot withdraw the plea now because of his disappointment

that the Judge did not follow the recommendation. Thus, Applicant's claim that Counsel was ineffective for failing to object to the sentence imposed is without merit because the sentence was proper, even if it was not recommended. Further, there is no evidence a formal sentencing agreement existed beyond the recommendation, let alone that the State breached a sentencing agreement. Thus, this argument is likely without merit as well.

Failure to Object or File Motions

Applicant alleges Counsel failed to file motions that would have allowed him to withdraw his plea and proceed to trial. Again, according to the plea hearing transcript, the plea was validly entered and cannot be withdrawn now. Additionally, there is no indication on record that Applicant sought to withdraw his plea at the hearing or that his answers were ambiguous enough for the voluntary, knowing, and intelligent nature of the plea entered.

However, above allegations probably raise questions of fact the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective because he failed to advise him to plead guilty, object to the sentence, or file motions that his client wanted that would allow him to withdraw the plea and proceed to trial. He also stated that the State breached the sentencing agreement and that the guilty plea was not knowingly and intelligently made.

However, it does not explain exactly why these blanket allegations entitle him to relief.

Applicant fails to set forth with specificity any facts and circumstances upon the claim is based.

The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in the Applicant’s PCR application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record."); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery

materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

WHEREFORE, Respondent respectfully requests the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By:/s Chelsey F. Marto
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

June 15, 2020

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Cecil E. Blackwell, #218835

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-11-0038

Certificate of Service

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020, "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Return and Motion for More Definite Statement** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Rodney W. Richey, Esquire
PO Box 10916
Greenville, SC, 29603-0916

DATED this 15th day of June, 2020.

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ChelseyMarto@scag.gov

FILED IN OFFICE OF
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2020 JUN 17 AM 10:54
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

C/A No.020-CP-11-0038

Cecil Eugene Blackwell -- Applicant,

-vs-

State of South Carolina -- Respondent,

AMENDED POST CONVICTION RELIEF

APPLICATION PURSUANT TO:

RULE 15, SCRCiv.P.

Cecil E. Blackwell
SCDC# 218835
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

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STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

C/A No. 020-CP-11-0038

Cecil Eugene Blackwell -- Applicant,

- vs -

State of South Carolina -- Respondent,

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BRANDY W. MCBEE

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed PCR Amendment on the persons whose addresses appear below by placing the aforesaid in properly addressed sufficient postage affixed envelopes and placed in the U.S. Mail this ___ day of ___, 20__.

Mrs. Brandy W. McBee
Clerk of Court for
Cherokee County
P.O. Box 2289
Gaffney, SC. 29342

Respectfully Submitted,

/s/ Cecil Blackwell
Cecil E. Blackwell

Office of Attorney General
PCR Division
P.O. Box 11549
Columbia, SC. 29211

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 20 DAY OF December, 2021

Tamara Conwell
NOTARY PUBLIC

MY COMM. EXPIRES September 25, 2023

RODNEY RICHEY

P.O. Box 10916

GREENVILLE, SC.

29603

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE)

Cecil E. Blackwell) C/A No.020-CP-11-0038
Applicant,)
- vs-) AMENDED POST CONVICTION RELIEF
State of South Carolina) APPLICATION PURSUANT TO:
Respondent,) RULE 15, SCRCivP.
_____)

COMES NOW, above captioned Applicant Cecil Eugene Blackwell by and through attorney of record respectfully moving this Honorable Court to amend the Original PCR application in the aboe captioned pursuant to Rule 15, South Carolina Rules of Civil Procedure.

Respectfully Submitted,

/s/ Cecil E. Blackwell

Cecil E. Blackwell

Applicant,

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ISSUE (B)

WAS COUNSEL INEFFECTIVE FOR FAILING TO CONDUCT ANY PRETRIAL INVESTIGATION BEFORE ADVISING APPLICANT TO PLEAD GUILTY?

ISSUE (C)

WAS COUNSEL INEFFECTIVE FOR FAILING TO MOVE TO WITHDRAWN APPLICANT'S PLEA BASED ON SLED DOCUMENTATION THAT REVEALS A BREAK IN THE CHAIN OF CUSTODY AND EVIDENCE TAMPERING?

To save the Court's time, Applicant will address these issues together since the facts of one encompasses the other.

FACTS

Applicant asserts he was denied his guarantee of constitutionally effective assistance of counsel when counsel failed to conduct any pretrial investigation into the case before advising Applicant his best bet was to plead guilty. Id.

Applicant submits counsel had an obligation to investigate and prepare trial. At a minimum counsel should have reviewed the chain of custody which reveals the strong suspicion of tampering with evidence in that Applicant's exhibit (1) states that Officer Rodney Painter confiscated [15.00 grams] of methamphetamine, and yet when SLED got the evidence (see Applicant's exhibit (2), shows that SLED only tested 0.01 grams, and the SLED Report states the Net Weight was [12.5 grams] nearly three (3) grams difference and/or missing, exploiting to the maximum the reason counsel should have moved to suppress all the evidence in the case as fruit of the poisonous tree. And the fact that Officer Bill Anthony testified pretrial that Rodney Kinard delivered the evidence ~~and~~ (see exhibit (4) (transcript page 7, 1.11). Rodney Kindard is not employed with the Cherokee County Sheriff's Department, since the hearing Applicant's family did a social media www.org search and Rodney Kinard has never been employed there. Calling into question "who is Rodney Kinard and why is he

handling evidence." Counsel's failure to adequately investigate and urge Applicant to just plead guilty was the complete abandonment of counsel at a critical stage of the proceeding.

To fully develop this issue Applicant will present the chain of custody reports and testimony in support during the hearing.

DISCUSSION

The Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right.. "...to have the assistance of counsel for his defense. Cuyler v. Sullivan, 446 U.S. 335, 344, 352 (1980); also see United States v. Morrison, 449 U.S. 361, 366 (1981); accord Tollett v. Henderson, 411 U.S. 258, 266-68.

At the heart of effective representation is the independent duty to investigate and prepare. Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir.), cert. denied _____ U.S. _____, 103 S.Ct. 1798. Therefore, permissible trial strategy can never include the "failure" to conduct reasonably substantial investigation of the case.

Preparation and investigation "must be more than perfunctory." Counsel has an affirmative legal duty to conduct appropriate investigation, both factual and legal. Coles v. Peyton, 389 F.2d 224, 226 (4th Cir.), cert. denied 393 U.S. 849 (1968). The failure to ascertain and investigate possible defenses has often resulted in finding that the defendant was denied adequate representation. See Goodwin v. Swenson, 287 F.Supp.166, 176-86 (W.D.Mo.1968).

The primary input of the attorney to his client's case is that of professional expertise. Even in a simple case, meticulous investigation and thoughtful legal analysis will often reveal a panolopy of issues -- to which the defendant, a layman will be oblivious. *Garland v. Cox*, 472 F.2d 875, 879 (4th Cir.).

The notion that defense counsel must obtain information that the State has and will use against the defendant is not simply a matter of common sense.

The American Bar Association Standards for Criminal Justice, Prosecution and Defense Function describes the obligation in terms no one could misunderstand in circumstances of a case like the one at hand. "It is the duty of the lawyer to conduct prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. See ABA Standards for Criminal Justice 4-4.1 (2d ed. 1982). The newer version of the Standard now reads that "any investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities." ABA Standards for Criminal Justice, Prosecution Function and Defense Function 4-4.1 (3rd ed. 1993). There is not material difference between these two phrasings, and in any case counsel should make reasonable efforts to learn the information in possession of the prosecution and "law enforcement authorities."

In the instant matter it is plainly seen that counsel advised Applicant to plead guilty without conducting any type of pretrial

investigation. The failure to investigate, research and prepare is equivalent to no representation at all. *Brubaker v. Dickson*, 310 F.2d 30; accord *Williams v. Beto*, 354 F.2d 698 and *Brooks v. Texas*, 381 F.2d 619.

Applicant submits he was denied constitutionally effective assistance of counsel as guaranteed by the Sixth Amendment and but for counsel's errors and lack of assistance thereof, Applicant would not have pled guilty but would have insisted upon going to trial.

CONCLUSION

Based on the above, Applicant respectfully prays this Court will grant the requested relief of a new trial in the instant matter.

Respectfully Submitted,

/s/ Cecil Eugene Blackwell

Cecil Eugene Blackwell

Applicant,

Applicants
Exhibit (1)

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BRANDY W. MCBIRT

Exhibit 1

10

Cherokee County Sheriff's Office

312 East Frederick Street

Gaffney, SC 29340

864-489-1722

Inc1702877-001 - Drug - One black pouch containing 3 small empty glassine bags and 2 glassine bags containing a crystal rock like substance



Sheriff Steve Mueller

Printed on July 20, 2017

Item # Inc1702877-001
Offsite Item #
Category Seized
Description One black pouch containing 3 small empty glassine bags and 2 glassine bags containing a crystal rock like substance
Owner
Drug Type L - Amphetamines/Methamphetamines
Is Counterfeit No
Quantity 15.000 Grams
Value
Collected By Painter, Ronnie
Access Tag
Date Collected 07/11/17 12:30
Collected Location
Target Disp. Date
Subjects
Comments

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CHEROKEE COUNTY, S.C.
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BRANDY W. MOORE

Chain of Custody

Date	User	Action	Category	Status	Location
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ZUERCHER

Applicants
Exhibit (2)

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BRANDY W. MCBET

Exhibit 2

Page 1
2/13/2018

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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief

Ronnie Painter
Cherokee County Sheriff's Office
312 E. Frederick St.
Gaffney, SC 29340

DRUG ANALYSIS
January 22, 2018
SLED LAB: L17-12812
Your Case No: 1702877
Incident Date: 07/11/2017
[S] Cecil Blackwel, Jr

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Sub # 1 On August 23, 2017, items were received in B274146 from Billy Anthony of the Cherokee County Sheriff's Office.

