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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LILLIAN MAE BATES,

APPELLANT.

APPELLATE CASE NO. 2023-000483

RECORD ON APPEAL

JESSICA M. SAXON
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

JOSHUA A. EDWARDS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

305 E. North St.
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2021-GS-23-01478A

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

LILLIAN MAE BATES,)
DEFENDANT.)

ORIGINAL

November 9, 2022
Greenville, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, JUDGE.

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

CLARK L. GROUNDSELL, ESQ.
Assistant Solicitor

RACHEL A. KEPLEY, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE CLERK: Your Honor, this is case number
3 2021-GS-23-1478A, a direct presentment, the State vs.
4 Lillian Mae Bates.

5 Your Honor, this is case number 2022-GS-23-6532, the
6 State vs. Angela Nicole Hendrix.

7 Your Honor, this is case number 2022-GS-23-0634, the
8 State vs. Tamarquis Sanders.

9 Your Honor, this is case number 2022-GS-23-6536, the
10 State vs. Chris Alender Howard. And case number
11 2022-GS-23-6537. And Pickens County case 2021-GS-42-6335.

12 MR. JONATHAN R. TROAST: It should be Spartanburg, I
13 believe.

14 THE CLERK: I apologize. It is Spartanburg.

15 Spartanburg County, case number 2022-GS-42-4896. And
16 case number 2022-GS-42-4897.

17 Please raise your right hand.

18 WHEREUPON,

19 LILLIAN MAE BATES,

20 ANGELA NICOLE HENDRIX,

21 TAMARQUIS SANDERS,

22 CHRIS ALENDER HOWARD,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 THE COURT: Ms. Bates, you are here today to plead to

1 trafficking in illegal drugs. That carries seven years up
2 to 25 years. That is classified as violent and serious.

3 Is that your understanding?

4 (WHEREUPON, there was no verbal response.)

5 THE COURT: And I need you to say "yes" or "no."

6 DEFENDANT BATES: Yes, ma'am.

7 THE COURT: Ms. Hendrix, you're here today to plead
8 to possession of methamphetamine. That carries up to
9 three years.

10 Is that your understanding?

11 DEFENDANT HENDRIX: Yes, ma'am.

12 THE COURT: Okay. Mr. Sanders, you are here today to
13 plead to threatening the life of a public official. That
14 carries up to 10 years.

15 Is that your understanding?

16 DEFENDANT SANDERS: Yes, ma'am.

17 THE COURT: And, Mr. Howard, you are here today to
18 plead to possession of methamphetamine third offense. It
19 carries up to 10 years.

20 Driving under suspension second offense carries up to
21 60 days.

22 Shoplifting third offense -- third or subsequent
23 offense carries up to 10 years.

24 Receiving stolen goods third or subsequent offense
25 carries up to 10 years.

1 And another receiving stolen goods that's a third
2 property offense that carries up to 10 years.

3 Is that your understanding?

4 DEFENDANT HOWARD: Yes, ma'am.

5 THE COURT: Okay. Have you discussed these charges
6 with your lawyer, Ms. Bates?

7 DEFENDANT BATES: Yes, ma'am.

8 THE COURT: Ms. Hendrix?

9 DEFENDANT HENDRIX: Yes, ma'am.

10 THE COURT: Mr. Sanders?

11 DEFENDANT SANDERS: No, ma'am.

12 THE COURT: Have you -- you haven't talked to your
13 lawyer about it?

14 DEFENDANT SANDERS: No, I haven't. Because I had to
15 switch attorneys back and forth.

16 THE COURT: Oh, okay.

17 DEFENDANT SANDERS: So it was kind of hard for me
18 to...

19 THE COURT: Oh, I got you. No, that's understandable.

20 Do you want -- do you want some more time to talk to
21 your lawyer about it?

22 DEFENDANT SANDERS: Yes.

23 THE COURT: All right. All good. Then we'll just
24 step it back. And you can either talk some more with your
25 lawyer today or possibly -- you know, we could possibly do

1 it tomorrow or we could do it another term of court.

2 Okay.

3 DEFENDANT SANDERS: Okay.

4 THE COURT: All right. Just have seat.

5 What about you, Mr. Howard? Have you discussed this
6 with your lawyer?

7 DEFENDANT HOWARD: Yes, ma'am.

8 THE COURT: Are you happy with what your lawyer has
9 done for you, Ms. Bates?

10 DEFENDANT BATES: Yes, ma'am.

11 THE COURT: Ms. Hendrix?

12 DEFENDANT HENDRIX: Yes, ma'am.

13 THE COURT: And Mr. Howard?

14 DEFENDANT HOWARD: Yes, ma'am.

15 THE COURT: Are you under the influence of drugs or
16 alcohol here today, Ms. Bates?

17 DEFENDANT BATES: No, ma'am.

18 THE COURT: Ms. Hendrix?

19 DEFENDANT HENDRIX: No, ma'am.

20 THE COURT: Mr. Howard?

21 DEFENDANT HOWARD: No, ma'am.

22 THE COURT: Has anybody forced you to plead guilty or
23 promised you anything to get you to plead guilty,
24 Ms. Bates?

25 DEFENDANT BATES: No, ma'am.

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THE COURT: Ms. Hendrix?

DEFENDANT HENDRIX: No, ma'am.

THE COURT: Mr. Howard?

DEFENDANT HENDRIX: No, ma'am.

THE COURT: When you plead guilty, you give up certain Constitutional rights. One is your right to remain silent about these charges.

Do you know that, Ms. Bates?

DEFENDANT BATES: Yes, ma'am.

THE COURT: Ms. Hendrix?

DEFENDANT HENDRIX: Yes, ma'am.

THE COURT: And Mr. Howard?

DEFENDANT HOWARD: Yes, ma'am.

THE COURT: You, also, give up your right to a jury trial. At that trial, your attorney could call witnesses for you, cross-examine witnesses against you. And the State would have to prove your guilt beyond a reasonable doubt.

But when you plead guilty, you give up your right to a jury trial.

Do you know that, Ms. Bates?

DEFENDANT BATES: Yes, ma'am.

THE COURT: Ms. Hendrix?

DEFENDANT HENDRIX: Yes, ma'am.

THE COURT: And Mr. Howard?

1 DEFENDANT HOWARD: Yes, ma'am.

2 THE COURT: Ms. Hendrix and Mr. Howard, you're
3 pleading to charges that have not been indicted by the
4 Grand Jury.

5 Do you want to give up that right and plead guilty
6 today anyway, Ms. Hendrix?

7 DEFENDANT HENDRIX: Yes, ma'am.

8 THE COURT: And Mr. Howard?

9 DEFENDANT HOWARD: Yes, ma'am.

10 THE COURT: How do you plead, guilty or not guilty,
11 Ms. Bates.

12 DEFENDANT BATES: Guilty.

13 THE COURT: Ms. Hendrix?

14 DEFENDANT HENDRIX: Guilty.

15 THE COURT: And Mr. Howard?

16 DEFENDANT HOWARD: Guilty.

17 THE COURT: Each of you has 10 days from today's date
18 to appeal this plea, if you so choose. But you must do so
19 in writing to this Court.

20 Yes, sir.

21 MR. GROUNSELL: Yes, Your Honor.

22 As to Ms. Bates, on or about November 13th, 2020, in
23 Greenville County, the Defendant delivered five kilograms
24 of a powder substance to an undercover officer. The
25 bricks were delivered in an open top bag. And the bricks

1 were easily visible. Four of the bricks came back as
2 Tramadol with a weight of 3,969 grams. The other brick
3 came back as 995 grams of Fentanyl. It is common for drug
4 traffickers to assume [phonetic] the narcotic and cutting
5 agent separate so that the other person can cut the drugs
6 how they want.

7 There are, also, text messages between this Defendant
8 and a supplier where it is clear this Defendant has done
9 this before. The Defendant agreed quickly to transport
10 these drugs. The Defendant threatened the supplier that
11 if it doesn't happen on a coming day, she is not wanting
12 him to do the job anymore. Multiple times she states that
13 she has changed around her plans to do this because she
14 needs the money. She confirmed she is getting paid in
15 cash. She says that this better be legit. And the
16 supplier asked if she is comfortable doing this at night.
17 And she says, Yes. And she will get it done.

18 The Defendant attempted to tell law enforcement that
19 she was raped by the supplier and was forced to do this
20 deal. From her text messages, that, certainly, doesn't
21 appear to be the case and was a willing participant.

22 There is no recommendation in this case. Law
23 enforcement is present and would like to speak at some
24 time, but maybe after the Defense has an opportunity to
25 talk.

1 THE COURT: All right. Very well.

2 Thank you for being here.

3 UNIDENTIFIED LAW ENFORCEMENT OFFICER: Yes, ma'am.

4 THE COURT: All right. Yes, ma'am.

5 MS. KEPLEY: Your Honor, I would, certainly, like the
6 opportunity to go last, if that's possible.

7 THE COURT: Okay. Yes, sir.

8 UNIDENTIFIED LAW ENFORCEMENT OFFICER: Okay. So I
9 established connection with an unknown subject. The only
10 thing that we knew is that they were in the state of
11 Georgia. We established a phone ping and located them
12 outside of DeKalb County.

13 The communications took -- took place over the course
14 of two weeks between me and this subject, who is, to my
15 knowledge, still unknown. We never were able to confirm
16 exactly who it was.

17 The Defendant showed up. She was not in distress in
18 any way. She was smiling. We conversed briefly in the
19 car. I opened up one of the -- the kilo packages. And
20 then I took her to the trunk of the car where I had just
21 under a quarter of a million dollars in cash. She saw
22 that. And I asked her was that what she was here for.
23 And she smiled and said, Yes. At that point, I walked
24 away and she was taken into custody.

25 She was offered -- offered an opportunity to work.

1 We knew that crossing state lines would make it difficult
2 for us to -- to fulfill the needs that she may have to --
3 to help herself. So we solicited the assistance of the
4 Drug Enforcement Administration. We had them on -- on
5 scene prior to her arriving.

6 She was taken to the Greenville DEA office where she
7 was debriefed. She was offered an opportunity to work.
8 And, really, the only thing that I can say from those
9 conversations is no other arrests were made and no other
10 positive identities were -- were made. So it was kind of
11 hard for me to believe that she didn't know who was
12 directing her, who she was getting paid by, and where we
13 could put our hands on that subject at -- you know, where
14 we could locate him. So that's -- that's pretty much
15 where we're at at this point.

16 The -- the amount of Fentanyl that was seized on
17 this, according to the DEA website, had the potential to
18 overdose 500,000 people. To put that into perspective,
19 last year Greenville Counties population was 533,000. So
20 minus the population of one of our small towns, it would,
21 essentially, have the ability to overdose everyone else
22 potentially. And that's all I have.

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

24 UNIDENTIFIED LAW ENFORCEMENT OFFICER: Yes, ma'am.

25 THE COURT: All right. Yes, ma'am.

1 MS. KEPLEY: Your Honor, briefly I'd like to address
2 some of the things that were just said that were not
3 accurate.

4 THE COURT: Okay.

5 MS. KEPLEY: She did speak to law enforcement. She
6 did offer to cooperate. She did give them the name and
7 number. His name is Marquis Little. She gave them that
8 name that day. So I don't know why they're saying they
9 don't know his name, they don't know how to find him.
10 That's not true. That's not accurate.

11 They have been given his name. I have been told
12 they're not interested in investigating him. From my
13 understanding in talking with Ms. Bates, he is still
14 walking free. He is, certainly, the actual drug
15 trafficker, the subject of this investigation.

