

PETITION FOR A WRIT OF CERTIORARI
IN POST-CONVICTION RELIEF ACTIONS

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AUG 30 2013

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Case No. 2010-CP-10-9745

Norris Earl White,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

ALAN WILSON
Attorney General

Ashleigh R. Wilson
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1589

ATTORNEYS FOR RESPONDENT

MILTON D. STRATOS

Stratos Law, LLC
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ATTORNEY FOR PETITION

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[The remaining portion of the Appendix is composed of a copy of the documents listed in the Index.]

STATE OF SOUTH CAROLINA

COUNTY OF

Norris Earl White Jr. Plaintiff(s)

vs.

The State of South Carolina Defendant(s)

(Please Print)

Submitted By: Milton D. Stratos

Address: 1041 Johnnie Dodds Blvd, 14A Charleston SC 29404

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

10-CP-10-9745

SC Bar #: 7972

Telephone #: 843-216-7739

Fax #: 843-216-0804

Other:

E-mail: milt@stratoslaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-CP-..., Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature: [Signature]

Date: 11.24.2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

2

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

2010 NOV 24

IN THE COURT OF COMMON PLEAS

AM 11:38

10-CP-10-9745

Norris Earl White Jr.

Full name and prison number (if any) of Applicant

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention City of North Charleston
2. Name and location of Court which imposed sentence City of North Charleston, Municipal Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Ticket Number: 83928 EN
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11/25/2009, Fine of \$470.00

- (b) _____
- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty Bench trial, finding of guilty.
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) I was not fully aware of my right to appeal, and the evidence upon which post-conviction relief is based was not known before, during, or immediately following the time for appeal.
 - (b) Dispositive evidence was not available nor immediately discoverable after the exercise of reasonable diligence before, during, or following trial.

(c) Additionally, at the close of bench trial I told the judge that I would like to appeal the ruling. I also asked the judge how to effect an appeal. The magistrate judge related that I could not appeal the decision without paying the fine.

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

(a) There exists evidence of material fact, not previously presented and heard, which requires vacation of the conviction or sentence in the interest of justice.

(b) The relief requested is based upon evidence discovered within one year after sentencing and the evidence could not have been discovered earlier by exercise of reasonable diligence.

(c) Newly discovered video evidence speaks plainly to petitioner's innocence, and denying relief would result in patent injustice and a denial of fundamental fairness.

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

(a) Officer Shivers, the arresting officer, provided false testimony to support a wrongful arrest, lacking in probable cause, and later a finding of guilt. Real and uncontroverted evidence in the form of a video surveillance was not immediately available, nor known at the time of trial. Officer Shiver's bias and false testimony supported a finding of guilt.

(b) Following trial, a complaint was filed with the City of North Charleston, Police Department, Internal Affairs, citing civil rights violations and police misconduct in instituting petitioner's arrest and later perpetrating a fraud upon the court providing false testimony. After several months it was discovered that Internal Affairs had located a video recording of the arrest and the events leading up to arrest. Petitioner attempted to obtain a copy of said video evidence, however his demand was denied by both the owner of the video as well as North Charleston Police Department. At this point in time Petitioner did not know exactly what the video surveillance may have captured at the time of the arrest. A copy of the video evidence was obtained only after hiring an attorney and service of a subpoena duces tecum.

(c) The newly discovered video evidence reveals that the arrest for disorderly conduct was wrongful, lacking in probable cause, and unsupported by any evidence that a crime had been committed. Conversely, the evidence is dispositive of wrongful arrest and a gross miscarriage of justice.

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

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

- iii. _____
- iv. _____

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

No.

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) Petition is based upon newly discovered evidence. The actual discovery of the content of said material evidence immediately preceeds this petition for post-conviction relief.

(b) Evidence of material fact was not evident, available nor discoverable prior to, during or subsequent to trial.

(c) Video evidence was discovered only after an investigation conducted by Internal Affairs, City of North Charleston Police Department.

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

(a) your arraignment and plea? No.

(b) your trial, if any? No.

(c) your sentencing? No.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.

(e) preparation, presentatic n or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.

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

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

- i. Milton D. Stratos
- ii. 1041 Johnnie Dodds Blvd., Suite 14-A
- iii. Mt. Pleasant, SC 29464

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

- i. Mr. Stratos was hired to assist in the retrieval of newly discovered evidence and post-conviction relief. Thus, to this date, Mr. Stratos has not represented me in any proceedings.
- ii. _____
- iii. _____

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

Vacation of the conviction or sentence in the interest of justice, and expungment and destruction of arrest records, and reimbursement for funds used to obtain a favorable ruling. In the alternative, petitioner request a new trial based upon newly-discovered evidence.

