

RECEIVED

Feb 16 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

DeANGELO BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001395

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT OF GUILTY PLEA HEARING HELD APRIL 13, 2016	1
APPLICATION FOR POST-CONVICTION RELIEF	25
RETURN.....	31
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	37
TRANSCRIPT OF EVIDENTIARY HEARING HELD DECEMBER 9, 2021	39
APPLICANT’S EXHIBIT 1, DRUG ANALYSIS REPORT.....	95
APPLICANT’S EXHIBIT 2, CHAIN OF CUSTODY-	96
APPLICANT’S EXHIBIT 3, EVIDENCE BY OCA.....	107
TRANSCRIPT OF CONTINUED EVIDENTIARY HEARING HELD FEBRUARY 23, 2022.....	114
ORDER OF DISMISSAL.....	144
MOTION TO RECONSIDER	160
ORDER DENYING MOTION TO RECONSIDER	167
INDICTMENTS AND SENTENCE SHEETS.....	168

1 STATE OF SOUTH CAROLINA)
) Court of General Sessions
2 COUNTY OF CHARLESTON) Case No. 2015-GS-10-6532, 6767
)
3 _____
)
4 STATE OF SOUTH CAROLINA)
)
 vs.) Transcript of Record
5)
6 DEANGELO LAPRINCE BROWN,)
)
 Defendant.)
7 _____
) DATE: April 13, 2016

8
9 B E F O R E:

10 THE HONORABLE R. MARKLEY DENNIS, JR.

11 A P P E A R A N C E:

12 CHARLES M. CONDON, JR. and SCOTT MAYNOR
13 Attorney for the State

14 MELISSA GAY
 Attorney for the Defendant

15
16 Karen V. Andersen, RMR, CRR
17 Circuit Court Reporter
18
19
20
21
22
23
24
25

1 (Whereupon, the defendant is present.)

2 THE COURT: It looks as though you've given me four
3 of the indictments. The firearm is not going forward?

4 MR. CONDON: We are going to dismiss the firearm.

5 THE COURT: That may have some federal aspects. I
6 understand that. That's a significant benefit. Thank you
7 for that, Solicitor. Appreciate it.

8 MR. CONDON: You're welcome, Your Honor.

9 THE COURT: You want to go forward now?

10 MS. GAY: Yes.

11 THE COURT: All right. You are Deangelo Brown?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I have now been presented with -- I have
14 the indictments, which I know we picked the jury in this.
15 And they are patiently waiting for us to get started. It
16 appears that there are -- of the indictments I have, I have
17 sentencing sheets for four of them --

18 THE DEFENDANT: Yes, sir.

19 THE COURT: -- bearing your signatures?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And, basically, what you are telling me
22 is that you, by this, that you changed your mind about
23 pleading not guilty; is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You are going forward on these four

1 indictments with the guilty plea?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You've talked with your lawyer about the
4 significance of that?

5 THE DEFENDANT: Sir?

6 THE COURT: About the significance of plead guilty,
7 do you know what I mean by that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I mean, I'm not trying to belittle you
10 and I'm not trying to degrade you. But this isn't the first
11 time you've appeared in court on something, is it?

12 THE DEFENDANT: No, sir.

13 THE COURT: You are familiar with this process?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So when I see you look like, "What's he
16 talking about" --

17 THE DEFENDANT: You asked me if I talked with
18 someone about --

19 THE COURT: If you've talked with her about these
20 charges.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you've talked with her about what it
23 means to have a jury trial?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Indictment 2015-6766 charges you with
3 the obstruction of justice. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And, basically, it's because you
6 attempted to destroy the evidence. You understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: What's that carry?

9 MR. CONDON: Carries up to 10 years.

10 THE COURT: You understand that, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Understanding that I could sentence you
13 to 10 years, what is your plea?

14 THE DEFENDANT: I plead guilty, sir.

15 THE COURT: Indictment 2015-6352 charges you with
16 possession with intent distribute heroin. Do you understand
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And that carries -- and it appears to be
20 a third offense.

21 MS. GAY: Yes, sir.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And that carries a minimum of 10 years
25 with a maximum of 30 years. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you understand that that is also a
3 serious offense. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you understand the significance of
6 that term, serious offense? It's a strike.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You understand that it's a nonparolable
11 offense?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Means that you will have to serve a
14 minimum of 85 percent of any sentence I impose. Do you
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Furthermore, you understand that there
18 is a two-year community supervision program which you will
19 have to complete. And if you fail to do that and you violate
20 that, you can be returned to prison up to one-year time until
21 you exhaust the remaining 15 percent of the sentence. Do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Understanding that, how do you plead?

25 THE DEFENDANT: I plead guilty, sir.

1 THE COURT: Indictment 2015-6767 charges you with
2 possession with intent distribute cocaine. Do you understand
3 that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And that, just as heroin, I could
6 sentence you to minimum -- have to sentence you to a minimum
7 of 10, but up to 30 years. It also is a serious offense. Do
8 you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you understand also the same
11 conditions apply, that you will be required to serve 85
12 percent of any sentence that I impose?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And the same, you will have to complete
15 community supervision program. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: How do you plead?

18 THE DEFENDANT: I plead guilty. Can I ask you a
19 question about that, though?

20 THE COURT: Sure.

21 THE DEFENDANT: You said that's a strike. That
22 would be as one together or separate?

23 MS. GAY: I can answer that.

24 THE COURT: Mr. Brown, you can talk to your lawyer.
25 I can answer you there's a law that says because they are

1 contemporaneous, they will treat them as one. But to tell
2 you that if you violate again and you come back in to court,
3 that that's going to be what it's going to be, I'm not
4 telling you that. You understand that there are strikes?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You can argue that, if you need to --
7 probably a suggestion would be for you, if somebody has a
8 strike or two strikes, probably you ought not to worry about
9 that.

10 THE DEFENDANT: No, I ain't going to get in
11 trouble.

12 THE COURT: Well, I understand that. But you would
13 probably want to stay away from anything that even closely
14 resembles a crime that would carry a strike. Do you agree
15 with that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: But to answer your question, I'm not
18 representing to you anything other than it also is a strike.

19 Now, in counting it, I believe there's some law that
20 says it treats it as one.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay? You certainly could argue that.
23 But what a judge would determine at that time, should that
24 arise -- now, if you had a most serious and a serious, that
25 probably would put you over the limit. Because that would be

1 two. I mean, it's something worse than this. But, quite
2 honestly, if you get a most serious offense, you are not
3 going to have to worry about mandatory life because you are
4 probably going to get it anyway. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: But understanding that it's a strike,
7 what's your plea?

8 THE DEFENDANT: Plead guilty, sir.

9 THE COURT: And, please, feel free at any time you
10 want to stop me to ask me a question that you don't
11 understand or you need to talk to your lawyer, do not
12 hesitate to do that. Because it's very important for me that
13 you are doing something that you fully understand and fully
14 appreciate the consequences of what you are doing. Okay?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Indictment 2013-6353 charges you with
17 resisting arrest. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand I could sentence you
20 up to one year for that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How do you plead?

23 THE DEFENDANT: Guilty.

24 THE COURT: Are you totally satisfied with your
25 lawyer?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, let me ask you, first of all, do
3 you solemnly swear and affirm that all of your responses to
4 my questions will be the truth, so help you God?

5 THE WITNESS: Yes, sir.

6 (Whereupon, the defendant is sworn.)

7 THE COURT: And you understand I will be relying on
8 your responses as being completely truthful and a complete
9 answer to my questions?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay? All of your responses thus far, I
12 may rely on; is that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Have you had any -- have you
15 taken any type of medication or consumed any alcohol in the
16 last 24 hours?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you been treated for any emotional
19 problems, any mental illness in the past?

20 THE DEFENDANT: Yes, as a child.

21 THE COURT: Anything that you could think of that
22 you had any problems, physical or mental problems that would
23 affect your ability to think and reason and make decisions
24 that you are making today?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you had sufficient time to think
2 about what you are about to do today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And is this your decision, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Ms. Gay -- first of all, Solicitor,
7 appears to be without any recommendation; is that correct?

8 MR. CONDON: That's correct, Your Honor.

9 THE COURT: And the only promise is that you are
10 going to nolle pros the gun violation?

11 MR. CONDON: That's correct, Your Honor.

12 MS. GAY: And that they be concurrent. I think that
13 was our understanding.

14 THE COURT: Well, that's a recommendation. It's not
15 a negotiated plea. It's a recommendation.

16 MS. GAY: Right.

17 THE COURT: And your client understands that? I'm
18 not bound by that.

19 MS. GAY: Yes, sir.

20 THE COURT: You've investigated this matter solely
21 on your client's behalf?

22 MS. GAY: Yes, I did, Your Honor.

23 THE COURT: You've shared the results of your
24 investigation with him?

25 MS. GAY: Yes, sir.

1 THE COURT: We've selected a jury. And you've gone
2 through that process. Your client assisted you. You were
3 prepared to go to trial here today, if necessary?

4 MS. GAY: Yes, sir.

5 THE COURT: You've already demonstrated that by your
6 cross-examination and one of your motions that we've heard.
7 And, of course, I granted the motion in part to limiting the
8 solicitor concerning the drug test that was taken by the
9 probation officer. But you were prepared to go forward; is
10 that correct?

11 MS. GAY: Yes, sir.

12 THE COURT: After your further discussions, your
13 client has indicated to you a desire to enter this plea; is
14 that correct?

15 MS. GAY: Yes, sir. The solicitor has agreed to
16 dismiss the gun charge. As we discussed, my client is on
17 federal supervision. And having a gun conviction can
18 significantly affect him in the federal system and possibly
19 make him a career criminal. So he asked me to have that
20 discussion with the solicitor, which I did.

21 THE COURT: And I'm aware of that. And I think
22 Judge Anderson -- I saw it, don't know the particulars -- but
23 there was possession and person got 15 years for that.

24 MS. GAY: Yes, sir, minimum.

25 THE COURT: Yeah. So you agree that's a significant

1 benefit to you for having the gun charge dismissed?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: In your opinion, does he fully
4 understand his rights?

5 MS. GAY: Yes.

6 THE COURT: And does he understand the consequences
7 of his decision?

8 MS. GAY: Yes, sir.

9 THE COURT: I also, in our pretrial discussions, I
10 understand that there's a three-year period that he's going
11 to have to serve once he finishes this sentence at the
12 federal system; is that correct?

13 MS. GAY: Yes, sir.

14 THE COURT: He understands that too?

15 MS. GAY: Yes.

16 THE COURT: But it's still his desire to go forward
17 with this?

18 MS. GAY: Yes, sir.

19 THE COURT: Based on your investigation, do you
20 concur with his decision to enter the guilty plea?

21 MS. GAY: Yes, sir.

22 THE COURT: Mr. Brown, is that true, sir, all of
23 what I've discussed with your lawyer?

24 THE DEFENDANT: Yes, sir. I just want to get this
25 behind me.

1 THE COURT: I understand that. And I've heard that
2 before this week. And I've practiced law. I was a lawyer
3 for 21 years before I became a judge. And I had the pleasure
4 of representing persons accused of criminal offenses just
5 like you. And I understand what that statement means. But
6 you have to understand, when I changed sides, the
7 significance of a guilty plea, while my client said, I just
8 want to get it behind me, I knew what that meant. But I have
9 a different burden. I have to be sure that what you are
10 doing is what you choose to do, because you are giving up a
11 really significant right that we are fortunate in this
12 country to have. And that is the right to make the State
13 prove you guilty beyond a reasonable doubt.

14 And it is really, the more I've done this job, the
15 more I appreciate that and understand it. Because you may be
16 just as guilty as anybody, and you know it, and in this state
17 and in this country, you can sit at that table and I will
18 tell this jury when they came in: Don't look to Mr. Brown to
19 prove anything. He has no responsibility whatsoever. The
20 only party that has a burden of proof is the State of South
21 Carolina. And don't you expect him to explain anything. If
22 you do, you violate your oath.

23 It's that serious and that significant. So what you
24 are doing today, don't you say, "I'm getting it over with."
25 You've got to convince me in this process that this is what

1 you want to do because you are guilty. That's what you
2 choose to do. And you are accepting the consequences of
3 pleading guilty; is that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that you will be
6 giving up your right to have a jury trial?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And your lawyer has explained that
9 process. And you are familiar with that process?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You understand that at a trial, you have
12 a chance to confront the witnesses against you, just as you
13 did today. You understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Obviously, since we don't have a trial,
16 that won't happen. You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You are also, by answering my questions
19 today, by admitting your guilt, you are giving up your
20 constitutional right to remain silent. Do you realize that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And that's a really significant right.
23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have there been any threats or promises

1 made to you at all to get you to plead guilty, sir?

2 THE DEFENDANT: No, sir.

3 THE COURT: And, again, this is your decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Solicitor, I've seen probably most of
6 the facts that would support the plea, but I will be happy to
7 hear from you. The drugs were analyzed and they are what
8 they claim to be, heroin and cocaine.

9 MR. CONDON: That's correct, Your Honor. Just
10 briefly, traffic stop in Mount Pleasant, Charleston County.
11 The defendant was in possession, which he put in his mouth 21
12 baggies of drugs. Eighteen were cocaine. Three were heroin.
13 He resisted arrest from Deputy Funsch and Rissanen. He was
14 placed in the back of the police cruiser, at which point he
15 put the drugs in his mouth; wouldn't give them up.

16 We had to take him to the hospital. He had them in
17 his mouth for a couple of hours. Chewed a lot of them up.
18 Spit a lot of product out, a lot of weight. And they located
19 a scale, which is another indicator of attempt to distribute
20 in the vehicle. He had \$174 on his person at the jail.

21 And in addition, we had some jail calls we planned
22 to introduce where he talked about how he faked the seizure
23 in back of the car and how he had in excess of 10 grams of
24 cocaine in his mouth at the time. These are all different
25 factors we would use to prove his guilt.

1 In terms of a record, he has a 2012 felon in
2 possession of firearm. That's a federal conviction,
3 transporting firearms interstate by a felon; 2007, PWID drugs
4 in proximity to a school, PWID cocaine, PWID crack.

5 He has a 2006 possession of stolen vehicle, 1,000
6 but less than 5,000, strong-arm robbery, another PWID drugs
7 and an ABHAN.

8 THE COURT: Okay. Are those facts correct, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You understand that I will be relying on
11 your responses here today as being truthful? And you want me
12 to do that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you fully understood all of my
15 questions?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you've given me truthful and
18 complete answers to each of them?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I find that there's sufficient factual
21 basis to support Mr. Brown's plea as to each of the charges.
22 I find that he has had the benefit of very competent counsel
23 with whom he's indicated he's totally satisfied. I find his
24 pleas to be freely, voluntarily, knowingly and intelligently
25 made and entered.

1 And I will be happy to hear from you, Ms. Gay.

2 Anything else the State wishes to add?

3 MR. CONDON: Just that we are leaving the sentence
4 up to Your Honor.

5 THE COURT: Thank you, sir.

6 Ms. Gay, happy to hear from you.

7 MS. GAY: Thank you, Your Honor. Mr. Brown is 29
8 years old. At the time of this arrest, Your Honor, he had a
9 two-year-old child, and he was attempting to try to support
10 that child. He had been working construction at a temp
11 service. Unfortunately, I think, as he described it to me,
12 his work had gotten very low and he was in a situation where
13 he did not feel as if he could support his family with the
14 type of money that he was making, Your Honor. That's the
15 reason that he made the bad choice to be involved with this.

16 He is on federal supervision, as we discussed. And
17 he will be serving the three years at the end. But what I
18 would ask the Court to do is, please, consider minimum
19 sentence, or if not the minimum, but something close to it,
20 fair and reasonable, sir, because whatever time he serves in
21 the state system, he will then be moved over to the federal
22 system.

23 And I had tried all along to see if that could be a
24 shorter amount of time, Your Honor, just so that he can keep
25 going. But -- and he had told me in the beginning that he

1 would plead guilty if we could work out something that makes
2 some sense.

3 He always said that the gun was not his. The gun is
4 registered -- he was not driving his own car. He was driving
5 his girlfriend's car. The gun is a registered gun to her.
6 One of the things factually, Your Honor, is that in between
7 the seats where this thing -- where the gun was found, he
8 actually had not just opened the top compartment, but opened
9 the bottom compartment also. So that was one of the things
10 that we never considered dismissing. Obviously, that was
11 going to make a huge impact on his life. And he felt like he
12 needed to ask for a jury trial. And they've dismissed that,
13 which has made this plea possible. We are really thankful to
14 them for doing it.

15 THE COURT: Anything you wish to add, Mr. Brown?

16 MS. GAY: I think he wanted me to tell Your Honor
17 that he was trying to get his life together at that time. He
18 got confused and messed up in some stuff. But the other
19 thing about the drug tests, he really was testing negative
20 for drugs.

21 THE COURT: I understand. He was selling it. I
22 don't quarrel with that, but that's the problem.

23 MS. GAY: I understand.

24 THE DEFENDANT: I got too much to say. I did wrong.
25 And there's no way around that. Taking me time being in

1 here, I'm really scared. You can see that. I have to face
2 all this time or whatever. And for me to really be able to
3 see my son and knowing that I've been going through this same
4 thing all my life, make me look at stuff different. And
5 that's why really I want this time. That's why I appealed to
6 go all the way out, because I have a home. Taken me too long
7 to really realize that. I've been doing this for a long
8 time.

9 THE COURT: I know.

10 THE DEFENDANT: I'm tired.

11 MS. GAY: Also, Your Honor, he has served enough
12 jail time to be time served on resisting arrest.

13 THE COURT: How much time has he served?

14 MS. GAY: He's been in jail since his arrest.

15 MR. CONDON: July 16th.

16 MS. GAY: July 16th.

17 THE COURT: Of what year?

18 MS. GAY: 2015.

19 THE COURT: July 15th?

20 MS. GAY: 16th, 2015?

21 THE COURT: 16, 2015? All right.

22 Well, Mr. Brown, one of the things -- sometimes
23 factor these in. I did it earlier this week or last week.
24 Well, not last week, but not too long ago -- no, I did it
25 this week. I don't know what it is. But this caveat, if you

1 are using, people who are addicted to drugs that get older --
2 and you are getting close to that -- it's much more -- and I
3 had an opportunity to talk with a psychiatrist who said my
4 observation -- I'm not a scientist, but it seemed to me that
5 persons who are older have a more difficult time dealing with
6 addictions and working through them than younger people did.
7 He said there's a physiological reason for that. And it is
8 true.

9 So if you are not addicted, good. Don't make that
10 mistake. Because with your record, you can't afford that
11 anymore. You understand that, I'm sure, because it will put
12 you away, what's happened.

13 But I've heard a fellow -- I had to attend a course,
14 three-week course years ago, and there was a panel. And the
15 panel had several -- had every facet of a criminal process,
16 had solicitors, public defenders, private lawyers. And had
17 about four or five persons that, like you, had a pretty
18 significant record. And I had the pleasure of eating lunch
19 across from this guy that had been in a motorcycle gang in
20 California and been in prison just about, I think, seven
21 states. And his last stop was Georgia. And he was about 34,
22 35. And the lawyer did a good job, because he was looking at
23 about 30 years, and I think he got about 10.

24 But, anyway, I said, did the threat of being --
25 facing punishment, going to jail for a long time, cause you

1 to stop?

2 He said, hum-um. He said, listen, it's a badge of
3 courage for us. We get out. We got a stamp. We good now.
4 We are part of the group.

5 I shook my head. And he said, I got tired of it. I
6 just got tired of living a life that I was in jail. And he
7 said, that's when I changed.

8 So, hopefully, you've reached that point.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: But I'm going to tell you something,
11 because law enforcement gets a bad rap sometimes. Some of it
12 is justified today. We can all look at some of the things.
13 But you better be glad you confronted some officers that -- I
14 want to commend that whole group, because they didn't do a
15 thing. They did everything by the book. And they did it
16 right. They could have tried -- I've seen -- we've all seen
17 videos of forcing somebody to do something. Simple thing,
18 just sit and wait. And it was the proper thing to do. You
19 were protected. You are the only one that jeopardize any
20 possible -- making yourself in a bad situation. They didn't
21 do anything.

22 And in this day and time, heat of the moment, that
23 situation presented itself with all sorts. And they chose to
24 follow in a very nonconfrontational but very authoritative
25 way. And I commend them for that. They are a credit to

1 their force and they are a credit to this state and to you.
2 You deserved that. You deserved that treatment. I'm not
3 saying you got something you didn't deserve to be treated
4 that way. I'm simply saying, law enforcement gets criticized
5 sometimes. This is one time they don't deserve criticism.
6 They did exactly what they should.

7 I know you take issue whether they should have
8 stopped you or not. We crossed that bridge. But I don't
9 fault the stop at all. And, frankly, could have had a lot
10 more charges. But I want to say that, because, really, I
11 really was impressed with how they handled that and commend
12 them for that.

13 Sentence of the Court, Mr. Brown, on Indictment
14 2015-6353 is one year. That's the resisting arrest. You
15 will be given credit for time served since 2000-- July 16th,
16 2015. That's done, but I will make it concurrent.

17 Sentence of the Court on obstruction of justice,
18 sentence of the Court is three years, and credit for time
19 served since July 16th, 2015.

20 And I will tell you that you saved yourself
21 substantial time. I will give you credit for doing that.
22 Given your record, I honestly just cannot give you the
23 minimum sentence. But I'm going to give you something that
24 really and truly would result in your serving, assuming you
25 get out and finish the -- I assume he hasn't finished

1 community supervision before; or does he go straight in?

2 That will be --

3 MS. GAY: I think he goes straight in.

4 THE COURT: All right. Well, then when you get out,
5 you will have to do community supervision. That's going to
6 be there.

7 But the sentence of the Court on the two remaining
8 indictments, 2015-6767 and 6352, because you decided to plead
9 guilty and not put the jury through this trial, is 15 years
10 on each of those. They are concurrent. You will be given
11 credit for time served since July 16th, 2015.

12 Good luck to you, sir. That will result in your
13 actual jail time. According to my math, if you are good and
14 don't do anything, 15 years, which is the sentence imposed.
15 So thank you.

16 MR. CONDON: Thank you, Your Honor.

17 (Whereupon, the proceedings are adjourned.)