16 We do have her text messages because she cooperated
17 completely with the police that day. She gave them a
18 search of her phone. So we know that she did not have
19 very close relations with this person. That she had been
20 in desperate need of cash. And that he had approached her
21 and offered her \$200 to drive a car to Greenville. She
22 did not know what that car contained. That's very clear
23 from the text messages. I don't think there's anything in
24 the text messages that would suggest different, Your
25 Honor.

1 She is the very definition of someone who was a mule.
2 I don't think she knew the risk she was taking on. She,
3 certainly, wouldn't -- wouldn't have done it if she had.

4 She has absolutely no criminal history whatsoever,
5 not a speeding ticket, Your Honor. So to suggest that she
6 has somehow been priorly involved with this individual, I
7 think is inaccurate.

8 She has, also, not done anything illegal since, Your
9 Honor. This was about two years ago. She's been on a GPS
10 monitor since. She has worked at the same job at the same
11 company. I would, certainly, like the opportunity to pass
12 up a letter from her employer. I have a copy for you.

13 If I may approach, Your Honor.

14 THE COURT: Sure.

15 Thank you.

16 MS. KEPLEY: She has worked at the same company the
17 entire time. She has been reliable, a wonderful asset to
18 their company. They have kept her on, even though I have
19 approached the State and asked that she be allowed to
20 travel outside her GPS zone. They denied that. That
21 request was denied. But her employer still kept her on.
22 They -- they really care about her. And she's done a lot
23 of great things.

24 She's a single mom of two kids, a 10-year-old and an
25 eight-year-old. The 10-year-old has autism. Both of

1 those children are with her parents right now, Your Honor.

2 I've struggled a lot with this case. She has told me
3 some things that I think the State alluded to that we,
4 certainly, would have presented at trial. I think her
5 having no connections to the drug industry meant she
6 didn't see a lot of red flags that she probably should
7 have when she initiated contact with this individual, who,
8 again, she did not know very well.

9 And she tells me -- and we would have presented at
10 trial, at some point, she tried to back out and was told
11 in person to her face, this is past the point of no
12 return. I know where you live. I know where your kids
13 live.

14 And she said, at that point, she was, also, sexually
15 assaulted. And she did as she was told, Your Honor. She
16 asked for a rape kit that day when she was arrested. She
17 was denied that. Officers did not perform one, would not
18 allow one to be performed. They have not taken any of her
19 allegations of being a victim, being sexually assaulted
20 seriously to this day when I don't have any reason to
21 think that's not true.

22 It is very hard personally. I don't think seven
23 years is fair. I'm going to be asking -- I'm going to be
24 asking the Court for the -- for the mandatory minimum.
25 I'm, also, going to be asking for all of her GPS days as

1 credit. She has by my count 20 days of jail credit from
2 November 13th of 2020, to December 12th -- December 2nd of
3 2020.

4 She has been on a GPS monitor since January 8th of
5 2021 to today. She has absolutely no violations. I know
6 the Court usually does not grant credit for GPS days.

7 I have provided the State and Your Honor a copy of
8 her GPS contract. Part of that contract lists certain
9 conditions, Your Honor. If I may, I would like to read
10 some of those conditions. One is that she has to remain
11 at her residence at all times, except for the hours agreed
12 upon to fulfill employment and community service. She has
13 curfew restrictions that are monitored. And if she does
14 not follow them, agents are allowed to show up at her
15 residence and arrest her and have her sit in jail.

16 I think when the detention folks are putting those
17 level of conditions on it, it's -- it's not just a
18 monitor -- a GPS monitor you can wear and go wherever you
19 want. That's, obviously, not the conditions she's been
20 under. That's not the conditions she's been following. I
21 think having her under restriction of where she can go and
22 when, requiring her to be at her home at all times except
23 for employment, by having her sign that, by having that be
24 a part of her contract, they've converted this GPS to some
25 sort of home detention requirement.

1 I've, also, provided the State and the Court a copy
2 of some statutes from the Home Detention Act that define
3 home detention. It's, certainly, not whatever we say it
4 is. It's -- to read directly from the statute, it's --
5 it's something that must require the participant remain
6 within the interior premises or within the property
7 boundaries of his residence at all times during the hours
8 designated by the department. I think those conditions
9 that I just read, certainly, qualifies it.

10 As -- as the Court is well aware, it's discretionary
11 for Your Honor to grant her credit. But I think this is,
12 certainly, a case that would justify that.

13 THE COURT: How many days do you think she has total?

14 MS. KEPLEY: She has 671 days on the GPS monitor,
15 Your Honor.

16 THE COURT: Okay.

17 MR. GROUNSELL: I have it as 573, Your Honor, from
18 the jail screen.

19 MS. KEPLEY: From January 8th is 671. The jail
20 screen may be different because they switched over to
21 Sentinel back in August. So I don't know that all of
22 those jail days since August will appear on the jail
23 screen. But she has been continuously on the GPS monitor
24 since January 8th of 2021, which by my math is 671 days.

25 THE COURT: Okay. Anything else?

1 MS. KEPLEY: Nothing -- nothing, Your Honor.

2 I -- I don't know if Ms. Bates would have anything to
3 add.

4 THE COURT: Ms. Bates.

5 DEFENDANT BATES: I -- I do agree that, yes, I did
6 agree to do it. I'm not going to say that I didn't. Yes,
7 I did agree. Yes, I'm a single mother. I -- I needed the
8 money.

9 But before it was -- before -- before I could do
10 anything, he got violent with me on the side of the road.
11 I tried to turn around. He wouldn't let me. I am
12 agreeing that I did it, yes. And I know it was wrong. I
13 shouldn't have done it. I should have thought about it.
14 And I do apologize.

15 THE COURT: I take all these things -- these are the
16 things I take into consideration when I sentence somebody,
17 just so you know where I'm going with this. I take into
18 consideration the amount of drugs we're talking about.
19 And, of course, with Fentanyl, the weight -- it -- I mean,
20 this is a lot. But the -- I think the officer when he
21 talks about the amount, if you multiply it out, it's a lot
22 of folks that could potentially have been affected. Thank
23 goodness, it didn't. Because of the intervention, it
24 didn't.

25 I take into account that you have no prior record. I

1 take into account that I do believe that what your
2 attorney says about you being, for lack of a better word,
3 a mule in this is correct. I do take that into account.
4 I do think that's a pretty fair statement.

5 I don't have a way of knowing how willing a
6 participant you were in it. While the officer there on
7 the scene has, you know, one view of it. You, certainly,
8 have a different view of it.

9 I know your involvement in it from a financial
10 standpoint was not willing. You were doing it because you
11 felt like you had to do it because of money. So I get
12 that. I see that. And I see that from a single mom
13 perspective. I do see that.

14 I think I already said that you don't have any
15 record. And I take that --

16 DEFENDANT BATES: Yes, ma'am.

17 THE COURT: -- into strong consideration.

18 I take into consideration that I think that this GPS
19 monitor that you were on and the conditions I think that
20 that qualifies under the Home Detention Act. I think that
21 qualifies as home detention. Okay. I do.

22 I, also, take into consideration that the drugs that
23 you were transporting whether -- how familiar with it you
24 were or you weren't were extremely dangerous, extremely
25 dangerous and equal out to deciments [phonetic] to a lot

1 of folks who -- who use that.

2 And so long story short, all that taken into -- and
3 I -- and I guess the other thing, finally, I take into
4 consideration is the sentence range in this case. And
5 that is seven to 25. And I'm -- I'm constrained to stay
6 within that sentencing range.

7 Taking all that into consideration, the sentence of
8 the Court is 10 years. Credit for 691 [sic] days.

9 Good luck to you.

10 *****END OF TRANSCRIPT OF RECORD*****

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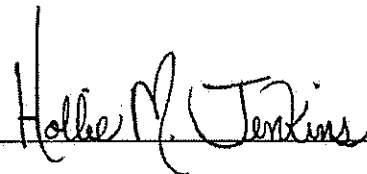
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 9th day of November, 2022.

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

May 30, 2023



Hollie M. Jenkins, Court Reporter

DOCKET NO. 2021-GS-23-^{EVM} 001478A

The State of South Carolina

County of Greenville

WFA

COURT OF GENERAL SESSIONS

May TERM 2021

THE STATE

vs.

LILLIAN MAE BATES

WITNESSES

Jeremy E. Jones

Greenville County Sheriffs Office

11/13/2020

DIRECT PRESENTMENT

DOB: [REDACTED] W/F SSN: [REDACTED]

ACTION OF GRAND JURY

TRUE BILL

[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0149

TRAFFICKING IN ILLEGAL DRUGS

VIOLATION § 44-53-0370

Foreperson of Petit Jury

Date:

ENTERED
ACCT. *bm*

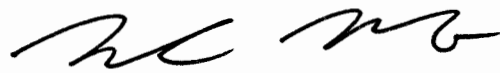
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING IN ILLEGAL DRUGS

At a Court of General Sessions, convened on **MAY 04 2021** the Grand Jurors of Greenville County present upon their oath:

That LILLIAN MAE BATES did in Greenville County, on or about the 13th day of November, 2020, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into the State or was knowingly in actual or constructive possession or attempted to become in actual or constructive possession of more than 28 grams or more of Fentanyl; a morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in §44-53-0190 or §44-53-210 of South Carolina Code of Laws. This is in violation of §44-53-0370 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

BAR # 101312

T-255-23

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE)
VS.)
Lillian Mae Bates)
AKA:)
Race: WHITE Sex: F Age: 33)
DOB: [REDACTED] SS# [REDACTED])
Address: [REDACTED])
City, State, Zip: Greenville, SC 29607)
DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 GS 23 001478 A

A/W#: Direct Presentment
Date of Offense: 11/13/2020
S.C. Code § : 44-53-0370(E)(3)(
CDR Code #: 0149

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Drugs / Trafficking In Illegal Drugs

in violation of § 44-53-0370(E)(3)(of the S.C. Code of Laws, bearing CDR Code # 2361

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. EMB (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST:

[Signature] 100370 [Signature] [Signature] 101957
Grounell, Clark SC Bar# Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 10 days/months/years Time Served Youthful Offender Act not to exceed — years
and/or to pay a fine of \$ — provided that upon the service of — days/months/years/Time Served and or payment
of \$ — ; plus costs and assessments as applicable*; the balance is suspended with **probation** for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

The sentence shall run
 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 SCDoc.
10 days/months
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

J

SPECIAL CONDITIONS: A/W#: Direct Presentment

PTUP after _____ months/years And Other Terms Listed Below:

- Substance Abuse Counseling, Completion of GED, Random Drug/Alcohol testing, Attend Voc. Rehab. or Job Corp, No Contact with, Domestic Violence Intervention Program, Mental Health Counseling, May serve W/E beginning:

Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours

Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Term _____ Set by SCDPPPS

Recipient: _____

*Fine: Table with columns for description, amount, and total. Includes items like §14-1-206 (Assessments 107.5 %), §14-1-211(A)(1) (Conv. Surcharge), etc. Total: \$ 283.25

Clerk of Court/ Deputy Clerk: Paul B. Wiskenstein Presiding Judge: [Signature]
Court Reporter: Jenkins Judge Code: 2162 Sentence Date: 11-09-22

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
 The State of South Carolina,)
)
)
 vs.)
)
)
 LILLIAN BATES,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
 Indictment Number: 2021GS2301478A