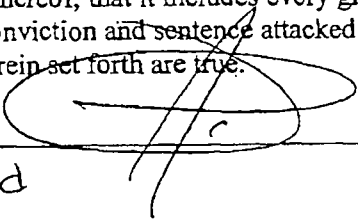
20. Are you now under sentence from any other court that you have not challenged?

No.

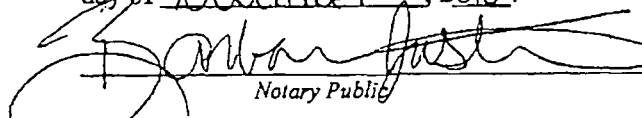
STATE OF SOUTH CAROLINA)
)
County of Charleston)

VERIFICATION

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



SWORN to and subscribed before me this 23rd
day of November, 2010.



Notary Public (S.S.)

My Commission Expires: 12-4-2017

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
	)	2010-CP-10-9745
Norris Earl White, Jr.,)	
)	
Applicant,	)	RETURN
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 24, 2010, would respectfully show this Court:

I.

The Applicant is not presently confined in the South Carolina Department of Corrections. On November 8, 2009, the Applicant was arrested and issued a uniform traffic ticket (#83928 EN) for disorderly conduct. On November 25, 2009, Applicant appeared at the Municipal Court for the City of North Charleston and proceeded to trial, after which the magistrate judge found him guilty as charged for disorderly conduct. The presiding judge imposed a penalty of \$470. Upon information and belief, Applicant did not appeal the conviction or the fine.

Attached herewith and incorporated herein are the PCR application, the uniform traffic ticket, and the case history from the North Charleston Municipal Court. The Respondent has been unable to obtain the trial transcript.

II.

The Applicant alleges the following grounds for relief:

1. There exists evidence of material fact, not previously presented and heard, which requires vacation of the conviction and sentence in the interest of

justice. Officer Shiver, the arresting officer, provided false testimony to support a wrongful arrest, lacking in probable cause, and later a finding a guilt. Real and uncontroverted evidence in the form of a video surveillance was not immediately available, nor known at the time of trial. Officer Shiver's bias and false testimony supported a finding of guilt.

2. The relief requested is based upon evidence discovered within one year after sentencing and the evidence could not have been discovered earlier by exercise of reasonable diligence. Following trial, a complaint was filed with the City of North Charleston, Police Department, Internal Affairs, citing civil rights violations and police misconduct in instituting Applicant's arrest and later perpetrating a fraud upon the court providing false testimony. After several months it was discovered that Internal Affairs had located a video recording of the arrest and the events leading up to arrest. Applicant attempted to obtain a copy of said video evidence, however his demand was denied by both the owner of the video as well as North Charleston Police Department. At this point in time Applicant did not know exactly what the video surveillance may have captured at the time of the arrest. A copy of the video evidence was obtained only after hiring an attorney and service of a subpoena duces tecum.
3. Newly discovered video evidence speaks plainly to Applicant's innocence, and denying relief would result in patent injustice and a denial of fundamental fairness. The newly discovered video evidence reveals that the arrest for disorderly conduct was wrongful, lacking in probable cause, and unsupported by any evidence that a crime had been committed. Conversely, the evidence is dispositive of wrongful arrest and a gross miscarriage of justice.

III.

The Applicant alleges that newly discovered evidence exists in that video evidence discovered after trial reveals that his arrest for disorderly conduct was wrongful, lacking in probable cause, and unsupported by any evidence that a crime had been committed. An applicant requesting a new trial based on after-discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). The Applicant has not shown that the alleged evidence meets all of the requirements for after-discovered evidence. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The relief Applicant seeks is a vacation of the conviction or sentence in the interest of justice, expungement and destruction of arrest records, and reimbursement for funds used to obtain a favorable ruling. In the alternative, Applicant requests a new trial based upon newly discovered evidence. Respondent submits that expungement and reimbursement are not available remedies in a post-conviction relief application. The post-conviction relief court does not have the authority to award monetary damages or to dismiss all charges or vacate all sentences with prejudice. Rather, Applicant's only remedy in this matter is a new trial.