Item: 1.1 Zip lock bag containing...

Item: 1.1.1 Crystal substance.

RESULTS:

The maximum attainable statutory threshold has been met for this substance based on indicative testing results consistent with item 1.1.3. Item was not subjected to confirmatory testing.

Net weight of the tested substance is 0.10 +/- 0.01 grams; 1 tested.

Item: 1.1.2 Zip lock bag containing crystal substance.

RESULTS:

The maximum attainable statutory threshold has been met for this substance based on indicative testing results consistent with item 1.1.3. Item was not subjected to confirmatory testing.

Net weight of the tested substance is 0.55 +/- 0.01 grams; 1 tested.



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2021 DEC 22 AM 11
BRANDY W. MCBEATH

102

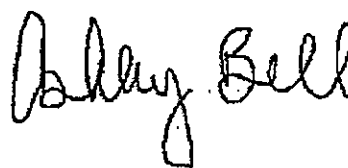
Item: 1.1.3

Plastic sandwich bag containing crystal substance.

RESULTS:

Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 12.15 +/- 0.01 grams (187.49 +/- 0.15 grains). Confidence level for the weight is 99.7%.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Ashley Bell
Forensic Scientist

BRANDY W. MCBEE

2021 DEC 22 AM 11:14

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CHEROKEE COUNTY, S.C.



Supplement to Analysis for Controlled Substance

I, Ashley Bell, am a Forensic Scientist employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a Forensic Scientist qualified to perform testing and analysis for controlled and/or 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 2 years and 10 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 4 times. I have received the following training as a Forensic Scientist.

B.S. Biochemistry, Washington and Lee University, Lexington VA, 2006
Training in Forensic Serology, South Carolina Law Enforcement Division, 2013
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2015
Drug Enforcement Administration, Forensic Chemist Seminar, 2015
West Virginia University Continuing & Professional Education Program, Introduction to Forensic Drug Chemistry, 2015
South Carolina Law and Legal Training, South Carolina Criminal Justice Academy, 2016
West Virginia University Continuing & Professional Education Program, Forensic Mass Spectrometry, 2016

Sub # 1 On August 23, 2017, items were received in B274146 from Billy Anthony of the Cherokee County Sheriff's Office.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ [X] Chemical Test
☐ [] Microscopic Exam
☐ [] Infrared Spectroscopy
☐ [] Visual Examination

☒ [X] Gas Chromatography
☒ [X] Mass Spectroscopy
☐ [] Physical Test
☐ [] Published Literature

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2017 DEC 22 AM 11:14
BRANDY W. MCBEE

Forensic Scientist

Ashley Bell

Ashley Bell

Date: January 22, 2018



Applicants
Exhibit (4)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2021 DEC 22 AM 11:12

BRADY W. HCBTE

CECIL BLACKWELL #218835
 PERRY, C. I. (Q1-118A)
 430 DAYLAWN RD
 PELZER SC 29669

DATE: 1-18-2022

DEAR MRS MCBEE,

I RECENTLY SEND A AMMENOMENT
 FOR PCR CIA # 020 CP-110038 BUT NEVER RECEIVED
 A CLOCK STAMPED COPY BACK FROM YOUR OFFICE.
 PLEASE SEND ME THIS INFORMATION TO ADDRESS
 ABOVE. THANK YOU KINDLY,

Cecil Blackwell

For future, when filing
 any documents, if you
 would like a time-stamped
 copy back you will need to
 provide a self addressed and postage
 paid envelope as well as the copies.
 This is a courtesy copy.

01/24/2022

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2022 JAN 24 AM 8:42
 BRADY W. MCBEE

CECIL BLACKWELL

APPLICANT

VS

STATE OF SOUTH CAROLINA

RESPONDENT

C/A NO. 020-CP-11-0038

DATE: JANUARY 18, 2022

PLEASE INCLUDE TO PCL AMMENDMENT AS
SUPPORTING EVIDENCE TO EXHIBIT 4,

ONE LETTER DATED FOR JANUARY 11, 2022 FROM
A NICHOLE L. TURNER HR GENERALIST IN
CHEROKEE COUNTY.

SUPPORTING
EXHIBIT 4 (TRANSCRIPT PAGE 7, 1-11.)

LETTER FROM HUMAN RESOURCES

SUPPORTING EXHIBIT 4

Copy

CHEROKEE COUNTY

110 RAILROAD AVENUE
GAFFNEY, SC 29340-3136
TELEPHONE (864) 487-2560
TELEFAX (864) 487-2594



COUNTY ADMINISTRATOR
STEVE BRATTON

ASST. ADMINISTRATOR
MERV BISHOP

COUNTY COUNCIL:

DIST. 1 LYMAN DAWKINS III
DIST. 2 MIKE FOWLKES
DIST. 3 QUAY LITTLE, VICE-CHAIRMAN
DIST. 4 TIM SPENCER, CHAIRMAN
DIST. 5 ELLIOTT HUGHES
DIST. 6 DAVID SMITH
DIST. 7 TRACY A. MCDANIEL

MASTER CLERK TO COUNCIL
DORIS PEARSON

January 11, 2022

To Whom It May Concern:

According to our records we have never had an employee by the name of Rodney Kinard work for Cherokee County.

If you have any questions, please contact me at 864-902-2309.

Sincerely,

Nichole L Turner
HR Generalist
Cherokee County

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WITNESSES

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SENTENCING -- PAGE 7

EXHIBITS

1	NO.	DESCRIPTION	ID.	EV.
2				
3		(NO EXHIBITS MARKED)		
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1 (PROCEEDINGS, FEBRUARY 4,, 2019)

2 THE COURT: Solicitor.

3 MS. LESKANIC: May it please the court, before you
4 is Cecil Eugene Blackwell, Jr.. He was before Your Honor on
5 October 10th of 2018 with his attorney, Mr. Reckenbeil, when
6 he entered a guilty plea on the two indictments and
7 sentencing sheets that are before Your Honor for trafficking
8 in methamphetamine and also failure to stop for blue light,
9 second offense.

10 After entering his plea he was given one week to
11 get his affairs in order and report back for sentencing on
12 October the 17th, at nine a.m.. He was placed on home
13 detention with electronic monitoring.

14 We received word the day before he was supposed to
15 report that morning he cut that electronic monitor and he
16 was on the run until late January, when he was captured with
17 the help of Spartanburg County and the marshals. There had
18 been a lot of effort placed into locating Mr. Blackwell,
19 Your Honor.

20 When he was finally located he was found in
21 possession of a substance that's believed to be
22 methamphetamine. He was charged with either possession or
23 possession with intent to distribute methamphetamine in
24 Spartanburg County. That case is pending. He also will
25 have an escape charge here from Cherokee County for cutting

1 the electronic monitor while he was on home detention.

2 As the court will recall, this incident occurred
3 back on July 11th of 2017, when officers were patrolling
4 here in Cherokee County. They saw the defendant. They
5 recognized him from past experience. He fled on a
6 motorcycle after running through a red light. He had thrown
7 a black bag out under a vehicle. And inside that bag they
8 found over 12 grams of methamphetamine, as confirmed through
9 testing at SLED.

10 He did have a recommendation at the time of
11 15 years from the State. It was only a recommendation that
12 was placed before Your Honor and then he failed to appear
13 for his sentencing.

14 He does have a considerable prior record. It
15 would have been a third offense on the drug case. We did
16 allow him to plead to a second offense trafficking.

17 THE COURT: Mr. Reckenbeil?

18 MR. RECKENBEIL: Thank you, Your Honor.

19 May it please the court. Ms. Leskanic stated the
20 facts accurately.

21 I have been informed that he would like to have a
22 family member speak, and then he's also informed me that he
23 would like to terminate my services, which I'm not really
24 sure where we go with that, but I'm happy to do whatever the
25 court needs for me to do.

1 THE COURT: Sir, you were previously sworn. You
2 remain sworn. Is there anything you would like to say?

3 THE DEFENDANT: Yes, sir, I -- I tried to get with
4 John and, you know, I said it the day before that -- at my
5 last hearing that I was so happy with his services,
6 whatever. I'm not happy with his services. It took me from
7 the day that I was -- you allowed me to go home on home
8 detention, from that Wednesday until that following Monday
9 to even get with him to try to get my motion, which I found
10 new evidence of that the methamphetamine that was weighed
11 in, the evidence had been tampered with because it was 15
12 grams weighed in by the arresting officer. And then upon
13 return from SLED it only weighed 12.5, which they did a
14 hearing -- the officer didn't even do a due process for --
15 the officer that signed the evidence out and took it to
16 SLED, he didn't even do the -- in my motion I have no
17 paperwork saying where he signed it out, but yet it was in
18 the solicitor's motion, so -- I mean, somewhere in there the
19 evidence is tampered with and I tried to get with him on it.
20 He told me to sit up in front of the jury and look pretty is
21 what he told me.

22 THE COURT: Sir, I have already taken your plea.
23 I'm not here to try the case. The plea was taken and as a
24 courtesy to your lawyer I was --

25 THE DEFENDANT: I want to withdraw that plea.

1 THE COURT: Sir?

2 THE DEFENDANT: I want to withdraw the plea --

3 THE COURT: No.

4 THE DEFENDANT: -- and take a jury.

5 THE COURT: No, sir. I am not allowing you to
6 withdraw the plea. There is no reason to allow you to
7 withdraw the plea, but you were given a seven-day period,
8 which is most unusual. I did that as a courtesy to your
9 lawyer and you didn't come back. If there had been some
10 issues, you could have come back in that seven-day period.

11 Anything further?

12 THE DEFENDANT: No, sir.

13 THE COURT: 2017-1192, the State Department of
14 Corrections for 20 years and pay a fine of \$50,000.
15 Concurrent. Credit for time.