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Charleston)

2016-CP-10-5736

Deangelo Labrice Brown/)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2016 OCT 25 PM 3:26
JULIE ARMSTRONG
CLERK OF COURT

FILED

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 MacDougall Correctional Inst., 1516 Old Gilliard Rd.,
Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Charleston County Court of
General Sessions, Charleston, S.C. 29401.
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) Possession With Intent To Distribute Cocaine 15-GS-10-06352

(b) Possession With Intent To Distribute Heroin

13-GS-10-06767

(c)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 15, 2015, 15 yrs. PWID Cocaine, and 15 yrs. PWID Heroin

Apr. 13-16

(b) to be served concurrent

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(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. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Claims of ineffective assistance of counsel are only cognizant in

(b) Post-Conviction Procedures

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) Involuntary Guilty Plea

(c) _____

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

(a) See Attached Memorandum of Law

(b) See Attached Memorandum of law

(c) _____

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. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

IV. N/A

(c) the disposition thereof:

I. N/A

II. N/A

III. N/A

IV. N/A

(d) the date of each such disposition:

I. N/A

II. N/A

III. N/A

IV. N/A

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

I. N/A

II. N/A

III. N/A

IV. N/A

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

No

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

(a) which grounds have been presented:

I. N/A

II. N/A

III. N/A

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

I. N/A

II. N/A

III. N/A

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) Claim can only be presented through Post-Conviction Relief
- (b) Claim can only be presented through Post-Conviction Relief
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. ~~NAME~~ Melissa Gay, Esquire, Charleston, S.C. 29403

ii. _____

iii. _____

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

- i. Melissa Gay-Plea and Sentencing

Melissa Gay-Arraignment

ii. _____

iii. _____

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

Sentence And Conviction Vacated

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

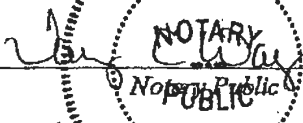
County of Berkley)

VERIFICATION

I, Deangelo LaPrice Brown, # 317618, 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.

[Signature]

SWORN to and subscribed before me this 11th
day of October, 2016.



(L.S.)

My Commission Expires

3/4/2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Deangelo Laprice Brown, #317618,	)	
	)	Case No. 2016-CP-10-5736
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent ("the State"), making its Return to the application for post-conviction relief filed on October 25, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its November 2012 term, the Charleston County Grand Jury indicted Applicant for possession with intent to distribute (PWID) heroin (2015-GS-10-6552). Applicant was subsequently indicted in December 2012 for resisting arrest (2015-GS-10-6352), obstruction of justice (2015-GS-10-6766), and PWID cocaine (2015-GS-10-6767).¹ Melissa Gay, Esquire, represented Applicant. Solicitors Charles Condon, Jr., Esquire, and Scott Maynor, Esquire, prosecuted the case. On April 13, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable R. Markley Dennis, Jr.² Judge Dennis sentenced Applicant to imprisonment for concurrent terms of fifteen years for PWID heroin, one year for resisting arrest, three years for obstruction of justice, and fifteen years for PWID cocaine. Applicant did not appeal his conviction or sentence.

¹ Applicant only listed the drug charges on his application.

² In exchange for the plea, the State dismissed a charge for felon in possession of a firearm.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. “Ineffective Assistance of Counsel”
 - a. “Defense counsel misadvised him when she informed him that he could be found guilty of PWID cocaine when in fact he could not whereas the prosecution could not have proven the fact of the substance to have found him guilty of the offense.”
 - b. “Defense counsel failed to investigate the documenting of the control substance and discover that the prosecution had failed to comply with the statutory record keeping requirement dealing with the handling and the analyzation of the heroin in this case.”
2. “Involuntary Guilty Plea”
 - a. “The Applicant was not aware that as an element to PWID cocaine, that it was required that it was required that the substance be proven as cocaine and that by pleading that he would be relieving the state of having to prove it.”

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the guilty plea transcript, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, an applicant must prove that “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 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced an applicant such 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, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

IV.

Applicant also asserts his plea was involuntary. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel.

Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty

plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

The record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

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 granted leave from the Court upon a showing of good cause. 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 that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

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

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 20, 2017

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF CHARLESTON	)	CASE NO.: 2016-CP-10-5736
	)	
Deangelo Brown #317618,	)	
	)	
Applicant,	)	AMENDMENT TO POST-
	)	CONVICTION RELIEF APPLICATION
Vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED
JULIE J. ARMSTRONG
CLERK OF COURT
2020 JUN -8 AM 11:22

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his Post-Conviction Relief Application. The Applicant re-alleges those grounds contained in the original Application for Post-Conviction Relief as well as the previous amendments, as if fully repeated herein.

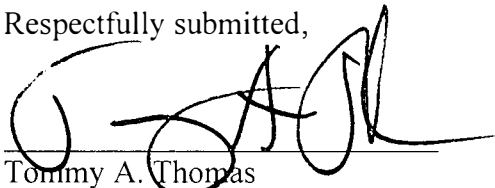
That the Applicant would amend his Application as follows:

1. The Applicant is informed and believes that the probable cause for the search warrant leading up to his arrest was a result of a traffic stop. That this traffic stop and resulting charge from the stop, was disposed of as not guilty. That Defense Counsel allowed the primary case to go to trial, prior to disposing of the traffic case. As a result, this action prejudiced the Applicant in his ability to attack the basis for the probable cause.
2. That the Applicant is informed and believes that there are certain irregularities in the chain of custody of the evidence. That according to the evidence logs, the lab results are different in the number of bags of contraband, as well as the weight of this contraband. In addition, there are irregularities in the timeline in this chain of custody. Specifically, the time of testing of the contraband is before the time in

which the evidence was transferred for testing. The Applicant discussed this issue with Defense Counsel . No action was taken regarding this matter.

3. Applicant was informed by Defense Counsel that all of his drug charges were non-violent and parole eligible. While his charges are non-violent, they are not parole eligible and Applicant is required to serve 85% on those crimes. This was a significant part of his understanding and one of the reasons he decided to take a plea.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', written over a horizontal line.

Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063

June 4, 2020

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) Case No. 2016-CP-10-5736

3 -----x
4 DEANGELO L. BROWN,)

5 Applicant,)

6 vs.)

7 STATE OF SOUTH CAROLINA,)

8 State.)
-----x

TRANSCRIPT OF RECORD

December 9, 2021

9 POST-CONVICTION RELIEF HEARING

10 B E F O R E:

11 The Honorable Jennifer B. McCoy, Presiding Judge

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

13 Tommy A. Thomas, Esq.

14 Attorney for the Applicant

15 Lauren T. Mims, Esq.

16 Samantha J. Weidauer,

17 Solicitors for the State
18
19
20
21
22
23

24 Recorded by: Court Monitor/DCRP (BIS)

25 Transcribed by: Bobbi Fisher, RPR

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
DEANGELO L. BROWN	
Direct Examination By Mr. Thomas	4
Cross-Examination By Ms. Mims	38
MELISSA GAY	
Direct Examination By Ms. Mims	49

E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

Applicant Exhibits			
Number	Description	ID.	ADM.
1	Drug Analysis Report	16	16
2	Evidence by OCA	19	19
3	Chain of Custody	19	19

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at
12:07 p.m.:)

THE COURT: All right. Okay. Mr. Brown, we are here
with your attorney, Mr. Thomas, as well as two representatives
from the Attorney General's Office for your PCR matter today.
And I'll ask the State to give me a brief background of
sort of the history of the case thus far, and then we will
turn it over to Mr. Thomas.

Yes, ma'am?

MS. MIMS: May it please the Court. This next matter is
Deangelo Brown vs. The State of South Carolina, Docket No.
2016-CP-10-5736.

Applicant is presently confined in the South Carolina
Department of Corrections pursuant to orders of commitment of
the Charleston County Clerk of Court. During its November
2012 term, the Charleston County Grand Jury indicted Applicant
for possession with intent to distribute heroin. Applicant
was subsequently indicted in the December 2012 term for
resisting arrest, obstruction of justice, and possession with
intent to distribute cocaine.

Melissa Gay, Esquire, represented the Applicant.
Solicitors Charles Condon, Jr., Esquire; and
Ms. (Indiscernible), Esquire, prosecuted the case.

On April 13, 2016, Applicant pleaded guilty as indicted

1 to all charges before the Honorable R. Markley Dennis, and
2 Judge Dennis sentenced Applicant to imprisonment for
3 concurrent terms of 15 years for the possession with intent to
4 distribute heroin, one year for resisting arrest, three years
5 for obstruction of justice, and 15 years for possession with
6 intent to distribute cocaine. Applicant did not appeal his
7 conviction or sentence.

8 And also, in exchange for the plea, the State dismissed
9 the charge for felony possession of a firearm, Your Honor.

10 THE COURT: Okay. Mr. Thomas, happy to hear from you.

11 MR. THOMAS: Your Honor, if it pleases the Court?

12 THE COURT: Yes, sir.

13 MR. THOMAS: We would call Mr. Brown to the stand.

14 THE COURT: All right.

15 THE BAILIFF: Stay right here?

16 THE COURT: Yeah, he can just sit where he is.

17 MR. THOMAS: Oh, okay.

18 THE COURT: It's such a small group of us in here, but
19 you're welcome to go wherever makes you most comfortable. And
20 as long as he can get somewhat close to that microphone, I can
21 probably hear him better from there.

22 MR. THOMAS: Okay. That's fine, Your Honor.

23 THE COURT: Closer to me.

24 MR. THOMAS: All right.

25 DIRECT EXAMINATION

1 BY MR. THOMAS:

2 Q Mr. Brown, you're currently serving --

3 THE COURT: Oh, wait. I'm sorry. We have got to put him
4 under oath right quick.

5 MR. THOMAS: Yes.

6 THE COURT: Can the clerk kindly do that for us?

7 DEANGELO L. BROWN,
8 after having been duly sworn, was examined and testified
9 to as follows:

10 THE COURT: Is that a yes?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. Thank you. Remember, everybody's
13 got to be "yes" and "no", because this nice lady right here,
14 our court reporter, is taking down everything we say. Okay?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Thank you, sir.

17 MR. THOMAS: May it please the Court?

18 THE COURT: Yes, sir. Have him state his first and last
19 name and spell his last.

20 THE DEFENDANT: Deangelo Brown. B-r-o-w-n.

21 THE COURT: All right. Now, Mr. Thomas.

22 MR. THOMAS: Yes, ma'am. Your Honor, if it please the
23 Court?

24 BY MR. THOMAS:

25 Q Mr. Brown, you're currently serving time in the South

1 Carolina Department of Corrections?

2 A Yes, sir.

3 Q And you're serving time for what?

4 A PWID coke, PWID heroin, resisting arrest.

5 Q Obstruction --

6 A And obstruction of justice.

7 Q Okay. All right. And what is your -- what's your
8 sentence? How much time do you have?

9 A I have 15 for cocaine, 15 for heroin. I think I already
10 completed the resisting arrest and the other charges.

11 Q Okay. So you're serving time now on the two drug
12 charges?

13 A Yes, sir.

14 Q All right. Now, you understand that you have filed a
15 post-conviction relief action?

16 A Yes, sir.

17 Q And you and I have spoken about that. Do you understand
18 that what you're asking for is a new trial?

19 A Yes, sir.

20 Q And, with that, should the Court grant this motion or
21 this action, then, you would be fictitiously taken back to the
22 situation that you were prior to you entering into this plea.

23 A Yes, sir.

24 Q And, with that, it's possible, if these -- if these
25 charges carried more time, that you could be tried and

1 sentenced, and you could receive more time than you have now.

2 A Yes, sir.

3 Q And you understand that?

4 A Yes, sir.

5 Q Based upon all the information that you have, do you wish
6 to go forward today?

7 A Yes, sir.

8 Q All right, sir.

9 All right. Now, Deangelo, if you would tell me a little
10 bit about -- so you were arrested when?

11 A On July 15th, 2015.

12 Q Okay. And when were you sentenced?

13 A I want to say like a year after that.

14 Q About a year?

15 A Uh-huh.

16 Q So how long were you in the detention center?

17 A Probably like eight months, ten months, somewhere around
18 that area.

19 Q Okay. And during this period of time, did you make bond?
20 Were you ever out?

21 A No, sir.

22 Q All right. And as far as representation, an attorney,
23 was an attorney appointed to you, or did you retain an
24 attorney?

25 A I retained an attorney.

1 Q Okay. And who was that attorney?

2 A Lisa Gay. Melissa Gay.

3 Q All right. Okay. And how many times did she come and
4 see you?

5 A I probably see her like, I want to say, probably like
6 three times. I seen her paralegal most of the time.

7 Q Okay. And in this process of the detention center
8 visits, were you able to talk about your defense and how
9 Ms. Gay was going to represent you?

10 A Yeah. Every time she came down, I talked about my
11 defense.

12 Q Okay. And how did -- how did she say that she was going
13 to defend you? Do you know what kind of -- the theory of
14 defense, what she was going to use?

15 A Okay. The situation came from a traffic stop. There had
16 been a traffic stop inside of Mount Pleasant. So my angle --
17 I wanted her to come at inside the case, I wanted the traffic
18 stop because I didn't commit a traffic -- because I didn't
19 commit a traffic -- I didn't commit a traffic violation. And
20 I was sure I didn't commit a traffic violation, so I wanted to
21 deal with the traffic stop because that was the probable cause
22 of the case.

23 Q All right. So is it fair to say that the traffic stop is
24 what kicked off this whole thing?

25 A Yes, sir.

1 Q And you were stopped where?

2 A In Mount Pleasant.

3 Q Mount Pleasant.

4 By the Mount Pleasant Police Department?

5 A County police.

6 Q County police. Okay.

7 And so they stopped you and they searched your vehicle?

8 A All right. He pulled me over. He pulled me over. He
9 say he pull me over for illegal lane change -- illegal lane
10 change and a defective center stop lamp. When he pulled me
11 over, he came to the car. We talked. He pulled me out the
12 car. He said he smelled marijuana, scent of marijuana. He
13 wanted to search the car. I told him to go ahead and search
14 the car.

15 We get inside a small altercation. He's saying I had
16 some drugs on me. We get into an altercation. All right.
17 His backup cam. They handcuffed me like I'm handcuffed right
18 now. They handcuffed me in the back. They handcuffed me like
19 this, because he be trying to strip-search me on the scene.

20 Q All right.

21 A And his supervising officer told him he couldn't do that,
22 you have to do that inside the county jail.

23 While sitting inside the car, the owner of the car that I
24 was driving came to the scene while he was searching the car,
25 and she told him that a gun was inside the car. He go on and

1 find the gun inside the car. She told him that's her gun.
2 The truck (ph) was registered to her. He asked me if it was
3 mine. I told him no, I don't know -- I don't know nothing
4 about it.

5 **Q** Okay. All right. Well, let me ask you this: Why is all
6 that important? Why is that important to this case?

7 **A** It's important to this case because that's the reason he
8 pulled me over. If he never pulled me over, we wouldn't have
9 been here.

10 **Q** Okay. Did you receive City charges, magistrate charges?

11 **A** I had magistrate charges.

12 **Q** Okay. And what were those charges?

13 **A** Defective equipment and -- he gave me defective
14 equipment. He didn't give me a ticket for illegal lane
15 change. And he gave me -- and driving under -- driving under
16 suspension.

17 **Q** Okay. So did Ms. Gay represent you with those charges as
18 well?

19 **A** No. I didn't retain her for those charges.

20 **Q** Okay.

21 **A** So, in the process of me -- since I didn't retain her on
22 those charges, I was telling her -- you know, because they was
23 bringing up trial. I was telling her, you can handle this
24 first because this is the probable cause. If I can knock this
25 out, then we wouldn't have to -- we would -- the other fight

1 will be easier.

2 Q Okay. But if you didn't retain her, would she have had
3 any responsibility to you to address those charges?

4 A She had a responsibility to ask for a continuance until I
5 addressed those charges.

6 Q Okay. Well, let's kind of cut to the end of it. Were
7 those charges eventually taken care of in some manner?

8 A I was charged with found not guilty and expunged off my
9 record.

10 Q All right. And when did that happen?

11 A After this case.

12 Q After this case?

13 A After this case.

14 Q After the plea?

15 A Yes, sir.

16 Q Okay. All right. And you feel like that is an important
17 issue for post-conviction because why?

18 A I feel like that's an important issue because this whole
19 situation is from a traffic stop, and I could have fight the
20 traffic stop and I'd get the not guilty verdict beforehand;
21 then I could have put the drugs and every -- and all the other
22 evidence under fruit of a poisonous tree in violation of the
23 Fourth Amendment and go that way.

24 Q Okay. And you felt like that this is something that
25 Ms. Gay should have handled for you in conjunction with the

1 drug charges that you had?

2 **A** No, I don't feel like she should have handled it. I feel
3 like she should at least continue the case until I get over,
4 because you can't go to B without A.

5 **Q** I gotcha. Continue the plea.

6 **A** No, continue the case. I'd been going to trial. I
7 wasn't looking to plea.

8 **Q** You were going to trial. Okay. All right.

9 So it was your contention that you wanted to go to trial
10 on these?

11 **A** Of course.

12 **Q** All right. And so how did you prepare with Ms. Gay?
13 What did you do to prepare for trial?

14 **A** Preparing for trial, immediately when it -- because he
15 said he had to lock me up for the traffic stop. So I send a
16 vehicle to Precision Tune to get all the lights checked so I
17 could have it on the record. I got the paper. I gave her
18 those paperwork for the lights. Ain't nothing wrong with the
19 lights.

20 I told her that I really wanted to fight the stop, so
21 she's going to get a DVD from the stop. And when they gave
22 her the DVD evidence from the stop, her paralegal brought it
23 down in to me.

24 He showed me -- he showed me the DVD video. I'm looking
25 at the lights on. I'm looking at the lights on. So I said,

1 Yeah, we going to try with that because not only that but the
2 chain -- I have been looking at the chain of custody form, and
3 I seen all kind of foolishness, the drugs going from here --
4 from one number to this number. He said he locked me up with
5 13 bags -- 13 bags of cocaine, 5.7 grams, and three bags of
6 heroin. That's what he --

7 Q Okay. All right. Let's kind of keep things kind of
8 compartmentalized a little bit --

9 A Mm-hmm.

10 Q -- so I think it's easier to present.

11 Now, when you -- you said that you had some indication
12 that the lights -- it showed that the lights on the car were
13 on, the rear lights or whatever. Did you bring that to the
14 attention of your attorney, Ms. Gay?

15 A Mm-hmm. Yeah, I did.

16 Q So what did she tell you or what was part of your -- of
17 your defense, if any, in regards to the probable cause with
18 the car and the traffic stop? Did y'all talk about that?

19 A No, we only talked about the stop. I wanted to argue
20 about the stop.

21 Q That's what I'm talking about. I'm asking you about the
22 stop.

23 So did you and she talk about the stop in regards to
24 preparing your defense?

25 A We probably talked about the stop, like, a couple of

1 times.

2 Q Okay.

3 A A couple of times.

4 Q Did she tell you that was a good issue? Bad issue? Or
5 what did she say to you?

6 A She said it would have been a good issue if we could have
7 went on it, if we would have passed it inside the -- inside
8 pretrial motions, we were going to bring it up inside pretrial
9 motions.

10 Q Okay. All right. Now, in preparing for trial -- because
11 you actually started the trial?

12 A Yes, sir.

13 Q You picked the jury?

14 A Yes, sir.

15 Q And then decided to enter into a plea?

16 A Yeah, from her advice.

17 Q I gotcha. Okay.

18 So when you were preparing for your trial, did you have
19 an opportunity to look at the drug analysis, the report?

20 A All right. The first time I seen the drug analysis
21 report, we gone and I think she had took me for a bond
22 reduction. And the solicitor brought the drug analysis form
23 inside the middle of the courtroom. And they showing me the
24 form, saying that the cocaine, wasn't no cocaine. And I have
25 been trying to get a bond at the time.

1 So I asked her, I'm like, "Hey, ain't no cocaine. Can we
2 get the charge dropped so I can get me a better bond?"

3 **Q** Okay. All right. When did this happen? Do you remember
4 when, in the whole scheme of things, when did you receive the
5 forensic report?

6 **A** That wasn't the first form I get. That wasn't the first
7 form because I asked her for the chain of custody, and that's
8 one of the first things they brought me inside the courtroom.

9 **Q** All right. Let me show you this document and see if you
10 can identify that.

11 **A** Yes, sir.

12 **Q** What is that?

13 **A** That's the forensic service division report, Charleston
14 County Police Department.

15 **Q** And is that regarding your case?

16 **A** Yeah, that's mine.

17 **Q** Okay. And that is a document that you discussed with
18 Ms. Gay?

19 **A** All right. When I get this document because they're
20 saying it was 16 bags of drugs. All right. So when I got the
21 document and I'm looking at it, everything is saying powder
22 residue, powder residue, powder residue, powder residue. So I
23 got in that stop and let them know about the numbers. I go
24 and check those numbers and I read the rest of the form. At
25 the bottom, it says all the numbers that's highlighted, it

1 said it was insufficient quantity for analysis. It was none.

2 Q Okay. All right. Hang on just a second.

3 MR. THOMAS: Your Honor, if I may, I'd like to mark this
4 as Applicant's 1.

5 THE COURT: Okay. And what is that?

6 MR. THOMAS: It is the Charleston County or Charleston
7 Police Department Forensic Services Division's report on the
8 drug analysis.

9 THE COURT: All right. We can mark that. You'll have to
10 get it to the court reporter so she can mark it accordingly.

11 MR. THOMAS: Yes, ma'am.

12 THE COURT: The State's been provided with a copy of that
13 already?

14 MR. THOMAS: Yes, ma'am.

15 THE COURT: All right.

16 (Applicant Exhibit No. 1 was marked for identification
17 and received into evidence.)

18 THE COURT: Do you want it back for purposes of --

19 MR. THOMAS: No, ma'am. I have a copy. I just wanted to
20 make sure it's published for the Court.

21 THE COURT: Yes, sir.

22 MR. THOMAS: Your Honor, if it pleases the Court.

23 BY MR. THOMAS:

24 Q Okay. So, now, let's talk about that report. What is
25 the date of the report?

1 **A** The date of the report is July 27th, 2015.

2 **Q** All right. And your plea was when?

3 **A** I think it was -- I want to say April.

4 **Q** So the report predates your plea?

5 **A** Mm-hmm.

6 **Q** Okay. And in that report, if you would just very briefly
7 tell us what the results were. What did they find in the drug
8 analysis?

9 **A** All right. The first thing -- the first thing I noticed
10 about this is he said it was -- he said it was 16 bags in
11 total from the affidavit and from the other one. So when I
12 looked at the form --

13 **Q** All right. Now, you said "he said." Who said --

14 **A** The arresting officer.

15 **Q** The arresting officer.

16 **A** The arresting officer said it was 13 [verbatim] bags.

17 **Q** Right.

18 **A** 13 coke and 3 heroin, which totaled up to 16 bags. So
19 when I looked at this form, I started counting up the bags.
20 And if you see on the side of it, it says 9, 6, 3. That's 18
21 bags.

22 **Q** Right.

23 **A** That's 18 bags plus the other 3 bags, that's 21 bags.

24 **Q** Twenty-one bags.

25 **A** So we got extra bags just came out of nowhere. So I want

1 her to know this. I showed it this.

2 Q From what the officer had.

3 A From what the officer is saying; and, under oath, he's
4 saying it was 13 and 3. Sixteen in total. That's 21 bags
5 altogether right here, what she testing.

6 Q Okay. So now you have got some concern about the number
7 of bags from the beginning when the officer got the bags and
8 when it's sent to analysis.

9 A So I asked her to get a copy of the chain of custody form
10 because at the time of my Rule 5, it was none.

11 Q All right. Let's talk about this first, if you don't
12 mind. So we're talking about that, so now we have how many
13 bags?