MOTION TO VACATE GUILTY PLEA

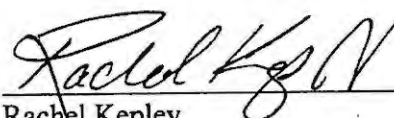
22 NOV 17 PM 12:58
 F331 WICKENSMEYER CDD SCVL SC

This matter comes before the Court on motion of Rachel Kepley, attorney for the above-captioned defendant who seeks to vacate the sentence received at her guilty plea to the above-referenced Indictment. In support of her motion defendant would show that:

1. Ms. Bates entered a plea to the above-referenced Indictment in on November 9th, 2022.
2. The sentencing sheet correctly reflects a plea to the offense of Trafficking in Fentanyl under § 44- 53-370(e)(3).
3. Ms. Bates was sentenced to 10 years incarceration for that offense alone.
4. Unknown to counsel and Ms. Bates, an Order was signed by the Honorable Donald Hocker of the Eighth Judicial Circuit the day prior on November 8th, 2022. In that Order, the court found that fentanyl is not a substance that can be lawfully included in any indictment under § 44- 53-370(e)(3). That Order is attached to this motion as an exhibit, along with Mr. Bates' indictment and sentencing sheet.
5. Had counsel or Ms. Bates been aware of this Order at the time the plea was entered, she likely would not have pled under that same statute. Accordingly, her plea was not made knowingly or intelligently.
6. In the alternate, Defendant moves this honorable court to vacate the conviction for lack of subject matter jurisdiction. Subject matter jurisdiction cannot be waived and can be raised at any point, including following a plea and sentence. *Florence v. Berry*, 61 S.C. 237, 239 (1901); *Browning v. State*, 320 S.C. 366, 465 S.E.2d 358 (1995). "A circuit court has subject matter jurisdiction over a criminal offense if: (1) there has been an indictment that sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the charge is a lesser-included offense of the crime charged in the indictment." *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998); *State v. Dudley*, 354 S.C. 514, 522 (2003). The above indictment fails, as a matter of law, to state an offense

as fentanyl is not included in the cited statute. See attached order. Further, this failure to charge a lawful crime under that particular statute renders the indictment invalid and unlawful and failed to confer subject matter jurisdiction to the Court of General Sessions. The proper remedy for a lack of subject matter jurisdiction is to vacate the conviction.

NOW THEREFORE defendant moves to vacate the guilty plea and sentence or, in the alternative, withdraw the guilty plea as not being knowingly made. The defendant respectfully requests a hearing on the motion as soon as practicable.



Rachel Kepley
Greenville County Public Defender's Office
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522
Attorney for Defendant

Greenville, South Carolina

This 17 day of November, 2022

Exhibit 1

WFA

DOCKET NO. 2021-GS-23-^{EWB} 001478A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2021

THE STATE

vs.

LILLIAN MAE BATES

WITNESSES

Jeremy E. Jones

Greenville County Sheriffs Office

11/13/2020

DIRECT PRESENTMENT

DOB: [REDACTED] W/F SSN: [REDACTED]

ACTION OF GRAND JURY

TRUE BILL

[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0149

TRAFFICKING IN ILLEGAL DRUGS

VIOLATION § 44-53-0370

Foreperson of Petit Jury

Date:

ENTERED
ACCT. BM

W

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING IN ILLEGAL DRUGS

At a Court of General Sessions, convened on

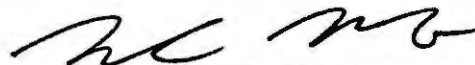
MAY 04 2021

the Grand Jurors of Greenville

County present upon their oath:

That LILLIAN MAE BATES did in Greenville County, on or about the 13th day of November, 2020, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into the State or was knowingly in actual or constructive possession or attempted to become in actual or constructive possession of more than 28 grams or more of Fentanyl; a morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in §44-53-0190 or §44-53-210 of South Carolina Code of Laws. This is in violation of §44-53-0370 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

BAR # 101312

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
STATE _____ VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 GS 23 001478 A

Lillian Mae Bates
AKA: _____
Race: WHITE Sex: F Age: 33
DOB: _____ SS# _____
Address: _____
City, State, Zip: Greenville, SC 29607
DL#: _____ SID#: _____

AW#: Direct Presentment
Date of Offense: 11/13/2020
S.C. Code § : 44-53-0370(E)(3)(
CDR Code #: 0149

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Drugs / Trafficking In Illegal Drugs

in violation of § 44-53-0370(E)(3)(of the S.C. Code of Laws, bearing CDR Code # 2361

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. EMB (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST:

[Signature] 100370 [Signature] [Signature] 101957
Grounsell, Clark SC Bar# Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,

for a determinate term of 10 days/months/years/Time Served Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years/Time Served and or payment of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for

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

The sentence shall run

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 SCDOC. _____ days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS Lillian Mae Bates INDICTMENT/CASE#: 2021 GS 23 001478
SPECIAL CONDITIONS: A/W#: Direct Presentment

PTUP after _____ months/years
And Other Terms Listed Below:

- Substance Abuse Counseling
- Completion of GED
- Random Drug/Alcohol testing
- Attend Voc. Rehab. or Job Corp
- No Contact with _____
- Domestic Violence Intervention Program
- Mental Health Counseling
- May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430
- Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
- Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Term _____ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____		\$ _____
§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	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ 8.25
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$ _____ PM
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
	TOTAL	\$ 283.25

Clerk of Court/ Deputy Clerk: Paul B. Wickens Presiding Judge: [Signature]
 Court Reporter: Jenkins Judge Code: 2162
 Sentence Date: 11-09-22

Exhibit 2

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF NEWBERRY)	EIGHTH JUDICIAL CIRCUIT
))
The State)	ORDER GRANTING MOTION TO QUASH
)	INDICTMENT
))
v.))
))
Jonathan Conard Dawkins,)	Indictment Number(s)
Defendant.)	2022-GS-36-0095
))
))

This matter came before the court on August 24, 2022 on Jonathan Conard Dawkins's ("Defendant") pretrial Motion to Quash the above-referenced Indictment. In granting this motion the Court finds the following:

FACTUAL AND PROCEDURAL BACKGROUND

The State alleges that on October 30, 2021, Defendant was in possession of approximately 200 blue pills. Defendant was arrested and charged under warrant 2021A3629299331 for a violation of S.C. Code § 44-53-375(C)(1)(a).¹

It appears that the pills were sent to SLED and found to contain a mixture of fentanyl and Tramadol. The weight of the pills and packaging was found to be 19.18 grams.

In February of 2022, the case was presented to the Newberry County Grand Jury. The indictment which was presented to the Grand Jury listed the offense as "Trafficking Fentanyl." The Indictment lists the applicable statute as S.C. Code 44-53-370(e). The body of this indictment contains the following information:

The defendant, Jonathan Conrad Dawkins, did on or about October 30, 2021, in Newberry County, South Carolina, knowingly sell manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture,

¹ S.C. Code § 44-53-375(C)(1)(a) is the code section for the offense of Trafficking in Methamphetamine or Cocaine Base." However, Defendant's arrest warrant describes S.C. Code § 44-53-375(C)(1)(a) as "Trafficking a Schedule II Controlled Substance."

cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of **four (4) grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, namely fentanyl, as described in Section 44-53-190 or 44-53-210** (emphasis added) or four (4) grams or more of any mixture containing any of these, all in violation of 44-53-370(e), South Carolina Code of Laws (1976, as amended).

The Grand Jury true billed the indictment on February 18, 2022.

The Indictment charges under S.C. Code § 44-53-370(e). However, that section contains all of the following offenses: (1) Trafficking in marijuana; (2) Trafficking in cocaine; (3) Trafficking in illegal drugs; (4) Trafficking in methaqualone; (5) Trafficking in LSD; (6) Trafficking in flunitrazepam; (7) Trafficking in gamma hydroxybutyric acid; and (8) Trafficking in MDMA or ecstasy;

Prior to the August 24, 2022 General Sessions non-jury term in Newberry, the parties informed the Court that Defendant would like to be heard concerning motions by Defendant. On August 22, 2022, Defense Counsel emailed the Court and indicated that he planned on raising the following motions:

- 1) Motion to Quash Indictment
- 2) Pursuant to the doctrine of collateral estoppel and res judicata, motion to estop the State from arguing that Fentanyl and/or Tramadol is a "morphine, opium, salt, isomer, or salt of an isomer thereof"
- 3) Motion in limine to prevent the state from arguing that "morphine, opium, salt, isomer, or salt of an isomer thereof" based on *Napue*² and *Riddle*.³
- 4) Motion to compel any writing in the possession of the State which would show that fentanyl does not qualify under the current version of the statute.

² *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).

³ *Riddle v. Ozmint*, 631 S.E.2d 70, 369 S.C. 39 (S.C. 2006).

The State objected to conducting the pre-trial hearing on this matter. The State argued that Defendant's motions were in reality pretrial motions to dismiss. Citing *Massey*,⁴ the State argued that pretrial motions to dismiss were not proper. The State argued that Defendant's motions should be denied without prejudice. The State submitted such motions would not be ripe until the State had rested its case, and at that point Defendant could raise the motion on directed verdict.

The Court found that it would be prudent to allow Defendant to submit evidence and make his motions prior to deciding whether such motions were ripe.

At the hearing on August 24, 2022, Defendant called Dr. Wendy Bell. Dr. Bell has a PhD in Chemistry. Dr. Bell holds the rank of Captain with SLED and is director of forensic services at SLED. Additionally, Dr. Bell was appointed as a SLED representative to the Governor's Opioid Emergency Task Force. During the hearing, the Defense moved for her to be qualified as an expert and the State did not object to her being so qualified.

Dr. Bell testified that Fentanyl and Tramadol were fully synthetic opioids. Dr. Bell testified that morphine and heroin were natural opiates that are produced from synthesizing the opium poppy. Dr. Bell testified that substances such as hydrocodone were considered semisynthetic opioids. Dr. Bell testified that fully synthetic opioids can not be produced by synthesizing the opium poppy.

Dr. Bell testified that for several years, SLED has been advising law enforcement agencies and Solicitors that it is problematic to charge someone under S.C. Code § 44-53-370(e)(3) when the drug was a fully synthetic opioid. Dr. Bell testified that neither Fentanyl nor Tramadol are a "morphine, opium, salt, isomer, or salt of an isomer thereof..."⁵ Although Dr. Bell admitted that

⁴ *State v. Massey*, 430 S.C. 349, 844 S.E.2d 667 (2020).

⁵ See S.C. § Code 44-53-370 (e)(3).

Fentanyl was a Schedule II drug, Dr. Bell testified that it would be difficult to say that fentanyl was included in the language S.C. Code § 44-53-370(e)(3).

Dr. Bell also testified that there has been proposed legislation that would define an offense for trafficking in fentanyl. Defendant submitted the proposed Acts for the Court's review. Dr. Bell testified that she helped write the proposed legislation.

In support of his motion to estop the state from arguing that fentanyl and/or tramadol are "morphine, opium, salt, isomer, or salt of an isomer thereof", defense counsel submitted several documents concerning Judge McKinnon's opinion in *State v. Harold Gene White, III* (2018-GS-46-7326). Defense Counsel argued to the Court that the State should be estopped from asserting that S.C. Code 44-53-370(e)(3) includes substances that are not derived from opium. Defense Counsel argued that by voluntarily abandoning its appeal of Judge McKinnon's opinion in *White*, the State is precluded from re-litigating whether S.C. Code § 44-53-370(e)(3) prohibits synthetic opioids.