16 2017-1193, five years Department of Corrections.
17 Concurrent. Credit for time.

18 Very best of luck to you.

19 MS. LESKANIC: Thank you Your Honor.

20 (END OF REQUESTED TRANSCRIPT OF RECORD)

21

22

23

24

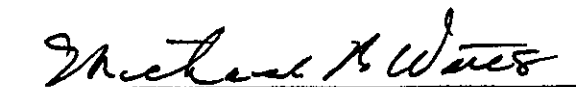
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of General Sessions for Cherokee County, South Carolina, on the 4th day of February, 2019.

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

June 13, 2019



Michael R. Watts
Circuit Court Reporter

State of South Carolina	)	
	)	
County of Spartanburg	)	
Cecil Blackwell, Jr.,	)	2020-CP-11-00038
	)	
Applicant,	)	
	)	
v.	)	Transcript
	)	
The State of SC,	)	of
	)	
Defendant.	)	Post-conviction
	)	Relief Hearing
	)	
	)	
	)	
	)	
	)	
	)	

Date: April 18, 2022

Time: 1:43 p.m.

Location: Spartanburg County Courthouse

180 Magnolia St.

Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable G.D. Morgan

For the Applicant: Rodney Richey, Esq.
Richey and Richey Law Firm
33 Market Pointe Drive
Greenville, SC 29607

For the Defendant: Chelsey Marto, Esq.
SC Attorney General's Office
1000 Assembly St., Room 519
Columbia, SC 29201

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1 PROCEEDINGS

2 THE COURT: All right. Are we ready to
3 proceed? Is the first one, Blackwell?

4 MS. MARTO: Yes, your honor.

5 THE COURT: All right. Yes, ma'am?

6 MS. MARTO: Yes. May it please the Court. We
7 are here today in the case of "Cecil Blackwell
8 vs. The State of South Carolina." Docket
9 Number 2020-CP-11-38. He is presently
10 confined in the South Carolina Department of
11 Corrections pursuant to orders of commitment
12 from the Cherokee County Clerk of Court.

13 During its September 2017 term, the
14 Cherokee County Grand Jury indicted him for
15 trafficking methamphetamine between 10 and 28
16 grams and failure to stop a motor vehicle when
17 signaled by an officer. He was represented by
18 Mr. John Reckenbeil. Assistant Solicitor,
19 Kimberly Leskanic of the Seventh Circuit
20 Solicitors office, prosecuted the case October
21 10th, 2018. He appeared before the Honorable
22 R. Keith Kelly and pled guilty to the lesser
23 included offense of trafficking meth between
24 10 and 28, second offense, to a recommended
25 sentence of 15 years on the drug charge and to

1 a recommended sentence of five years on the
2 failure to stop for a blue light, second
3 offense, sentences running concurrently. And
4 then he was ultimately sentenced to 20 years
5 imprisonment for the drug charge and five
6 years for the failure to stop charge. Again,
7 sentences running concurrently.

8 He did not pursue a direct appeal. He
9 filed his post-conviction relief application
10 January 10th, 2020. The return was made June
11 12th, 2020. With that, I'll turn it over to
12 Mr. Richey.

13 THE COURT: All right. Mr. Richey?

14 MR. RICHEY: Before I proceed, we'll call Mr.
15 Blackwell.

16 (WHEREUPON, the applicant was sworn.)

17 MR. RICHEY: Your Honor, can I approach the
18 witness, please?

19 THE COURT: Yes.

20 MR. RICHEY: Okay. Mr. Blackwell, I don't
21 know if you've got all your stuff here. I'm
22 going to give you these printouts of what
23 we're going to be referring to, okay?

24 THE APPLICANT: Uh-huh.

25 DIRECT EXAMINATION

1 BY MR. RICHEY:

2 Q Okay. All right. Okay. Sir, would you state your

3 name, please?

4 A Cecil Blackwell.

5 Q And, Mr. Blackwell, are you at the Department of

6 Corrections right now?

7 A Yes, sir.

8 Q And -- and what are you in there for?

9 A Trafficking methamphetamine, second offense, and

10 failure to stop for a blue light, second offense.

11 Q And did you have a trial or plead guilty in your

12 case?

13 A Pled guilty.

14 Q And who represented you in that case?

15 A Mr. John Reckenbeil.

16 Q Okay. And you filed an application for post-

17 conviction relief because you felt like that his --

18 his representation was not effective; is that

19 correct?

20 A At the time that I pled guilty, yes, sir.

21 Q Okay. All right. And -- and you raise several -

22 you've got several issues here. One of the issues

23 is: Did you see the discovery prior to pleading

24 guilty?

25 A Did I see what?

- 1 Q The discovery information.
- 2 A No, sir.
- 3 Q Are you having hard time hearing me?
- 4 A No. I -- I can hear you, yeah.
- 5 Q Okay. So you did not see the discovery prior to
- 6 pleading guilty?
- 7 A No, sir.
- 8 Q Okay. Did your lawyer discuss the discovery with
- 9 you?
- 10 A On some issues, yes, sir.
- 11 Q Some issues. What issues were those?
- 12 A He advised me that they was gonna be a hearing due
- 13 to the chain of custody (verbatim.)
- 14 Q Right.
- 15 A And, basically, just the fact that I would have to
- 16 plead to the second offense. They was a
- 17 recommendation by the State of 15 years (verbatim.)
- 18 Q Okay. And was that recommendation accepted by the
- 19 judge, that you know of?
- 20 A Did you say, "Was it accepted"?
- 21 Q Yes.
- 22 A No, sir.
- 23 Q Okay. All right. So when was the first time you
- 24 saw the discovery in your case?
- 25 A After -- October the 13th. Three days after my

1 plea was accepted, I went and met John at USCS due
2 to him attending a soccer game. He gave me --
3 which I have a copy here -- he gave me a -- a copy
4 of this.

5 THE COURT: Do you want to approach?

6 Q Go ahead, sir.

7 A He gave me a copy of this letter confirming that he
8 had give me a complete copy of my discovery, and
9 that was on October the 13th.

10 Q So you got that discovery on October the 13th, and
11 that was after the day you pled, right?

12 A Three days after, yes.

13 Q Okay. What date -- thinking of the transcript --
14 what date -- look at it. What date did you plead
15 guilty?

16 A October the 10th.

17 Q Okay. And then, subsequently, you met him, and he
18 gave you discovery?

19 A On October 13th.

20 Q Okay. So did -- you were out of jail, correct?

21 A Yes, sir.

22 Q Okay. Did you ever go to his office and talk to
23 him?

24 A No, sir.

25 Q You never went to his office at all?

1 A (Shakes head no.)

2 Q Okay. You have to answer yes or no.

3 A No, sir.

4 Q Okay. So when you got that discovery, what did you
5 discover in your discovery?

6 A If I can get this out . . .

7 Q Well, let me ask you this way: In your case, were
8 there -- did you try to withdraw your plea?

9 A Yes, sir.

10 Q And -- and where did you try to do that? At the
11 sentencing?

12 A At the sentencing, yes.

13 Q Okay. And did the judge allow you to withdraw your
14 plea?

15 A No, sir.

16 Q Okay.

17 A But the reason -- the reason that I had concerns
18 about the -- withdrawing the plea is the fact that
19 I seen a discrepancy in the dope amount levels.

20 Q Okay.

21 A And, also, the signatures involved in the chain of
22 custody that I was unsure about.

23 Q Okay. Did you discuss that with -- with your
24 lawyer?

25 A Yes. I -- I mentioned it to John, and he said my

1 plea had already been accepted and for me to show
2 up for court that Wednesday.

3 Q So he said your plea, the judge accepted, so you --
4 you had to show up for court?

5 A Yes. My plea had already been accepted.

6 Q And so did you talk to him about withdrawing your
7 plea?

8 A To John?

9 Q Yeah.

10 A No, sir.

11 Q Okay. You didn't talk to the lawyer about, "Hey, I
12 want to withdraw my plea prior to getting in front
13 of the judge"?

14 A No. That morning when I -- before sentencing, I
15 advised John that I wanted to relieve him of his
16 services, which is in the transcript --

17 Q Right.

18 A -- on the sentencing. And then when I got up, the
19 judge asked me did I have anything for the Court,
20 that's when I tried to withdraw the guilty plea,
21 and I was denied. That's the reason that there
22 wasn't a direct appeal done is because, I guess, I
23 had done relieved him of his services, and he
24 didn't do nothing else.

25 Q Okay. And -- and you believe that your lawyer did

1 not properly investigate the case?

2 A I -- I'd just like to put on record that I don't

3 know if it was him not properly investigating it,

4 but I think it was something that was missed by

5 him. And after I -- since my incarceration -- and

6 I've reviewed my discovery -- I asked, "What you

7 got for me?" The chain of custody will be a

8 pretrial hearing.

9 Q Okay. And you're referring to Woodstock (phonetic)

10 and --

11 A In October --

12 Q Okay. Let's --

13 A -- the 8th.

14 Q Let's take these off. Okay.

15 A And that's the --

16 Q This is -

17 A -- the hearing for the --

18 Q Just the date. October 8th, 2018, this is a

19 hearing in front of Judge Kelly, right?

20 A Yes, sir.

21 Q Okay. Were you present at that hearing?

22 A No, sir.

23 Q Okay. And what was this hearing regarding, to your

24 understanding?

25 A Due to one of the detectives or somebody involved

1 in my chain of custody is not going to be able to
2 be present during my trial, so they was given a
3 testimony out of the order.

4 Q Out of order, okay. And -- and did you find
5 anything in -- in that testimony about your case?

6 A Yes, sir. On Page 7, under direct examination from
7 Solicitor Leskanic, she asked, "Is -- Billy
8 Anthony, does he have his proof of chain of
9 physical custody paperwork with him?" And he --
10 Line 8, he said, "Yes, ma'am. I do."