14 A You got 21 bags now.

15 Q Okay. And what are the results of those 21 bags?

16 A Out of all these -- out of all the 21 bags, they only had
17 two bags that tested positive for drugs. And the two bags
18 that tested positive for drugs were 0.01 and 0.05, which
19 equals out two grains -- two rice grains. Two rice grains in
20 two bags.

21 Q Okay. Now, let me get you to read right at the bottom
22 where it says -- it says something about the analysis on the
23 other bags. It says, "Insufficient quantity"?

24 A The six, the nine, and the three? 149796, 149796-B, and
25 149796-C, but insufficient quantity for analysis. That's the

1 18 bags.

2 Q So they weren't able to determine that there was
3 cocaine -- because we're talking about cocaine?

4 A We talking about cocaine. This is not cocaine.

5 Q That they were unable to determine that there was cocaine
6 in those bags.

7 A In any of the bags.

8 Q In any bags.

9 A In any bag.

10 Q Okay. All right. Now, let's go from there to -- let's
11 talk about the chain of custody. I know that you and I have
12 worked on this pretty hard.

13 MR. THOMAS: And, Your Honor, if it please the Court, I
14 have copies of a chain, which I would like to admit as
15 Applicant's 2 and 3.

16 THE COURT: All right. You can do so at this time.

17 MR. THOMAS: Yes, ma'am.

18 THE COURT: Any objection to those being admitted?

19 MS. MIMS: None.

20 THE COURT: Thank you.

21 (Applicant Exhibit Nos. 2 and 3 was marked for
22 identification and received into evidence.)

23 THE COURT: All right. Go ahead.

24 MR. THOMAS: Your Honor, if it please the Court.
25

1 BY MR. THOMAS:

2 Q Okay. Deangelo, if we look at --

3 MR. THOMAS: Which one is which?

4 A Evidence by OCA and then chain of custody.

5 Q All right. 2 and 3. Which one was --

6 THE COURT: The chain of custody has been marked as 2.

7 MR. THOMAS: All right. Is that the one that says

8 "Evidence by OCA," Your Honor?

9 THE COURT: No. I'm sorry. The one that starts with the
10 case number, L15.

11 MR. THOMAS: Okay. Yes, ma'am. And the other one is 3.

12 THE COURT: Correct.

13 BY MR. THOMAS:

14 Q All right, Deangelo. So you had -- when did you -- when
15 did you see these documents?

16 A All right. I asked her for the chain of custody because
17 I had seen the first report you just had showed me.

18 Q Right.

19 A So when I seen that, I had some concerns. So I told her,
20 I said I wanted to see the chain of custody. They didn't have
21 a chain of custody inside my Rule 5 at all. So they brought
22 me this again. She just brought this up there to me and said,
23 "Well, that's what they gave me when I asked for the chain of
24 custody."

25 Q Ms. Gay did.

1 **A** Yeah. She said that's what they gave her.

2 **Q** Okay. All right. So she gave you two lists. One is
3 like -- is your Applicant No. 3, which is the --

4 **A** Evidence by OCA.

5 **Q** Yeah, OCA. And then the No. 2 is the case numbers, and
6 it has the L15 and then the different subsections.

7 **A** No, it's prepared by -- this one was prepared by Renee
8 Hilton, if you look at the bottom.

9 **Q** Right, yeah. Okay. All right.

10 So you're saying that you noticed some discrepancies in
11 this chain?

12 **A** Correct.

13 **Q** Can you very briefly tell us what -- what discrepancies
14 that you saw between Applicant's 2 and Applicant's 3? And you
15 need to make sure we know which document you're talking about.
16 Okay?

17 **A** All right. On Applicant 3 --

18 **Q** Yes?

19 **A** On Applicant 3, on the Evidence by OCA, I have been going
20 through everything about the evidence. Now, he said it was --
21 he said --

22 **Q** Yeah, this is the one that's talking about what? How
23 many bags?

24 **A** He said it's approximately 13 -- 13 bags of white
25 powder-like substance, 5.7 grams.

1 Now, if you're going to look -- when he checked in it,
2 Officer Jason Riley, on 7/27/2015 at 1:32 p.m., Officer Riley,
3 Jason, he took the drugs down to the lab, signed it up for
4 investigation.

5 So when I looked at page -- on Report 3, then I go into
6 Report 2, which is Renee Hilton's one --

7 **Q** Which is on page --

8 **A** On page 1 of 11.

9 **Q** One of eleven.

10 **A** One of eleven.

11 **Q** Mm-hmm.

12 **A** She said, on 7/27, at 2015, at 10:00 in the morning, it
13 was submitted by Officer Riley, Jason. That's impossible for
14 her to -- for her to have it. He ain't sign it out until 1:32
15 p.m. It's no way she had that.

16 **Q** So there's a discrepancy between No. 3 and No. 2.

17 **A** A couple of discrepancies. That's one of them.

18 **Q** Okay. So that's one of them.

19 **A** Uh-huh.

20 **Q** And according to that, it would have been impossible --

21 **A** It's impossible for that to happen. She can't have that
22 if he ain't signing out yet. That's in North Charleston, and
23 that's Downtown Charleston. That's impossible.

24 **Q** All right. Tell us about the next discrepancy.

25 **A** All right. So when I look at that, then I go into the

1 next line under it to make sure it ain't been a typo. So I go
2 and look up under it, and it says 8/3/2015 at 1:45 p.m.,
3 Officer Hickory (ph), he was taking it down to the lab.

4 So I go in and look on page 2, on Form 2, and I wanted to
5 check, so I go into page 2 of 11. When I seen that --

6 Q What date is that?

7 A This is 8/3/2015.

8 Q Right.

9 A He signed it out from -- from the forensic office at
10 12:19 p.m. And he got it back -- he got it back -- on Form 3,
11 he got it back at 1:45 p.m. That means that time correct.
12 That time correct. That's dead on the head. That's right.

13 So then I go to the next one, which would have been -- it
14 would have been 8/17/2015.

15 Q On which form?

16 A On Form 3.

17 Q Right.

18 A 8/17/2015 at 12:50 p.m. This is a different officer,
19 now. This ain't Riley no more; this is Hickory.

20 Q Yeah.

21 A Now, he took it down to the lab. He signed it out too.
22 He took it down to the lab at 12:50 p.m.

23 Now, I go on Form 2, 2:11, and I look at that same date.
24 She said on 8/17 at 2015, 10:00 in the morning, she already
25 had the drugs. Again, it's impossible for her to have. Every

1 time they took it down there, it was off. Every time they
2 brought it back, it's correct.

3 Q Okay.

4 A But it never changed on here. It never changed on
5 Form 3, the approximately 13 bags, and she said she had tested
6 18 or 21. When he brought it back, he never logged in 18
7 bags. It's -- those say that 13. It never changed to 18. It
8 never changed to 21. It stayed at 13.

9 Q Okay. Let me ask you about this: So on page 1 of
10 Applicant's 3 --

11 A Mm-hmm.

12 Q -- it says how many bags?

13 A Thirteen.

14 Q Okay. If you look on page 2 --

15 THE COURT: Where do you -- point me. I see where it
16 says "approximately 13."

17 MR. THOMAS: Yes, ma'am.

18 THE COURT: Is that the same part you're looking at?

19 MR. THOMAS: Yes, ma'am.

20 THE COURT: Oh, okay.

21 MR. THOMAS: Yes, ma'am.

22 BY MR. THOMAS:

23 Q And then on page 2, it says how many bags?

24 A Three.

25 Q Three clear. So we're talking about 16 -- again, it's

1 physically 16 bags?

2 **A** It's 16 altogether.

3 **Q** Okay.

4 **A** That bag count never changed from 13. It never changed
5 from 13.

6 **Q** Okay. But the forensic report says that there were 21
7 bags; is that correct?

8 **A** 21 bags, yes.

9 **Q** All right. Are there any other discrepancies between
10 Applicant's 3 and Applicant's 2? You just told us about
11 those --

12 **A** No, only the drop-off time is wrong, yeah.

13 **Q** Okay. All right. All right.

14 Now, did you bring all of this information to Ms. Gay's
15 attention?

16 **A** Of course. I told her I want -- again, I wanted to go to
17 trial, because I'm looking at a clear broken light. I'm
18 telling her it ain't right. The 16 -- the 16 go into 21. 21
19 never was in question. There never was 21.

20 **Q** So you're concerned about the number of bags --

21 **A** The number of bags and the times when she's saying he was
22 testing it -- we go back to that right there, the Form 2, she
23 said she was testing it at 11:00. That's -- that's really
24 impossible there. She's saying, on 7/27 at 11:12:59 in the
25 morning, she was testing the drugs. And it never left her

1 until 1:32 p.m.

2 Q Okay. All right. But you brought that to the attention
3 to Ms. Gay, and you also brought the attention about the no
4 cocaine.

5 A Okay.

6 Q Okay. And was there any kind of strategy about that? I
7 mean, you brought this to her attention. At what point in
8 your -- in your case --

9 A As soon as I seen it. As soon as I seen it, I brought
10 that to her attention because, now, me knowing -- me knowing
11 that that's where it does, I'm saying, Hey, you can go ahead
12 and tell them you need to drop this -- drop this cocaine
13 charge because it ain't no cocaine. The light mess up. I say
14 the chain of custody broken and they got extra bags. They got
15 extra bags that came out of nowhere. They're testing drugs
16 that ain't there.

17 Q Okay. So that was your motivation, that was your
18 reasoning for going to trial?

19 A It ain't right.

20 Q It ain't right. Okay. All right. I understand that.
21 So you get to court the day of trial and you pull a jury.

22 A Pull a jury.

23 Q Okay. And were there any plea offers in there during
24 this process?

25 A Okay. Now, I tell her -- I tell her, I said, I don't

1 know if she must interrupt what I'm trying to tell her. I
2 tell her I'm not taking a gun charge because the forensic lab
3 test that come back on the gun, is no fingerprints on the gun.
4 The gun never was in my possession. The owner -- the gun was
5 found inside the owner of the vehicle. Her vehicle.

6 Q That was your girlfriend's?

7 A I got the documents. I got everything. I got her gun
8 records, the car -- I put all that inside her hands so she can
9 see that I'm not pleading guilty to this gun, I'm not pleading
10 guilty to no cocaine that they don't have --

11 Q And I guess -- and there's some reference to that in
12 the --

13 A Exactly. So when we're doing and I'm telling her to get
14 the -- I said, If you can get the cocaine charge dropped and
15 the gun charge dropped, then you only got two bags of heroin.
16 I'd plead to possession. Oh, they don't want to drop the
17 cocaine charge. And I'm telling her, the cocaine is the
18 bulk -- the bulk of the drugs. They're saying it's 18 bags,
19 13 bags. If you get rid of those and you get rid of the other
20 bag of heroin, it's nothing but two bags of heroin. And
21 you're trying to tell me you couldn't do that? She said they
22 ain't going to take -- they don't want to -- they don't want
23 to accept that. They're not going to accept that.

24 Q All right. So what changed? I mean, you know, you pull
25 the jury and you're ready for trial. So what changed? Why

1 did you end up entering into a plea?

2 **A** Okay. We put on -- we're going through the pretrial
3 motions. Now, when we started the pretrial motions, they put
4 down the DVD and the video of the stop on the TV. And we're
5 showing the stop. I'm looking at the brake light on. I'm
6 looking at the brake light on. And the judge admitted it. He
7 just, "Hey, I'm still going to let it go through."

8 **Q** This is a pretrial motion?

9 **A** This is pretrial motion.

10 **Q** Okay.

11 **A** He let it go on through. So now -- I think they call it
12 a recess or -- I'm not sure. I think they call it a recess.
13 And she came down and sit down and talked to me. She told me,
14 said that all -- she said all drug charges inside South
15 Carolina are not violent now. The best -- the best -- her
16 best advice was for me to take the plea. Take the plea, it's
17 non-violent, I'll get parole.

18 Now, I tell her, I said, I'm not going to take the plea
19 because the chain of custody broken.

20 She said, Well, Deangelo, all they're going to do is show
21 the bags. They're going to show the signatures on the bags
22 and they're going to let it go through, just like they let the
23 stop go on through. He's going to admit it. The best thing I
24 can do for you --

25 **Q** Was there a suppression motion?

1 **A** No, she never mentioned -- she never suppressed the
2 drugs.

3 **Q** All right.

4 **A** She never suppressed the drugs. She never suppressed the
5 drugs.

6 **Q** Okay. Now, so your factors for entering into the plea
7 were what? What were the reasoning -- reasons?

8 **A** She's telling me that the best advice -- that that's the
9 best thing -- that's the best she can do for me because I'm
10 going to lose. She said I'm going to lose at trial. That's
11 the best -- they're going to show the bag with the signature.
12 I'm going to lose. That's the best thing. "They're going to
13 give you 30. They're going to give you 30 years, Deangelo."

14 She ain't had no motivation. She ain't -- she got no
15 motivation to fight. She not --

16 **Q** Now, let me ask you about this -- now, you're saying that
17 she told you that drugs were non-violent.

18 **A** Mm-hmm.

19 **Q** You didn't have trafficking, so you had just --

20 **A** PWID.

21 **Q** -- PWID.

22 And -- well, these were drug thirds.

23 **A** Mm-hmm.

24 **Q** Did you understand that they were drug third -- third
25 offense?

1 **A** I understand that completely. Again, when she said it --
2 I asked her and I said, Listen, I -- I don't know nothing
3 about that. From what I know, it's 85 percent. So I said,
4 "If you can get that in writing that it's going to be
5 non-violent, then bring it to me."

6 She brought those -- those forms that I showed you with
7 my signature on it. I sign it because she brought it to me
8 with the non-violent boxes checked off like it was really
9 going to be non-violent.

10 **Q** The sentencing sheets.

11 **A** Yes.

12 **Q** Okay. So you did not know that you were plea'ing to
13 offenses that were 85 percent?

14 **A** No, I didn't know I was pleading to offenses that was
15 85 percent. The judge said it, but I'm going off her word. I
16 done entered the plea then. When he started saying 85 percent
17 this and 85 percent -- I done entered the plea.

18 **Q** Yeah, because the judge --

19 **A** He telling me -- as he's sentencing me, he's telling me
20 at this sentencing that it's going to be 85, but I ain't
21 really paying him no attention because I signed the box. I
22 signed off on non-violent sentences.

23 But when I got to SCDC -- when I got to SCDC, my sentence
24 was non-violent. I did have parole. I did have parole for
25 the first two years of my sentences. And this right here, I

1 have parole. They changed my parole because -- because of
2 Boland (ph) -- Boland v. South Carolina.

3 Q Right.

4 A Called me in the office and changed my time too right
5 here.

6 Q All right. Because it was a drug third.

7 A Uh-huh.

8 Q And as long as the prior drug offenses were simple
9 possession --

10 A Right.

11 Q -- then you would have been parole eligible.

12 A Right.

13 Q But were your prior offenses more than simple possession?

14 A It had to have been. But she would have known that,
15 though.

16 Q Okay. All right. So you got to the Department of
17 Corrections. They told you that you had a parole date.

18 A Mm-hmm.

19 Q They told you that you were non-violent.

20 A Correct.

21 Q And -- but then you found out at what point in time that
22 that was not true?

23 A I just had it --

24 Q Is this the document you're looking for?

25 A March 21st. No, no. February 9th, 2017.

1 Q Okay. And you were informed by the Department of
2 Corrections.

3 A Mm-hmm, by the caseworker.

4 Q All right. Now --

5 A These are the sentencing?

6 Q Hmm? Yeah, we're going to talk about that.

7 All right. So you decided to take this plea, but you
8 think this plea was voluntary?

9 A No, it ain't voluntary. Nobody going to plead to drugs
10 they don't have, but I'm going off her advice. I going off
11 her advice. Like, I had her before. She was my lawyer
12 before. I wouldn't thought she would have did that to me.

13 Q So is it fair to say that you pled to cocaine when there
14 was no cocaine?

15 A That's -- that's clear as day. That's crystal clear.
16 Ain't no cocaine. I plead to cocaine and there ain't no
17 cocaine. That's crystal clear.

18 Q And you feel like that she was ineffective for allowing
19 you to do that?

20 A Of course she was ineffective. Ain't no competent lawyer
21 going to let their client plead to something that's not them.

22 Q Did you take an Alford plea?

23 A She brought that plea to me.

24 Q No, but -- no. Alford means that "I'm not guilty of this
25 but I'm afraid that the Court -- the State can prevent

1 submission -- present sufficient evidence to -- that I will be
2 found guilty."

3 **A** No, I plead straight up. There wasn't no Alford plea,
4 none of that. She ain't try to protect no rights. None of
5 that. None of that.

6 **Q** All right. Now, let me ask you about the plea itself.
7 And I'm going to direct your attention to page 15 of the plea
8 transcript.

9 **A** Yes, sir.

10 **Q** And I'm going to let you look at --

11 **A** Yes, sir.

12 **Q** You got it? Okay. I'm going to let you look at lines,
13 basically, 9 through 25. And it says "Mr. Condon." Who is
14 Mr. Condon?

15 **A** That's the solicitor.

16 **Q** All right. What does he say about your -- about your
17 cocaine?

18 **A** Oh, we got to go back to -- we got to go back up to
19 line 5 from the reports.

20 **Q** Okay. All right. Go back to line 5 then.

21 **A** The judge from -- the Court -- the judge asked the
22 solicitor, he said, "Solicitor, I have seen probably most of
23 the facts that would support a plea, but I'll be happy to hear
24 from you. The drugs were analyzed and they are what they
25 claim to be: Heroin and cocaine."

1 This is the solicitor. Answer, his response:

2 "MR. CONDON: That's correct, Your Honor. Just briefly.
3 Traffic stop in Mount Pleasant, Charleston County. The
4 defendant was in possession, which he placed in his mouth,
5 21 baggies of drugs. 18 were cocaine and 3 were heroin."

6 That's incorrect.

7 **Q** Okay. And that's documented by --

8 **A** The solicitor and the judge. The judge, he read the
9 facts of this too.

10 **Q** And that is documented by the drug analysis, which was
11 Applicant's 1.

12 **A** An analysis, like they said, it's not -- it's not --
13 that's not -- the lab say it ain't no cocaine. And he has
14 the --

15 **Q** Well, it says insufficient quantities.

16 **A** Insufficient quantities there. They don't know what it
17 is. He's saying right here, under oath, 18 bags of cocaine,
18 3 were heroin. 21 again. It never was 21.

19 **Q** All right. So the judge, in sentencing, had the
20 information -- the information that was provided to the judge
21 was that there were 21 bags of drugs and there was cocaine and
22 heroin.

23 **A** 21 bags of drugs. He said three of them had heroin in
24 them. Three of them didn't have heroin in them. And --

25 **Q** Two had heroin.

1 **A** Two of them had heroin in them. And 18, he's saying,
2 were cocaine, which is a lie.

3 **Q** Okay.

4 **A** Out of all those bags, it ain't nothing but two bags that
5 had drugs in them. They got 21 bags in this paper, though.

6 **Q** Did you have a negotiated sentence? Were you plea'ing to
7 a set number of years?

8 **A** No, sir.

9 **Q** Okay. So, in other words, what you had was an open plea.

10 **A** I had -- I had what they been giving me. I got -- the
11 best offer they could give me.

12 **Q** Okay. So the judge, in making a determination to
13 sentence you, as far as the information that he had, was that
14 you had both cocaine and heroin.

15 **A** Correct, and but -- correct, but he said he seen the
16 facts. He couldn't have seen the facts because he would have
17 seen -- I doubt if he would accept this plea if he had seen
18 the fact it says it was no cocaine.

19 **Q** Well, he would not have necessarily seen the report.

20 **A** But the solicitor knew.

21 **Q** But the solicitor knew, right.

22 **A** He knew. And she knew too.

23 **Q** And Ms. Gay knew.

24 **A** Exactly.

25 **Q** Okay. Did she say anything to the Court?

1 **A** She said nothing. I didn't know nothing about the 21
2 baggies until I got my transcripts. That's when I notice he
3 has said 21 because I kind of was out of it was once he
4 started -- once he -- I was kind of out of it. I was
5 disappointed in how -- her performance.

6 **Q** Okay. Why did you plead to it? Why didn't you step down
7 and say, "I'm not doing this"?

8 **A** Okay. Now, she put me in a -- I was in a situation
9 whereas I couldn't separate the charges because I would have
10 to take both charges -- I would have to take all those charges
11 at the trial, and I couldn't beat all those charges. I
12 didn't -- I didn't feel like I could beat all those charges,
13 but I --

14 **Q** So you were admitting that you had --

15 **A** Exactly. I was admitting that I had -- I had something.

16 **Q** Basically 2 grams --

17 **A** No, the two bags of heroin. I'm cool with that.

18 **Q** And one was -- well, they were tenths. One was
19 one-tenth?

20 **A** Two grains.

21 **Q** Two grains.

22 **A** Two grains. So now I'm telling -- I'm telling -- if you
23 just get rid of the cocaine charge -- if you get rid of the
24 cocaine charge, she said, No, they're not going to get rid of
25 the cocaine charge. How? How are you not going to get rid of

1 the cocaine charge when the lab is saying it's no cocaine.

2 But they would not drop it.

3 Q Okay. Now, to enter into your plea, I asked you whether
4 or not you feel like it was freely given, and you said no.
5 You also have to have the knowledge to enter. It's knowingly
6 and intelligently given. In other words, you have to have the
7 knowledge of what you're doing to enter into your plea. It
8 has to be intelligent. You also -- and also that, I don't
9 know, you're making a rational and intelligent decision to
10 enter into this plea.

11 Do you think that you had all the information that you
12 needed to enter into it?

13 A No, I didn't have all the information. Again -- again,
14 now, I argued to her again because I kept on bringing up this
15 cocaine. Right? I said, Listen, if there ain't nothing
16 there, then I want the charge dropped.

17 She said, Well, Deangelo, they're going to use the bag.
18 It says residue.

19 Residue don't mean cocaine residue. Residue is residue.
20 Residue can be any kind of residue. She keep on -- she keep
21 on pushing in my head: They're going to use the bags, they're
22 going to use the bags.

23 Q So is that why -- according to that report, there was no
24 way to determine what was in those bags?

25 A According to the expert.

1 Q Yeah. Okay. All right.

2 Deangelo, we talked about this as well, and I'm not
3 saying that I have forgotten something or missed something,
4 but you have been waiting a long time to be in this courtroom.
5 And is there anything else that I might have forgotten to
6 raise or is there anything else that you would like to bring
7 to the attention of the Court?

8 A Yeah, I mean, right is right and wrong is wrong, man.
9 Like, I don't think I should be in jail for cocaine I don't
10 have. This is wrong.

11 Q Okay.

12 MR. THOMAS: Your Honor, we have no further questions.

13 THE COURT: Okay. Does the State have any questions,
14 Ms. Mims?

15 MS. MIMS: Yes, just a few, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. MIMS:

18 Q How are you doing today, Mr. Brown?

19 A Fine. How about yourself?

20 Q Good. So you have been talking about the plea
21 proceedings pretty much ad nauseam here. Do you remember
22 telling Judge Dennis that you were satisfied with Mrs. Gay?
23 A Yeah, I told Judge Dennis I wanted to get it over with
24 because he let the stop go on through. He let the stop go on
25 through and those clear light -- I told him I wanted to get it

1 over with it. I wanted to get it behind me. That's in there
2 too if you look.