In addition to the estoppel issue, Defendant further argued that it would be inappropriate to allow the State to argue that fentanyl and/or tramadol are "morphine, opium, salt, isomer, or salt of an isomer thereof" under S.C. Code § 44-53-370(e)(3) because there is no factual support for this argument. To support their argument Defendant cites to *Napue*⁶ and *Riddle*⁷ which both deal with prosecutors presenting knowingly false information to a jury. Defendant contended that allowing the state to make the argument that fentanyl is "morphine, opium, salt, isomer, or salt of an isomer thereof" is false because the state has no evidence to support such a position.

⁶ *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).

⁷ *Riddle v. Ozmint*, 631 S.E.2d 70, 369 S.C. 39 (S.C. 2006).

During the hearing the State took the position, by its cross-examination of Dr. Bell, that fentanyl was covered by S.C. Code § 44-53-370(e)(3). After the hearing, there were multiple email exchanges between the State and the Defense restating their respective positions which the Court will not discuss in this Order.

FINDINGS OF THE COURT

“Trafficking In Fentanyl” and S.C. Code § 44-53-370(e)

Before the Court states its rulings on Defendant’s motions, it is important that the Court address whether there currently is an offense of trafficking in fentanyl in South Carolina, or whether fentanyl is included in the substances prohibited by S.C. Code § 44-53-370(e)(3).

According to the face of the indictment in this case, Defendant is charged with “Trafficking in Fentanyl.” This Court finds that “Trafficking in Fentanyl” is not currently an offense under South Carolina Law. Although there are statutes that criminalize the unlawful possession of fentanyl, it is not currently contained in South Carolina’s drug trafficking statutes. During the hearing, there was testimony that the legislature had proposed legislation creating the offense of trafficking in fentanyl. While there are certainly strong public policy reasons for the adoption of such a statute, currently the offense of Trafficking in Fentanyl does not exist in this state.

During the hearing, the State alleged that the possession of over 4 grams of a substance containing fentanyl should be considered a violation of S.C. Code § 44-53-370(e)(3). S.C. Code § 44-53-370(e)(3) states in part the following:

Four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as “trafficking in illegal drugs”...

S.C. Code § 44-53-370(e)(3).

[Handwritten signature]

Based on the testimony of Dr. Bell, this Court finds that fentanyl is not by definition a “morphine, opium, salt, isomer, or salt of an isomer thereof.” The plain language of the statute does not include fully synthetic opioids such as fentanyl. Therefore, this Court finds that fentanyl is not included under S.C. Code § 44-53-370(e)(3). It is worth noting that S.C. Code § 44-53-370(e)(3) cross-references two other statutes; S.C. Code § 44-53-190 and S.C. Code § 44-53-210. S.C. Code § 44-53-210 comprises a list of controlled substances labeled Schedule II. Included in this list is the opioid fentanyl. At first glance, it would appear that this cross-reference would pull fentanyl into the substances covered by S.C. Code § 44-53-370(e)(3). However, S.C. Code § 44-53-210 also lists Amphetamine, Methamphetamine, and multiple other Schedule II substances which are clearly not a “morphine, opium, salt, isomer, or salt of an isomer thereof” as expressly contemplated in § 44-53-370(e)(3). Thus, This Court finds that a mere cross-reference to S.C. Code § 44-53-210 is not sufficient to pull fentanyl into the substances covered by S.C. Code § 44-53-370(e)(3). This Court further notes that even if S.C. Code § 44-53-370(e)(3) was found to be ambiguous, the rule of lenity demands that the statute be strictly construed against the State.

Defense’s Motion to Quash the Indictment

“Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.” S.C. Code § 17-19-90. “A motion to quash an indictment tests only the facial validity of the indictment.” *See State v. Massey*, 430 S.C. 349, 358, 844 S.E.2d 667, 671 (2020). “An indictment which does not charge a valid offense is clearly insufficient.” *State v. Blackmon*, 304 S.C. 270, 274, 403 S.E.2d 660, 662 (1991).

Defendant submits that the indictment in this case is not facially valid. At the hearing Defendant argued that the indictment was not facially valid because of the following:

#6
JGMS

- (1) the State titles the offense "Trafficking in Fentanyl"; and
- (2) the State interjected the term "namely fentanyl" into the language taken from 44-53-370(e).

As to the first objection this Court finds that titling the charged offense as Trafficking in Fentanyl renders the indictment invalid. This Court finds that there is not currently an offense in South Carolina for Trafficking in Fentanyl. The purpose of the indictment is to give Defendant notice of the charges against him. *See State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 499 (2005) ("an indictment is needed to give notice to the defendant of the charge(s) against him." (footnote 6)). This notice is required by Article I, Section 11 of the South Carolina Constitution. Since the charged offense does not currently exist, this court finds that the indictment does not give sufficient notice to the Defendant.

The problem of insufficient notice is compounded by the State's decision to cite to all of S.C. Code § 44-53-370(e). S.C. Code § 44-53-370(e) contains 8 different trafficking offenses. Although the language of the indictment is largely based on S.C. Code § 44-53-370(e)(3), the fact that the State titled the indictment, in two places, "Trafficking in Fentanyl," does not create a valid criminal offense. *See Blackmon*, 304 S.C. at 274, 403 S.E.2d at 662. Defendant also asserts that the body of the indictment is facially invalid because the State interjected the term "namely fentanyl" into the language taken from 44-53-370(e). The term fentanyl does not appear in S.C. Code § 44-53-370(e). Insertion of the word "fentanyl" into the body of the indictment does not create a valid criminal offense, and the Court will not create a criminal offense in this case.

While it may seem inconsistent that heroin is included under § 44-53-370(e)(3) but a similarly dangerous opioid such as fentanyl is not, it is not within the Court's "province to amend the law to resolve this inconsistency." *See id.*, 304 S.C. at 274, 403 S.E.2d at 662 (1991). Moreover, to allow amendment of the law through the State's act of crafting an indictment or the Judicial act

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of reading new terms into a statute would violate the doctrine of separation of powers and Defendant's right to due process.

State's Argument Concerning *Massey*

In order for full consideration of the State's arguments, the Court finds it necessary to address the State's main argument concerning *Massey*. The State has alleged that *Massey* prohibits Defendant from making a pre-trial motion to quash on these grounds. The State contends that Defendant's argument would be more appropriately raised by a motion for directed verdict at trial after the State has rested its case-in-chief.

In *Massey*, the defendant moved to quash an indictment for burglary in the first degree. *Massey* argued that the outbuilding in the indictment was not a dwelling under South Carolina law. The trial court agreed and quashed the indictment. The Court of Appeals affirmed the trial court, and the State sought certiorari. In their Petition for Writ of Certiorari the State:

- (1) Challenged the circuit court's authority to quash a facially valid indictment, and
- (2) Asked whether the court of appeals erred in affirming the circuit court on fact-based grounds where the pretrial evidence showed the first-degree burglary charge was both "legally and factually appropriate."

State v. Massey, 430 S.C. 349, 356, 844 S.E.2d 667, 670 (2020). The Supreme Court only granted certiorari as to the second issue.

In the opinion, the Court noted that a "motion to quash an indictment tests only the facial validity of the indictment." *Id.*, 430 S.C. at 358, 844 S.E.2d at 671. In reversing the trial court, the Supreme Court found that "the only question that should have been addressed at the pretrial hearing was whether the first-degree burglary indictment set forth the necessary elements of the offense." *Id.*, 430 S.C. at 358-59, 844 S.E.2d at 672.

#8
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 Page 8 of 9

In its motion to quash the indictment, Defendant here has argued that the indictment is not facially valid. While the State frames this as a “pretrial directed verdict motion,” at the hearing, Defendant based his argument on the language that appeared on the face of the indictment. As stated above, the court agrees that the indictment is not facially valid as it does not charge a valid criminal offense under South Carolina law. *See Blackmon*, 304 S.C. at 274, 403 S.E.2d at 662 (“An indictment which does not charge a valid offense is clearly insufficient.”). The State’s position relies heavily on *Massey*. Although the *Massey* Court did not rule on whether or not the trial court had the authority to quash a facially valid indictment, it provided guidance on the issue. What this Court takes from the *Massey* decision is this: if the defense is offering a sufficiency of the evidence (question of fact) analysis in challenging the indictment, then the defense is precluded from moving to quash the indictment pretrial. On the other hand, if the defense is offering an analysis of whether the indictment sufficiently charges a crime (question of law), then a pretrial motion to quash is appropriate. Though the Court in *Massey* did not make this specific ruling, it is gleaned from the body of the opinion.

Due to the fact that this Court finds that Trafficking Fentanyl is not covered under § 44-53-370(e)(3), we are faced with a question of law in that this indictment does not sufficiently charge a crime. In light of the Court’s ruling, the Defense’s other motions will not be addressed.

IT IS HEREBY ORDERED that the indictment 22-GS-36-00095 is Quashed.



Donald Hocker
Presiding Circuit Court Judge
Eighth Judicial Circuit

Date: 11-8-22

#9

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

MAR 14 AM 10 30

THE STATE,

vs.

Harold Gene White, III,

Defendant.

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Indictment No.: 2018-GS-46-07326

ORDER GRANTING MOTION TO DISMISS

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

CERTIFIED TRUE COPY
2019 MAR 14 AM 10:36

Defendant Harold Gene White, III ("White") has moved to dismiss the charge of Trafficking Hydrocodone, Indictment No. 2018-GS-46-07326.¹ For the reasons set forth below, the motion is GRANTED.

During a search of White's residence on April 17, 2017, 88 hydrocodone pills were found. The State then indicted White for trafficking pursuant to S.C. Code Ann. 44-53-370(e)(3), which makes it unlawful to traffic: "four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210..." The question before the Court is whether hydrocodone is included in this statute. As far as the Court can determine, this is an issue of first impression in South Carolina.²

The State conceded in this matter that hydrocodone is not chemically "any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin," but that Court will analyze that issue out of thoroughness since it appears an appeal is likely.

It is first necessary to define the terms in the statute. "Opium" is a natural product of the *papaver somniferum* poppy plant, and contains numerous chemical compounds including: morphine, narcotine, codeine, thebaine, papaverine and narceine.³ "Morphine" is a specific chemical substance: C₁₇H₁₉NO₃ and one of the component drugs found in opium.⁴ "Heroin" is chemically modified morphine, and is a different chemical compound: C₂₁H₂₃NO₅.⁵ Hydrocodone, the substance at issue in this indictment, is a

¹ Although the motion was originally made by the White as an objection to the indictment, the Assistant Solicitor requested, and the Court agreed, to dismiss the charge rather than quashing the indictment to allow for an appeal. The ruling was made prior to the start of the bench trial, and therefore double jeopardy had not attached.

² The Court is aware of *State v. Miles*, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017), in which the Court of Appeals affirmed a conviction under S.C. Code Ann. 44-53-370(e)(3) for trafficking oxycodone. However, *Miles* presented the issue of whether the defendant must know the specific drug has was possessing, rather than the issue of what drugs are covered by the statute.

³ United Nations Office of Drugs and Crime, "The Opium Alkaloids," https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1953-01-01_3_page005.html, visited 3/12/19.

⁴ Pubmed Chemistry Database, "Morphine," <https://pubchem.ncbi.nlm.nih.gov/compound/5288826>, visited 3/12/19.