V.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

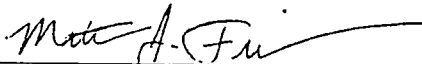
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

August 11, 2011.

STATE OF SOUTH CAROLINA)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
Earl Norris White,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. 10-CP-10-9745
)	
State of South Carolina,)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing was held the above-captioned action on May 24, 2012, before The Honorable Kristie Harrington, in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Milton Stratos, Esq.
 STRATOS LAW FIRM
 1041 Johnnie Dodds Blvd, Ste 14A
 Charleston, SC 29464
 Appearing for Earl Norris White

Karen Ratigan, Esq.
 OFFICE OF ATTORNEY GENERAL
 P O Box 11549
 Columbia, SC 29211-1549
 Appearing for State of South Carolina

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

1 THE COURT: I understand that this
2 was an issue that was before Judge Jefferson; is
3 that correct?

4 KAREN RATIGAN: Yes, Your Honor. I
5 wanted to just kind of put forth where I believe
6 that the State is at right now. I do know that
7 Mr. Friedman used to handle this Circuit and now
8 he's in Virginia. Uh, -- based on some notes in
9 his file and a conversation that I've had with
10 him, he indicated to me that this matter was on
11 the PCR docket back in September of last year
12 (sic) and that Judge Jefferson and counsel for
13 the Applicant had a discussion about whether or
14 not it was a proper PCR issue. That Judge
15 Jefferson kind of intimated that an after-
16 discovered evidence Motion in the magistrate
17 court would probably be the proper way to
18 proceed. There are some notes in the file that
19 it was determined that such a Motion was filed
20 and set in May 2011 (sic), but that no one
21 showed up. Counsel told Judge Jefferson that "I
22 did not have notice of that hearing."

23 The notes and Mr. Friedman's
24 indications to me were that Judge Jefferson then

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Case No. 10-CP-10-9745
Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 spoke with the courts there and, uh, instructed
2 counsel to contact Judge Coleman and have the
3 hearing reset at that time, so that the matter
4 could proceed with an after-discovered evidence
5 Motion in magistrate court. Then appeal it to
6 the circuit court to preserve his rights.

7 That is my understanding of what
8 happened in September. Uh, we would simply go
9 back to what we said in the beginning, which is
10 that this is the way that this should proceed.
11 I am not sure that it is the way that it has
12 proceeded.

13 THE COURT: Evidently not, otherwise
14 we would not be here.

15 KAREN RATIGAN: Well, again, -- and
16 I haven't -- I do believe that I spoke to
17 counsel the other day and asked if he filed an
18 appeal. I believe that he told me that he had
19 not.

20 The State's position is that under the
21 post-conviction relief procedure act that a PCR
22 is not a substitute for an appeal and that, uh,
23 -- we would simply argue that if this case was
24 not appealed through the circuit court that the

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Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 issues being raised today, that would be a
2 proper method of challenging it.

3 He can explain more what the issues are
4 before the court, Your Honor.

5 THE COURT: Who was the attorney in
6 North Charleston at the municipal court?

7 MILTON STRATOS: He was not allowed
8 counsel at that time, Your Honor.

9 THE COURT: He was not allowed
10 counsel?

11 MILTON STRATOS: Well, he wasn't
12 advised that he had a right to counsel. And
13 when he indicated to the court that he couldn't
14 afford counsel, they didn't go into any further
15 discussion. I have a copy of the transcript of
16 record -- which it took us two years to get that
17 transcript. I was initially -- my client and I
18 were initially advised that there was no video
19 recording -- I mean, not video but audio. No
20 audio recording of the hearing. Then after we
21 filed under the State's tort claims act, uh, we
22 were then provided, through discovery, a copy of
23 the audio. We just got that in January of this
24 year.

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Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 THE COURT: The file ---

2 MILTON STRATOS: As well as the ---

3 THE COURT: Then you filed the Motion
4 that everyone seems to indicate ---

5 MILTON STRATOS: We filed a 29(e)
6 Motion.

7 THE COURT: Mr. Stratos.

8 MILTON STRATOS: I'm sorry, Your
9 Honor.

10 THE COURT: Mr. Stratos. I
11 understand that you are an advocate but my court
12 reporter has to write down everything that I say
13 and ---

14 MILTON STRATOS: Yes, ma'am. I
15 apologize.

16 THE COURT: --- everything that you
17 say.

18 MILTON STRATOS: Yes, ma'am.

19 THE COURT: So please do not talk
20 over me and I will try not to talk over you.

21 MILTON STRATOS: Yes, ma'am. Sorry.

22 THE COURT: Have you filed the
23 appropriate Motion that everybody seems to think
24 that you ---

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Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 MILTON STRATOS: We filed -- we filed
2 a 29 -- we filed a 29(e) -- 29(b).