3 Q Yes.

4 A Yeah.

5 Q Okay. So -- but did you tell him also that you were
6 satisfied with Mrs. Gay's performance?

7 A Yeah, because I -- I tried to fire her, but I couldn't.
8 I had no choice but -- I had to -- I had to use her in trial.
9 I had to use her in trial. And when you get her up there, she
10 going to tell you she tried to remove herself from the case
11 too, because she didn't get paid all her money. She tried to
12 remove herself, and they told her she had to stay on because I
13 retained her. Because I retained her, I wouldn't be able to
14 get a public defender. That's what they're telling me.

15 Q All right.

16 A So I had to keep her.

17 Q I understand that you had to keep her, but did you -- do
18 you understand that it was your decision to say that it was --
19 that you were satisfied with her services?

20 A I ain't satisfied with her services. I mean, a blind
21 person can see I ain't satisfied. I'm in here for drugs I
22 didn't have. I'm not satisfied with her services, no. I told
23 the judge that because I had no choice. I couldn't get rid of
24 her.

25 Q Okay. And so it was your decision to plead guilty;

1 correct?

2 **A** At the counsel advice because she said we was going to
3 lose. It was also my decision to go to trial too, when I
4 picked my jury. I picked my jury and I was ready. I got my
5 evidence to show.

6 **Q** Yes, but you also told the judge you wanted to plead
7 guilty; correct?

8 **A** I would have to represent myself pro se, ma'am.

9 MS. MIMS: I beg the Court's indulgence.

10 BY MS. MIMS:

11 **Q** And you also told Judge Dennis that no one made you any
12 promises to get you to plead guilty; correct? And said that
13 the gun charge would no longer be on the table.

14 **A** Nobody promised me the gun charge wouldn't be on the
15 table anyway neither. They didn't promise me nothing about
16 the gun charge. They dropped the gun charge, which was --
17 honestly, wasn't no help because there was no evidence to
18 prove a gun charge -- to connect me to no gun anyway. So that
19 wasn't no help to me. I wanted to get the cocaine charge
20 dropped, that they didn't -- that they didn't have no evidence
21 on.

22 **Q** Okay. And so you also plead guilty to PWID for heroin.

23 **A** Yes, ma'am.

24 **Q** Which you do have; correct?

25 **A** Yes, ma'am.

1 Q Okay. So if you had gone to trial on that charge, you
2 understood that that could have carried a 30 or max; correct?

3 A Okay. Now -- now, at the --

4 Q I'm sorry. It's --

5 A I can answer that question, ma'am, but that question kind
6 of -- that question kind of -- that question kind of --
7 because if that cocaine wouldn't have been there, it would
8 have only been two bags of drugs. That would have been
9 possession. That wouldn't have been possession with intent to
10 distribute.

11 So that question kind of -- I can't answer that question.
12 Because if the cocaine wasn't there, it would have only been
13 two bags of heroin, and it wouldn't have been possession with
14 intent to distribute. It would have been a whole different
15 charge. It would have been a different element. It wouldn't
16 have been that. I wouldn't have had to plead to the PWID.
17 And if I would have took a plea, it would have been a lesser
18 sentence.

19 Q And also, in that forensic report you referenced in your
20 application, it conclusively states that one of the substances
21 tested was heroin; correct?

22 A Correct.

23 Q And at your plea, you also agreed with all the facts that
24 the State presented; right?

25 A Excuse me?

1 Q That -- what you read earlier -- I believe it was on the
2 page 15.

3 A Yes, ma'am, but those ain't facts. When we get down to
4 the bottom of it, those were the facts because the 18 bags
5 wasn't cocaine. That wasn't facts. None of that was facts.
6 And it wasn't three bags of heroin. That wasn't facts
7 neither.

8 Q Can you read, on line -- page 16, line 8 for me? And
9 line 9. Actually, read -- read -- I'm sorry. Could you go on
10 page 16 and read 8 through 13 -- lines 8 through 13 for me?

11 A I know what you're saying. It's the same thing. I agree
12 that I accepted all that. But it wasn't intelligently. What
13 you're trying to ask me, the answer is yes, I accepted -- I
14 answered yes to all of these that you see inside the form.
15 But it was wrong. Even the judge didn't know, so -- I'm the
16 only fool here now. The judge didn't even know it was no
17 cocaine. So the facts ain't even the facts here.

18 Q But you agreed to those facts.

19 A I agreed to the lies.

20 Q You said you agreed to those facts?

21 A Yes, ma'am. Yes, ma'am. Yes, ma'am.

22 Q Okay. Thank you.

23 And also in that -- in that recitation of facts, do you
24 remember the State saying there was a jail call of you
25 admitting to having in excess of 10 grams of cocaine?

1 **A** I swallowed 10 grams of cocaine, but -- 10 grams -- I
2 would have died. The doctor report been normal. You got that
3 too? The doctor report been normal. I ain't get no medicine
4 inside -- inside in -- again, the lab lady saying it was no
5 cocaine. That was (indiscernible). It ain't no cocaine.

6 **Q** And you were also charged with obstruction of justice as
7 well; correct?

8 **A** Yes, ma'am.

9 **Q** And you pled guilty to that; correct?

10 **A** Yes, ma'am.

11 **Q** And I just want to -- and that's because you attempted to
12 destroy evidence; correct?

13 **A** Ma'am?

14 **Q** You were charged with obstruction of justice; correct?

15 **A** Mm-hmm. Mm-hmm. Yes, ma'am.

16 **Q** And you were charged with that because you attempted to
17 destroy evidence; correct? Or it was alleged that you
18 attempted to destroy evidence; correct?

19 **A** There you go. It was alleged that I attempted to destroy
20 evidence.

21 **Q** Which you pled guilty to obstruction of justice.

22 **A** Yes, ma'am.

23 **Q** And you allege that your attorney told you that all of
24 these offenses would be non-serious and parolable offenses;
25 correct?

1 **A** Correct.

2 **Q** Okay. But Judge Dennis asked if you understood that you
3 would have to serve a minimum of 85 percent of any sentence
4 imposed for possession with intent to distribute cocaine or
5 heroin; correct?

6 **A** Again, that was after -- that was after -- that was after
7 I had signed those paperwork that said that the plea was going
8 to be non-violent. That was after that. That was after that.

9 **Q** And -- but Judge Dennis explained to you that you would
10 be serving 85 percent.

11 **A** And I was going off the advice of my lawyer. And it
12 wasn't 85 percent when I got there. It was 65. I got it
13 right here.

14 **Q** But he told you that it could have been 85 percent?

15 **A** Yes, ma'am.

16 **Q** So you understood that there was 85 percent, which would
17 be 20 percent more than what it ended up being; correct?

18 **A** Mm-hmm.

19 **Q** Okay. And you stated that you understood that it would
20 be 85 percent; right?

21 **A** Yes, ma'am.

22 **Q** Okay. And the Court also asked you to let him know at
23 any time -- or do you remember the Court asking you to let him
24 know if at any time you needed him to stop or ask questions or
25 talk to your lawyer to appreciate the consequences of what you

1 were doing; correct?

2 **A** And the Court perjure too. The Court -- you're going
3 through all these questions and asking me, but the Court
4 perjured -- like we're going through a dog and pony show right
5 now, and, at the end of the day, I ain't here for drugs that
6 ain't there though. We got the best legal and we seen this,
7 and you're really fighting me to say -- to agree with this
8 plea. And you know the drugs ain't there. I'm not
9 understanding that. Right is right and wrong is wrong. Come
10 on, now.

11 THE COURT: Just answer the questions to the best of your
12 ability.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: I don't know that she's trying to do
15 anything --

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: -- nefarious. I think she's just asking
18 questions, and asking you to respond. Okay?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: You're allowed to explain. Okay?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Explain your answer.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay.

25 **A** I would never have plead to this charge. I would never

1 plead to the charge of no cocaine. Nobody would do that. Not
2 with 15 years. That's a lot of time. That's a lot of time
3 for stuff that they don't have. And the bulk of the drugs
4 that they're saying they have -- the bulk of this is the
5 cocaine. The bulk is the cocaine. The 18 bags jumped from 16
6 to 18 to 21 of cocaine that's not there.

7 MS. MIMS: I beg the Court's indulgence just one moment.

8 THE COURT: Mm-hmm.

9 BY MS. MIMS:

10 Q All right. One last question for you, Mr. Brown. You
11 know, throughout your testimony with your attorney and
12 throughout your testimony with me, you allege that, you know,
13 you were not being entirely truthful with the Court at the
14 time or that you wanted to take --

15 MS. MIMS: I'll rephrase the question. May I rephrase
16 the question?

17 THE COURT: Sure.

18 BY MS. MIMS:

19 Q Did you feel at the time of your plea what you were
20 alleging to wasn't truthful or what you were pleading to
21 wasn't truthful?

22 A It wasn't the truth, no. It wasn't. It couldn't have
23 been. It's right there. It couldn't have been. It couldn't
24 have been the truth. We all know it ain't the truth. We all
25 know it ain't the truth on both ends. On both ends. I

1 probably been wrong -- I probably been wrong for allowing this
2 to go this far, but we both know it's wrong. Even the
3 solicitor is wrong. He know, he seen this. He seen the
4 facts.

5 If I done seen the facts, the people seen the facts. Me,
6 my lawyer, and the solicitor. He seen the facts too. He know
7 this. Come on, they railroad me.

8 MS. MIMS: No further questions, Your Honor.

9 THE COURT: All right. Thank you.

10 Any redirect?

11 MR. THOMAS: No, Your Honor.

12 THE COURT: All right. You can call -- well, let's see.
13 Yeah, you can call your next witness. Go ahead.

14 MR. THOMAS: Your Honor, if I may approach -- indulgence
15 just for a second.

16 THE COURT: Mm-hmm.

17 MR. THOMAS: Your Honor, if it please the Court, that's
18 the Applicant's case.

19 THE COURT: All right. Does the State have any witnesses
20 it wishes to call at this time?

21 MS. MIMS: I would like to call Melissa Gay.

22 THE COURT: Okay. Ms. Gay, please take the stand. The
23 clerk of court will swear you in.

24 MS. GAY: Your Honor, I don't have my file. They do.

25 So --

1 THE COURT: Who is "they"?

2 MS. GAY: The plaintiff. And (indiscernible) has my
3 file. So I don't -- if I need to look at something, it would
4 be helpful if I had that.

5 THE COURT: Okay.

6 MS. GAY: Because I don't have it.

7 THE COURT: All right.

8 MR. THOMAS: Your Honor, I don't have that file that --
9 let me look and see what I have got.

10 I do have it.

11 THE COURT: Excellent. Perfect.

12 MR. THOMAS: I thought it was the other one. I have got
13 two cases today.

14 THE COURT: All right.

15 MR. THOMAS: But it was sent to me by ODC.

16 THE COURT: All right. Swear the witness in.

17 MELISSA GAY,

18 after having been duly sworn, was examined and testified
19 to as follows:

20 THE CLERK: Thank you. Please be seated and state your
21 name for the record.

22 THE WITNESS: My name is Melissa Gay. It's spelled
23 G-a-y.

24 MR. THOMAS: Your Honor, if I may approach.

25 THE COURT: Yes, sir.

1 MS. MIMS: May it please the Court.

2 DIRECT EXAMINATION

3 BY MS. MIMS:

4 Q Good afternoon, Ms. Gay. How long have you been
5 practicing law?

6 A Thirty -- well, since 1991.

7 Q Thirty years?

8 Where exactly?

9 A I practiced -- originally started practicing in
10 Charleston County. I practiced all over the state. I do -- I
11 have done criminal defense since 1991. I do some other civil
12 and general practice as well.

13 Q Okay. And you were retained in this case; correct?

14 A Yes, ma'am.

15 Q Can you give me the approximate date of your retention?

16 A I don't know. Like I said, I just got this file handed
17 to me back before so I didn't have it to review. Before we
18 went to court, obviously.

19 Q Okay.

20 A Long before that. I have something in here all the way
21 back from April of 2013 that kind of looks like something that
22 may have started my representation.

23 Q And I understand that you just got the file in front of
24 you, but can you recollect how many times you met with the
25 Applicant prior to the trial or guilty plea?

1 **A** Hold on. Just give me a minute.

2 Okay. When I meet with somebody, I write notes. I'm a
3 voluminous note-taker. So I always write down -- like, here's
4 one that says "called." And I talked to him from May 19,
5 2014; 7/11/14. Here's a -- that would be me doing -- meeting
6 with the defendant and talking to him at a preliminary
7 hearing. This would be -- some other dates here are for
8 5/22/14, 4/12/13. That's just in this one folder. So a
9 number of times.

10 **Q** Okay. So a number of times.

11 Can you just give me a recitation of what evidence that
12 you understand the State had against Mr. Brown?

13 **A** No, because I mean, I just -- as I said, I just got this
14 back. I listened to Mr. Brown, and I'm familiar, you know,
15 enough from what he explained to me about his case. I just --
16 I think the best way for me to describe how this is handled,
17 Mr. Brown says that we picked a jury or there was some jury
18 panel involved. Mr. Brown was on federal supervision, so
19 whatever was going to happen to Mr. Brown is going to have a
20 significant effect in his federal case.

21 Mr. Brown had a gun charge pending. In the federal
22 system, gun -- a simple gun charge that would be, you know, a
23 state court -- unlawful possession or something like that --
24 has tremendous consequences.

25 So I have looked at the record from when you and I were

1 talking, and I -- from what he was telling me about the case
2 and my recollection, my major concern would be trying to avoid
3 a gun conviction for Mr. Brown because it would significantly
4 have affected his federal problems or federal exposure.

5 So in terms of the facts -- when a person is stopped in a
6 car, you know, there's just all kinds of law that has to do
7 with whether or not a traffic stop is a valid constitutional
8 stop. Unfortunately, in this state, every motion and
9 suppressing, making arguments about violations of the Fourth
10 Amendment or illegal traffic stops must be made at the time of
11 trial.

12 He mentioned that I didn't file a motion to suppress. I
13 don't know because I haven't had a chance to look at this.
14 But if we had been talking about a jury or something like
15 that, I routinely have a form set that pops up in my computer
16 that's called trial motions. Those trial motions include a
17 motion to suppress if necessary.

18 So this case is about a traffic stop, and if I was
19 talking at all about the possibility of a trial, I would have
20 created one of those motions. But I don't know because this
21 is the first I have looked at my file in years.

22 But I do know that, when you're dealing with traffic
23 stops, you don't get to argue fruit of the poisonous tree or
24 any type of suppression things until you're actually going to
25 trial, which is the standard process in the procedural steps

1 of cases.

2 So this case, it appears from what he was saying, is
3 there were things related to it that had to do with a plea
4 offer, and ultimately, he chose to accept the plea offer.
5 Plea offers are not always perfect; they usually leave both
6 sides a little unhappy. I would have described to him what
7 his options were, and he would have told me what he wanted to
8 do.

9 I do not recall -- personally recall all the parts about
10 the SLED report being defective or having those issues. After
11 I were to review this case more, it's possible that I could
12 personally recall that. I do recall that I was trying to work
13 on things -- a plea offer that would help with his exposure
14 in this case and in the federal case.

15 Q All right. I'm going to stop you right here.

16 MS. MIMS: May we approach, Your Honor?

17 THE COURT: Of course.

18 Oh, the attorneys approach. I thought you meant can you
19 approach the witness.

20 All right. Mr. Thomas, she wants you to approach.

21 BENCH CONFERENCE

22 (A bench conference was held off the record and outside the
23 hearing of others.)

24 (Open court resumes as follows:)

25 THE COURT: -- of the State's and the agreement of the

1 Petitioner's attorney, we have decided -- Ms. Gay, in light of
2 the fact that you have just been provided a copy of your own
3 file for this case, it's really difficult for you to make any
4 meaningful responses to these questions at this time;
5 obviously, through no fault of your own.

6 So in order -- not to prejudice the Petitioner in any
7 way, shape or form, it's really better to keep the record
8 open, allow her time to review the file. I don't know how
9 long it will be, but certainly not more than 30 days, I
10 couldn't think, so that she can answer these questions in a
11 meaningful way so that neither side is prejudiced, so...

12 And when we reconvene to take the testimony, we can do it
13 by Webex. That's fine with me. And both attorneys have
14 agreed that's fine as well.

15 I think that's the best way to protect everybody's
16 interests.

17 Do you have a question?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: What's that?

20 THE DEFENDANT: I really don't think that's fair. She
21 had this from 2015. She know all this --

22 THE COURT: She doesn't have her file, Mr. Brown.

23 MS. GAY: Sir, you have had my file for over a year.

24 THE DEFENDANT: Why have we had your files?

25 MS. GAY: Because he asked for it.

1 THE DEFENDANT: No. Why have we had your files for over
2 a year?

3 MS. GAY: Because he asked me for them and I gave them to
4 him.

5 THE DEFENDANT: Who did we get them from?

6 MR. THOMAS: ODC.

7 THE DEFENDANT: I have been fighting this case for a long
8 time. She had plenty of time to go over this. I don't think
9 that's fair. I really don't think that's fair.

10 THE COURT: I think what would be really unfair to you
11 would be to expect her to answer questions on your PCR when
12 she can't answer the questions. I think that would be --
13 prejudice you far more than the 30 days' time.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay?

16 MR. THOMAS: Your Honor, if it please the Court, just for
17 the record too: I literally received this file from Columbia.
18 And I apologize. I just assumed that she would have retained
19 copies. And had I known, I certainly would have.

20 THE COURT: No, I don't think it's anybody's fault. I
21 mean, these things happen from time to time. It's not very --
22 it doesn't happen frequently but it happens. So it's okay.
23 We'll keep the record open for 30 days. I would like the
24 attorneys just to let me know.

25 Ms. Gay, if you could just take the next 30 days to kind

1 of --

2 MS. GAY: Yes, ma'am.

3 THE COURT: -- refamiliarize yourself with the case so
4 that when we reconvene your testimony by Webex, we can get you
5 in and out, and you can give meaningful responses. Okay?

6 MS. GAY: Yes, ma'am. Thank you.

7 THE COURT: All right. Thank you very much.

8 MR. THOMAS: Okay. Thank you, Your Honor.

9 (At 12:10 a.m., the above hearing concluded sine die.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: Deangelo Brown v State of SC

3 2016-CP-10-5736

4 DATE OF PROCEEDING: December 9, 2021

5
6 I, Bobbi J. Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings; **that said proceedings were transcribed**
9 **to the best of my ability from the audio recording and**
10 **supporting information**, and that I am neither counsel for,
11 related to, nor employed by any of the parties to this case,
12 and I have no interest, financial or otherwise, in its
13 outcome.

14 16 _____
17 Bobbi J. Fisher, RPR

18 NCRA Registered Professional Reporter (RPR)

19 Prepared: March 11, 2022

20 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER
21 SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY
22 OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES
23 OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR
24 NON-PARTIES MUST BE SENT TO THIS REPORTER AT
25 BFISHER@SCCOURTS.ORG.



Charleston Police Department FORENSIC SERVICES DIVISION



Lab #: L15-01609 #1

Drug Analysis

Case #: 15-011299

Charleston County Sheriff's Office
3505 Pinehaven Drive
Charleston Heights, SC 29405

July 30, 2015

Date Submitted: July 27, 2015

Suspect: Deangelo Brown

This is an official report of the Charleston Police Department Forensic Services Division and is to be used in conjunction with an official criminal investigation. This report contains the conclusions, opinions and interpretations of the analyst whose signature appears on the report.

Evidence

- Container 159796: Plastic bag
- Item 159796: Plastic bags with white powder residue (6)
- Item 159798: Plastic bag with tan substance
- Known 159798: Plastic bag
- Item 159798b: Plastic bag with tan substance
- Item 159796b: Plastic bags with white powder residue (9)
- Item 159796c: Plastic bags with residue (3)

Items	Weight	+/-	Results	Methods
Item 159798	0.10g	0.01	Heroin	Color Test FTIR GC/MS
Item 159798b	0.05g	0.01	Heroin	Color Test FTIR GC/MS

ADDITIONAL COMMENTS:

Item 159796, Item 159796b and Item 159796c: Insufficient Quantity for Analysis

For items in which an uncertainty is reported, that uncertainty has been assigned based on statistical calculations with a minimum coverage probability of 95%.

End of Report

Renee Hilton

Renee Hilton
Analyst

Case # L15-01609 - Chain of Custody Report

Forensic Services Division
Laboratory

EVIDENCE

L15-01609 Sub #1

Agency Case #15-011299

Container Plastic bag
 159796
 Evidence Plastic bag
 Package
 159796
 Evidence Plastic bag
 Package
 159798
 Item 159796 Plastic bags with white powder residue (6)
 Item 159798 Plastic bag with tan substance
 Known 159798 Plastic bag
 Item 159798b Plastic bag with tan substance
 Item 159796b Plastic bags with white powder residue (9)
 Item 159796c Plastic bags with residue (3)

L15-01609 Sub #2

Agency Case #15-011299

Container Plastic bag
 159796
 Evidence Plastic bag
 Package
 159796
 Item 159796 Plastic bags with white powder residue (6) x
 Item 159796b Plastic bags with white powder residue (9)
 Item 159796c Plastic bags with residue (3)
 Item 159796d Plastic bags with white powder residue (5)
 Item 159796e Plastic bags with white powder residue (8)
 Item 159796f Plastic bags with residue (2)

Transfers

L15-01609 - Container 159796

7/27/2015 10:18:50 AM Submitted by Officer RILEY, JASON from Charleston County Sheriff's Office.
 Received by Hilton, Renee at Forensic Services Division - Evidence. Delivery
 Method: Hand to Hand.

Reason: For Exam

Comments:

7/27/2015 10:18:50 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division -
 Evidence

Reason: For Exam

Comments:

Prepared by Hilton, Renee on Monday, 08 February 2016 10:59 AM.