⁵ Pubmed Chemistry Database, "Heroin," <https://pubchem.ncbi.nlm.nih.gov/compound/Diacetylmorphine#section=Top>, visited 3/12/19.

synthetic derivative of codeine or thebaine with the structure $C_{18}H_{21}NO_3$.⁶ It is chemically distinct from both heroin and morphine, and not one of the chemicals found in opium.

While hydrocodone is not a component part of opium, and is chemically different than heroin and morphine, S.C. Code Ann. § 44-53-370(e)(3) also includes a "salt, isomer, or salt of an isomer thereof." An isomer is a chemical compound with an identical number and type of atoms as another compound, but with a different three dimensional structure (i.e., the atoms are arranged and connected differently). Hydrocodone is not an isomer of either morphine or heroin (it has a different chemical formula), and opium cannot have an isomer because it is a mixture of numerous different chemical compounds.

A "salt" in this sense is a compound formed by mixing an acid with the base compound.⁷ Drugs are often mixed with hydrochloric acid (HCl) or other acids to create a salt that is dissolvable in water (for use in IVs, injections, etc).⁸ Although there are salt forms of hydrocodone (e.g., hydrocodone bitartrate)⁹, hydrocodone itself is not a salt, much less a "salt" of morphine, heroin, or opium.

S.C. Code Ann. § 44-53-370(e)(3) also uses the phrase "any morphine," which is difficult to interpret because morphine is a specific chemical compound. It is possible "any" refers to the "salts" and "isomers" language (i.e., it means "any salt or isomer of morphine"). Even if the "any morphine" phrase is construed as broadly as possible, and "any morphine" is read to mean any chemical derivative of morphine, hydrocodone is not included. Hydrocodone is a chemical derivative of thebaine and codeine, not morphine.¹⁰

The only remaining avenue to sweep hydrocodone into S.C. Code Ann. § 44-53-370(e)(3) is the "as described in Section 44-53-190 or 44-53-210" clause, and this is what the State argues. S.C. Code Ann. § 44-53-190 and § 44-53-210 are the two statutory lists of drugs in Schedule I and Schedule II, respectively. It is difficult to determine what the legislature intended here, as none of the important terms from S.C. Code Ann. § 44-53-370(e)(3) are "described" or defined in sections 44-53-190 or 44-53-210. Further, those statutes include large numbers of drugs that are chemically unrelated to morphine, opium, and heroin (e.g., marijuana, psycote, psilocybin, and amphetamines).

Perhaps recognizing this difficulty, the State does not argue for wholesale importation of every drug in either S.C. Code Ann. § 44-53-190 or S.C. Code Ann. § 44-53-210 into the S.C. Code Ann. § 44-53-370(e)(3) trafficking statute. Instead, the State argues the term "opiate" should be imported from S.C. Code Ann. § 44-53-190 and § 44-53-210 into the S.C. Code Ann. 44-53-370(e)(3). The State essentially argues the phrase "as described in Section 44-53-190 or 44-53-210" should be interpreted to mean

⁶ Pubmed Chemistry Database, "Hydrocodone", <https://pubchem.ncbi.nlm.nih.gov/compound/hydrocodone#section=Top>, visited 3/12/19; and NIH Liver Toxicity, "Hydrocodone," <https://livertox.nih.gov/Hydrocodone.htm>, visited 3/13/19.

⁷ Chemistry Explained, "Salt," <http://www.chemistryexplained.com/Ru-Sp/Salt.html>, visited 3/13/19

⁸ Patel, et al., "Pharmaceutical salts: a formulation trick or a clinical conundrum?", *Br J Cardiol* 2009;16:281-6, <https://bjcardio.co.uk/2009/11/pharmaceutical-salts-a-formulation-trick-or-a-clinical-conundrum/>, visited 3/13/19

⁹ Pubmed Chemistry Database, "Hycon," <https://pubchem.ncbi.nlm.nih.gov/compound/5463977#section=Top>, visited 3/13/19.

¹⁰ NIH Liver Toxicity, "Hydrocodone," <https://livertox.nih.gov/Hydrocodone.htm>, visited 3/13/19.

"including opiates as listed in Section 44-53-190 or 44-53-210" even though the word "opiate" does not appear in S.C. Code Ann. 44-53-370(e)(3).

An "opiate" is generally considered to be a drug made from opium. For example, the National Cancer Institute at the National Institute of Health defines an opiate as "A substance used to treat pain or cause sleep. Opiates are made from opium or have opium in them. Opiates bind to opioid receptors in the central nervous system. Examples of opiates are codeine, heroin, and morphine. An opiate is a type of analgesic agent."¹¹ The Merriam-Webster Dictionary agrees that an opiate is: "a drug (such as morphine or codeine) containing or derived from opium and tending to induce sleep and alleviate pain."¹²

However, "opiate" is defined in the South Carolina Code in a very unusual way:

'Opiate' means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under this article, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include racemic and levorotatory forms.

S.C. Code Ann. § 44-53-110(31).

South Carolina's unusual definition of opiate includes not just drugs derived from opium, but *any* drug "having an addiction-forming or addiction-sustaining liability similar to morphine" or even being capable of "conversion" into such a drug. This language is staggeringly vague and broad. How does someone determine if a drug has "addiction forming liability similar to morphine"? How many steps of chemical "conversions" are allowed in determining if a benign chemical can be converted into a substance with "addiction forming liability similar to morphine"? Given the widespread acknowledgement of the addictiveness of nicotine, surely the Legislature did not intend to include trafficking in cigarettes in S.C. Code Ann. § 44-53-370(e)(3), but that is a possible result if "opiates" are included and defined in this way.

What settles this matter definitively is the rule of lenity. "[I]n construing a criminal statute, we are guided by the rule of lenity—the principle that any ambiguity must be resolved in favor of the accused." *Berry v. State*, 381 S.C. 630, 633, 675 S.E.2d 425, 426 (2009). An important part of the rule of lenity is the concept of fair notice — that a criminal statute should make it plain what is prohibited. "[I]t is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." *McBoyle v. United States*, 283 U.S. 25, 27 (1931).

Weighed against the rule of lenity, it is plain the motion must be granted. Hydrocodone is not mentioned in S.C. Code Ann. 44-53-370(e)(3) by name, and neither is it morphine or opium or heroin or a salt or isomer of one of those. There is no possible way the phrase "four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210..." can be fairly said to unambiguously pull in the definition of "opiate" from 44-53-

¹¹ NIH National Cancer Institute, "Opiate", <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/opiate>, visited 3/13/19

¹² Merriam-Webster's Dictionary, "Opiate," <https://www.merriam-webster.com/dictionary/opiate>, visited 3/13/19

THE STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 THE STATE)
)
 v.)
)
 LILLIAN MAE BATES,)
)
 DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
 THIRTEENTH JUDICIAL CIRCUIT
 Warrant/Indictment Nos.:
 2021-85-23-01478A
 AFFIDAVIT OF SERVICE
 (Hand Delivery)

22 NOV 17 PM 12:35
 Paul Wrenschmer-CDC/SUL/SC

PERSONALLY APPEARED before me the below signed Investigator for the Greenville County Public Defender Office who states, after first being duly sworn, that they have served the below listed pleading(s) upon all parties by hand delivering a copy to the address(es) listed below on this 17 day of Nov, 2022.

Pleading(s) Served: Motion to Vacate Guilty Plea

Parties Served: The Honorable W. Walt Wilkins, Solicitor
 13th Circuit Solicitor Office
 305 East North Street, Suite 325
 Greenville, SC 29601

GREENVILLE COUNTY PUBLIC DEFENDER

By: Jeanne Hayes
 Jeanne Hayes, Paralegal
 305 E. North Street, Suite 123
 Greenville, SC 29601
 (864) 467-8522

SWORN TO and subscribed before me
 this 17 day of November, 2022

Jules Pack
 NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 10-29-30

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 STATE OF SOUTH CAROLINA)
)
 Plaintiff,)
)
 vs.)
)
)
 LILLIAN MAE BATES,)
)
 Defendant.)

IN THE CIRCUIT COURT
 THIRTEENTH JUDICIAL CIRCUIT

STATE'S RESPONSE TO DEFENDANT'S
 MOTION TO VACATE GUILTY PLEA

Indictment: 2021-GS-23-01478A

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 Paul Whickensimer COC GUL SC

Now comes the State represented by Assistant Solicitor Ryan Holloway who hereby responds to the Defendant's motion to vacate her guilty plea in the above-entitled matter:

POSTURE OF THE CASE

On November 13, 2020, the Greenville County Sheriff's Office charged the Defendant with Trafficking in Illegal Drugs pursuant to S.C. Code Ann. 44-53-370(e)(3) for delivering what field-tested positive as 995.0 grams of heroin to an undercover officer. A chemical analysis later determined the substance the Defendant delivered was fentanyl. A Greenville County Grand Jury later indicted the Defendant for Trafficking in Illegal Drugs on May 4, 2021. On November 9, 2022, the Defendant, represented by Assistant Public Defender Rachel Kepley, pled guilty to Trafficking in Illegal Drugs before the Honorable Judge Letitia Verdin. Her sentencing sheet reflects that she pled guilty to Trafficking in Illegal Drugs, and not Trafficking in Fentanyl. On November 17, 2022, the Defendant timely filed a motion to vacate her plea primarily based on a written order by the Honorable Judge Donald Hocker in Newberry County of the Eighth Circuit General Sessions Court. Judge Hocker filed his order on November 8,

2022, which was the day before the Defendant pled guilty in the case *sub judice*. In his order, Judge Hocker quashed an indictment for "Trafficking in Fentanyl." The State had secured an indictment for Trafficking in Fentanyl, rather than the crime of "Trafficking in Illegal Drugs" as defined in S.C. Code Ann. 44-53-370(e)(3). Moreover, the Defendant also cites to an another unpublished opinion by the Honorable William McKinnon of the Sixteenth Judicial Circuit, who quashed an indictment for trafficking in hydrocodone, rather than trafficking in illegal drugs. However, South Carolina Appellate Court Rule 268(d)(2), which governs citation hierarchy in South Carolina pleadings, states "...unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Despite a specific prohibition against using unpublished orders such as Judge Hocker's and Judge McKinnon's written orders, the Defendant now asks this Court to vacate her valid guilty plea based on these orders.

VACATING VALID GUILTY PLEA IS IMPROPER

The Defendant has a high hurdle to leap to convince this Court to vacate her valid guilty plea.¹ When the Defendant pled guilty, she waived her right to raise nonjurisdictional defects in the prosecution of her case and constitutional violations. State v. Sims, 814 S.E.2d 632, 633 (S.C. 2018); State v. Rice, 737 S.E.2d 485, 485-86 (2013) (citing Hyman v. State, 723 S.E.2d 375, 379 (2012)). "A plea of guilty is an admission or a confession of guilt, and [is] as conclusive as a verdict of a jury; it admits all material fact averments of the accusation...." State v. Fuller, 174 S.E.2d 774, 777 (1970) (citations omitted); see North Carolina v. Alford, 91 S. Ct. 160 (1970) (noting guilty pleas constitute a waiver of trial and an express admission of guilt upon which a sentence may be imposed). Thus, "[w]hen a criminal defendant has solemnly

¹ "A defendant who voluntarily and knowingly enters a plea accepting responsibility for the charges is properly held to a higher burden in demonstrating to the court that newly-discovered evidence should allow him to withdraw that plea." Jamison v. State, 765 S.E.2d 123, 129 (S.C. 2014).

admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Jamison v. State, 765 S.E.2d 123, 129 (S.C. 2014); Rice at 486 (quoting Tollett, 411 U.S. at 267).