11 She says, "In looking at that paperwork, can
12 you tell who dropped Item 1 and Item 2 into
13 evidence?"

14 He says -- the answer to that is on Line 11.
15 He says, "Yes, ma'am. It shows Rodney Kinard."

16 Q Okay. Was Kinard on your chain of custody you
17 received?

18 A No, sir.

19 Q Is this a copy of what you're referring to?

20 A (Reviews documents.) Yes.

21 Q That's a -- that's a copy of the chain of custody.
22 You don't recognize that name being on here,
23 correct?

24 A No. I don't. Correct.

25 Q And, also -- also, attached to this is a document

1 where you've talked about the --

2 A The --

3 Q -- the drug house.

4 A The weight discrepancy, yes, sir.

5 Q All right. And so -- and so you also had someone
6 from your family get a copy of this letter right
7 here. I'm gonna pass this up to you.

8 A Yes, sir. I had a affidavit from --

9 Q Okay. Well, don't say.

10 MR. RICHEY: This will be Applicant Number 1,
11 Your Honor.

12 MS. MARTO: No objection, Your Honor.

13 THE COURT: All right. (To Mr. Richey) Tell
14 me what it is.

15 MR. RICHEY: It's -- this is a letter from
16 Cherokee County.

17 THE COURT: All right. Exhibit Number 1
18 admitted into evidence without objection.

19 (WHEREUPON, Cherokee County Letter, as
20 Applicant's Exhibit No. 1 entered into
21 evidence.)

22 THE COURT REPORTER: (To Mr. Richey) Can you
23 hold on just one second? All right.

24 MR. RICHEY: And I want to admit this as
25 Applicant 2, the chain of custody.

1 MS. MARTO: No objection.

2 THE COURT: Exhibit Number 2 admitted into
3 evidence without objection.

4 (WHEREUPON, Proof of Chain of Custody, as
5 Applicant's Exhibit No. 2 entered into
6 evidence.)

7 MR. RICHEY: And this is Applicant Exhibit 3,
8 the October 8, 2008 transcript.

9 THE COURT: (To the State) Any objection
10 noted to Exhibit Number 3?

11 MS. MARTO: No, Your Honor.

12 THE COURT: All right. Exhibit Number 3
13 admitted into evidence without objection.

14 (WHEREUPON, Transcript, as Applicant's
15 Exhibit No. 3 entered into evidence.)

16 DIRECT EXAMINATION CONTINUES

17 BY MR. RICHEY:

18 Q You have this letter that I'm showing you is
19 January the 11th of 2020, right?

20 A Yes, sir.

21 Q And in that letter, what does that letter state?

22 A "To Whom It May Concern, according to our records
23 we have never had an employee by the name of Rodney
24 Kinard work for Cherokee County."

25 Q Okay.

1 A "If you have any questions, please contact me at
2 (864) 902-2309. Sincerely, Nicole Turner."
3 Q Okay. And let me see the document you are reading
4 from.
5 A (Complies.)
6 Q And so, pursuant to this document, the sheriff --
7 this person handling the drugs, did not work for
8 the sheriff's office?
9 A Correct.
10 Q So you believe that there was a question of the
11 chain of custody in your case?
12 A Correct.
13 Q And did your attorney talk to you about that?
14 A No, sir.
15 Q Okay. During the discussion with -- the chain of
16 custody is at issue in the drug case, y'all never
17 talked about that?
18 A We never talked about this particular -- this guy
19 that's involved on the paperwork that I have now,
20 no.
21 Q No. Not -- not -- let me ask -- let me put it this
22 way: Did y'all talk at all about the chain of
23 custody, anything?
24 A Yes, sir. It -- the initial hiring of him and him
25 looking into the case. He had mentioned something

1 about there was a break in my chain of custody and
2 that he -- after reviewing the solicitor's file, he
3 found this and that they should be -- that he would
4 have a hearing in regards of it.

5 Q Okay. When you say "he found this," are you
6 referring to what's in the transcript? In the
7 October 8th transcript. And you said he found
8 something, right?

9 A He didn't -- he didn't address what he found. He
10 just told me that he found a break in the chain of
11 custody.

12 Q But he didn't tell you what it was?

13 A No, sir.

14 Q Now, prior to pleading guilty, did y'all talk about
15 you going to trial?

16 A Yes, sir. We -- we selected a jury.

17 Q Okay. And why didn't you proceed with the trial?

18 A After the jury was selected, and due to the
19 solicitor advising that she would -- doing a
20 recommendation of 15 years, I agreed to take the
21 recommendation.

22 Q Okay. So you agreed to take the 15-year
23 recommendation? You agreed to that?

24 A Yes, sir.

25 Q Okay. At that point, with your agreement, were you

1 satisfied with what your attorney had done at that
2 point?

3 A Yes, sir. At that point.

4 Q Okay. But then once you got -- got the discovery,
5 then -- then you found this chain of custody,
6 right?

7 A Yes, sir.

8 Q Okay. And so you didn't get 15, you got 20; is
9 that correct?

10 A Yes, sir.

11 Q And -- and why did you get 20? Do you have any
12 idea?

13 A (No response.)

14 Q Because you didn't come back, is that why you got
15 20? Is that --

16 A I would suggest, yes.

17 Q Yeah. And you're asking for the Court to give you
18 a new trial, right?

19 A Yes, sir.

20 Q And you want to go back and start over from the
21 beginning?

22 A Yes, sir.

23 Q Okay. And you -- and you realize that you can get
24 more or less time if you went back, correct?

25 A Correct.

1 Q And do you believe that your lawyer being
2 ineffective hurt your case?

3 A I feel like whether he missed it or failure to
4 investigate this issue on the chain of custody, I
5 felt like that, yes, I -- I would have proceeded to
6 trial had I known this stuff.

7 Q And you -- you wouldn't have -- you -- you wouldn't
8 have went to trial on failure to stop, right?

9 A No, sir.

10 Q Okay. Just the drugs?

11 A Yes, sir.

12 Q Okay.

13 A Due to -- to the chain of custody issue, yes.

14 Q Okay.

15 MR. RICHEY: Okay. (To the applicant) Answer
16 any questions that the Attorney General may
17 have for you, please.

18 THE COURT: All right. Cross?

19 MS. MARTO: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. MARTO:

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q So you pled to the trafficking charge and the
25 failure to stop, correct?

- 1 A Yes, ma'am.
- 2 Q Did anybody force you to plead, or was that your
3 decision at the time?
- 4 A At the time, my decision.
- 5 Q Okay. Can you tell me a bit about the facts of
6 this case?
- 7 A Ma'am?
- 8 Q What -- what does the State say you did that
9 constituted trafficking?
- 10 A They say I possessed more than 10 grams of
11 methamphetamine that was discovered after being
12 found on the ground.
- 13 Q How did it get on the ground?
- 14 A According to them, I threw it on the ground --
- 15 Q What --
- 16 A -- after --
- 17 Q Why did you throw it on the ground?
- 18 A -- during the traffic stop.
- 19 Q Okay. So --
- 20 A They was essentially me and a -- a female that was
21 on a motorcycle. I -- I fled the scene and was
22 later -- like two days later arrested for the
23 charges of trafficking and failure to stop.
- 24 Q And you were being followed by police officers when
25 you threw it?

1 A Yes, ma'am.

2 Q Officers that recognized you?

3 A Yes, ma'am.

4 Q Okay. So why did you say you were happy with
5 Counsel at the time of the plea hearing? Because
6 you didn't know of this discovery then?

7 A I did not know of the issue with the chain of
8 custody, no. And, at the time, I've -- according
9 to the recommendation of the State on the 15 years,
10 I'll -- he advised me that he wasn't bound by the
11 recommendation several times, but as he's telling
12 me that, I'm under the interpretation that I would
13 not get no more than the 15 years, that he could
14 give me less than the 15. So when -- but the whole
15 time he's telling me he's not bound to the
16 recommendation.

17 And then at the end of it, when he accepts my
18 plea, he tells me that if I don't show back up for
19 court, he won't accept a recommendation, so I was
20 really confused as to what was gonna happen, so my
21 bad.

22 Was I wrong for not showing back up for court?
23 Yes, ma'am. When I left from there, and I went and
24 met John and got a copy of my discovery, I seen
25 these issues that I was unsure about: the -- the

1 weight discrepancy, the signatures on the -- on
2 chain of custody, which I have a couple of papers
3 here, too, that show what I was unsure about far as
4 the signatures, because the signatures that Billy
5 Anthony signed on July and August are not on the --
6 my piece of discovery that has the date of
7 11/30/2017 on it. And, as this court knows, July
8 and August comes before November, so why wasn't
9 those signatures on that paperwork.

10 So with these questions and stuff -- and I
11 asked John -- I contacted John and he short -- he
12 pretty well short me and said, "Listen, you've got
13 to show back up for court for sentencing
14 Wednesday." And I couldn't get another message
15 from him after that. So I contacted -- I know he's
16 not here, but I contacted Ricky Harris, another
17 attorney, and he told me via -- by telephone that
18 due to the time frame of me having to report back
19 to court, that they wasn't nothing he could do for
20 me and that he doubt that any other attorney could,
21 neither.

22 Q So you didn't show up for sentencing because you
23 were confused based upon what your attorney was
24 telling you?

25 A Based upon what I had seen in the discovery and

1 stuff, and then I -- yes, ma'am.

2 Q Is that also why you cut your GPS monitor off you?

3 A Yes, ma'am.

4 Q Okay. And it took several months for U.S. Marshals

5 to find you, correct?

6 A Yes, ma'am.

7 Q Okay. So do you think that Judge Kelly maybe gave

8 you more time because you cut your monitor off, and

9 you ran away for months?

10 A I would -- I think so, yes.

11 Q Okay. And you were told that you would not

12 necessarily receive 15 years, just that was

13 recommended, right?

14 A That's what I -- that's what they stated to me; I

15 could get 15 years. That's what the -- at least

16 the solicitor was recommending, yes.