7/27/2015 11:12:59 AM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

7/30/2015 11:03:55 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

8/3/2015 12:19:11 PM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/3/2015 12:19:11 PM Returned to Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/17/2015 10:52:42 AM Submitted by Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Received by Payne, Susan at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

8/17/2015 10:52:42 AM Placed in Storage at Safe by Payne, Susan at Forensic Services Division - Evidence

Reason: For Exam

Comments:

8/17/2015 1:26:10 PM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

8/19/2015 2:58:53 PM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

9/21/2015 11:17:55 AM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Riley

9/21/2015 11:17:55 AM Returned to Officer RILEY, JASON from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Riley

L15-01609 - Evidence Package 159796

7/27/2015 10:18:50 AM Submitted by Officer RILEY, JASON from Charleston County Sheriff's Office. Received by Hilton, Renee at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

7/27/2015 10:18:50 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: For Exam

Comments:

7/27/2015 11:12:59 AM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

7/30/2015 11:03:55 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

8/3/2015 12:19:11 PM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/3/2015 12:19:11 PM Returned to Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/17/2015 10:52:42 AM Submitted by Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Received by Payne, Susan at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

8/17/2015 10:52:42 AM Placed in Storage at Safe by Payne, Susan at Forensic Services Division - Evidence

Reason: For Exam

Comments:

8/17/2015 1:26:10 PM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

8/19/2015 2:58:53 PM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

9/21/2015 11:17:55 AM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Riley

9/21/2015 11:17:55 AM Returned to Officer RILEY, JASON from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Riley

L15-01609 - Item 159796

7/27/2015 10:18:50 AM Submitted by Officer RILEY, JASON from Charleston County Sheriff's Office. Received by Hilton, Renee at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

7/27/2015 10:18:50 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: For Exam

Comments:

7/27/2015 11:12:59 AM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

7/30/2015 11:03:55 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

8/3/2015 12:19:11 PM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/3/2015 12:19:11 PM Returned to Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/17/2015 10:52:42 AM Submitted by Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Received by Payne, Susan at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

8/17/2015 10:52:42 AM Placed in Storage at Safe by Payne, Susan at Forensic Services Division - Evidence

Reason: For Exam

Comments:

8/17/2015 1:26:10 PM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

8/19/2015 2:58:53 PM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

9/21/2015 11:17:55 AM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Riley

9/21/2015 11:17:55 AM Returned to Officer RILEY, JASON from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Riley

L15-01609 - Evidence Package 159798

7/27/2015 10:18:50 AM Submitted by Officer RILEY, JASON from Charleston County Sheriff's Office. Received by Hilton, Renee at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

7/27/2015 10:18:50 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: For Exam

Comments:

7/27/2015 11:12:59 AM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

7/30/2015 11:03:55 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

8/3/2015 12:19:11 PM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/3/2015 12:19:11 PM Returned to Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Hockreiter

L15-01609 - Item 159798

7/27/2015 10:18:50 AM Submitted by Officer RILEY, JASON from Charleston County Sheriff's Office. Received by Hilton, Renee at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

7/27/2015 10:18:50 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: For Exam

Comments:

7/27/2015 11:12:59 AM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

7/30/2015 11:03:55 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

8/3/2015 12:19:11 PM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/3/2015 12:19:11 PM Returned to Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Hockreiter

L15-01609 - Known 159798

7/27/2015 10:18:50 AM Submitted by Officer RILEY, JASON from Charleston County Sheriff's Office. Received by Hilton, Renee at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

7/27/2015 10:18:50 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: For Exam

Comments:

7/27/2015 11:12:59 AM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

7/30/2015 11:03:55 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

8/3/2015 12:19:11 PM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/3/2015 12:19:11 PM Returned to Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Hockreiter

L15-01609 - Item 159796b

7/27/2015 10:18:50 AM Submitted by Officer RILEY, JASON from Charleston County Sheriff's Office. Received by Hilton, Renee at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

7/27/2015 10:18:50 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: For Exam

Comments:

7/27/2015 11:12:59 AM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

7/30/2015 11:03:55 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

8/3/2015 12:19:11 PM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/3/2015 12:19:11 PM Returned to Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/17/2015 10:52:42 AM Submitted by Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Received by Payne, Susan at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

8/17/2015 10:52:42 AM Placed in Storage at Safe by Payne, Susan at Forensic Services Division - Evidence

Reason: For Exam

Comments:

8/17/2015 1:26:10 PM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

8/19/2015 2:58:53 PM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

9/21/2015 11:17:55 AM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Riley

9/21/2015 11:17:55 AM Returned to Officer RILEY, JASON from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Riley

L15-01609 - Item 159798b

7/27/2015 10:18:50 AM Submitted by Officer RILEY, JASON from Charleston County Sheriff's Office.
Received by Hilton, Renee at Forensic Services Division - Evidence. Delivery
Method: Hand to Hand.

Reason: For Exam

Comments:

7/27/2015 10:18:50 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division -
Evidence

Reason: For Exam

Comments:

7/27/2015 11:12:59 AM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug
Analysis.

Reason: For Exam

Comments:

7/30/2015 11:03:55 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division -
Evidence

Reason: Return

Comments:

8/3/2015 12:19:11 PM Removed from Storage by Payne, Susan at Forensic Services Division -
Evidence.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/3/2015 12:19:11 PM Returned to Officer HOCHREITER, CHRISTOPHER from Charleston County
Sheriff's Office. Returned by Payne, Susan at Forensic Services Division -
Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Hockreiter

L15-01609 - Item 159796c

7/27/2015 10:18:50 AM Submitted by Officer RILEY, JASON from Charleston County Sheriff's Office.
Received by Hilton, Renee at Forensic Services Division - Evidence Delivery
Method: Hand to Hand.

Reason: For Exam

Comments:

7/27/2015 10:18:50 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division -
Evidence

Reason: For Exam

Comments:

7/27/2015 11:12:59 AM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug
Analysis.

Reason: For Exam

Comments:

7/30/2015 11:03:55 AM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division -
Evidence

Reason: Return

Comments:

8/3/2015 12:19:11 PM Removed from Storage by Payne, Susan at Forensic Services Division -
Evidence.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/3/2015 12:19:11 PM Returned to Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Hockreiter

8/17/2015 10:52:42 AM Submitted by Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Received by Payne, Susan at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

8/17/2015 10:52:42 AM Placed in Storage at Safe by Payne, Susan at Forensic Services Division - Evidence

Reason: For Exam

Comments:

8/17/2015 1:26:10 PM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

8/19/2015 2:58:53 PM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

9/21/2015 11:17:55 AM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Riley

9/21/2015 11:17:55 AM Returned to Officer RILEY, JASON from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Riley

L15-01609 - Item 159796d

8/17/2015 10:52:42 AM Submitted by Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Received by Payne, Susan at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

8/17/2015 10:52:42 AM Placed in Storage at Safe by Payne, Susan at Forensic Services Division - Evidence

Reason: For Exam

Comments:

8/17/2015 1:26:10 PM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

8/19/2015 2:58:53 PM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

9/21/2015 11:17:55 AM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Riley

9/21/2015 11:17:55 AM Returned to Officer RILEY, JASON from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Riley

L15-01609 - Item 159796e

8/17/2015 10:52:42 AM Submitted by Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Received by Payne, Susan at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

8/17/2015 10:52:42 AM Placed in Storage at Safe by Payne, Susan at Forensic Services Division - Evidence

Reason: For Exam

Comments:

8/17/2015 1:26:10 PM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

8/19/2015 2:58:53 PM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

9/21/2015 11:17:55 AM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Riley

9/21/2015 11:17:55 AM Returned to Officer RILEY, JASON from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Riley

L15-01609 - Item 159796f

8/17/2015 10:52:42 AM Submitted by Officer HOCHREITER, CHRISTOPHER from Charleston County Sheriff's Office. Received by Payne, Susan at Forensic Services Division - Evidence. Delivery Method: Hand to Hand.

Reason: For Exam

Comments:

8/17/2015 10:52:42 AM Placed in Storage at Safe by Payne, Susan at Forensic Services Division - Evidence

Reason: For Exam

Comments:

8/17/2015 1:26:10 PM Removed from Storage by Hilton, Renee at Forensic Services Division - Drug Analysis.

Reason: For Exam

Comments:

8/19/2015 2:58:53 PM Placed in Storage at Safe by Hilton, Renee at Forensic Services Division - Evidence

Reason: Return

Comments:

9/21/2015 11:17:55 AM Removed from Storage by Payne, Susan at Forensic Services Division - Evidence.

Reason: Return

Comments: Returned to Ofc. Riley

9/21/2015 11:17:55 AM Returned to Officer RILEY, JASON from Charleston County Sheriff's Office. Returned by Payne, Susan at Forensic Services Division - Evidence. Return method: Hand to Hand.

Reason: Return

Comments: Returned to Ofc. Riley



EVIDENCE BY OCA: 15-011299



ID:159795: DIAMONDBACK DM 9MM HANDGUN WITH MAGAZINE (1 F)

STATUS: RETURNED

STORAGE: H-4

LOCATION: HIGHWAY 17 NEAR IOP CONNECTOR, MT PLEASANT SC

OWNER: CRYSTAL JONES

DATE: 7/15/2015

SUBMITTED BY: RISSANEN, AUSTIN T. 7/16/2015 8:26:05 AM

ENTERED BY: HOCHREITER, CHRISTOPHER S. 7/16/2015 1:18:28 PM

SUBSEQUENT CHAIN OF CUSTODY:

7/30/2015 8:15:19 AM: SOMMERFELDT, BRIAN K. — TEST FIRED FOR IBIS

12/18/2015 1:30:01 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

3/10/2016 9:25:11 AM: WATSON, MARK E. TO INV WALTERS — DISPOSITION CHANGED TO SIGNED OUT FOR INVESTIGATION

4/28/2016: RILEY, JASON H. FROM JOSH CHENEY — DISPOSITION CHANGED TO IN CUSTODY

5/31/2016 11:10:22 AM: KJELLMAN, K.B. — AUDITED

8/16/2016 3:52:52 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

2/16/2017 1:24:03 PM: McELROY, HERSEL M. — DISPOSITION CHANGED TO RETURNED

ID:159796: APPROXIMATELY 13 BAGS OF WHITE POWDER LIKE SUBSTANCE 5.7GG

STATUS: IN CUSTODY

STORAGE: 1B-49

LOCATION: HIGHWAY 17 NEAR IOP CONNECTOR, MT PLEASANT SC

OWNER: DEANGELO BROWN

DATE: 7/15/2015

SUBMITTED BY: RISSANEN, AUSTIN T. 7/16/2015 8:26:53 AM

ENTERED BY: HOCHREITER, CHRISTOPHER S. 7/16/2015 1:14:44 PM

SUBSEQUENT CHAIN OF CUSTODY:

7/27/2015 1:32:18 PM: RILEY, JASON H. TO CPD LAB — DISPOSITION CHANGED TO SIGNED OUT FOR INVESTIGATION

8/3/2015 1:45:28 PM: HOCHREITER, CHRISTOPHER S. FROM CPD LAB — DISPOSITION CHANGED TO IN CUSTODY

8/17/2015 12:50:31 PM: HOCHREITER TO CPD LAB — DISPOSITION CHANGED TO SIGNED OUT FOR INVESTIGATION

9/21/2015 2:35:09 PM: RILEY, JASON H. FROM CPD LAB — DISPOSITION CHANGED TO IN CUSTODY

12/10/2015 3:25:29 PM: JAMES, SHAWN P. — AUDITED

12/18/2015 1:30:02 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

3/10/2016 9:25:36 AM: WATSON, MARK E. TO INV WALTERS — DISPOSITION CHANGED TO SIGNED OUT FOR INVESTIGATION

4/28/2016: RILEY, JASON H. FROM JOSH CHENEY — DISPOSITION CHANGED TO IN CUSTODY

6/1/2016 10:20:41 AM: RILEY, JASON H. — AUDITED

8/16/2016 3:52:56 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

3/6/2017 4:31:08 PM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO TO BE DESTROYED

3/6/2017 4:31:15 PM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

5/2/2017 1:48:35 PM: KJELLMAN, KATHY B. — AUDITED

1/30/2018 10:48:17 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

ID:159797: BLACK DIGITAL SCALE**STATUS: IN CUSTODY****STORAGE: 377****LOCATION: HIGHWAY 17 NEAR IOP CONNECTOR, MT PLEASANT SC****OWNER: DEANGELO BROWN****DATE: 7/15/2015****SUBMITTED BY: RISSANEN, AUSTIN T. 7/16/2015 8:27:44 AM****ENTERED BY: HOCHREITER, CHRISTOPHER S. 7/16/2015 1:24:04 PM****SUBSEQUENT CHAIN OF CUSTODY:**

10/8/2015 4:06:06 PM: JAMES, SHAWN P. — AUDITED

12/18/2015 1:30:03 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

3/10/2016 9:26:16 AM: WATSON, MARK E. TO DEP WALTERS — DISPOSITION CHANGED TO SIGNED OUT FOR INVESTIGATION

4/28/2016: RILEY, JASON H. FROM JOSH CHENEY — DISPOSITION CHANGED TO IN CUSTODY

5/4/2016 9:24:12 AM: McMANIGAL, PAUL D. — AUDITED

8/16/2016 3:53:00 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

3/6/2017 4:31:19 PM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

4/26/2017 9:14:08 AM: RILEY, JASON H. — AUDITED

1/30/2018 10:48:17 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

ID:159798: 3 CLEAR PLASTIC ZIP LOCK BAGS WITH BROWN SUBSTANCE (UNKNOWN SUBSTANCE)**STATUS: IN CUSTODY****STORAGE: 1B-49****LOCATION: HIGHWAY 17 NEAR IOP CONNECTOR, MT PLEASANT SC****OWNER: DEANGELO BROWN****DATE: 7/15/2015****SUBMITTED BY: RISSANEN, AUSTIN T. 7/16/2015 8:28:45 AM****ENTERED BY: HOCHREITER, CHRISTOPHER S. 7/16/2015 1:17:02 PM****SUBSEQUENT CHAIN OF CUSTODY:**

7/27/2015 1:32:36 PM: RILEY, JASON H. TO CPD LAB — DISPOSITION CHANGED TO SIGNED OUT FOR INVESTIGATION

8/3/2015 1:45:55 PM: HOCHREITER, CHRISTOPHER S. FROM CPD LAB — DISPOSITION CHANGED TO IN CUSTODY

12/10/2015 3:25:31 PM: JAMES, SHAWN P. — AUDITED

12/18/2015 1:30:05 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

3/10/2016 9:26:35 AM: WATSON, MARK E. TO INV WALTERS — DISPOSITION CHANGED TO SIGNED OUT FOR INVESTIGATION

4/28/2016: RILEY, JASON H. FROM JOSH CHENEY — DISPOSITION CHANGED TO IN CUSTODY

6/1/2016 10:20:42 AM: RILEY, JASON H. — AUDITED

8/16/2016 3:53:03 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

3/6/2017 4:31:36 PM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

5/2/2017 1:48:37 PM: KJELLMAN, KATHY B. — AUDITED

1/30/2018 10:48:17 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

ID:159825: (7) 9MM ROUNDS FROM #159795**STATUS: RETURNED****STORAGE: 601B****LOCATION: HIGHWAY 17 NEAR IOP CONNECTOR, MT PLEASANT SC****OWNER: CRYSTAL JONES****DATE: 7/15/2015****SUBMITTED BY: HOCHREITER, CHRISTOPHER S. 7/16/2015 1:19:47 PM****ENTERED BY: HOCHREITER, CHRISTOPHER S. 7/16/2015 1:19:47 PM****SUBSEQUENT CHAIN OF CUSTODY:**

8/6/2015 2:43:23 PM: MEYER, ERIN — AUDITED

12/18/2015 1:30:06 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

3/10/2016 9:26:53 AM: WATSON, MARK E. TO INV WALTERS — DISPOSITION CHANGED TO SIGNED OUT FOR INVESTIGATION

4/28/2016: RILEY, JASON H. FROM JOSH CHENEY — DISPOSITION CHANGED TO IN CUSTODY

5/4/2016 10:48:29 AM: MEYER, ERIN — AUDITED

8/16/2016 3:53:10 AM: RISSANEN, AUSTIN T. — DISPOSITION CHANGED TO IN CUSTODY

2/16/2017 1:25:39 PM: McELROY, HERSHEL M. — DISPOSITION CHANGED TO RETURNED



CHARLESTON COUNTY SHERIFF'S OFFICE

3691 LEEDS AVE
CHARLESTON, SC 294057437
(843) 202-1700

PROPERTY CHAIN OF CUSTODY

CASE NUMBER

2015011299

CASE TYPE

TRAFFIC STOP (EXPUNGED)

CASE						
REPORT DATE 07/15/2015	REPORT TYPE EXPUNGED - EXPUNGED			OFFICER 10647 - RISSANEN, AUSTIN T		
LOCATION						
CHARLESTON, SC 29464						
PROPERTY ITEM						
ITEM NO 2	CR REF NO	INVOLVEMENT EVIDENCE - EVIDENCE	EVIDENCE TYPE		PROPERTY TYPE FIREARM	
QUANTITY		DESCRIPTION DIAMONDBACK DM.9MM HANDGUN WITH MAGAZINE (1 F)				
SERIAL YE7866	OAN	TAG	BAR CODE 0159795	CUSTODY DATE 07/15/2015 00:00		
NARCOTICS TYPE		NARCOTICS DESCRIPTION				NARCOTICS QUANTITY
COMMENTS AMMUNITION MOVED TO ENTRY #159825 /// CRYSTAL JONES 843-804-2331 CALLED 4/19/16 REF TO RETURN OF GUN EMAILED RISSANEN SAME /// JHR CSH - CH VERIFIED BY SGT JAMES OWNER: JONES, CRYSTAL L OWN ADDR: 2612 MADDEN DRIVE, SC 29405 OWNERDL: 100195347 OWNERDOB: 1986-01-28 OWNER RACE: B OWNER SEX: M						
RELATIONSHIPS						
REF #	RELATIONSHIP	NAME / ADDRESS			DOB	PHONE
CHAIN OF CUSTODY						
DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
07/30/2015	08:15	TEST FIRED	TEST FIRED			CONVERSION E -
12/18/2015	01:30	DISPOSITIO	DISPOSITIO			CONVERSION E -
03/10/2016	09:25	DISPOSITIO	DISPOSITIO			CONVERSION E -
04/28/2016	00:00	DISPOSITIO	DISPOSITIO			CONVERSION E -
05/31/2016	11:10	AUDITED	AUDITED			CONVERSION E -
08/16/2016	03:52	DISPOSITIO	DISPOSITIO			CONVERSION E -
02/16/2017	13:24	DISPOSITIO	DISPOSITIO			CONVERSION E -
PROPERTY ITEM						
ITEM NO 3	CR REF NO	INVOLVEMENT EVIDENCE - EVIDENCE	EVIDENCE TYPE		PROPERTY TYPE DRUGS	
QUANTITY		DESCRIPTION APPROXIMATELY 13 BAGS OF WHITE POWDER LIKE SUBSTANCE 5.7GG DRUGS				
SERIAL	OAN	TAG	BAR CODE 0159796	CUSTODY DATE 07/15/2015 00:00		
NARCOTICS TYPE		NARCOTICS DESCRIPTION				NARCOTICS QUANTITY
COMMENTS CSH WRRESULT INSUFFICIENT QUANTITY FOR ANALYSIS OWNER: BROWN, DEANGELO OWN ADDR: 2901 CHARLENE DR N CHARLESTON OWNERDOB: 1986-01-28 OWNER RACE: b OWNER SEX: m						
RELATIONSHIPS						
REF #	RELATIONSHIP	NAME / ADDRESS			DOB	PHONE
CHAIN OF CUSTODY						
DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
07/27/2015	13:32	DISPOSITIO	DISPOSITIO			CONVERSION E -
08/03/2015	13:45	DISPOSITIO	DISPOSITIO			CONVERSION E -
08/17/2015	12:50	DISPOSITIO	DISPOSITIO			CONVERSION E -
09/21/2015	14:35	DISPOSITIO	DISPOSITIO			CONVERSION E -
12/10/2015	15:25	AUDITED	AUDITED			CONVERSION E -
12/18/2015	01:30	DISPOSITIO	DISPOSITIO			CONVERSION E -
03/10/2016	09:25	DISPOSITIO	DISPOSITIO			CONVERSION E -
04/28/2016	00:00	DISPOSITIO	DISPOSITIO			CONVERSION E -
06/01/2016	10:20	AUDITED	AUDITED			CONVERSION E -

08/16/2016	03:52	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/06/2017	16:31	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/06/2017	16:31	DISPOSITIO	DISPOSITIO			CONVERSION_E -
05/02/2017	13:48	AUDITED	AUDITED			CONVERSION_E -
01/30/2018	10:48	DISPOSITIO	DISPOSITIO			CONVERSION_E -
04/11/2018	08:37	AUDIT 2018		DRUGS / 1B-49 /		10666 - MCELROY, HERSHEL
04/11/2018	08:37	AUDIT 2018		DRUGS / 1B-49 /		10666 - MCELROY, HERSHEL
04/11/2018	08:37	AUDIT 2018		DRUGS / 1B-49 /		10666 - MCELROY, HERSHEL
01/19/2021	10:04	AUDIT 2020		DRUGS / 1B-49 /		10055 - WATTS, LORI J
01/19/2021	10:05	AUDIT 2020		DRUGS / 1B-49 /		10055 - WATTS, LORI J
01/19/2021	10:05	AUDIT 2020		DRUGS / 1B-49 /		10055 - WATTS, LORI J

PROPERTY ITEM

ITEM NO 5	CR REF NO	INVOLVEMENT EVIDENCE - EVIDENCE	EVIDENCE TYPE	PROPERTY TYPE DRUGS
QUANTITY		DESCRIPTION BLACK DIGITAL SCALE DRUGS		
SERIAL	OAN	TAG	BAR CODE 0159797	CUSTODY DATE 07/15/2015 00:00
NARCOTICS TYPE		NARCOTICS DESCRIPTION		NARCOTICS QUANTITY

COMMENTS

CSH OWNER: BROWN, DEANGELO OWN ADDR: 2901 CHARLENE DR N CHARLESTON

RELATIONSHIPS

REF #	RELATIONSHIP	NAME / ADDRESS	DOB	PHONE

CHAIN OF CUSTODY

DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
10/08/2015	16:06	AUDITED	AUDITED			CONVERSION_E -
12/18/2015	01:30	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/10/2016	09:26	DISPOSITIO	DISPOSITIO			CONVERSION_E -
04/28/2016	00:00	DISPOSITIO	DISPOSITIO			CONVERSION_E -
05/04/2016	09:24	AUDITED	AUDITED			CONVERSION_E -
08/16/2016	03:53	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/06/2017	16:31	DISPOSITIO	DISPOSITIO			CONVERSION_E -
04/26/2017	09:14	AUDITED	AUDITED			CONVERSION_E -
01/30/2018	10:48	DISPOSITIO	DISPOSITIO			CONVERSION_E -
06/06/2018	09:11	AUDIT 2018		EVIDENCE / 377 /		10425 - SANDERS, CHRISTOPHER A
12/21/2020	10:27	AUDIT 2020		EVIDENCE / 377 /		10666 - MCELROY, HERSHEL

PROPERTY ITEM

ITEM NO 6	CR REF NO	INVOLVEMENT EVIDENCE - EVIDENCE	EVIDENCE TYPE	PROPERTY TYPE DRUGS
QUANTITY		DESCRIPTION 3 CLEAR PLASTIC ZIP LOCK BAGS WITH BROWN SUBSTANCE (UNKNOWN SUBSTANCE)		
SERIAL	OAN	TAG	BAR CODE 0159798	CUSTODY DATE 07/15/2015 00:00
NARCOTICS TYPE		NARCOTICS DESCRIPTION		NARCOTICS QUANTITY

COMMENTS

CSH WRRESULT HEROIN 0.10 GRAMS AND BAG LABELED (b) HEROIN 0.05 GRAMS = TW0.15 GRAMS OWNER: BROWN, DEANGELO OWN ADDR: 2901 CHARLENE DR N CHARLESTON