3 THE COURT: What is the status of
4 that?

5 MILTON STRATOS: The status is that
6 it's been dismissed. Judgment was entered
7 against us.

8 THE COURT: That ---

9 MILTON STRATOS: They -- they --
10 without a hearing, they ---

11 THE COURT: Have you appealed that
12 ruling?

13 MILTON STRATOS: I have not appealed
14 that ruling.

15 THE COURT: Are you going to appeal
16 that ruling?

17 MILTON STRATOS: No, ma'am. We
18 wanted to proceed with this matter.

19 THE COURT: Mr. Stratos, explain to
20 me how this is the appropriate forum.

21 MILTON STRATOS: Under Section 3 of
22 the PCR statute, it seems that after-discovered
23 evidence is a viable -- as well as we're going
24 to raise the attorney -- uh, advisement of

1 having counsel present. But we believe that's
2 appropriate for the PCR court.

3 I mean, certainly there are other
4 avenues that can be taken. Lots of times people
5 give up their right to appeal and proceed on to
6 the PCR court, try to -- where they're arguing
7 ineffective assistance of counsel rather than
8 going through the appeal process.

9 THE COURT: All right. Ms. Ratigan,
10 your response?

11 KAREN RATIGAN: Your Honor, Rule
12 12(b) of the magistrate rules, I don't know if
13 that is the section to which counsel is
14 referring but ---

15 MILTON STRATOS: Right.

16 KAREN RATIGAN: --- that basically
17 provides for an after-discovered Motion before
18 the magistrate court.

19 What I'm given to understand is that
20 the after-discovered evidence they plan on
21 submitting is, in a nutshell, that the officer
22 perjured himself.

23 The State's position is that that's a
24 matter for the trial court, that after-

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Hearing of May 24, 2012
Before The Honorable Kristie Harrington

1 discovered evidence is germane to that trial
2 which was conducted back in November of 2009;
3 that the trial judge who heard the trial should
4 be allowed to rule on the potential value of
5 that after-discovered evidence and that his or
6 her ruling on that should be appealed to the
7 circuit court.

8 Again, PCR is not a substitute for
9 issues that can be raised at trial or on appeal.
10 That's Section 17-27-20(b). There are also a
11 multitude of cases that say that, you know, you
12 can't raise anything in a PCR that should have
13 been raised at trial or on appeal. So, again,
14 we would state that this is not the proper venue
15 at this time when there is that separate, proper
16 venue of going through magistrate court.

17 THE COURT: So you're saying that
18 he's never done that, so now he shouldn't have
19 that opportunity?

20 KAREN RATIGAN: Well, the only
21 difference is that he did not file an appeal to
22 the circuit court.

23 The after-discovered evidence may have
24 been in time for the trial but not an actual

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1 appeal. Magistrate appeals, as Your Honor
2 knows, get appealed to the circuit court.

3 So there's been no appellate ruling on
4 whether that is truly after-discovered evidence
5 or was applicable at trial.

6 THE COURT: Mr. Stratos?

7 MILTON STRATOS: Well, the after-
8 discover evidence that we want to present to
9 this court wasn't even discovered until January
10 of this year. That was all because the State
11 refused to provide us with a copy of the
12 investigation done by the North Charleston
13 Police Department, Department of Internal
14 Affairs, which found that their client (sic)
15 unlawfully arrested my client ---

16 THE COURT: But, Mr. Stratos, is that
17 not the -- so you requested a new trial and that
18 request was denied?

19 MILTON STRATOS: Correct.

20 THE COURT: And then you just stopped
21 with that avenue; is that correct?

22 MILTON STRATOS: Well, we -- we ---

23 THE COURT: It's a yes or no.

24 MILTON STRATOS: (No verbal

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1 response).

2 THE COURT: Did you file a notice to
3 appeal?

4 MILTON STRATOS: No, ma'am.

5 THE COURT: Then what I am hearing
6 Ms. Ratigan say is that that precludes you from
7 going forward here today. Is that correct, Ms.
8 Ratigan?