17 Q Now, did you say you never saw any of the discovery

18 in your case?

19 A Yes, ma'am.

20 Q So why did you tell the judge at the plea hearing

21 that your counsel shared all the discovery

22 materials with you?

23 A Well, that was a -- those -- all of those questions

24 that he asked me: Had my attorney did everything

25 for me, had I seen the discovery, and all that,

1 when I answered, "Yes," to that, that was to get my
2 plea accepted.

3 Q Why would you plead it if you didn't know of any of
4 the evidence against you?

5 A I don't know.

6 Q Now, concerning the Rodney Kinard letter, you sent
7 this to Cherokee County, correct?

8 A No. My mother went to Cherokee County and spoke
9 with someone in human resources, and they gave her
10 that letter.

11 Q Okay. But you received the letter from Cherokee
12 County, right? Not Cherokee County's Sheriff's
13 Office?

14 A No. The -- the affidavit that I have is a
15 voicemail that was done by Amanda Parris from the
16 Cherokee County Sheriff's Office. My mother went
17 up there on two occasions and spoke with her in
18 regards of trying to talk with the sheriff. He
19 never returned her call, so she made a call back to
20 the sheriff's department. At that time, this --
21 this Amanda returned her phone call with that
22 extension that's on that paper, stating that after
23 reviewing the records that this guy has never been
24 employed at the sheriff's department. She left her
25 phone number and an -- and an extension. So me

1 knowing that that wouldn't be allowed in the
2 courtroom today, the only way I figured to get it
3 on record was to have her to take that to a notary
4 and let the notary have a witness and listen to the
5 recording on my mother's cell phone and then send
6 it to me. So that is the paper that you have, or I
7 give it to him. I . . .

8 Q How did you know what the State was saying you did
9 in order to be charged with trafficking if you
10 never saw any of the discovery? Just conversations
11 with counsel or what?

12 A Well, I just -- yeah. Attending roll call. Going
13 to court monthly for the roll call hearing.

14 MS. MARTO: No further questions, Your Honor.

15 THE COURT: Any redirect?

16 MR. RICHEY: Well, a couple of them.

17 REDIRECT EXAMINATION

18 BY MR. RICHEY:

19 Q That number you're referring to is "(4 -- 864)489-
20 4722"?

21 A Yes, sir.

22 Q And it's "Extension 114"?

23 A Yes, sir.

24 Q And that's to the Cherokee County Sheriff's Office?

25 A That's the sheriff's office clerk or whoever she

1 is. Her name is Amanda. And I want to think her
2 last name is Parris.

3 Q And she sent this to Brenda. And your mom's name
4 is Brenda Mauthers?

5 A My mother's name is Barbara Blackwell --

6 Q Okay.

7 A -- but she went and had the - the notary, Evetta
8 Lawson (phonetic), to listen to the recording along
9 with Brenda Mauthers to witness it. And she typed
10 that up -- or wrote it up and sent -- had it sent
11 to me. Evetta is the notary; Brenda is just a
12 witness to the recording.

13 Q Okay.

14 MR. RICHEY: Thank you, Your Honor. (To the
15 applicant) Thank you, sir. No other
16 questions.

17 THE COURT: Any recross?

18 MS. MARTO: No questions, Your Honor.

19 THE COURT: All right. You may step down.

20 (WHEREUPON, the applicant was excused.)

21 MR. RICHEY: Call Mr. Reckenbeil.

22 THE COURT: What was that, Mr. Richey?

23 MR. RICHEY: Call Mr. Reckenbeil.

24 THE COURT: All right.

25 (WHEREUPON, the witness was sworn.)

1 DIRECT EXAMINATION

2 BY MR. RICHEY:

3 Q Sir, would you state your name, please?

4 A Sure. It's John Reckenbeil, R-e-c-k-e-n-b-e-i-l.

5 Q Okay. Mr. Reckenbeil, do you recall representing
6 Mr. Blackwell?

7 A Yes, sir. I do.

8 Q And you've heard the issues here, and I'm gonna
9 give this letter -- I'm gonna give this letter to
10 you. Is that a letter from your office?

11 A It looks -- at that time, yeah. It looks like
12 that's the letterhead at that time.

13 Q Would that be the type of letter you sent to a
14 client giving him his discovery?

15 A It would be, yeah. It would be something along
16 those lines like that, but when you hand-deliver --
17 having it be hand-delivery only, yeah.

18 Q Okay.

19 MR. RICHEY: And so we're gonna offer this --

20 MS. MARTO: No objection.

21 MR. RICHEY: -- as Applicant's 4, I think it
22 is.

23 THE COURT: (To the State) Any objection?

24 MR. RICHEY: Four, I -- yeah.

25 THE COURT: All right. Exhibit Number 4 is

1 admitted into evidence without objection.

2 (WHEREUPON, Reckenbeil Law Letter, as
3 Applicant's Exhibit No. 4 entered into
4 evidence.)

5 Q Okay. Did -- did you provide him a copy or go over
6 his discovery with him prior to the guilty plea?

7 A So to answer your question: I know I went over the
8 discovery with him, talked about the issues,
9 obviously, with the lack of signatures on the drug
10 report and, obviously, the reasonable suspicion of
11 why he were (as spoken) being pulled over and just
12 basically going into the -- the weight that was
13 over 10 grams. But, obviously, the letter, I -- I
14 can't -- Cecil's absolutely right. It was -- we
15 were at USC Upstate on a Saturday; I handed it to
16 him. I was at a soccer game. Now, I -- I can't
17 say that it was the 13th or the 5th --

18 Q All right.

19 A -- but -- so discovery, I don't know if I gave it
20 to him afterwards, but I did.

21 Q Right. But -- yeah. But you --

22 A But you know --

23 Q -- discussed it with him in --

24 A Oh, no question, yes, sir.

25 Q -- detail? Then -- and when you discussed it with

1 him, I'm assuming you had the discovery in front of
2 you?

3 A Oh, yes, sir.

4 Q And you said there was an issue about the
5 signatures?

6 A Yes, sir.

7 Q Okay. Did y'all discuss that?

8 A Yes, sir.

9 Q Tell me what y'all discussed.

10 A Yes, sir. No. It was the fact that there was just
11 a lack of signatures on this certification of proof
12 and chain of custody. And that's where I think the
13 first kind of angle of attack was going to be at.

14 And that's why Ms. Leskanic called that officer on
15 the 8th is to try to prove the chain of custody,
16 because I think there was just lack of signatures.

17 Q Okay. And you discussed this lack of signatures
18 that he -- did you discuss with him about going to
19 trial based off of the chain of custody being
20 frozen or not being --

21 A Oh, I think that was one of the defenses, for sure.
22 I don't think it was -- it's not like a civil case,
23 "Let's go to this Court to try to win, you know,
24 for the" -- no. I think that it was obviously an
25 issue that, you know, he was looking at substantial

1 jail time either way and that this was an issue
2 that we could -- could attack.

3 Q And can you tell me whose -- what was the decision-
4 making process for him not going to trial and
5 pleading guilty? Do you remember?

6 A Not going to trial and pleading guilty? It was
7 literally at counsel's table where, you know --
8 like I said, this morning I found some handwritten
9 notes. I always provide a client a notepad --

10 Q Yeah.

11 A -- writing back and forth. We were literally
12 picking a jury --

13 Q Right.

14 A -- on the 10th. And that was when Ms. Leskanic
15 kind of looked at me and said, "I'm willing to do
16 15 years," and that's when we conversed very
17 quickly to say, "Hey, this is on the table, you
18 know. Would you take it?"

19 And then he asked if he could self-surrender.
20 We had a sidebar. I talked to Judge Kelly. Judge
21 Kelly agreed he would give him home detention for a
22 couple of weeks, and then Cecil went through the
23 plea.

24 Q Okay. And -- and so you're saying that he pled
25 knowing full well the issues with the chain of --

1 the chain of custody?

2 A Oh, I can't speak to what he, you know, says he
3 knows, but I can say that it was definitely
4 discussed with all; that's obviously a issue. And
5 I would say is that the -- the hearing on October
6 8th was at roll call, which Cecil didn't come to on
7 the 8th, which is why we had that hearing. Was the
8 day of roll call.

9 Q And -- and one of the issues Mr. Blackwell raised
10 was you failed to investigate the issues and the --
11 provide defense in this case. Do -- can you tell
12 me whether you investigated all the issues in this
13 case in terms of failure to stop? Was it really a
14 failure to stop?

15 A Yeah. Well, we don't have any video evidence to
16 demonstrate whether or not that he ran the red
17 light. We had just the words of the officers who
18 knew him, so, you know, not much there to really
19 say yes or no on. The chain of custody obviously
20 was an issue. The weight, I didn't have the
21 ability to go, you know, to reweigh the evidence as
22 best as I could, but it was over the threshold, so,
23 you know, investigate, yeah. I'm sure a lawyer
24 could do more in every case, but I'd say that I was
25 probably well within my reasonable expectation of

1 doing my job to make sure I looked at everything,
2 looked at all the angles.

3 Q Okay. I'm going to give you this transcript that's
4 been marked as Applicant's Number 3. And this is
5 the pretrial hearing where y'all -- where you-all
6 talked -- building answers to testimony out of
7 turn.

8 A Yes, sir.

9 Q And I'm gonna direct you to Page 7 --

10 A Yes, sir.

11 Q -- Line 11. And -- and who's the gentleman that's
12 quoted his name on -- on Line 11, Rodney?

13 A I -- I'm just guessing on this, but I think he's
14 from SLED, because there were several SLED agents
15 that were not on the witness list that were
16 doing -- I think they were on another bust, another
17 sting operation; because it was SLED that was
18 jointly working that day on July 11th, 2017. And
19 so, Kinard -- that name sounds familiar from SLED,
20 but it doesn't appear anywhere.