Tacitly acknowledging her guilty plea contained no procedural defects, the Defendant couches her guilty plea within a subject matter jurisdictional defect. The Defendant argues that fentanyl does not fall within the scope of Trafficking in Illegal Drugs as defined in subsection 44-53-370(e)(3). “Under South Carolina law, a circuit court lacks subject matter jurisdiction to accept a guilty plea to a nonexistent offense.” Whitner v. State, 492 S.E.2d 777, 779 (S.C. 1997) (relying on Williams v. State, 410 S.E.2d 563 (S.C. 1991)). As such, the Defendant claims this Court improperly accepted her guilty plea to a non-existent charge, as the Court lacked subject matter jurisdiction to accept a plea to such a charge. Concomitantly, the Defendant denies she freely, voluntarily, and intelligently pled guilty to her indictment as she was unaware of Judge Hocker's unpublished Eighth Circuit written order. Both prongs of her circular argument must be satisfied before this Court may vacate her guilty plea. The Defendant waived her right to convince this Court fentanyl is not included in subsection 44-53-370(e)(3), and this Court cannot vacate her valid guilty until she convinces this Court of the identical argument. Her doubletalk argument is not evidence the Court lacked subject matter jurisdiction to accept her plea. Her motion to vacate is evidence of buyer's remorse. Whitner at 779.

THE DEFENDANT WAIVED COURT’S PRETRIAL FACTFINDER ROLE

The Defendant waived her constitutional right to test the State's evidence that fentanyl is a narcotic included with the other narcotics enumerated in subsection 44-53-370(e)(3) in exchange for a reduced trafficking charge and a corresponding lighter sentence. Her strategic

choice is evidence of a free, voluntary, and intelligent decision, rather than evidence this Court lacked subject matter jurisdiction to accept her plea.

This Court has not had the opportunity to be a pretrial factfinder as occurred in the Newberry County case to which the Defendant cites, as the Defendant never filed a motion to quash the indictment prior to her plea. The Defendant's legal argument that this Court lacks subject matter jurisdiction is rooted in a credibility determination over whether fentanyl applies to subsection 44-53-370(e)(3). This issue can only be answered in the crucible of a pretrial hearing, the opportunity for which the Defendant waived upon pleading guilty. Circuit judges become pretrial factfinders for the purposes of credibility determinations related to whether a Defendant is entitled to immunity under the Protection of Persons and Property Act,² to the suppression of State's evidence,³ to represent himself or herself pursuant to Faretta v. California,⁴ and when expert testimony is necessary to resolve a motion to quash an indictment. The Defendant deprived herself and the State of the opportunity to present evidence for and against the applicability of fentanyl to subsection 44-53-370(e)(3). Her decision deprived a court of the opportunity to hear and weigh any such evidence offered by both parties when she freely and intelligently chose to plead guilty. Now, she urges this Court to vacate her guilty plea blind to the evidence she waived her right to present at a pretrial hearing. Without the benefit of hearing testimony of expert witnesses and reviewing the evidence for a credibility determination, this Court has an inadequate basis to vacate her otherwise valid guilty plea.

² S.C. Code Ann. §§ 16-11-410 to -450. See State v. Duncan, 709 S.E.2d 662 (S.C. 2011); See also State v. McCarty, 2022 S.C. LEXIS 137 (Sept. 21, 2022).

³ See State v. Morris, 769 S.E.2d 854 (S.C. 2015).

⁴ See State v. Samuel, 813 S.E.2d 487 (S.C. 2018) (citing to Faretta v. California, 422 U.S. 806 (1975)).

DEFENDANT WAIVED HER INVALID CHARGE ARGUMENT UPON HER
GUILTY PLEA

The Defendant argues that Judge Verdin lacked subject matter jurisdiction if this Court determines her indictment fails to allege a valid crime. Fundamentally, she argues that the evidence of her delivering 995.0 grams of fentanyl does not apply to subsection 44-53-370(e)(3). That analysis is a quintessential question for a jury at a trial the right of which she waived when she pled guilty.

A valid guilty plea relinquishes any claim that would contradict the “admissions necessarily made upon entry of a voluntary plea of guilty.” Class v. United States, 138 S. Ct. 798, 805-6 (2018). The Defendant does not deny she delivered four grams or more of fentanyl to an undercover officer. She simply denies fentanyl applies to subsection 44-53-370(e)(3) after agreeing during the plea colloquy Judge Verdin conducted that indeed fentanyl applies in the Trafficking in Illegal Drugs statute. The Defendant’s argument questions the State’s constitutional power to prosecute her, which is intertwined with the Court’s authority to accept her plea conferred by her true-billed indictment. Id.

While a valid guilty plea waives “nonjurisdictional” defects and defenses, it is unclear what amounts to a jurisdictional defect to a criminal prosecution. State v. Sims, 814 S.E.2d 632, 633 (S.C. Ct. App. 2018). “The jurisdictional power of the court of general sessions to adjudicate criminal cases is not unlimited. It does not include, for instance, the power to convict someone of a statute no longer in effect or of a nonexistent offense.” Id.; See Whitner at 779. The Defendant raises the question of whether the State had the power to prosecute her for Trafficking in Illegal Drugs when the drug she admitted she delivered to an undercover officer is not specifically enumerated in subsection 44-53-370(e)(3). In the Sims case, the South Carolina Court of Appeals reviewed an improper conditional guilty plea. Specifically, the Court

examined whether a defendant who pleads guilty to a charge for which he could not be properly convicted waives his right to assert immunity under the Protection of Persons and Property Act.⁵ Sims at 634. The Sims Court held he waived his assertion that the State lacked the power to prosecute him when he chose to plead guilty rather than move for an immunity hearing. Consequently, the Defendant surrendered his right to move the trial court to make a credibility determination of whether he was entitled to immunity. Fundamentally, "...a guilty plea is 'a lid on the box, whatever is in it, [and] not a platform from which to explore further possibilities.'" United States v. Bluso, 519 F.2d 473, 474 (4th Cir. 1975).

In State v. Whitner, the Defendant pled guilty to unlawful conduct toward a child pursuant to S.C. Code Ann. § 20-7-50 (now S.C. Code Ann. § 63-5-70). Whitner at 778-79. During her plea hearing, Whitner admitted to ingesting illegal narcotics while pregnant. Subsequently, the Defendant filed a post-conviction relief (hereinafter PCR) action alleging the circuit court lacked subject matter jurisdiction to accept her plea because her unborn child was not a "child" within the purview of the crime of unlawful conduct toward a child. The South Carolina Supreme Court disagreed and reversed the PCR court's granting of relief to Whitner. Id. at 779. The Supreme Court concluded that the Legislature intended to include unborn fetuses within the protective scope of the statute. The Court examined S.C. Code Ann. § 20-7-30(1) (now S.C. Code Ann. § 63-1-40(1)), which defines a "child" as "...a person under the age of eighteen" to determine if the Legislature intended to define an unborn fetus as a "child" within the Children's Code. The Court concluded that, despite the ambiguity in subsection 20-7-50 (63-5-70), the circuit court had subject matter jurisdiction to accept Whitner's plea. Id.

⁵ See also Blackledge v. Perry, 417 U.S. 21, 30 (1974) (claim attacking "the very power of the State to bring the defendant into court to answer the charge brought against him" survives guilty plea).

In the case *sub judice*, the Defendant also asserts that Judge Verdin lacked subject matter jurisdiction to accept her plea because the State lacked the power to prosecute her for Trafficking in Illegal Drugs related to fentanyl. As in Whitner, the Defendant also waived her right to file a motion to quash her indictment to allow this Court to make a credibility determination related to the issue she now wishes to litigate. Moreover, the Defendant argues nothing defective in her indictment or in her guilty plea hearing. Her argument is simply that evidence she possessed fentanyl does not satisfy the elements of trafficking in illegal drugs, and thus the State lacks the power to prosecute her. Such defenses she waived when she admitted guilt to the allegations in her indictment and the facts as alleged by the State during her plea hearing. Id. Certainly, the Defendant does not argue that Judge Verdin conducted a defective plea colloquy. Judge Verdin recited the allegations in her indictment for Trafficking in Illegal Drugs involving fentanyl, and the Defendant agreed with the facts as alleged in the indictment. Moreover, the State added further details as to the Defendant's Trafficking in Illegal Drugs involving fentanyl, and the Defendant allocuted that she concurred in those facts. By virtue of the Defendant's post-plea motion, this Court cannot assume the role of a factfinder to make a credibility determination when the Defendant herself admitted committing the crime she now argues is inapplicable to fentanyl.

FENTANYL IS WITHIN THE PURVIEW OF TRAFFICKING IN ILLEGAL DRUGS

Assuming this Court finds that it has the authority to decide whether fentanyl falls within the scope of subsection 44-53-370(e)(3), cardinal rules of statutory interpretation are a helpful guide in that analysis. By the plain language of S.C. Code Ann. 44-53-370(e)(3), the legislative intent was to include any opioid, whether naturally occurring or a synthetic that mimics the chemical effects of a substance synthesized from an opium plant. This legislative intent is

further illuminated by an examination of S.C. Code Ann. §§ 44-53-190 and 44-53-210, which are cross-referenced in subsection 44-53-370(e)(3). The purpose of the cross-reference of these statutes is not to declare all controlled substances enumerated in Schedule I and II controlled substances under the umbrella of the Trafficking in Illegal Drugs statute. The purpose was to include all opiates, whether naturally synthesized or synthetically created, within the scope of this crime.⁶

When drafting subsection 44-53-370(e)(3), the Legislature is presumed to have chosen the caption of the crime of “Trafficking in Illegal Drugs,” over trafficking in opium-synthesized opioids. See Prot. & Advocacy for People with Disabilities, Inc. v. Buscemi, 789 S.E.2d 756 (S.C. Ct. App. 2016) (“when interpreting a statute, courts must presume the legislature did not intend a futile act...A statute should be so construed that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous....”). This Court must presume the Legislature intended Trafficking in Illegal Drugs to encompass trafficking in various opioids, also known as narcotics. The Legislature entitled this crime “Trafficking in Illegal Drugs,” rather than the narrower description “Trafficking in Naturally-Synthesized Opiates.” Therefore, this Court should consider the larger category in which the specifically listed drugs in the Trafficking in Illegal Drugs statute are defined in S.C. Code Ann. § 44-53-110. For guidance, this Court should examine “...not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Whitner at 779.

“Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, *or independently by means of chemical synthesis*, or by a combination of extraction and chemical

⁶ “Statutes which are part of the same legislative scheme should be read together’... [S]tatutes are to be construed with reference to the whole system of law of which they form a part.” Prot. & Advocacy for People with Disabilities, Inc. v. Buscemi, 789 S.E.2d 756 (S.C. Ct. App. 2016) (citations removed).

synthesis: (a) *opium*, coca leaves, and *opiates*. (b) a compound, manufacture, salt, derivative or *preparation of opium*, coca leaves, or *opiates*; (c) a substance (and *any compound*, manufacture, salt, derivative, or *preparation thereof*) *which is chemically identical* with any of the substances referred to in subitem (a) or (b).