RELATIONSHIPS

REF #	RELATIONSHIP	NAME / ADDRESS	DOB	PHONE

CHAIN OF CUSTODY

DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
07/27/2015	13:32	DISPOSITIO	DISPOSITIO			CONVERSION_E -
08/03/2015	13:45	DISPOSITIO	DISPOSITIO			CONVERSION_E -
12/10/2015	15:25	AUDITED	AUDITED			CONVERSION_E -
12/18/2015	01:30	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/10/2016	09:26	DISPOSITIO	DISPOSITIO			CONVERSION_E -
04/28/2016	00:00	DISPOSITIO	DISPOSITIO			CONVERSION_E -
06/01/2016	10:20	AUDITED	AUDITED			CONVERSION_E -

08/16/2016	03:53	DISPOSITIO	DISPOSITIO		CONVERSION_E -
03/06/2017	16:31	DISPOSITIO	DISPOSITIO		CONVERSION_E -
05/02/2017	13:48	AUDITED	AUDITED		CONVERSION_E -
01/30/2018	10:48	DISPOSITIO	DISPOSITIO		CONVERSION_E -
04/11/2018	08:37	AUDIT 2018		DRUGS / 1B-49 /	10666 - MCELROY, HERSEL
04/11/2018	08:37	AUDIT 2018		DRUGS / 1B-49 /	10666 - MCELROY, HERSEL
01/19/2021	10:04	AUDIT 2020		DRUGS / 1B-49 /	10055 - WATTS, LORI J

PROPERTY ITEM

ITEM NO 7	CR REF NO	INVOLVEMENT EVIDENCE - EVIDENCE	EVIDENCE TYPE	PROPERTY TYPE FIREARM
QUANTITY		DESCRIPTION (7) 9MM ROUNDS FROM #159795		
SERIAL	OAN	TAG	BAR CODE 0159825	CUSTODY DATE 07/15/2015 00:00
NARCOTICS TYPE		NARCOTICS DESCRIPTION		NARCOTICS QUANTITY
COMMENTS CSH OWNER: JONES, CRYSTAL OWN ADDR: 2612 MADDEN DRIVE, SC 29405				

RELATIONSHIPS

REF #	RELATIONSHIP	NAME / ADDRESS	DOB	PHONE

CHAIN OF CUSTODY

DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
08/06/2015	14:43	AUDITED	AUDITED			CONVERSION_E -
12/18/2015	01:30	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/10/2016	09:26	DISPOSITIO	DISPOSITIO			CONVERSION_E -
04/28/2016	00:00	DISPOSITIO	DISPOSITIO			CONVERSION_E -
05/04/2016	10:48	AUDITED	AUDITED			CONVERSION_E -
08/16/2016	03:53	DISPOSITIO	DISPOSITIO			CONVERSION_E -
02/16/2017	13:25	DISPOSITIO	DISPOSITIO			CONVERSION_E -

PROPERTY ITEM

ITEM NO 8	CR REF NO	INVOLVEMENT EVIDENCE - EVIDENCE	EVIDENCE TYPE	PROPERTY TYPE OTHER
QUANTITY		DESCRIPTION PHOTOGRAPHS OF CONTRABAND OTHER		
SERIAL	OAN	TAG	BAR CODE 0159848	CUSTODY DATE 07/16/2015 00:00
NARCOTICS TYPE		NARCOTICS DESCRIPTION		NARCOTICS QUANTITY
COMMENTS CSH WRRESULT COPY SENT BY C. RAGER 8/27/15, 9/29/15				

RELATIONSHIPS

REF #	RELATIONSHIP	NAME / ADDRESS	DOB	PHONE

CHAIN OF CUSTODY

DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
12/18/2015	01:30	DISPOSITIO	DISPOSITIO			CONVERSION_E -
05/20/2016	10:55	AUDITED	AUDITED			CONVERSION_E -
08/16/2016	03:53	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/06/2017	16:31	DISPOSITIO	DISPOSITIO			CONVERSION_E -
04/07/2017	10:53	AUDITED	AUDITED			CONVERSION_E -
01/30/2018	10:48	DISPOSITIO	DISPOSITIO			CONVERSION_E -
05/17/2018	06:58	AUDIT 2018		MISC / CD FILE /		9491 - REITER, LEVI D
01/26/2021	13:57	AUDIT 2020		MISC / CD FILE /		10055 - WATTS, LORI J

PROPERTY ITEM						
ITEM NO	CR REF NO	INVOLVEMENT	EVIDENCE TYPE	PROPERTY TYPE		
9		EVIDENCE - EVIDENCE		OTHER		
QUANTITY		DESCRIPTION				
		DVD CONTAINING IN-CAR VIDEO FROM RISSANEN, AUSTIN T. OTHER				
SERIAL	OAN	TAG	BAR CODE	CUSTODY DATE		
			0160008	07/22/2015 00:00		
NARCOTICS TYPE		NARCOTICS DESCRIPTION			NARCOTICS QUANTITY	
COMMENTS						
SPJ WRRESULT COPY SENT						
RELATIONSHIPS						
REF #	RELATIONSHIP	NAME / ADDRESS		DOB	PHONE	
CHAIN OF CUSTODY						
DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
12/18/2015	01:30	DISPOSITIO	DISPOSITIO			CONVERSION E -
05/20/2016	10:55	AUDITED	AUDITED			CONVERSION E -
08/16/2016	03:53	DISPOSITIO	DISPOSITIO			CONVERSION E -
03/06/2017	16:31	DISPOSITIO	DISPOSITIO			CONVERSION E -
04/07/2017	10:53	AUDITED	AUDITED			CONVERSION E -
01/30/2018	10:48	DISPOSITIO	DISPOSITIO			CONVERSION E -
05/17/2018	06:58	AUDIT 2018		MISC / CD FILE /		9491 - REITER, LEVI D
01/26/2021	13:57	AUDIT 2020		MISC / CD FILE /		10055 - WATTS, LORI J
PROPERTY ITEM						
ITEM NO	CR REF NO	INVOLVEMENT	EVIDENCE TYPE	PROPERTY TYPE		
10		EVIDENCE - EVIDENCE		FIREARM		
QUANTITY		DESCRIPTION				
		TEST FIRED PROJECTILE, TEST FIRED CASING (1 F) FL H-4				
SERIAL	OAN	TAG	BAR CODE	CUSTODY DATE		
TF 1 CC & TF 1 B			0160263	07/22/2015 00:00		
NARCOTICS TYPE		NARCOTICS DESCRIPTION			NARCOTICS QUANTITY	
COMMENTS						
BOX 1 OF 1						
BKS WRRESULT WORK COMPLETED						
RELATIONSHIPS						
REF #	RELATIONSHIP	NAME / ADDRESS		DOB	PHONE	
CHAIN OF CUSTODY						
DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
12/18/2015	01:30	DISPOSITIO	DISPOSITIO			CONVERSION E -
01/08/2016	11:38	AUDITED	AUDITED			CONVERSION E -
06/02/2016	12:27	AUDITED	AUDITED			CONVERSION E -
08/16/2016	03:53	DISPOSITIO	DISPOSITIO			CONVERSION E -
03/06/2017	16:31	DISPOSITIO	DISPOSITIO			CONVERSION E -
04/13/2017	11:35	AUDITED	AUDITED			CONVERSION E -
04/17/2017	14:25	AUDITED	AUDITED			CONVERSION E -
08/07/2018	10:17	AUDIT 2018		BALLISTICS / IBIS /		9734 - SOMMERFELDT, BRIAN K
08/07/2018	10:17	AUDIT 2018		BALLISTICS / IBIS /		9734 - SOMMERFELDT, BRIAN K
PROPERTY ITEM						
ITEM NO	CR REF NO	INVOLVEMENT	EVIDENCE TYPE	PROPERTY TYPE		
11		EVIDENCE - EVIDENCE		OTHER		
QUANTITY		DESCRIPTION				
		ONE LPC FROM DIGITALSCALE EVIDENCE #159797 OTHER				
SERIAL	OAN	TAG	BAR CODE	CUSTODY DATE		
			0165592	01/12/2016 00:00		
NARCOTICS TYPE		NARCOTICS DESCRIPTION			NARCOTICS QUANTITY	
COMMENTS						
JHR						

RELATIONSHIPS

REF #	RELATIONSHIP	NAME / ADDRESS	DOB	PHONE

CHAIN OF CUSTODY

DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
02/12/2016	13:39	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/10/2016	10:10	OUT FOR IN	OUT FOR IN			CONVERSION_E -
04/28/2016	00:00	DISPOSITIO	DISPOSITIO			CONVERSION_E -
05/23/2016	12:06	AUDITED	AUDITED			CONVERSION_E -
08/16/2016	03:53	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/06/2017	16:31	DISPOSITIO	DISPOSITIO			CONVERSION_E -
04/06/2017	14:10	AUDITED	AUDITED			CONVERSION_E -
01/30/2018	10:48	DISPOSITIO	DISPOSITIO			CONVERSION_E -
04/26/2018	14:24	AUDIT 2018		FINGERPRINTS / LPF2 /		10055 - WATTS, LORI J
01/29/2021	15:06	AUDIT 2020		FINGERPRINTS / LPF2 /		10775 - CONKEY, ALESSANDRA IVETTE

PROPERTY ITEM

ITEM NO 12	CR REF NO	INVOLVEMENT EVIDENCE - EVIDENCE	EVIDENCE TYPE	PROPERTY TYPE OTHER
QUANTITY		DESCRIPTION BODY CAM VIDEO - DEP. FUNSCH OTHER		
SERIAL	OAN	TAG	BAR CODE 0167639	CUSTODY DATE 04/28/2016 00:00
NARCOTICS TYPE		NARCOTICS DESCRIPTION		NARCOTICS QUANTITY
COMMENTS JHR				

RELATIONSHIPS

REF #	RELATIONSHIP	NAME / ADDRESS	DOB	PHONE

CHAIN OF CUSTODY

DATE	TIME	TRANSACTION	REASON	PROPERTY LOCATION	RECEIVING PERSON	PIN / OFFICER
04/28/2016	00:00	FROM COURT	FROM COURT			CONVERSION_E -
05/20/2016	10:55	AUDITED	AUDITED			CONVERSION_E -
08/16/2016	03:53	DISPOSITIO	DISPOSITIO			CONVERSION_E -
03/06/2017	16:31	DISPOSITIO	DISPOSITIO			CONVERSION_E -
04/07/2017	10:53	AUDITED	AUDITED			CONVERSION_E -
01/30/2018	10:48	DISPOSITIO	DISPOSITIO			CONVERSION_E -
05/17/2018	06:58	AUDIT 2018		MISC / CD FILE /		9491 - REITER, LEVI D
01/26/2021	13:57	AUDIT 2020		MISC / CD FILE /		10055 - WATTS, LORI J
01/26/2021	13:57	AUDIT 2020		MISC / CD FILE /		10055 - WATTS, LORI J

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) Case No. 2016-CP-10-5736
-----X
3 DEANGELO L. BROWN,)
4 Applicant,)
5 vs.) TRANSCRIPT OF RECORD
6 STATE OF SOUTH CAROLINA,)
7 State.)
-----X

8 February 23, 2022

9 CONTINUED POST-CONVICTION RELIEF HEARING

10 B E F O R E:

11 The Honorable Jennifer B. McCoy, Presiding Judge

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

13 Tommy A. Thomas, Esq.
14 Attorney for the Applicant

15 Lauren T. Mims, Esq.
16 Attorney for the State

17
18
19
20
21
22
23 Recorded by: Webex Recording

24 Transcribed by: Bobbi Fisher, RPR

25 I N D E X

1	WITNESS/DESCRIPTION	PAGE
2	MELISSA GAY	
3	Direct Examination by Ms. Mims	3
4		
5		
6		
7	E X H I B I T S	
8	(None.)	
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20	COURT REPORTER LEGEND	
21	Dash (--)	Indicates an interruption in speech
22	Ellipses (...)	Indicates trailing off in speech
23	(ph)	Indicates phonetic word
24	[Verbatim]	Indicates the word is said as written
25	(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

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

2 (Whereupon, the following proceedings commenced as follows:)

3 THE COURT: All right. So this is the State's witness;
4 is this right, Ms. Mims?

5 MS. MIMS: Yes.

6 THE COURT: All right. Well, Ms. Gay, you are here. I
7 would ask you to raise your right hand for me.

8 MELISSA GAY,

9 after having been duly sworn, was examined and testified
10 to as follows:

11 THE COURT: All right. Take your hand down. State your
12 full name and spell your last.

13 THE WITNESS: My name is Melissa Gay, spelled G-a-y.

14 THE COURT: Thank you so much.

15 Ms. Mims, your witness.

16 D I R E C T E X A M I N A T I O N

17 BY MS. MIMS:

18 Q All right. We'll begin where we were last time.

19 Ms. Gay, how long have you been practicing law?

20 A I got my license in 1991. So I think I'm almost -- I'm
21 right at 31 years.

22 Q Okay.

23 A Despite the break in the middle.

24 Q And where have you been practicing law?

25 A I practice in the state of South Carolina. I actually

1 practice all over the state. My primary focus is in the
2 Lowcountry, which sometimes goes all the way up to Columbia.
3 But -- and I do criminal defense. Not entirely, but probably
4 85 percent.

5 **Q** Okay. And how many times did you meet with Applicant
6 prior to his guilty plea?

7 **A** Okay. So this is my file, what I have reviewed. And I
8 keep documents. I have sheets of paper that I wrote on. And
9 so I have one, two, three, four -- that's in this folder.
10 Hold on a second. Five. Hold on. I have five pieces of
11 paper -- no, more. Hold on. Five, six, seven, eight. So I
12 have about at least eight, nine -- maybe that's not one --
13 somewhere between eight and ten pages of me, like, writing the
14 date on the top. And that's when I either talked to him,
15 talked to family member, talked to the solicitor, talked to a
16 witness. But I think that all of these are about talking with
17 him.

18 And also, at that time, we could freely go into the
19 Charleston County Jail, and so I would have also been at the
20 jail to talk to him as well. I don't know how many times I
21 may have gone to the jail.

22 **THE COURT:** Hang on right quick.

23 **Mr. Brown,** what's going on?

24 **THE DEFENDANT:** Trying to get a pen.

25 **THE COURT:** Okay. Let's take a -- all right. You have

1 one?

2 THE DEFENDANT: Can I get a pen?

3 THE COURT: Do you want us to stop for a minute or what?

4 THE DEFENDANT: Thank you, ma'am.

5 THE COURT: All right. Thank you. Go ahead.

6 BY MS. MIMS:

7 Q And, so, were you appointed or retained?

8 A I was retained.

9 Q Okay. And, so, I know this ended up being a plea, but
10 did you file any Brady or Rule 5 motions before you, you know,
11 decided to take a plea?

12 A Yes, ma'am.

13 Q And if you could, just tell me what kind of evidence the
14 State had against Mr. Brown.

15 A Okay. So I'm pulling out a folder that's got a lot of
16 stuff in it. This would be -- Mr. Brown had several different
17 charges at different times, so there's a lot of stuff
18 associated with my file, some of which has to do with this
19 charge and some of which has to do with some other stuff.

20 So I have got to figure out which one is -- like, for
21 instance, this is a charge of robbery, just so you'll know.
22 That's not the one we're talking about.

23 And then --

24 THE DEFENDANT: What is she talking about?

25 A I'm looking at a -- it says: Kelvin Brown positive,

1 falsely identified -- I mean, this is just stuff. These are
2 pieces of paper in here. So I'm going to try to figure out
3 how -- okay. So I did a Rule 5 on October 4, 2013, for that
4 one. So I need to go to -- this is, I don't think, related to
5 this incident is what I'm trying to say. Let me get this one.
6 All right.

7 There was a drug -- he was charged with two counts of
8 trafficking, and he was charged with the one where they
9 claimed that he -- what's the name of it where they claim that
10 he was withholding information on an investigation that he
11 didn't help them try to give them information? So that's that
12 one.

13 So this one is not this.

14 **Q** Obstruction of justice?

15 **A** Obstruction of justice, yes.

16 And so he had two counts of trafficking and two counts of
17 obstruction of justice -- and a count of obstruction of
18 justice related to this arrest.

19 **Q** And so what was the -- what evidence had you received
20 from the State or any discovery regarding this matter?

21 **A** I would have received a copy of a police report, which I
22 would have sent him a copy of, because he was in the jail, so
23 I would have mailed it to him, possibly even dropped it off,
24 but I think it was probably mailed to him.

25 And then the other thing that I would have received is a

1 SLED report, which is something right here that I see:
2 Forensic Services Division. And this is the SLED report
3 related to an arrest that occurred on the Case No. 15-011299,
4 which is this case that we're talking about.

5 Q And, so, did you discuss the discovery material with the
6 Applicant?

7 A Yes, I did.

8 Q And what were your discussions, if you can remember?

9 A Well, this was back in 2015, and honestly, I can't
10 remember specific things that may have been discussed.
11 However, I do know that I have lots of information about me
12 talking to him and pieces of paper with written dates and me
13 referring to things about the arrest and all these things.

14 This case had to do with drugs and it had to do with the
15 fact that there were two trafficking charges: One for
16 cocaine, one for heroin pending. And so I would have
17 discussed all of the information that I have received about
18 the arrest and about the SLED report with him.

19 Q And so what kind of investigations did you do into that
20 or did you do any investigation into that?

21 A Okay. So, most of the time -- I did a preliminary
22 hearing. I know that because I saw the notes in the file.
23 And so I -- that would have been an investigative tool to find
24 out more about why and how he got arrested.

25 In terms of the SLED reports, I don't generally routinely

1 go off and ask for, you know, another expert opinion for the
2 SLED weights. We generally, in my practice, generally --
3 unless my client wants to hire an expert, which has happened
4 in the past, most of the time, the SLED reports stand for
5 themselves. That is the accurate weight and that is the
6 accurate substance. Occasionally, as I said, some clients
7 want to get an expert opinion on that.

8 So I would have discussed with him the facts of the
9 arrest, why it's -- why it was a charge. These charges were
10 reduced down, I believe, to PWID. And so that's what I
11 recall.

12 And that means that there would be some discussions about
13 the charge itself and that the solicitor was offering to
14 reduce it and stuff. But in terms of going out or doing
15 investigative work that is what we would normally think of as
16 sending an investigator to interview witnesses or something
17 like that, I don't see any information like that in this file.

18 **Q** Thank you, Ms. Gay.

19 Did you discuss the potential sentences with Mr. Brown
20 regarding what he was pleaing to?

21 **A** Yes.

22 And Mr. Brown is making a bunch of facial expressions,
23 and he's shook his head like I didn't go out and interview his
24 witness. I did see in my file that I did talk to a witness.
25 If I need to get specific on who that person is, that is in my

1 file when I was reviewing it.

2 So if he thought that there was a person that I was
3 supposed to talk to, I do believe I talked to a person about
4 his case that was not about him but maybe more about the
5 facts, and I do have that in my file. So I don't remember
6 specifically why that person was relevant, but I do have
7 information in my file that I did contact someone else about
8 this case.

9 I would have discussed with Mr. Brown the exposure of his
10 charges as trafficking. Always, we have to discuss
11 Mr. Brown's prior record and what's going on in terms of --
12 please don't do that. Don't do that.

13 So if we -- I'm in the middle of a hearing.

14 So if we are -- if we're going to talk about drug
15 charges, we always determine if there's a prior record. We
16 always determine whether or not there's an enhanceable event
17 to possibly make the penalty ranges higher.

18 So Mr. Brown was given a plea offer that was to reduce
19 the charges to possession with intent to distribute, which, on
20 its face, would be much better than the trafficking.

21 This is what I have determined about Mr. Brown's case.
22 Mr. Brown's argument is that I, I guess you could say,
23 encouraged him to plea to a charge that the State could not
24 prove. And I can tell you what it is I found out and then
25 whatever (indiscernible) I guess.

1 Q We'll come back to that question.

2 A Okay.

3 Q And that's outside of the scope of what I asked you.

4 So did you -- was it Applicant's decision to decide -- or
5 was it Applicant's decision to plead guilty and did he
6 understand the consequences of his plea?

7 A Do you want me to really answer that? I don't think he
8 did, and I think I know why. And that's what I'm talking
9 about, about my review of this case, is that I believe that a
10 person has to have accurate information to determine if they
11 are pleading freely and voluntarily. And I have decided,
12 after reviewing this file, that I don't believe that Mr. Brown
13 had accurate information, and that's because I have looked at
14 it and evaluated it and looked at what he said, and I think
15 that's the case.

16 And so I'm under oath and I'm telling you that I don't
17 believe that I advised him properly about the charge of
18 possession -- or the charge at that time was trafficking
19 cocaine, which he ultimately pled to the possession with
20 intent to distribute.

21 And I don't believe it's -- after reviewing it, I don't
22 believe it's a prosecutable case, and I should have advised
23 him, "Hey, this is not even a case. Let's talk about some
24 plea negotiations based on all that." Because he did plead
25 guilty and he did plead guilty because I was saying, in the

1 totality, you know, this is a good offer and some things.

2 But after further evaluating what it is that's being said
3 in the PCR and looking more closely at it, he -- in the SLED
4 report, there is no -- they didn't find any cocaine in the
5 test.

6 And so he did get arrested for cocaine, and we don't have
7 to talk about the law and I don't have to give my opinion of
8 it, but what I'm saying is it does not appear in this SLED
9 report that there is any positive test for cocaine.

10 So I have looked at it and I'm sure at the time I may
11 have advised him, "I think this plea offer is in your best
12 interest. This is a global plea offer. This is what you need
13 to do to handle your exposure on all of this."

14 But, in retrospect, looking at this, I do not know that
15 this could have been prosecuted, and if it could not have been
16 prosecuted, I should not have told him that this was part of
17 the global plea and this might be in your best interest.
18 That's literally what I found out after I looked at all this.

19 MS. MIMS: I beg the Court's indulgence one minute, Your
20 Honor, if I may.

21 (Pause in the proceedings.)

22 MS. MIMS: I apologize about that, Your Honor.

23 BY MS. MIMS:

24 Q So, Ms. Gay, from my understanding, this -- you were
25 prepared to go to trial for this case; correct?

1 **A** I'm always prepared to go to trial if they don't plead.
2 Honestly, ma'am, I can't remember if there was a jury panel
3 sitting in the other room or not. I don't have any trial
4 motions prepared, which is something we were talking about the
5 last time, like the ones that are about, you know, voir dire
6 and, you know, stuff. I don't have those prepared that were
7 in my file for Mr. Brown, so I can't remember personally
8 whether we were about to pick a jury or not.

9 I do recall that, in terms of his guilty plea, yes, he
10 did answer that he had answered the questions yes and things
11 like that, but I'm sure that I would have been talking to him
12 about his exposure and what could have happened to him if he
13 didn't take the global plea offer.

14 He had a trafficking heroin that was, in fact, reduced
15 down to possession with intent to distribute, and I do have a
16 SLED report capable of substantiating that charge. You know,
17 this is a global thing. So I have that, and I'm sure I would
18 have been advising him that he needed to limit his exposure in
19 the big picture.

20 I just think now, after looking at it further, that I
21 don't believe they could have convicted him, despite whatever
22 the solicitor may have said on that case, because, when they
23 sent the stuff to SLED, there was not even enough to test. So
24 it wasn't a residue case where they tested it and said, "You
25 know, we have tested it and now there is no measurable amount

1 left." There was no measurable amount at all.