21 Q But -- but it's not a name that's on the chain of
22 custody or even --

23 A Correct.

24 Q -- to your case?

25 A No. That's correct. Yeah. It's --

1 Q So -- so --

2 A It doesn't appear anywhere.

3 Q So this gentleman was, you know, touching his dope,

4 moving it --

5 A Yes.

6 Q -- then he should be on the chain of custody.

7 A Sure. Yeah. With the Rule 6 issue, no question,

8 he should've been on it.

9 Q And the -- and the lack of him being on it, would

10 that -- could that be a reasonable basis to

11 suppress these drugs in the case?

12 A Right. The ultimate, obviously, issue would be on

13 the judge, but I think under Rule 6 that -- yes.

14 You know, we're talking about fungible -- we're

15 talking about evidence that literally -- or passing

16 from hand to hand, it's -- there's -- the law

17 basically is that there doesn't have to be an

18 absolute clear, crystal certainty with every shred

19 of doubt, but you have to prove, basically, the

20 chain, you know, to I would say probably like a

21 clear and convincing evidence standard.

22 Q So -- and -- and you -- you had that hearing -- at

23 that hearing, did you recognize that name not being

24 within the discovery or anything like that to

25 change it or it was just going by so fast?

1 A I can't say that, you know, I remember that.

2 Q Was that --

3 A It -- it's just the fact that I had -- I know that
4 here it's tabbed and it's highlighting the fact
5 that -- you know, the lack of names --

6 Q Right.

7 A -- and that's my highlight and my tab of -- of
8 showing like the lack of names on this chain of
9 custody report.

10 Q So the State didn't provide you any discovery of
11 the chain with this gentleman's name on it?

12 A Not that I recall, but it -- it could be, yeah,
13 nothing. Not that I recall, and not that I see
14 here where -- where I tabbed and where I was
15 looking at.

16 Q All right.

17 MR. RICHEY: (To the witness) Thank you.

18 Answer any questions the Attorney General may
19 have.

20 THE COURT: (To the State) Cross?

21 MS. MARTO: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. MARTO:

24 Q Thank you for being here today, sir.

25 A Sure.

1 Q So you showed all the discovery to Mr. Blackwell in
2 this case, correct?

3 A I -- I would say that I went over it, but, again,
4 you know, getting him a full copy wasn't until that
5 day, but, yes. Before trial --

6 Q Yeah.

7 A -- and everything, yes. I went over discovery and
8 went over the issues. I felt I was keeping him
9 well apprised.

10 Q Okay. And y'all had discussed the chain of custody
11 at that point, right?

12 A Correct. Correct.

13 Q At pretty great length; is that fair?

14 A Yeah. I think I gave a pretty good analysis of
15 what I thought the issue was and then what I
16 thought the law was and what I think Judge Kelly
17 would look at, yeah.

18 Q And that would have been your primary defense at
19 trial if it had proceeded there?

20 A Yeah. Yeah. That was -- yeah. That was pretty
21 much one of -- and only the issues, and then,
22 obviously, the reasonable suspicion of why you're
23 pulling him over, just because you recognize
24 somebody doesn't give you reasonable suspicion. So
25 that, obviously, was going to be an issue we would

1 attack with the witnesses that would've came after,
2 obviously, jury selection.

3 Q And were the officers following Mr. Blackwell when
4 he chunked the drugs? Do you recall?

5 A I -- I -- they -- again, there was -- because at
6 that time, I don't think there was any -- there was
7 no bodycam footage; there was no car footage. I
8 know I looked for that. And then I don't -- I
9 don't know what they were doing. But, again, there
10 were SLED agents with Cherokee County. I'm just
11 putting two and two together to say that I think
12 they were doing something else, and they just
13 happen to see Cecil driving by on a motorcycle.

14 Q Okay.

15 A Should wear a helmet. Sorry. That's --

16 Q Now, there was a recommendation of 15 years, right?

17 A Correct.

18 Q Do you -- in your opinion, why did Judge Kelly
19 sentence him to more?

20 A Because he -- because he didn't come back.

21 Q Yeah.

22 A You know, you -- you give your word to Judge Kelly;
23 give your word to anybody -- you know, Judge Kelly
24 went out on a limb. And I've done federal defense
25 in federal district court. If you're not looking

1 at ten years, you have sometimes the opportunity to
2 self-surrender; state court, it's just unheard of.
3 Judge Kelly went above and beyond to give Cecil the
4 opportunity to plead and then come back in a couple
5 of weeks. And when he didn't come back, I -- I had
6 nothing at the end. That -- there's -- there's
7 nothing to be said.

8 Q Now, do you remember why this case just went to a
9 plea as opposed to a trial, the reasoning behind
10 that?

11 A Just spur of the -- I -- can't say spur of the
12 moment. It's just the fact that you're -- you're
13 in trial where literally the jury's being picked,
14 we're conversing at counsel table via notes because
15 I'm obviously trying to do two things at once, and
16 it's, I guess -- the offer was made by Kim
17 Leskanic, at that time, literally while the jury
18 selections going on and, you know, Cecil decided
19 that, yeah, he would take it.

20 Q Did he take it because he was afraid he'd get more
21 time at trial?

22 A I can't speculate to --

23 Q You don't recall?

24 A -- to what, you know, he would be taking, but,
25 obviously, he was looking at 30 years with this

1 being a second offense. They had -- the record was
2 clear on the prior conviction. They had everything
3 they needed to on that, and so he was looking at 30
4 years, and we lost the chain of custody issue, you
5 know, or the reasonable suspicion issue, kind of
6 had it dead in the water.

7 Q Did you think that if this case proceeded to trial
8 it would likely lead to a not guilty verdict or
9 guilty verdict? You have an opinion?

10 A I'm pretty good -- I'm -- sorry. I -- I know other
11 lawyers in this room. I'm good at what I do. I
12 mean, I know I'm prepared, but I -- I genuinely
13 know that in jury trials it's just hard to get away
14 from things that are just so crystal clear if there
15 is no suppression, and the jury would've convicted.

16 Q And do you think that you would have won on those
17 suppression issues, or no?

18 A I -- gosh. I don't know. Judge Kelly, where are
19 you? You know. I don't -- I don't know. I think
20 that -- I think our -- our state is trying to do
21 the best they can with Rule 6 because, obviously,
22 we're -- we want to make sure that the evidence
23 gets from Point A to Point B. But I just think
24 that the case law kind of waters down Rule 6 a
25 little bit, and I think it gives a lot of wiggle

1 room for the Court, you know, to know that
2 something reasonably got from A to B, they're gonna
3 allow it. So I think I had a shot. But would I
4 still put my money down on that in Vegas, no.

5 Q Now, you had a chance to review these pleadings in
6 this case, correct?

7 A Correct.

8 Q And did you see that letter from Cherokee County
9 concerning Rodney Kinard? What -- I guess, what
10 was your opinion on that, and how did it factor
11 into your analysis of the case?

12 A Well, I don't take any -- I didn't prepare that
13 letter; I didn't have anything to do with the
14 letter. But all I can tell you is that in my civil
15 practice I do a lot of -- is that there's different
16 governmental entities. The sheriff's office is
17 different from the county, so that's -- so that's
18 the first, obviously, that jumps off the page.
19 Obviously, I didn't have any of that information
20 beforehand, so I -- I would think he's an employee
21 of the sheriff's department if he was.

22 And then, secondly, is that I think he was --
23 I think he was a SLED agent, and so I didn't know
24 what -- but, again, he didn't appear anywhere on --
25 on the chain of custody.

1 Q Gotcha. So you think it's likely that they
2 received a response back that they couldn't
3 recognize it as an employee because they reached
4 out to the wrong agency? Not that --

5 A That's possible. It's -- I -- that's the first
6 thing that jumps off the page to me, because I
7 clearly know when I sue --

8 Q Yeah.

9 A -- under Civil Tort Claims Act and Title VII, that
10 you have to name the right entity, and I know the
11 sheriff's department is completely different than
12 the county.

13 Q Okay.

14 MS. MARTO: No further questions, Your Honor.

15 THE COURT: All right. Any redirect?

16 MR. RICHEY: No questions. Thank you, Your
17 Honor.

18 THE COURT: Any recross?

19 MR. RICHEY: There's no other witnesses.

20 MS. MARTO: No witnesses, Your Honor.

21 THE COURT: No witnesses. All right.

22 Anything else from the parties?

23 MR. RICHEY: Nothing, Your Honor.

24 MS. MARTO: No, Your Honor.

25 THE WITNESS: Thank, Your Honor.

1 THE COURT: Thank you, Mr. Reckenbeil.

2 (WHEREUPON, the witness was excused.)

3 THE COURT: All right. I'll review and take
4 that one under advisement. I'll let you know
5 my decision.

6 MR. RICHEY: Okay.

7 MS. MARTO: Thank you, Your Honor.

8 (Whereupon the within hearing was
9 concluded at 2:24 p.m.)

10 (*This transcript may contain quoted material.
11 Such material is reproduced as read or quoted
12 by the speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina on April 18th, 2022.

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

Amber J. Payne, CVR

Date: 8/29/2022
Notary public for South Carolina
My commission expires August 12, 2029

CHEROKEE COUNTY

110 RAILROAD AVENUE
GAFFNEY, SC 29340-3136
TELEPHONE (864) 487-2560
TELEFAX (864) 487-2594

COUNTY COUNCIL:

Dist. 1 LYMAN DAWKINS III
Dist. 2 MIKE FOSVLES
Dist. 3 QUAY LITTLE, VICE-CHAIRMAN
Dist. 4 TIM SPENCER, CHAIRMAN
Dist. 5 ELLIOTT HUGHES
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COUNTY ADMINISTRATOR
STEVE BRATTON

ASST. ADMINISTRATOR
MERV BISHOP

BRANDY W. MCBEE

2022 APR 25 PM 2:23

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

January 11, 2022

To Whom It May Concern:

According to our records we have never had an employee by the name of Rodney Kinard work for Cherokee County.