S.C. Code Ann. § 44-53-110 (31) (emphasis added). In other words, narcotics include opiates produced through chemical synthesis independent of extraction from a vegetable origin. The Trafficking in Illegal Drugs statute provides examples of natural opiates, as well as heroin, an example of a semi-synthetic opioid. However, 44-53-370 does not specifically exclude synthetic opioids. Pursuant to cardinal rules of statutory construction, this Court cannot add an exception for synthetic opiates where presumably the Legislature chose not to act. State v. Sweat, 688 S.E.2d 569, 575 (S.C. 2010).⁷

Subsection 44-53-370(e)(3) references “...any opium, morphine, salt, isomer, or salt of an isomer, including heroin, as described in 44-53-190 and 44-53-210...,” for Schedules I and II controlled substances. Morphine and heroin are specifically listed in 44-53-190. Opium is not listed in either schedule, though it is as much a narcotic as morphine, heroin, and fentanyl. The answer to the question of why it was not listed goes to the heart of the State’s argument. Fentanyl is not specifically listed in subsection 44-53-370(e)(3), but opium is listed. Morphine, heroin, and fentanyl, are expressly listed in subsections 44-53-190 and 210, though these three are naturally synthesized, semi-synthesized, and synthetically synthesized respectively. Subsection 44-53-370(e)(3) cross-references Schedule I and II, which includes these narcotics, but subsection 44-53-370(e)(3) references morphine, opium, and heroin. The Legislature qualified these narcotics with the word “any” and the cross-references to Schedules I and II controlled substances classified as narcotics. Finally, the Legislature entitled the crime of

⁷ “The Court should give words ‘their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.’” Sweat at 575 (quoting Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 636 S.E.2d 598, 607 (S.C. 2006)).

trafficking in these substances with the generic description “Trafficking in Illegal Drugs.” Any ambiguity in the phrase “illegal drugs” should be construed to include the narrower category of narcotics within subsections 44-53-190 and 44-53-210, which would include fentanyl.

The Legislature’s choice of language in Trafficking in Illegal Drugs was as strategic as the Defendant’s decision to plead guilty to this crime. The Legislative intent clearly was to include “any opium” narcotic synthesized naturally from the poppy plant or any synthetic created to mimic its addictive effects. Otherwise why use the qualifier “any” in conjunction with a single type of narcotic opium. Opium is extracted from the opium poppy, as are morphine and heroin, though heroin is semi-synthetic. Again, cardinal rules of statutory interpretation require this Court “to ascertain and effectuate the intent of the legislature.” State v. Pittman, 647 S.E.2d 144, 161 (S.C. 2007). A statute’s language must be construed in light of its intended purpose, and “[w]henver possible, legislative intent should be found in the plain language of the statute itself.” State v. Gaines, 667 S.E.2d 728, 733 (S.C. 2008). The Court must reject a statutory interpretation if it leads to an absurd result that could not possibly have been intended by the legislature or that defeats plain legislative intent. Sweat, 688 S.E.2d at 575. See also Taylor at Id.

The Legislature’s intent could not have been more plain in the language of subsection 44-53-370(e)(3) than cross-referencing subsections 44-53-190 and 44-53-210. Legislature has provided guideposts below to this Court to follow toward two inclusive lists of narcotics, from opium derivatives to synthetically-produced controlled substances.

(B) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:.... S.C. Code Ann. § 44-53-190(B).

(C) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:...[including] (10) Heroin. S.C. Code Ann. § 44-53-190(C).

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation...[including] (6) Fentanyl. S.C. Code Ann. § 44-53-210(C).

The thrust of the Defendant's argument is that subsection 44-53-370(e)(3) is silent as to whether Trafficking in Illegal Drugs includes fentanyl. Therefore, a statutory ambiguity exists that must be interpreted in her favor. However, her argument that subsection 44-53-370(e)(3) contains an exhaustive list of opium derivatives that fall under the purview of Trafficking in Illegal Drugs is belied by the Legislature's cross-references to two inclusive lists of opium derivatives *and* opiates, including a specific reference to fentanyl.

This Court must also harmonize subsection 44-53-370(e)(3) related to Trafficking in Illegal Drugs with subsection 44-53-370(b)(1), related to distribution, manufacturing, and possession with intent to distribute narcotics, including fentanyl.

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony...." S.C. Code Ann. § 44-53-370

A statute's language should be "read in a sense which *harmonizes* with its subject matter and accords with its general purpose." Sweat at 575. "[A] court should not focus on any single section or provision but should consider the language of the statute as a whole." Mid-State Auto Auction of Lexington, Inc. v. Altman, 476 S.E.2d 690, 692 (S.C. 1996) (emphasis added).

The Defendant does not deny in her motion to vacate her plea that she possessed fentanyl. Thus, implicitly, she admits she possessed a quantity of fentanyl that a jury could presume was with the intent to distribute the fentanyl pursuant to subsection 44-53-370(b)(1). Following this

logic, the language the Legislature chose to categorize narcotics such as fentanyl in subsection 44-53-370(b)(1) illuminates the language the Legislature chose in subsection 44-53-370(e)(3). Therefore, this Court can determine whether the Legislature envisioned fentanyl to apply to Trafficking in Illegal Drugs pursuant to subsection 44-53-370(e)(3) by harmonizing this statute with subsection 44-53-370(b)(1).

The Trafficking in Illegal Drugs statute cross-references subsections 44-53-190 and 44-53-210, which cover “any” Schedule I and II controlled substances. However, subsection 44-53-370(b)(1) narrows the list of drugs enumerated under Schedules I and II to those narcotics within Schedule I(b), and I(c), as well as Schedule II. The Legislature also codified certain narcotics into their own inference and penalty levels within subsections 44-53-370(b)(1) and 44-53-370(e)(3). Thus, the narrow list of narcotics in which fentanyl is included in subsection 44-53-370(b)(1), which encompasses Schedules I(b), I(c), and II are the narcotics the Legislature intended to include in subsection 44-53-370(e)(3). Harmonizing separate statutes that cover fentanyl is a necessary step and another cardinal rule of statutory interpretation, rather than evidence of an ambiguity in the Trafficking in Illegal Drugs statute.

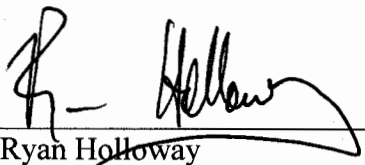
CONCLUSION

The Defendant’s motion to vacate her guilty plea is rooted in the argument that this Court has the authority to declare that fentanyl is not included in Trafficking in Illegal Drugs. The Defendant is not arguing that Trafficking in Illegal Drugs is an invalid charge. The issue in the case *sub judice* is whether fentanyl falls within the purview of Trafficking in Illegal Drugs as defined in subsection 44-53-370(e)(3). The question of whether evidence of the Defendant’s actions, including possessing four grams or more of fentanyl, constitutes Trafficking in Illegal Drugs is a quintessential question for a jury. At the conclusion of the State’s case in a trial, the

Court could have granted the Defendant's directed verdict motion, if the State had failed to prove even in a favorable light that fentanyl falls within the purview of subsection 44-53-370(e)(3). However, the Defendant waived her right to avail herself of presenting expert testimony challenging the indictment to which she admitted guilt.

Judge Donald Hocker's unpublished order does not constitute precedent, much less newly-discovered evidence, upon which this Court can vacate her valid guilty plea. Certainly, ignorance as to the existence of such an order does not vitiate the Defendant's free and intelligent waiver of her right to challenge her trafficking in illegal drugs indictment. Furthermore, the indictment Judge Hocker quashed was for the non-existent "Trafficking in Fentanyl," not trafficking in illegal drugs as defined in subsection 44-53-370(e)(3). Even if Judge Hocker's order could justify vacating a valid guilty plea, the substance of his order is inapposite to the Defendant's case and thus unpersuasive.

Therefore, the State respectfully requests this Court deny the Defendant's motion to vacate her valid guilty plea.



Ryan Holloway
Assistant Solicitor
Bar # 71605
Thirteenth Circuit Solicitor's Office
305 East North Street, Suite 325
Greenville, South Carolina 29601
864-467-8780
rholloway@greenvillecounty.org

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There were no witnesses.

There were no exhibits.

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Certificate of Reporter 14

1 THE COURT: All right.

2 MS. KEPLEY: Thank you, Your Honor, before The
3 Court is Ms. Lillian Bates. She's in the custody of
4 the department of corrections because she pled guilty
5 back on November 9th of 2022. She was before Judge
6 Verdin, she pled guilty to trafficking in Fentanyl.
7 She received a sentence of ten years from Judge
8 Verdin. Following that plea I filed a motion to
9 vacate her plea or in the alternative to withdraw her
10 plea based upon some legal issues. I have attached
11 some exhibits I'm going to be referencing, Your
12 Honor. There's Exhibit 1, which includes her
13 indictment and her sentencing sheet. Exhibit 2 is an
14 order from Newberry County by Judge Hocker that came
15 out the day before Ms. Bates pled guilty. And
16 there's a third exhibit that is another order out of
17 York County from Judge McKinnon.

18 THE COURT: Okay.

19 MS. KEPLEY: What we're asking The Court to do
20 is one of two options. We'll ask The Court to
21 consider allowing Ms. Bates to withdraw her plea as
22 it was not knowingly or intelligently made. The
23 issue in her case has always been about the statute
24 of trafficking in heroin and whether or not Fentanyl
25 falls into that. Both of those orders do a very good

1 job of getting into the chemistry and the science
2 behind all of that. These are issues that I
3 discussed at length with Mr. Clark Grounsell, who was
4 the solicitor at the time. He told me, Look, we
5 don't have any sort of order on point. I'm not -- he
6 believed that Fentanyl was included in that statute.
7 I disagree.

8 The order that I'm referring to is Exhibit 2,
9 the order from Judge Hocker, does make a court
10 finding that Fentanyl is not a substance --
11 trafficking Fentanyl is not a crime in the State of
12 South Carolina. I know that order is not binding.
13 But had I known about that order before Ms. Bates
14 pled, and I absolutely should have known about it,
15 should have informed her about it--

16 THE COURT: How would you be expected to know
17 about a circuit Judge's order in a different circuit?
18 So, okay, go ahead.

19 MS. KEPLEY: Yes, Your Honor, because it --
20 because it is very germane to the issues in her case,
21 to the issues we've been litigating, had we known
22 about that order before she pled, I expect she would
23 not have pled. And my failure to inform her, I
24 think, would render her plea not necessarily
25 knowingly or intelligently made. We'd ask The Court

1 to consider allowing her to withdraw that plea on
2 that basis.

3 In the alternative, we would also suggest to The
4 Court that there is a subject matter jurisdiction
5 issue here. As I'm sure The Court is aware,
6 Ms. Bates is entitled to raise the issue of subject
7 matter jurisdiction before her plea, during her plea
8 or after her plea. Which is what we've done here.
9 Subject matter jurisdiction centers on the issue of
10 whether or not there was a crime alleged in that
11 indictment. I've included the indictment for Your
12 Honor. It states -- the title is trafficking in
13 illegal drugs. And it states that she was in
14 possession of a certain quantity of Fentanyl in
15 violation of that subsection that relates to heroin.
16 Morphine, opium [indiscernible].

17 We would put to The Court, we certainly don't
18 dispute the facts, we don't dispute the sufficiency
19 of the facts to prove that indictment. But we would
20 dispute that that indictment alleges something that
21 is a crime in The State of South Carolina. I would
22 put that it does not. Fentanyl is not included in
23 that statute by name or reference. It is not
24 morphine, opium or salts of isomers thereof. We can
25 certainly get into all the chemistry.