2 And I don't think -- I think, without a SLED report that
3 at least says cocaine on it for something, that I don't
4 believe they could have prosecuted him for that case. And I
5 didn't -- I didn't -- I just think that this should have been
6 handled differently after I look at it, you know, seven years
7 later.

8 **Q** Ms. Gay, let me ask you this: So Applicant did benefit
9 from having his firearm charge dismissed as a result of his
10 plea; correct?

11 **A** Whatever he had pending at the time that was dismissed,
12 anything related to it, yes, he benefitted from having pled.
13 If he had pled to the possession of heroin, you know, if I had
14 been saying to him, "Well, this cocaine is gone, and, you
15 know, so let's talk about the situation now," I just -- I keep
16 going back to the same thing. My conversations with him were
17 in the totality, and so I am just saying that part -- I
18 believe that part of what -- the fact that he got convicted of
19 it, pled guilty to it and was sentenced, obviously, I wasn't
20 saying, "Oh, they can't prosecute you on this one. This one
21 needs to get dismissed," I mean, you know, in hindsight.

22 So in my own view of what was going on, I, obviously, was
23 focusing on the totality and focusing on, you know, some
24 version of the possibility of, in my mind, of thinking that he
25 could have gotten convicted. And I don't know that that's

1 accurate, but, you know, I'm just testifying. I'm just
2 telling you what --

3 **Q** Yes, Ms. Gay, I understand.

4 But it was ultimately his decision to plead guilty;
5 correct?

6 **A** Any defendant that pleads guilty, it has to be their
7 decision, because they have to be under oath to answer all the
8 questions. And I will tell you, in my 31 years of doing this,
9 there's been a lot of defendants who, in the middle of the
10 plea, don't want to answer those questions, and the plea
11 stops.

12 So if he continues to answer the questions, then, it's
13 obviously, his choice what's -- you know, how he's answering.

14 **Q** Okay. And at the time of the plea, you had this
15 information from SLED?

16 **A** Yes, I did, I believe, had it in my file. I do not have
17 specific memories of specific conversations about the SLED
18 report. I remember more of a -- I keep saying the same
19 thing -- a global aspect of exposure and the fact that he -- I
20 mean, he still had a trafficking heroin that was dismissed --
21 you know, reduced.

22 I just think that a part of the information that I shared
23 with him may not have been accurate, which, I -- you know, I'm
24 being honest.

25 **Q** But the -- you and -- excuse me. You and Applicant both

1 had the ability to review this report at the time, and it was
2 still his decision to plead guilty to those charges; correct?

3 **A** I don't think I told him the right information. That's
4 what I'm saying. I mean, that's seven years later, looking
5 back at my file, looking at what I may have been thinking or
6 doing at the time.

7 I'll tell you like this: There's nothing in my file that
8 says to me that I even knew what it is I'm talking about now
9 to talk to him about. There's no reference to any of it for a
10 strategic purpose or anything like that except that, when
11 people are charged with big stuff and the solicitors are
12 agreeing to reduce it down, sometimes they say things like,
13 "Well, he has to do this." But those are for cases they can
14 prove.

15 And so the problem with this one, as I see, is I don't
16 believe they could have actually convicted him of the cocaine
17 charge. So if they couldn't have convicted him of the cocaine
18 charge and somehow I'm talking to him about the global big
19 picture, I don't -- I'm honestly saying I don't know that I
20 had the correct information in my head.

21 Now, other cases where somebody has a trafficking and
22 they say, "We're going to reduce all these down to PWIDs" and
23 they can convict the person of both of them, you know, if we
24 pick a jury, then, you know, I'm having this -- it's as if I
25 was having those kind of conversations with him as opposed to

1 the one I think I should have been having now. And that's
2 from going through my file and looking at things and trying to
3 see -- you know, piece together why I would have told this man
4 to plead guilty. And I don't see anything in my file that
5 indicates that that would have been in my head at the time.

6 **Q** Okay.

7 **A** I'm just telling you what I see.

8 **Q** No. I understand. And thank you for your honesty, as
9 you are under oath.

10 MS. MIMS: I beg the Court's indulgence one more time.

11 (Pause in the proceedings.)

12 BY MS. MIMS:

13 **Q** And one last question, Ms. Gay. Applicant did, at the
14 plea, admit to the version of the solicitor's facts; correct?

15 **A** Applicant said "yes" and did everything that he needed to
16 do to enter that guilty plea. And, yes, that is true. And I
17 think that when people -- okay. So, certainly, the solicitor
18 alleged that he had trafficked cocaine or had some kind of
19 cocaine charge, and in the rendition of the facts, would have
20 said that he was arrested on such and such date and charged
21 with heroin and charged with cocaine.

22 The field test would have given them probable cause for
23 some type of arrest. It's the SLED result that doesn't come
24 back with anything indicating there was cocaine in the
25 substances that is a problem.

1 So, I don't know. I mean, I can't remember -- I don't at
2 all remember telling Mr. Brown, "You just need to plead to
3 this" or, you know, anything like that, which I wouldn't do
4 anyway. But I don't remember necessarily even having this
5 extensive of a conversation as we're having now about this
6 situation then.

7 **Q** Thank you.

8 MS. MIMS: No further questions, Your Honor.

9 THE COURT: Okay. Mr. Thomas, your witness.

10 MR. THOMAS: Your Honor, if it pleases the Court, I don't
11 have any questions.

12 THE COURT: All right. That's fine. Okay.

13 All right. Any objection to Ms. Gay being excused?

14 MR. THOMAS: No, Your Honor.

15 MS. MIMS: No, Your Honor.

16 THE COURT: Okay. Ms. Gay, thanks for joining us today.
17 Appreciate it.

18 THE WITNESS: All right. Thank you.

19 THE COURT: Okay. Are there any other witnesses that we
20 were needing to elicit testimony from for this post-conviction
21 relief matter? Any additional witnesses from the State?

22 MS. MIMS: No, none from the State, Your Honor.

23 THE COURT: And any additional from Mr. Thomas?

24 MR. THOMAS: No, ma'am. Nothing further.

25 THE COURT: Okay. I'm happy to hear from the attorneys

1 now, if there's anything they want to argue at this point in
2 time, or we can --

3 MR. THOMAS: Your Honor, if it please the Court, just in
4 brief. The Court has, of course, heard all the testimony in
5 this case and has copies of the exhibits. The only thing I
6 would point out is that, even -- I think that what drives this
7 whole thing -- and I appreciate Melissa Gay's candor and
8 honesty about what happened -- is that it is negative -- while
9 there's insufficient quantity for even an analysis for
10 cocaine, so there was no cocaine of which he pled to.

11 And also -- and I think Ms. Gay was honest in her
12 analysis in regards to the heroin. If you look at the
13 exhibit, which has been entered into evidence, from the
14 forensic services division, Charleston Police Department, the
15 weight of the heroin is troubling as well. The weight in two
16 separate samples, one is .10 and the other one is .05. We
17 don't even have one gram.

18 So I would present to the Court, I think that the PWID is
19 an overcharge as well. It looks like to me, in my opinion, is
20 that it's more of a possession of heroin, if anything, that
21 would be supported by the forensic's report.

22 THE COURT: Okay. Of course there are other factors that
23 can go into the --

24 MR. THOMAS: Yes, ma'am.

25 THE COURT: -- State's decision to charge with possession

1 with intent to distribute. It's not solely based on weight.

2 MR. THOMAS: Certainly.

3 THE COURT: And I'm just trying to refresh my memory a
4 little bit as to this. Some of those factors can be, but are
5 not limited to, that they find large amounts of money or how
6 was it packaged, or, you know, are there other items
7 surrounding the seized drugs that would indicate distribution
8 activity. So, obviously, that's always a concern. And I'll
9 hear from the State.

10 And if I could just get another -- you know, this has
11 been a couple of months, obviously -- just a brief -- what was
12 he charged with and what did he plead to and what was he
13 sentenced to, just so I have it reset in my head.

14 MS. MIMS: Yes. I can give you a brief recitation of the
15 facts if you'll give me one second here.

16 THE COURT: I seem to remember a traffic stop. Is
17 that --

18 MS. MIMS: Yes.

19 THE COURT: Hold on, Mr. Brown. Let me finish what I'm
20 doing. I see your hand raised.

21 MS. MIMS: Yes. There was a traffic stop in which
22 Mr. Brown was stopped. I have the description of the offenses
23 here from the -- from the warrant, if you would like me to
24 read that, or I can read the overall --

25 THE COURT: What was he charged with? What did he plead

1 to? What was he sentenced to?

2 Hold on, Mr. Brown. I see your hand; it's just not quite
3 time. You'll have an opportunity.

4 MS. MIMS: Give me one second. Okay. I have it here.

5 He was charged with intent to distribute -- possession
6 with intent to distribute heroin. Also indicted for resisting
7 arrest, obstruction of justice, and PWID of cocaine. In
8 exchange for the plea, the State also dismissed a charge of
9 felony possession of a firearm. And, like I said, those facts
10 stem from a traffic stop.

11 THE COURT: What did he plead to? What charges did he
12 plead guilty to?

13 MS. MIMS: He pled guilty to possession with intent to
14 distribute heroin, possession with intent to distribute
15 cocaine, obstruction of justice, and also resisting arrest.

16 THE COURT: And what was he sentenced to?

17 MS. MIMS: The sentences were -- he was given 15 years
18 for the PWID of heroin, 15 years for the PWID of cocaine,
19 three years for the obstruction of justice, one year for
20 resisting arrest, all of them being concurrent.

21 THE COURT: Concurrent. Okay.

22 And were these second? Third? Any enhancements
23 involved?

24 MS. MIMS: I'm sorry; can you repeat that?

25 THE COURT: Were these enhancements? In other words,

1 were these seconds? Thirds? Does his record support them as
2 being enhanced?

3 MS. MIMS: I don't have his record right in front of me.

4 MR. THOMAS: Your Honor, I don't believe they were
5 enhanced.

6 THE COURT: Okay.

7 MR. THOMAS: Yes, I don't believe they were enhanced.

8 THE COURT: All right. And so, Mr. Thomas, I'll come
9 back to you. You know, since it's been some time since we
10 initially sort of discussed this, the central issue seems to
11 be the weight of the drugs; is that correct?

12 MR. THOMAS: No, Your Honor. Well, that's one of the
13 issues.

14 THE COURT: One. Okay. And the other ones were what?

15 MR. THOMAS: The others, just kind of in summary. We
16 raised the issue in regards to the traffic stop, because that
17 was a probable cause that was used --

18 THE COURT: Okay.

19 MR. THOMAS: -- to search for the drugs. They, then,
20 seized the drugs as a result of that, and Mr. Brown feels
21 that, because it was actually a finding of not guilty, I don't
22 know all the facts of that because it was in magistrate's
23 court, but he feels like counsel could have argued that there
24 was no probable cause.

25 Further from that, there were some issues which we

1 brought out, that's also in one of our exhibits, in regards to
2 the actual chain of custody. Some of the days and times don't
3 add up. They show that the drugs are either out for
4 examination or in for examination when they couldn't have
5 been.

6 And then, really, the big thing, I think, is this think
7 about pleaing to cocaine when there allegedly was no cocaine,
8 according to the drug analysis.

9 So -- and I think that Ms. Gay was very candid in
10 admitting that she was ineffective for allowing him and
11 advising him to plead to something that they could not have
12 convicted him of.

13 And to kind of compound all of it, the solicitor advises
14 the Court, on page 15 of the transcript, lines 9 through 15,
15 that he has 21 bags of drugs, 18 were cocaine, three were
16 heroin. It leads the Court to believe, I think, wrongly that
17 they had 18 baggies of some sort of cocaine, and that three of
18 those were actually of heroin when there was no -- the drug
19 report doesn't support any cocaine at all.

20 THE COURT: Okay. All right. Your client is very
21 adamant that he needs to speak, so do you want him to at this
22 time, Mr. Thomas?

23 MR. THOMAS: Yes, ma'am. I don't mind.

24 THE COURT: All right. Let's get him -- Mr. Brown, I'll
25 hear from you.

1 THE DEFENDANT: Can you hear me?

2 THE COURT: Yes.

3 THE DEFENDANT: Okay. First, we're talking about the
4 (inaudible) --

5 THE COURT: Hold on. I'm losing you. Wait a minute,
6 wait a minute, wait a minute. Slow down and I guess lean in
7 the best you can.

8 THE DEFENDANT: Okay. On exhibits -- on both of the
9 exhibits that we (inaudible), the chain of custody was broken
10 because the time that she's saying she was testing the drugs,
11 the drugs (inaudible). So it's impossible to be testing these
12 drugs when these drugs (inaudible) --

13 THE COURT: I remember that now. Yeah, your attorney did
14 a good job refreshing my memory on these other issues too.

15 THE DEFENDANT: The heroin and the cocaine were
16 (inaudible).

17 THE COURT: Hold on. It's bad audio. Say it again. The
18 cocaine and the heroin what?

19 THE DEFENDANT: The supposed cocaine and heroin, they
20 were transported (inaudible). The cocaine -- the heroin in
21 question too. Ain't no (inaudible). I'm arguing the
22 transporting -- the transportation of the heroin and the
23 cocaine together. We're not trying to break it out and saying
24 this one is here and this one is here. They were together.
25 At both times -- the first time they were transported

1 together. The second time, they never transported the heroin
2 (inaudible). I'm not going to be arguing the weight. I'm
3 arguing the chain of custody (inaudible) came about. The
4 traffic stop was (inaudible).

5 And when Melissa Gay was talking, I never was charged
6 with trafficking heroin or trafficking cocaine in this case.
7 The case was originally possession with intent to distribute
8 from the start. It was never a trafficking charge. She
9 doesn't even know what she was talking about. Got the case
10 mixed up with somebody else's case, just like (inaudible) she
11 didn't know what she was talking about.

12 THE COURT: That's why I wanted the Attorney General to
13 tell me, and she did. She told me, you know, what you were
14 charged with.

15 THE DEFENDANT: And with the gun charge that they're
16 saying that dismissed or they throw it way, I don't
17 (inaudible) she was talking about, no witnesses that she was
18 talking about. That witness was the witness that was saying
19 that was her gun that they found in her truck, which I got
20 documentation that there wasn't (inaudible) getting rid of a
21 gun (inaudible) --

22 THE COURT: Okay. I understand. So what you're saying
23 is it's not like it's a deal or something, in other words.
24 It's just somebody else pointing to it.

25 THE DEFENDANT: (Inaudible). They have no evidence to

1 support that gun charge.

2 THE COURT: Uh-huh.

3 THE DEFENDANT: That wasn't no deal.

4 THE COURT: Got it.

5 THE DEFENDANT: Everything I got charged with, that's
6 what I (inaudible). (Inaudible) --

7 THE COURT: Slow down. Okay.

8 THE DEFENDANT: (Inaudible).

9 THE COURT: It's super hard. Ridgeland needs to fix the
10 audio up. I got about 90 percent of what you said, but...

11 Okay. All right. Anything else from Mr. Thomas?

12 MR. THOMAS: Your Honor, no. Just one thing: I think
13 that what Deangelo was saying is exactly what we're talking
14 about, what's been presented to the Court: The traffic stop,
15 the concerns about the chain of custody, and whether or not
16 there's some default there or faults there, and, also, this
17 thing about the weights -- the suggestion to the Court about
18 what the weights were and also the fact that there was a plea
19 to a drug that they couldn't have proven.

20 THE COURT: Okay.

21 MR. THOMAS: Yes, ma'am.

22 THE COURT: All right. Anything else from the Attorney
23 General's Office?

24 MS. MIMS: Just briefly, Your Honor. In closing, we
25 still ask the Court to deny the post-conviction relief

1 application of Mr. Brown specifically because the Strickland
2 test is an objective test. The attorneys -- any objective
3 that the attorney's performance (inaudible) standard of
4 reasonableness. We submit that counsel's opinion regarding
5 his or her own ineffectiveness is not probative of whether he
6 or she was constitutionally ineffective under Strickland.

7 As we have had in testimony at the first hearing and now,
8 you know, it was Mr. Brown's decision to plead guilty,
9 Ms. Gay -- I apologize. Let me restate that.

10 Applicant had the ability and benefitted from the gun
11 charge being removed as a token of his -- or as a plea of
12 guilty. He decided to plead guilty. The judge on the case
13 had a very in-depth colloquy with Mr. Brown to determine
14 his -- whether his statements were voluntarily, knowingly and
15 intelligently made. There are several places in the
16 transcript where he asks Mr. Brown if he needed any further
17 clarification, which he had. He agreed with the State's facts
18 and admitted his guilt.

19 And if there was any deficient -- or if the Court finds
20 there was a deficient performance from Ms. Gay, Applicant was
21 not prejudiced, as he received a 15-year sentence or what he
22 could have been serving 25 for.

23 So, for these reasons, we ask that the Court deny
24 Mr. Brown's PCR case.

25 THE COURT: 25 had they been run consecutively?

1 MS. MIMS: Possession with intent --

2 THE COURT: Does the PWID heroin carry up to 25?

3 MS. MIMS: Pull up the -- at least 15 to 25.

4 But without it being a 15 to 25, he did -- if they were
5 ran consecutively, he could have faced up to 33 years for all
6 those charges that he did plead guilty to and agreed with the
7 State's facts on those matters.

8 THE COURT: Okay. All right.

9 Anything else from Mr. Thomas?

10 MR. THOMAS: No, ma'am. Nothing further.

11 THE COURT: All right. I will probably request proposed
12 orders from each side on this one, and I know you'll need a
13 little bit of time to get that together. How much time do you
14 think you'll need, Attorneys?

15 MS. MIMS: 30 to 45 days. We have a couple of PCR terms
16 coming up. But, I mean, if you need it sooner, we can get it
17 out.

18 THE COURT: Okay.

19 MR. THOMAS: Your Honor, if it please the Court, in my
20 old age, I have gotten to where I feel a little more
21 comfortable, especially with Ms. Melissa Gay's testimony. Is
22 it possible that we could request an expedited transcript? I
23 don't think these hearings are long. I don't want to
24 belabor --

25 THE COURT: I'm happy -- I'm happy for you to do that. I

1 would just say, you know, at the outset, we'll say 30 days.
2 If extension is required, that's fine. Just request one.

3 MR. THOMAS: Yes, ma'am.

4 THE COURT: And in terms of the hearing transcript, we
5 will -- of course it's fine with me. I'm not in charge of
6 getting the transcripts, but -- from Webex. I do believe the
7 instructions for that are in the South Carolina Supreme Court
8 order governing virtual hearings. But, otherwise, you can
9 contact Court Administration for that.

10 MR. THOMAS: All right.

11 THE COURT: If you need help, you know, feel free to
12 reach out to my office.

13 MR. THOMAS: Yes, ma'am.

14 THE COURT: But I'm not sure that we have any more
15 information than you do on that at this point in time.

16 MR. THOMAS: Okay.

17 THE COURT: But if you do need our help, we're happy to
18 help in that regard.

19 MR. THOMAS: All right. We'll start working on that
20 today and see if we can't expedite those transcripts, Your
21 Honor.

22 THE COURT: Excellent.

23 Thank y'all very much.

24 Thank you, Mr. Brown.

25 THE DEFENDANT: Thank you, Your Honor.

1 MR. THOMAS: Thank you.

2 MS. MIMS: Judge McCoy, so was it 30 days from the
3 receipt of the transcripts? Or just period?

4 THE COURT: Just period, at this point. You know, if
5 there's an extension -- you know, something comes up and
6 there's a reason we need an extension, just let me know.
7 Okay?

8 MS. MIMS: Okay.

9 MR. THOMAS: Thank you, Your Honor.

10 THE COURT: Thank y'all very much.

11 MR. THOMAS: Yes, ma'am.

12 THE COURT: Okay.

13 (The above matter concluded.)

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: Deangelo Brown v State of SC

3 2016-CP-10-5736

4 DATE OF PROCEEDING: February 23, 2022

5
6 I, Bobbi J. Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings; **that said proceedings were transcribed**
9 **to the best of my ability from the audio recording and**
10 **supporting information**, and that I am neither counsel for,
11 related to, nor employed by any of the parties to this case,
12 and I have no interest, financial or otherwise, in its
13 outcome.

14 16 _____
17 Bobbi J. Fisher, RPR

18 NCRA Registered Professional Reporter (RPR)

19 Prepared: March 13, 2022

20 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER
21 SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY
22 OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES
23 OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR
24 NON-PARTIES MUST BE SENT TO THIS REPORTER AT
25 BFISHER@SCCOURTS.ORG.

HH
144
SOL
AG
GS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DeAngelo Brown, SCDC #317618,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-10-5736

ORDER OF DISMISSAL

2022 MAY 10 AM 7:41
JOLEE J. ARMSTRONG
CLERK OF COURT

FILED

This matter comes before the Court by way of post-conviction relief (PCR) action commenced by Applicant DeAngelo Brown on October 25, 2016. The State requested an evidentiary hearing through its return filed on June 20, 2017. An evidentiary hearing into the matter convened before the undersigned on December 9, 2021, at the Charleston County Courthouse. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Lauren T. Mims represented the State. Applicant testified on his own behalf at the hearing. Plea counsel, Melisa W. Gay, was called to testify. However, plea counsel informed the court she had no longer had access to her file. Therefore, this Court held the record open to allow plea counsel the ability to review her file. A second evidentiary hearing convened on February 23, 2022 via Webex Virtual Platform. Plea counsel testified.

In addition to the pleadings in this action, this Court has before it a copy of the Charleston County Clerk of Court records regarding the subject convictions, Applicant's records from the South Department of Corrections, and the plea transcript.

After hearing the testimony at the evidentiary hearing and a full review of the record, this Court find's Applicant's allegations regarding ineffective assistance of counsel and involuntary

JBM/l

guilty plea are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the November 2012 term of the Charleston County Grand Jury for possession with intent to distribute (PWID) heroin (2015-GS-1-6552). Applicant was subsequently indicted during the December 2012 term of the Charleston County Grand Jury for resisting arrest (2015-GS-10-6352³), obstruction of justice (2015-GS-10-6766), and PWID cocaine (2015-GS-10-6767). Melissa Gay, Esquire, represented Applicant. Solicitors Charles Condon, Jr., Esquire and Scott Maynor, Esquire, prosecuted the case. On April 13, 2016, Applicant pleaded guilty to all charges before the Honorable R. Markley Dennis, Jr. Judge Dennis sentenced Applicant to imprisonment for concurrent terms of fifteen years for PWID heroin, third offense, one year for resisting arrest, three years of obstruction of justice, and fifteen years for PWID cocaine, third offense. Applicant did not appeal his conviction or sentence.

II. FACTS GIVING RISE TO THE PLEA

At the plea hearing, the State presented the following factual basis for the plea, to which Applicant agreed:

Just briefly, traffic stop in Mount Pleasant, Charleston County. The defendant was in possession, which he put in his mouth 21 baggies of drugs. Eighteen were cocaine. Three were heroin. He resisted arrest from Deputy Funsch and Rissanen. He was placed in the back of the police cruiser, at which point he put the drugs in his mouth; wouldn't give them up.