If you have any questions, please contact me at 864-902-2309.

Sincerely,

Nichole L Turner
HR Generalist
Cherokee County



Control No. B274146

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED
CERTIFICATION OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

This is to certify that I Ronnie Hunter Initial Custody
 (Name) am employed by

Cherokee County Sheriff's Office
 (Name of Agency of Department) and that on

July 11th 2017, I seized from Cecil Eugene Blackwell Jr.
 (Date) (Name)

pursuant to Lawful Traffic Stop
 (State whether Subject to a Warrant, Lawful Arrest or Otherwise)

at or near 113 Cherokee Avenue
 (Place where seized)

The following substance(s) or container(s): 2 Glassine bags containing a crystal rock like substance
 (Describe the substance or container to sufficiently distinguish it)

Signed: Ronnie Hunter Print Name: Ronnie Hunter Date: 7-11-17
 Sworn before me this _____ day of _____ Notary Public for South Carolina Signature
 My commission expires: _____ County: _____

Subsequent Chain of Custody Following Seizure:

The item(s) listed above were delivered in substantially the same condition as when it was received according to the following chain:

Signature	Print Name	Company	Date/Time
1.) Relinquished By: <u>Ronnie Hunter</u>	<u>Ronnie Hunter</u>	<u>CCSO</u>	<u>7-11-17</u>
Received By: <u>Evidence Drop Box</u>		<u>CCSO</u>	<u>1500</u>
Sworn before me this _____ day of _____	Notary Public for South Carolina Signature		
My commission expires: _____	County: _____		
2.) Relinquished By: <u>Evidence Drop Box</u>	<u>Billy Anthony</u>	<u>CCSO</u>	<u>8/21/17</u>
Received By: <u>Evidence Vault</u>		<u>CCSO</u>	<u>1458</u>
Sworn before me this _____ day of _____	Notary Public for South Carolina Signature		
My commission expires: _____	County: _____		
3.) Relinquished By: <u>Evidence Vault</u>	<u>Billy Anthony</u>	<u>CCSO</u>	<u>8/23/17</u>
Received By: <u>Evidence Locker # 211</u>		<u>SLED</u>	<u>8/23/17</u>
Sworn before me this _____ day of _____	Notary Public for South Carolina Signature		
My commission expires: _____	County: _____		
4.) Relinquished By:			
Received By:			
Sworn before me this _____ day of _____	Notary Public for South Carolina Signature		
My commission expires: _____	County: _____		
5.) Relinquished By:			
Received By:			
Sworn before me this _____ day of _____	Notary Public for South Carolina Signature		
My commission expires: _____	County: _____		

PLAINTIFF'S
 EXHIBIT 2
Blackwell
4-18-22 AP

EXHIBIT-2

159

Cherokee County Sheriff's Office

312 East Frederick Street

Gaffney, SC 29340

864-489-1722



Sheriff Steve Mueller

Printed on July 20, 2017

Inc1702877-001 - Drug - One black pouch containing 3 small empty glassine bags and 2 glassine bags containing a crystal rock like substance

Item # Inc1702877-001
Offsite Item #
Category Seized
Description One black pouch containing 3 small empty glassine bags and 2 glassine bags containing a crystal rock like substance
Owner
Drug Type L - Amphetamines/Methamphetamines
Is Counterfeit No
Quantity 15.000 Gram
Value
Collected By Painter, Ronnie
Access Tag
Date Collected 07/11/17 12:30
Collected Location
Target Disp. Date
Subjects
Comments

Chain of Custody

Date	User	Action	Category	Status	Location
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GRANDY W. MCBE
2022 APR 25 PM 2:20

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

ZUERCHER

11/30/20159

Supplement to Analysis for Controlled Substance

I, Ashley Bell, am a Forensic Scientist employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a Forensic Scientist qualified to perform testing and analysis for controlled and/or 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 2 years and 10 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 4 times. I have received the following training as a Forensic Scientist.

B.S. Biochemistry, Washington and Lee University, Lexington VA, 2006
Training in Forensic Serology, South Carolina Law Enforcement Division, 2013
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2015
Drug Enforcement Administration, Forensic Chemist Seminar, 2015
West Virginia University Continuing & Professional Education Program, Introduction to Forensic Drug Chemistry, 2015
South Carolina Law and Legal Training, South Carolina Criminal Justice Academy, 2016
West Virginia University Continuing & Professional Education Program, Forensic Mass Spectrometry, 2016

Sub # 1 On August 23, 2017, items were received in B274146 from Billy Anthony of the Cherokee County Sheriff's Office.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test	☒ Gas Chromatography
☐ Microscopic Exam	☒ Mass Spectroscopy
☐ Infrared Spectroscopy	☐ Physical Test
☐ Visual Examination	☐ Published Literature

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2018 APR 25 PM 2:21
BANDY W. MOBBE

Forensic Scientist

Ashley Bell

Ashley Bell

Date: January 22, 2018



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

EX-1181HX7

Item: 1.1.3

Plastic sandwich bag containing crystal substance.

RESULTS:

Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 12.15 +/- 0.01 grams (187.49 +/- 0.15 grains). Confidence level for the weight is 99.7%.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.

Ashley Bell

Ashley Bell
Forensic Scientist

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 APR 25 PM 2:21
BRANDY W. MCBEE



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

EXHIBIT - 1

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief

Ronnie Painter
Cherokee County Sheriff's Office
312 E. Frederick St.
Gaffney, SC 29340

DRUG ANALYSIS
January 22, 2018
SLED LAB: L17-12812
Your Case No: 1702877
Incident Date: 07/11/2017
[S] Cecil Blackwel, Jr

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Sub # 1 On August 23, 2017, items were received in B274146 from Billy Anthony of the Cherokee County Sheriff's Office.

Item: 1.1 Zip lock bag containing...

Item: 1.1.1 Crystal substance.
RESULTS:
The maximum attainable statutory threshold has been met for this substance based on indicative testing results consistent with item 1.1.3. Item was not subjected to confirmatory testing.

Net weight of the tested substance is 0.10 +/- 0.01 grams; 1 tested.

Item: 1.1.2 Zip lock bag containing crystal substance.
RESULTS:
The maximum attainable statutory threshold has been met for this substance based on indicative testing results consistent with item 1.1.3. Item was not subjected to confirmatory testing.

Net weight of the tested substance is 0.55 +/- 0.01 grams; 1 tested.



EXHIBIT 1 - 1702877

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 APR 20 PM 2:21
BRANDY W. MCBE

APPLICANT'S EXHIBIT NO. 3
PLEASE SEE GUILTY PLEA TRANSCRIPT
APPENDIX PAGE 18

LAW OFFICE OF JOHN RECKENBEIL, LLC

P.O. Box 16735
Greenville, SC 29606
Phone: (864) 248-0436
Fax: (864) 326-5940
www.johnreckenbeillaw.com

John G. Reckenbeil, Esq.
john@johnreckenbeillaw.com

October 13, 2018

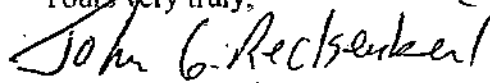
VIA HAND DELIVERY ONLY
Cecil Blackwell

RE: State v. Cecil Blackwell
Case Nos. 2017A1110100619; 2017A1110100620

Dear Cecil:

This letter confirms I have given to you in person a complete set of the original discovery provided by the Solicitor's office in regard to the above referenced charges.

Yours very truly,



John G. Reckenbeil

/kea

Enclosure

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 APR 25 PM 2:28
BRANDY W. MCBEE



STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT

Cecil Blackwell, #218835,
Applicant,

Case No.: 2020-CP-11-00038

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

FILED IN FILE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 JUL 18 AM 11:02
BRANDY W. HCBEE

This matter comes before this Court by way of Applicant's post-conviction relief application filed January 10, 2020. Respondent made its return on June 12, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 18, 2022, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto, Esquire, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel John G. Reckenbeil, Esquire, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its September 2017 term, the Cherokee County Grand Jury indicted Applicant for trafficking methamphetamine, between ten and twenty-eight grams (2017-GS-11-01192) and failure to stop motor vehicle when signaled by officer (2017-GS-11-01193). Applicant was represented by John Reckenbeil, Esquire. Assistant Solicitor Kimberly L. Leskanic of the Seventh Circuit Solicitor's Office

prosecuted the case.