1 THE COURT: Who signed -- there's only three of
2 the four pages to this second order. Whose order is
3 that?

4 MS. KEPLEY: Oh, the order -- Exhibit 3 is a
5 order from Judge McKinnon, Your Honor. I certainly
6 can include the last page if it's not in your
7 package.

8 THE COURT: It's not in there. That's all
9 right, go ahead, finish your argument.

10 MS. KEPLEY: I think both of those orders
11 address, although they aren't binding, they address
12 the issue that The State has attempted to amend their
13 current trafficking statute by the grand jury process
14 and the indictment process. Something they're not
15 permitted to do, something the legislature is
16 permitted to do. And something the legislature is
17 currently trying to do, Your Honor. And we would
18 certainly ask The Court, because this indictment does
19 not allege something that is a crime, there is no
20 criminal jurisdiction. We'd ask The Court to vacate
21 her plea that she made in November, as looking any
22 subject matter jurisdiction on that basis.

23 THE COURT: When did you file this motion?

24 MS. KEPLEY: Back in November, Your Honor. We
25 have tried to get it heard in front of Judge Verdin.

1 There was some scheduling issues and we weren't able
2 to do it. I would also put -- it's not in my motion
3 but I think there is some estoppel issues with the
4 state attempting to say that Fentanyl is included in
5 this statute when they certainly haven't appealed to
6 any of these orders. And I know The State, based on
7 their response motion, is going to say this situation
8 is somehow fixed because they changed the title of
9 the indictment from trafficking in Fentanyl to
10 trafficking illegal drugs. I would put to The Court
11 that changing the title of the document does not
12 change the fact that they're amending the indictment
13 by adding language that's just not in the statute,
14 Your Honor.

15 THE COURT: Do I even have jurisdiction to hear
16 this? It was not filed during the term of court that
17 she entered her plea, am I right?

18 MS. KEPLEY: Motion--

19 THE COURT: Plea was on the 9th, this was filed
20 on the 17th.

21 MS. KEPLEY: Yes, Your Honor.

22 THE COURT: So, I mean, that's one question.

23 MR. HOLLOWAY: I would say it's within 10 days.
24 She did file it within 10 days after the plea. I
25 think that does give The Court jurisdiction to hear

1 this matter.

2 THE COURT: Ten days? I thought it was the term
3 of court.

4 MR. HOLLOWAY: I think it's the end of the term
5 of court, plus 10 days. But I will need to confirm
6 that.

7 THE COURT: I don't think that's correct.

8 All right, go ahead, what else?

9 MS. KEPLEY: I can certainly get into the
10 Chemistry of Fentanyl and what -- I think those
11 orders do a great job of --

12 THE COURT: Has it been appealed?

13 MS. KEPLEY: No, it has not, Your Honor.

14 THE COURT: Has this case been appealed?

15 MS. KEPLEY: The case itself has not been
16 appealed yet, no, Your Honor. We were waiting until
17 this motion was decided before we did that.

18 THE COURT: Yeah, what do you want to tell me?

19 MR. HOLLOWAY: Your Honor, I don't have much to
20 say, I put most of that in the 12 page response. But
21 I'll summarize. The Defense's motion fails--

22 THE COURT: You got it down to about a half
23 paragraph.

24 MR. HOLLOWAY: I think The Court could look at
25 that as one paragraph and say under Rule 268,

1 Appellate Court Rules, she can't cite to unpublished
2 orders from other circuits. So the basis of this
3 sudden change of heart on a valid guilty plea is --
4 comes from two different circuit orders. And the
5 indictments in the, for Judge Hocker, is trafficking
6 in Fentanyl. We have trafficking illegal drugs. And
7 on the face of the indictment we allege Fentanyl.
8 That's the distinction. The charge of trafficking in
9 Fentanyl --

10 THE COURT: Yeah, but that was on a motion to
11 quash.

12 MR. HOLLOWAY: Again, motion to quash. When The
13 Defendant --

14 THE COURT: That's very different. What was the
15 other on one?

16 MR. HOLLOWAY: Trafficking in--

17 THE COURT: Was it a motion --

18 MR. HOLLOWAY: It was a motion to quash.

19 THE COURT: A preconviction?

20 MR. HOLLOWAY: Yes, sir.

21 THE COURT: That's very -- a big distinction.

22 MS. KEPLEY: Well, I will say, Your Honor, we're
23 not arguing the sufficiency, though, of the
24 indictment or the evidence that would prove it. We
25 are arguing that there's just not jurisdiction,

1 criminal jurisdiction to hear something that's not a
2 crime.

3 THE COURT: Okay. I tell you what my
4 inclination is that I'm just not sure, technically, I
5 don't think I have jurisdiction. I think it's filed
6 out of time. And I don't think -- it's very
7 distinctive that the two orders that you want this
8 Court to rely on are prejudgment orders. What you're
9 doing, though, I think, is creating a platform to
10 pursue this to a higher court to resolve it. Which I
11 think is the appropriate venue for this. But I don't
12 want to talk about that. File a motion to alter or
13 amend the sentence, it's got to be done during the
14 week, during the term. I don't think -- do you have
15 any authority that says that this is different?

16 MS. KEPLEY: I don't have any authority that
17 says that, Your Honor.

18 THE COURT: Okay. We're just taking a quick
19 look, see what we can find. Certainly is a
20 interesting issue.

21 MS. KEPLEY: Yes, Your Honor.

22 THE COURT: And are you aware -- you said the
23 legislature, are you aware that they are --

24 MS. KEPLEY: A bill has been drafted. I think
25 it's just awaiting votes.

1 THE COURT: To include it as -- under the
2 statute?

3 MS. KEPLEY: No, it would make trafficking in
4 Fentanyl it's own distinct subcategory.

5 THE COURT: Okay.

6 MR. HOLLOWAY: And I do want to emphasize, we
7 have discussed -- I mean, our office has discussed
8 this with law enforcement for -- since, at least,
9 2018 and whether to even decide if it's appropriate
10 or not. Our position is that this is not a chemistry
11 issue, it is -- and with all due respect to Judge
12 Hocker and the Judge in York County, but they got
13 lost in the weeds of chemistry. The language of the
14 statute cross references Schedule I and II. If you
15 harmonize the trafficking statute with the PWID
16 statute, it highlights which part, which drugs in
17 Schedule I and II are roped into the trafficking in
18 illegal drug statute. It is all about the language
19 of these three different statutes. And not in the
20 chemistry.

21 And by the way, heroin is not a naturally
22 occurring -- it's not derived naturally from opium.
23 It is a semi synthetic. So -- and heroin is
24 specifically mentioned in trafficking in illegal
25 drugs.

1 THE COURT: I think you're getting down into the
2 weeds.

3 MR. HOLLOWAY: I'm getting into the weeds of
4 language, the language of the statue. And with all
5 due respect to the expert from SLED who testified, I
6 don't -- what I know is what we've talked about and
7 what the language shows.

8 THE COURT: All I know is that the stuff that
9 comes out of York County is always suspect; right?

10 MR. HOLLOWAY: There's one exception. Two
11 exceptions, where's Mindy at?

12 THE COURT: You got anything?

13 MS. KEPLEY: (Ms. Kepley shakes her head.)

14 THE COURT: Okay. I am convinced this is an
15 issue that should be decided at the appellate level.
16 And it's unfortunate that the two orders you cited
17 were not appealed so that could be tested. And so
18 I'm going to deny your motion. And let you appeal
19 it. Okay.

20 MS. KEPLEY: Thank you, Your Honor.

21 THE COURT: All right, do you understand that?

22 MS. BATES: I'm sure she's going to explain it
23 to me.

24 MS. KEPLEY: I will sit down and explain it all
25 to her, Your Honor.

1 THE COURT: Okay. All right.

2 MR. HOLLOWAY: Yes, Your Honor. Thank you, Your
3 Honor.

4 (WHEREUPON, the proceedings were concluded.)

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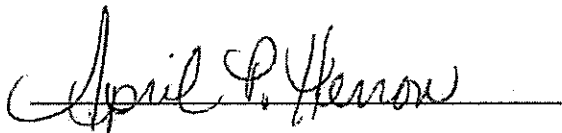
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 17th day of March, 2023.

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

April 12, 2023



APRIL P. HERRON, Court Reporter

23 MAR 22 PM 4:13
PAUL HICKENBOMER COC.GUL.SC

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
STATE OF SOUTH CAROLINA)
Plaintiff,)
vs.)
LILLIAN MAE BATES,)
Defendant.)

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

ORDER DENYING DEFENDANT'S
MOTION TO VACATE GUILTY PLEA

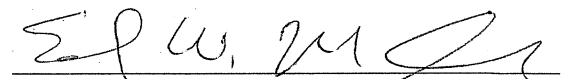
Indictment: 2021-GS-23-01478A

Now comes the State represented by Assistant Solicitor Ryan Holloway and the Defendant represented by Assistant Public Defender Rachel Kepley on the above-entitled matter. On March 17, 2023, this Court held a hearing on the Defendant's motion to vacate her guilty plea to trafficking in illegal drugs involving fentanyl pursuant to S.C. Code Ann. § 44-53-370(E)(3) accepted by the Honorable Judge Letitia Verdin on November 9, 2022. The Defendant had filed her motion on November 17, 2022.

After reviewing the Defendant's motion and the State's response, as well as considering both parties' oral arguments, this Court hereby denies the Defendant's motion to vacate her guilty plea.

THEREFORE, the Defendant's motion is DENIED.

22 day of March, 2023


Honorable Judge Edward Miller
Circuit Judge
Thirteenth Judicial Circuit

CERTIFICATE OF COUNSEL FOR APPELLANT

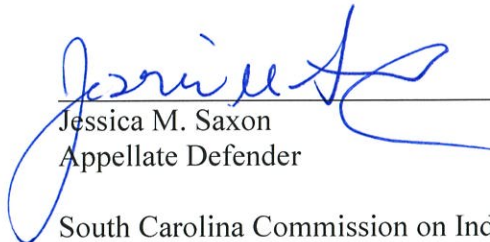
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Jul 19 2024

SC Court of Appeals



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of July, 2024.

RECEIVED

Jul 19 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

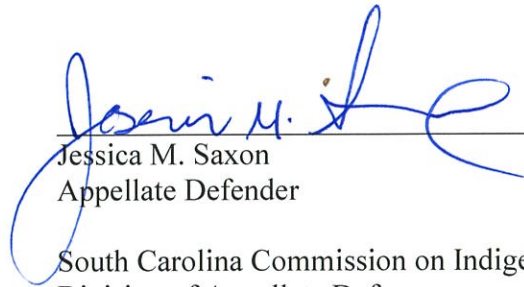
LILLIAN MAE BATES,

APPELLANT.

APPELLATE CASE NO. 2023-000483

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 19th day of July, 2024.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

From: [Stock, Chris](#)
To: [SC - EDWARDS JOSHUA](#); [SC - COLLINS CAROLINE](#)
Cc: [Saxon, Jessica](#)
Subject: 2023-000483 The State v. Lillian Mae Bates - Record on Appeal
Date: Friday, July 19, 2024 10:22:00 AM
Attachments: [2023-000483 The State v. Lillian Mae Bates - Record on Appeal.pdf](#)

Mr. Edwards,

Please find attached for service the record on appeal for Lillian Mae Bates' appeal which will be filed today with the Court of Appeals.

Thank you.

Chris Stock
Administrative Assistant
Commission on Indigent Defense
Appellate Division
(803) 734-1330