We had to take him to the hospital. He had them in his mouth for a couple of hours. Chewed a lot of them up. Spit a lot of product out, a lot of weight. And they located a scale, which is another indicator of attempt to distribute in the vehicle. He had \$174 on his person at the jail.

JBM/2

And in addition, we had some jail calls we planned to introduce where he talked about how he faked the seizure in back of the car and how he had in excess of ten grams of cocaine in his mouth at the time. These are all different factors we could use to prove his guilt.

Plea Tr. pp. 15-16.

III. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. "Ineffective Assistance of Counsel"
 - a. "Defense counsel misadvised him when she informed him that he could be found guilty of PWID cocaine when in fact he could not whereas the prosecution could not have proved the fact of the substance to have found him guilty of the offense."
 - b. "Defense counsel failed to investigate the documenting of the control substance and discover that the prosecution had failed to comply with the statutory record keeping requirement dealing with the handling and the analyzation of the heroin in this case."
2. "Involuntary Guilty Plea"
 - a. "The Applicant was not aware that as an element to possession with intent to distribute cocaine, that it was required that it was required that the substance be proven as cocaine and that by pleading that he would be relieving the state of having to prove it."

To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant DeAngelo Brown's Testimony

At the evidentiary hearing, Applicant testified he retained plea counsel, Melissa Gay (Counsel). Applicant testified he only spoke with counsel three or four times. When Applicant

JBm/3

spoke to counsel, he testified he spoke with her about defenses, specifically about his defense regarding the traffic stop from which his charges arose. Applicant testified that the traffic stop matter was still pending in Magistrate Court at the time of his plea. Applicant testified he had not retained Counsel to represent him on that charge, but wished to use it as a defense to his general session charges. Applicant further testified Ms. Gay advised him he could bring this issue up as a defense during pre-trial motions, and that they spoke about this defense a number of times. Applicant testified he spoke with counsel about an alleged "inadequate amount" of cocaine shown on a forensic report. Applicant testified he received the forensic report well before his plea, during a bond modification hearing. Applicant testified he read the report and felt he could not be convicted of possession with intent to distribute cocaine at the time of his plea and told Counsel this theory as well.

Regarding the trial proceedings, Applicant testified he and Counsel were prepared for trial. Applicant testified there was a pre-trial motion hearing regarding a video of the aforementioned traffic stop; the Court allowed the video of the traffic stop to come in as evidence. After the jury had been selected, Applicant testified he decided to take a plea after the result of the pre-trial motion.

Regarding the guilty plea, Applicant testified he was aware that the report reflected that there was allegedly no cocaine found before the guilty plea. He testified he asked Counsel to negotiate dropping his gun charge and the charge for possession with intent to distribute cocaine, and that he was willing to plea. Applicant testified he did not understand he must serve eighty-five percent of those charges, but conceded through cross-examination that Judge Dennis had asked him at his plea hearing whether he understood he would have to serve at least eighty-five percent of both possession charges. Applicant confirmed he had testified at the plea hearing that

JBm/4

he understood. During cross-examination by the State, Applicant testified he ultimately pled guilty to possession with intent to distribute heroin, possession with intent to distribute cocaine, obstruction of justice and resisting arrest. He testified he agreed to the facts that were presented at the plea hearing. He additionally testified he told Judge Dennis that he wanted to get this matter over with and behind him.

Plea Counsel Melisa Gay's Testimony

At the evidentiary hearing, Counsel testified this case had a lot to do drugs and Applicant's possession of said drugs. Counsel credibly testified she met with Applicant a number of times before his plea. She further testified she received discovery that she shared with Applicant on a number of occasions. She testified she discussed the potential sentences Applicant could receive, his potential exposure, as well as spoke with witnesses regarding Applicant's case. Counsel testified she was prepared to go to trial on behalf of Applicant. Counsel additionally testified that she counseled Applicant on a "global approach" to effectively limit his exposure to a longer sentence, as well as limit Applicant's potential federal exposure. She opined, in hindsight, that she could have negotiated further with the Solicitor regarding the plea due to the amount of weight in the forensic report. Counsel testified it was her opinion that the cocaine charge was not a prosecutable offense. However, counsel further testified Applicant benefitted from pleading guilty due to the gun charge being dismissed. She further testified it was Applicant's decision to plead guilty.

V. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of

JBm/5

this State;

2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the

JBM/6

applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted

on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsels, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims raised at the evidentiary and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

The issue before this Court is whether Applicant received ineffective assistance of counsel, rendering his guilty plea involuntary and unintelligently entered. This Court disagrees, and finds the combined record from the plea hearing and the evidentiary hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

Involuntary Guilty Plea

Applicant contends his plea was involuntary because he relied on erroneous advice from

Counsel. This Court disagrees, and finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528-529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337

S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434-35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App.

JBm/lb

2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeké*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; cf. *Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding

that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Surmounting *Strickland's* high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. *Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post-hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

At the plea hearing, Counsel advised the plea court she had an adequate opportunity to fully discuss the charges with Applicant. Counsel advised the plea court she had adequate opportunity to fully discuss the charges with Applicant, Counsel was satisfied Applicant had understood their discussions, Applicant had been able to fully assist in his defense, and it was Applicant's decision to accept the plea. (Plea Tr. 11-12). Judge Dennis explained to Applicant the constitutional rights he waived by pleading guilty, including the rights to: remain silent, challenge the State's evidence, and present a defense. (Plea Tr. 14-15). Applicant informed the court he understood both the charges and affirmed for the court Counsel had explained the charges to him

JBM/12

(Plea Tr. 4). Applicant further indicated he was satisfied with the services provided to him by Counsel. (Plea Tr. 8-9).

Judge Dennis further informed Applicant that the possession with intent to distribute heroin and cocaine are classified as most serious crimes, meaning, Applicant would have to serve a minimum of eighty-five percent of the sentences imposed (Plea Tr. 5-6). Applicant affirmed he understood and wished to proceed forward. *Id.* Applicant advised the court he had not been threatened, pressured, intimidated, or promised anything in exchange for his guilty plea. (Plea Tr. 10, 15). When questioned whether he had been truthful with the court in his answering of the Court's questions, Applicant affirmed he had. (Plea Tr. 16).

Furthermore, Applicant agreed with the facts of the case that were presented at the plea hearing. Notably, he agreed there was additional evidence of Applicant's guilt, including a jail call admitting guilt where he indicated he faked a seizure in the back of the patrol car and admitting he had a large amount of cocaine in his mouth at that time, admitting a scale was found in his vehicle, and 174 dollars were found on his person. Applicant testified at the evidentiary hearing he received discovery in the form of forensic reports which showed there was an insufficient amount of cocaine for testing. Therefore, Applicant contends his cocaine charge should not have been dismissed. This Court disagrees. Applicant had knowledge of this potential evidence prior to his plea, and still represented to the plea court that he was in fact guilty. Additionally, Applicant stated to the plea court he agreed with the State's recitation of the facts of this case and stated his answers to the Court were truthful.

The plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Applicant has failed to present any valid reason why he should be able to depart from the above statements made during

JBm/13

his guilty plea. *See Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Additionally, Counsel credibly testified at the evidentiary hearing she met often with Applicant in preparation for his trial, discussed discovery with Applicant, and discussed Applicant's constitutional rights with him. Counsel further testified it was Applicant's decision to plead guilty -- notably, after she had begun proceedings for trial and argued a pre-trial motion. Counsel testified Applicant benefitted from this plea by reducing his exposure federally.

Counsel for Applicant retroactively opines that she may have been ineffective for failing to further negotiate the plea offer due to the alleged insufficient amount of cocaine available for testing. However, Counsel's opinion regarding her own ineffectiveness is not probative of whether she was constitutionally ineffective under *Strickland*. *See Foye v. State*, 335 S.C. 586, 590, 518 S.E.2d 265, 267 (1999) (the court may properly disregard opinions of trial counsel going to the ultimate issues in a PCR case). This Court finds counsel for Applicant was not deficient under *Strickland* standard, because she acted reasonably by counseling Applicant, discussing potential defenses, appearing on his behalf, arguing pretrial motions and creating a defense that would have reduced Applicant's potential federal exposure. Furthermore, Applicant was not prejudiced by Counsel's representation. In exchange for a plea of guilty, the State dropped a gun charge that would have caused severe implications under Applicant's federal supervision. Because the possession with intent to distribute charges at issue were third or subsequent offenses, Applicant could have faced up to forty-one years for the charges of possession with intent to distribute heroin, obstruction of justice and resisting arrest if sentenced consecutively. Additionally, the State

JBm/14

presented evidence at the plea hearing to support a conviction of possession with intent to distribute cocaine, which Applicant pled guilty to.

Based on the foregoing, the record reflects Applicant's assertion that his plea was involuntary as a result of ineffective assistance of counsel is without merit. Thus, based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

VIII. CONCLUSION

Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in her representation as she acted reasonably in representing Applicant, nor was Applicant prejudiced by Counsel's representation, as he got a significant benefit in pleading guilty by his gun charge being dropped, thus limiting potential severe federal implications. Accordingly, this Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements he made during the guilty plea hearing should not be considered conclusive. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a

JBm/15

notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 9 day of May, 2022.


JENNIFER B. MCCOY
Presiding Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

JBm/16

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF CHARLESTON	)	CASE NO.: 2016-CP-10-5736
Deangelo Brown #317618,	)	
	)	
Applicant,	)	
	)	NOTICE OF MOTION AND MOTION
Vs.	)	TO ALTER OR AMEND
	)	AND RECONSIDERATION
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED
CLERK OF COURT
2022 MAY 23 PM 3:01
JULIE J. JENNIFER

PLEASE TAKE NOTICE that Applicant, through his undersigned attorney will move before the Honorable Jennifer B. McCoy, to alter or amend the judgment entered in this action. An Order of Dismissal was signed on May 9, 2022 and recorded on May 10, 2022. A copy of the Order of Dismissal was received by the undersigned counsel on May 11, 2022.

COMES NOW Applicant, by and through his undersigned attorney, and submits argument regarding the following:

1. The inadequacies of the Order of Dismissal
2. To alter or amend and to reconsider the Court's findings and conclusions.

I

Upon review of the Order of Dismissal, Counsel would request that the following deficiencies be corrected and/or amended.

Inadequacies of the Order of Dismissal

1. Page 1, second paragraph, the Order fails to indicate that documents were entered into evidence at trial. These documents are:
 - a. Applicant's Exhibit 1 - Drug and Analysis Report
 - b. Applicant's Exhibit 2 – Evidence by OCA regarding chain of custody; and

c. Applicant's Exhibit 3 – Chain of Custody

2. Page 3, Section 3, issues before the Court:

a. The Court fails to reflect the Amended Application for Post-Conviction Relief which contains more detailed issues to be presented before the Court. Even without this, the order wholly fails to recognize the ground of ineffective assistance of counsel, which is recited on p.3 as having been alleged. The clocked copy of that Amended Application is attached hereto.

3. The Order is insufficient in its recitation of the testimony given by the Applicant on Pages 4 and 5 of the Order. Specifically:

a. The charges arose from a traffic stop. Applicant testified the incident was he was pulled for an illegal lane change and defective center stop lamp. The officer said he smelled marijuana and wanted to search the car, to which Applicant consented. A gun was found in the car, which Applicant stated was owned by the same female who owned the car. He admitted to getting into a small altercation after an officer attempted to strip-search him at the scene. Also arising from this incident were magistrate-level charges for defective equipment and driving under suspension. Applicant testified that, though Ms. Gay was not representing him on these charges, he believed that if she could get a not guilty or dismissal, they would help in the trial on the general sessions charges. He was ultimately found not guilty of the magistrate charges after entering his plea on the instant charges.

b. Drugs - The number of bags tested differed from the police report (13 bags of cocaine and three bags of heroin) and the drug lab report (18 bags of cocaine

and three bags of heroin). Despite that, the drug labs were unable to find that there was cocaine in any of the bags. This issue was compounded by chain of custody problems, which were essentially that the timelines between submission by officers and testing by the lab were impossible to reconcile in that they showed testing at time earlier than drop off.

- c. Applicant was adamant that he would not plead guilty to a gun charge because he was unaware of the gun and his fingerprints were not on it to show actual possession. Therefore, due to his dissatisfaction with plea offers, he continued to trial and pulled a jury.
 - d. Applicant again began discussing plea deals with Ms. Gay who inaccurately assured him that all drug charges in South Carolina were nonviolent and to take the plea because he would get parole. Part of Applicant's consideration of the plea offers was that Ms. Gay never moved to suppress the drugs.
 - e. The Solicitor stated to the Court that eighteen baggies contained cocaine and three contained heroin. Again, Applicant stated that he was only willing to take responsibility for the two bags of heroin that equaled 0.15g in weight.
 - f. Applicant is informed and believes this testimony should be included in the Order.
4. The testimony of plea counsel, Melisa Gay is also deficient on Page 5 of the Order.
- a. Ms. Gay testified that, ultimately, she encouraged Applicant to plead guilty to a charge that the State could not prove. She opined that she did not believe he had accurate information about his case, which was necessary for any person to plead guilty freely and voluntarily. She further testified that she did not believe

she advised him properly about the charge of trafficking versus PWID. After reviewing her file in preparation for this evidentiary hearing, she did not believe it was a prosecutable case and she should have pushed the solicitors harder to talk about plea negotiations. She also confirmed that the drug lab did not find cocaine. Ms. Gay testified that she should not have been looking at the charges as a global resolution.

- b. She agreed with the State that Applicant benefitted from the dropping of some charges in exchange from his plea, but that did not change her opinion as to whether the case regarding the cocaine could have been proven.
5. In the finding of the Court as set forth in the Order, Page 8, third paragraph, the word “intelligently” is left out of the standard regarding freely, knowingly, voluntarily and intelligently given.
6. The Order is deficient and a ruling is not made specifically regarding the issues raised at the hearing a) about issues with the chain of custody; b) plea counsel’s failure to adequately address the issue of probable cause for the stop, which resulted in the current charges; and c) anything regarding ineffective assistance of counsel.
7. On page 13, second paragraph, the Order reads, “therefore the applicant contends his cocaine charge should not have been dismissed.” (emphasis added) This is incorrect and should state, “Therefore, Applicant contends his cocaine should have been dismissed.”

II

Alter and Amend or Reconsider

1. Applicant would contend that the facts as presented to the Court in his Post-Conviction Relief hearing do not support the Court's finding and conclusion. On page 3, the Court's Order reads, "To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. §17-27-90."
2. The Applicant would contend that this finding is completely without factual basis. The Order fails to reference the Amended Application and, even without the Amended Application, the issues as stated in the original application are directly related to the testimony and evidence presented before the Court. In fact, the Court, in its Order goes further to address and specifically rule on those issues as set forth in the Original Application. Therefore, this finding is without any basis.
3. The Order relies on inaccurate statements of testimony, as recounted above, thereby reaching a conclusion that is not based in fact. The Order states a great amount of case law regarding guilty pleas, finding prejudice within them, and how a guilty plea can represent the benefit of a bargain. However, testimony from both witnesses shows that Applicant did not actually understand the nature of the charges and the possible punishment, contrary to the holding in paragraphs one and two, page 13. Despite Judge Dennis's colloquy and description of the charges, it was clear from testimony that Applicant did not understand the nature of his punishment due to the disparity

between testimony and paperwork. Further, Applicant testified that he was only willing to take responsibility for the two virtually empty bags of heroin, not the cocaine. The fact that plea counsel disregarded this shows clear prejudice as required by *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984), *Johnson v. Catoe*, 336 S.C. 354, 520 S.E.2d 617 (1999), *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007), and the like. *See also Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014). Applicant's unwavering testimony that he would have proceeded to trial were it not for plea counsel's erroneous information regarding his exposure is dispositive.

4. Plea counsel could not have acted reasonably and effectively if she allowed Applicant to plead despite his lack of knowledge in the matter. Further, her own testimony provides that she did not have any trial motions prepared, notably a motion to suppress. Though the Court may disregard counsel's statements regarding their own representation (*See Foye v. State*, 335 S.C. 586, 590, 518 S.E.2d 265, 267 (1999)), it is clear that she was not attempting to fall on her sword for Applicant. Ms. Gay was taking responsibility for the fact that Applicant pleaded to these charge at all. The Order as drafted gives Ms. Gay credit for having a gun charge dismissed but, in reality, the cocaine charges, if not all charges, should have been dismissed as there was simply no evidence to substantiate them. She knew this prior to trial/plea because of the SLED report but was focused on a global resolution. Again, Applicant was so adamant about his innocence of these charges that he was willing to go to trial but for counsel's advice that he would serve 65% and be parole eligible. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001) (prejudice is found if Applicant would have

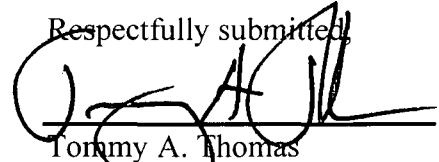
proceeded to trial but for counsel's errors). Inaccurate advice regarding collateral consequences is a specifically recognized ground for post-conviction relief. *Smith v. State*, 329 S.C. 280, 494 S.E.2d 626 (1997) (if counsel provides inaccurate advice about collateral consequences, a plea may be attacked) (citing *Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989)).

Conclusion

For the above cited reasons, the Applicant moves for the Court to:

- 1) Reconsider its original ruling and grant Post Conviction Relief.
- 2) Correct those inadequacies of the original signed Order
- 3) Alter and Amend the Order to reflect the testimony presented to the Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', is written over a horizontal line.

Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

May 19, 2022
Irmo, SC

ATTN
SOL
AG
GS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-10-05736

Deangelo Brown #317618,

Applicant,

V.

State of South Carolina,

Respondent.

ORDER DENYING APPLICANTS
MOTION TO ALTER OR AMEND AND
RECONSIDERATION

Applicant Deangelo Brown filed a Motion to Alter or Amend and Reconsideration on May 23, 2022. Upon careful consideration, this Court hereby DENIES Applicant's Motion.

IT IS SO ORDERED!

September 20, 2022
Charleston, South Carolina

The Honorable Jennifer B. McCoy

SEP 21 PM 1:44
J. ARSTADT
CLERK OF COURT

四

CMC/0307887
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2015-011299

ARREST WARRANT NUMBER

2015A1010203487

DATE OF ARREST

08/12/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date:

NOV 02 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-10-06352

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

DEANGELO LAPRINCE BROWN
B/M DOB [REDACTED]

Indictment for

**POSSESSION WITH INTENT TO
DISTRIBUTE HEROIN**

SC Code: § 44-53-0370(b)(1)
CDR Code: 0185

FILED

11/17/2015 9:27:57 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

DEANGELO LAPRINCE BROWNAKA: Dangelo Brown, Dangelo Laprince BrownRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SC 29405-3930DL# [REDACTED]SID# SC01517804*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADSTO: Dist/PWID I-II Narc/Heroin 3rdIn violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr. 100579
Charles M. Condon, Jr., Assistant Solicitor SC Bar #[Signature]
Defendant[Signature] 63773
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. since July 16, 2015☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP _____

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

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,

§47.12 requires \$500 be paid to Clerk

during probation.

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) _____ \$ _____

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

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

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 8.40TOTAL \$ 288.40Clerk of Court/Deputy Clerk: CallahCourt Reporter: Baren AndersenPresiding Judge: [Signature]Judge Code: 2060Sentence Date: 9/13/16

CMC/0306928
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2015-011299

ARREST WARRANT NUMBER

2015A1010203008

DATE OF ARREST

07/16/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

DEC 7 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-06353

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015

THE STATE

VS.

DEANGELO LAPRINCE BROWN

B/M DOB: [REDACTED]

Indictment for

RESISTING ARREST

SC Code: § 16-09-0320(A)

CDR Code: 0326

FILED

12/18/2015 2:28:08 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

DEANGELO LAPRINCE BROWN

AKA: Dangelo Brown, Dangelo Laprince Brown

Race: Black/African American

Sex: M

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: North Charleston SC 29405-3930

DL# [REDACTED]

SID# [REDACTED]

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

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

☐ CONVICTED OF or☒ PLEADSTO: Resisting Arrest

In violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr. 100579
Charles M. Condon, Jr., Assistant Solicitor SC Bar #X R. D.
DefendantMS
Attorney for Defendant63773
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 1 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Since July 16, 2015☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: _____

Substance Abuse Counseling ☐

§14-1-206 (Assessments 107.5%)

Random Drug/Alcohol Testing ☐

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge)

\$100

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test)

\$25

Other: _____

Proviso 47.9 (Public Def/Prob)

\$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

Proviso 90.5 (SCCJA Surcharge)

\$5

☐ Appointed PD or appointed other counsel,

3% to County (if paid in installments)

\$

\$47.12 requires \$500 be paid to Clerk

during prob _____

TOTAL

\$ 133.90

Clerk of Court/Deputy Clerk: CalvinPresiding Judge: [Signature]Court Reporter: Robert CondonJudge Code: [Signature]Sentence Date: [Signature]

CMC/0306928
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2015-011299

ARREST WARRANT NUMBER

2015-GS-10-06766

DATE OF ARREST

07/16/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-06766

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015

THE STATE

VS.

DEANGELO LAPRINCE BROWN

B/M DOB: [REDACTED]

DEC 7 2015

Indictment for

OBSTRUCTION OF JUSTICE

SC Code: § 17-25-0030

CDR Code: 0118

FILED

12/18/2015 2:28:08 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

DEANGELO LAPRINCE BROWNAKA: Dangelo Brown, Dangelo Laprince BrownRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Obstruction of JusticeIn violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0118☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr.

100579

Charles M. Condon, Jr., Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

63773

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 3 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Sent July 16, 2015☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

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: _____

Recipient: _____

*Fine: _____

\$ _____

§14-1-206 (Assessments 107.5%)

\$ _____

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 47.9 (Public Def/Prob)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

Proviso 90.5 (SCCJA Surcharge)

\$5

\$ 5.00

3% to County (if paid in installments)

\$

\$ 3.90

TOTAL

\$ 133.90Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: [Signature]Judge Code: 2060Sentence Date: 4/13/16

174

CMC/0306928
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2015-011299

ARREST WARRANT NUMBER

2015A1010203009

DATE OF ARREST

07/16/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-06767

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015

THE STATE

VS.

DEANGELO LAPRINCE BROWN
B/M DOB [REDACTED]

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE

SC Code: § 44-53-0370(b)(1)

CDR Code: 0183

FILED

12/18/2015 2:28:08 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

DEANGELO LAPRINCE BROWNAKA: Dangelo Brown, Dangelo Laprince BrownRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SC 29405-3930DL# [REDACTED]SID# SC01517804*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADSTO: Dist/PWID I-II Narc/Heroin 3rd CocaineIn violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr. 100579
Charles M. Condon, Jr., Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

63773
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Since July 16, 2015☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

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: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

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

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

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 8.40TOTAL \$ 288.40Clerk of Court/Deputy Clerk: ColleenCourt Reporter: Haren AndersonPresiding Judge: [Signature]Judge Code: 2060Sentence Date: 4/13/16