On October 10, 2018, Applicant appeared before the Honorable R. Keith Kelly, circuit court judge, and pled guilty to the lesser included offense of trafficking methamphetamine ten to twenty-eight grams, second offense, to a recommended sentence of fifteen years' imprisonment on the drug charge and to a recommended sentence of five years' imprisonment on the failure to stop for a blue light, second offense, to run concurrent with the drug charge. Judge Kelly deferred sentencing until October 17, 2018. Applicant absconded and was arrested by U.S. Marshalls in late January 2019. On February 4, 2019, Judge Kelly sentenced Applicant to twenty years' imprisonment for the drug charge and five years' imprisonment for the failure to stop charge, sentences running concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On July 11, 2017, four officers with SLED were travelling down the road when they saw Applicant at Cherokee Food Mart. (Plea Tr. 24). Three out of four of the officers recognized Applicant from prior dealings. (Plea Tr. 24). When they noticed Applicant, they began following him. (Plea Tr. 24). Applicant ran a red light, at which an officer activated the blue lights on the police vehicle. (Plea Tr. 24). Then, the officers saw Applicant reach into his waistband. (Plea Tr. 24-25). Applicant pulled out a black wallet-type pouch and threw it underneath a white parked van. (Plea Tr. 25). Applicant failed to stop his motorcycle. (Plea Tr. 25). One officer got out of the car, trying to apprehend Applicant, but Applicant took off on his motorcycle before the officer could reach him. (Plea Tr. 25). His passenger later told the police that Applicant travelled at a high rate of speed to get away from law enforcement. (Plea Tr. 25). Officers retrieved the black pouch and found 12.15 grams of methamphetamine and three empty baggies. (Plea Tr. 25). This was confirmed by SLED. (Plea Tr. 25).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Defense counsel was ineffective for:
 - a. "failing to advise me to plea[d] guilty."
 - b. "counsel failed to object or file motions that his client want[ed] [that would allow him] to withdraw his plea and proceed to trial."
2. "[The] [g]uilty plea was not knowingly and intelligently made to the court."
3. "State breached the sentence[ing] agreement."
4. Counsel was ineffective for failing to object to the twenty year sentence handed down by the Court that was contrary to the negotiated fifteen year plea agreement.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel.
 - a. Failure to review discovery.
 - b. Failure to investigate chain of custody report.
2. Invalid plea.
 - a. Failure to ensure negotiated sentence was imposed.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant testified that he did not think Counsel was effective. He stated he never saw the discovery in the case, but that he discussed some of the discovery, including the chain of custody report. He testified that there were plea negotiations with the State that were not accepted by the Court. He testified that he discovered some issues with the chain of custody report several days after he pled. He stated these included issues with individuals that signed the report and issues concerning the amount of drugs listed. He stated he did not discuss this with his attorney. Applicant claimed that he discussed the chain of custody report with Counsel generally, but that they did not specifically discuss the name of one individual who seemingly did not work

for the institution listed in the report. Applicant stated he decided to plead initially, but that his analysis on whether the plea was a good idea has changed since discovering the alleged issue with the chain of custody report. Instead, he stated he would have proceeded to trial had he discovered this issue with the report before the plea.

On cross-examination, Applicant stated he pled freely at the time. He stated that the basis for the charges revolved around him being in possession of more than ten grams of methamphetamine. He stated that when he discovered the police were following him, he fled and threw the drugs while pleading. Applicant confirmed that the plea was based on recommendations from the State, not negotiations, and the Court informed Applicant that he was not bound to recommendations. Applicant stated that he did not appear at his scheduled sentencing hearing and cut his GPS monitoring off. Applicant stated he did not know the evidence against him and was unsure why he pled even though he did not know the evidence in the case.

Counsel Testimony

Counsel testified that he discussed the discovery in the case with Applicant. He stated they discussed the lack of signatures on the chain of custody report. Counsel testified that Applicant decided to plead on the day of the plea after everyone was at the courthouse. Counsel testified that any issues with the chain of custody report were present when Applicant entered the plea. Counsel stated that there was a pre-trial hearing concerning a SLED agent who did not appear on the chain of custody report, but that this hearing did not lead to a favorable outcome for the defense.

On cross-examination, Counsel testified he discussed the discovery with Applicant. He stated he gave Applicant an analysis of what the applicable law was. He stated that there was no

body camera footage in the case. He stated that there was a recommendation of fifteen years' imprisonment at the plea hearing. Counsel stated that the offer Applicant took was offered during the voir dire leading up to trial. He stated he thought that the jury would have convicted Applicant if he proceeded to trial. He stated he thought he had a shot at winning the motion to suppress hearing if the case proceeded to trial but could not state either way whether he would have been successful.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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.

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *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."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *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)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the

prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (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 the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea 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." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Based upon the plea transcript and PCR hearing testimony, this Court finds that the plea was entered freely, voluntarily, knowingly, and intelligently. Applicant stated he was not on any substances that impeded his ability to think clearly, that he knew he was at court to plead, that Counsel represented him, and that the Court was not bound to the recommended sentences in the case. (Plea Tr. 20-22). Applicant stated he understood he was giving up his rights to a jury trial, to remain silent, and to call and confront witnesses. (Plea Tr. 20-22). After being told the charges, sentences, and indictments he was pleading to, Applicant pled guilty. (Plea Tr. 22-23). Applicant stated it was his decision to plead, he had sufficient time to speak with his attorney, that Counsel shared discovery materials with him, and that Counsel did everything he could to help him and to investigate the case. (Plea Tr. 23-24).

At the PCR hearing, Applicant testified that he pled freely at the time and that it was his

decision to plead, but that he has since changed his mind. A change of mind after the fact is not sufficient to undermine the plea. Thus, based upon the plea transcript and PCR hearing testimony, Applicant seemingly pled freely, voluntarily, knowingly, and intelligently and cannot withdraw it now.

Failure to Review Discovery

Applicant's claim of ineffective assistance of counsel for failure to review discovery is without merit. Applicant testified that he never saw the discovery in the case, but that he discussed some of the discovery in the case with Counsel, including the chain of custody report. Counsel credibly testified that he discussed the discovery with Applicant. Thus, this Court finds that Applicant seemingly did review the discovery with Counsel and, accordingly, Counsel is not deficient on this ground. Additionally, this Court finds that Applicant has failed to meet his burden of proof in establishing prejudice because he has failed to show with any specificity what discovery was not shared with him or why that would have caused him to go to trial. Thus, relief is denied on this ground.

Failure to Investigate Chain of Custody

Applicant claims Counsel was ineffective for failing to investigate the chain of custody report. Specifically, he claims that one of the individuals on the report did not work at the institution listed on the report. *Strickland* makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* At the PCR hearing, Applicant is required to present evidence

or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant claims Counsel was ineffective for failure to investigate the chain of custody report. He stated that had Counsel investigated the chain of custody, he would have noticed that one of the individuals on the chain did not work at the institution reflected on the report. However, Counsel credibly testified that he did not see anything incorrect on the chain and that he believed that Applicant sought out this individual's records from the wrong institution. Thus, Counsel acted reasonably in reviewing the report and finding nothing incorrect on it and is not deficient as a result. Additionally, even if this was not investigated, there is seemingly no change in Counsel's recommendation as to the plea and prejudice has not been established as a result. Accordingly, relief is denied on this ground.

Negotiated Sentence

Applicant alleges that the plea should be vacated because the negotiated sentence was not imposed. This Court finds this allegation to be without merit. Applicant pled to a recommended sentence, not a negotiated sentence. (Plea Tr. 19-20). Applicant stated that he understood the Court was not bound to the recommendation. (Plea Tr. 26). Further, the sentence imposed that was higher than the recommended was only imposed after Applicant absconded, cut off his ankle monitor, and was on the run for a couple months before being apprehended by U.S. Marshalls; something that almost certainly factored into the Judge's decision when sentencing Applicant five years over the recommended sentence. (Sentencing Tr. 4, 7). Applicant was never offered a

negotiated plea offer and, accordingly, never accepted one. Thus, this allegation is without merit and this Court denies relief on this ground as a result.

Conclusion

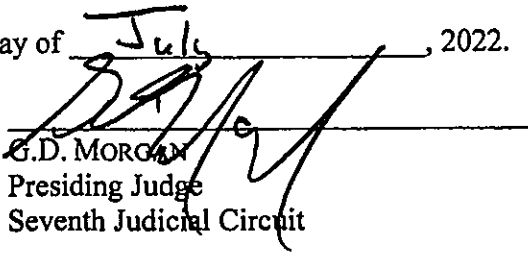
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

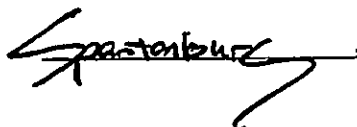
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 14th day of July, 2022.


 G.D. MORGAN
 Presiding Judge
 Seventh Judicial Circuit

, South Carolina.

WITNESSES

Cherokee County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

2017A1110100619

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 9-21-17

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO 17-GS-11-01192

The State of South Carolina

County of Cherokee

Barry Barnett, Solicitor

COURT OF GENERAL SESSIONS

Sept 21 2017 **TERM**

THE STATE

vs.

CECIL EUGENE BLACKWELL, JR.

Indictment for

TRAFFICKING IN METHAMPHETAMINE

SC Code: 44-53-375

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2017 SEP 21 P 12:30

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

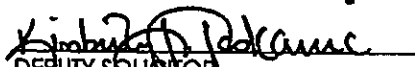
INDICTMENT

At a Court of General Sessions, convened on Sept 21 2017, the
Grand Jurors of Cherokee County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

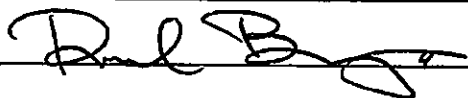
That Cecil Eugene Blackwell, Jr. did in Cherokee County on or about July 11, 2017, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess (10) ten grams or more, but less than (28) twenty-eight grams of Methamphetamine, a schedule II controlled substance, in violation of §44-53-375, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

Cherokee County Sheriff's Office



ARREST WARRANT NUMBER

2017A1110100620

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 9-21-17

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

17-GS-11-01193

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

Sept 21 2017 TERM

THE STATE

vs.

CECIL EUGENE BLACKWELL, JR.

Indictment for

FAILURE TO STOP MOTOR VEHICLE
WHEN SIGNALLED BY OFFICER

SC Code: 56-5-750 (B)(1)

CDR Code: 0065

Class MIS/A

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2017 SEP 21 P 12:30

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

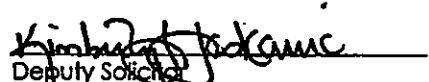
INDICTMENT

At a Court of General Sessions, convened on Sept 21 2017 the
Grand Jurors of Cherokee County present upon their oath:

FAILURE TO STOP MOTOR VEHICLE WHEN
SIGNALLED BY A LAW ENFORCEMENT VEHICLE

That Cecil Eugene Blackwell, Jr. did in Cherokee County on or about July
11, 2017, willfully fail to stop the motor vehicle which he was driving on a road,
street, or highway of the State of South Carolina when he was signaled by a
law enforcement vehicle by means of a siren or flashing light, in violation of
§56-5-750 (B) (1), THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as
amended.

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


Deputy Solicitor