9 KAREN RATIGAN: We take the
10 position, Your Honor, you know, that in a PCR,
11 that if it should have been raised at trial or
12 on appeal then that's the proper thing that
13 should have been done.

14 THE COURT: Mr. Stratos?

15 MILTON STRATOS: Well, I don't agree
16 with that.

17 THE COURT: Right.

18 MILTON STRATOS: Certainly people
19 forego appeals, never appeal their trial at any
20 level, uh, don't ask for a motion for
21 reconsideration or otherwise and just -- that
22 would be the keystone which would allow them to
23 proceed on their PCR action.

24 KAREN RATIGAN: If I may, ---

1 THE COURT: Yes, ma'am.

2 KAREN RATIGAN: The distinction is,
3 for example if somebody decides not to file an
4 appeal, they cannot come into a PCR and argue
5 the trial judge erred in not admitting the
6 evidence -- because that would have been an
7 appellate issue. That's why there is a
8 distinction.

9 MILTON STRATOS: I'm not arguing that
10 the trial judge wouldn't allow evidence that ---

11 THE COURT: Then what are you arguing
12 here?

13 MILTON STRATOS: I am arguing -- I am
14 going to argue here, one, that he had the right
15 to counsel; two, that after his revocation or
16 after the issuance of a bench warrant that he
17 had a right to counsel; and, three, that the
18 after-discovered evidence should be -- that it
19 is so material to the facts of that case that he
20 should be allowed a new trial.

21 THE COURT: Ms. Ratigan, what relief
22 are you seeking? Dismissal of this PCR?

23 KAREN RATIGAN: Yes, Your Honor.
24 And specifically it has been long held that

1 litigation of the issue of right to counsel is a
2 -- so then we would just -- is not recognizable
3 under the Act because the Act itself, 17-27-
4 20(b), says that you can't use it as a
5 substitute.

6 We don't have anything further to add
7 at this point.

8 THE COURT: Anything further, Mr.
9 Stratos?

10 MILTON STRATOS: Well, in the case of
11 *Dangerfield v. State*, cited by the Supreme Court
12 back in 2008 where an individual entered a
13 guilty plea to charges without counsel present,
14 he appealed his decision - or filed a PCR on his
15 decision and then appealed that decision. They
16 didn't preclude him from bringing in his post-
17 conviction relief action, although he entered a
18 plea of guilty and never even had a trial.

19 THE COURT: Do you have the citation
20 or may the court have that copy?

21 MILTON STRATOS: I ---

22 THE COURT: Are you familiar with
23 that case?

24 KAREN RATIGAN: Yes, Your Honor. I

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1 would note that the -- I would note that Mr.
2 Friedman's notes from that September hearing
3 state that Mr. Stratos argued this before Judge
4 Jefferson, who stated her belief that it was a
5 totally different set of facts than this case.
6 So we would simply argue that he's making the
7 same argument a few months later than he
8 originally argued.

9 MILTON STRATOS: There was no finding
10 made there. She agreed to continue ---

11 THE COURT: Counsel! Counsel!

12 MILTON STRATOS: She agreed to
13 continue the matter.

14 THE COURT: I appreciate your zealous
15 advocacy; again, I really do. But please do not
16 interrupt me. Are you going to bring me the
17 citation?

18 MILTON STRATOS: (Tendering).

19 THE COURT: Thank you. Anything
20 else, Mr. Stratos?

21 MILTON STRATOS: No, Your Honor. On
22 *Bell v. State* (phonetic), a 2011 case, ---

23 THE COURT: Okay, here is what we are
24 going to do. I'm going to have you brief this

Earl Norris White v State of South Carolina
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1 issue for me, Mr. Stratos, because I don't have
2 the ability to read these marked over cases. So
3 you may present to me a brief. I will give you
4 ten days to submit the brief. Please make sure
5 that you present the AG a copy of that brief
6 indicating why you should be allowed to go
7 forward, that it is a recognizable claim under
8 the statute.

9 Ms. Ratigan, if you feel the need to
10 respond, please respond. I will give you the
11 time to respond accordingly. It sounds like
12 you're pretty clear on your position, these
13 issues, and that you're aware of the case law.

14 So, Mr. Stratos, I am going to give you
15 ten days to submit a brief. I will issue a
16 ruling based on those. If we need another
17 hearing, I will bring you back. Thank you.

18 (HEARING CONCLUDED)
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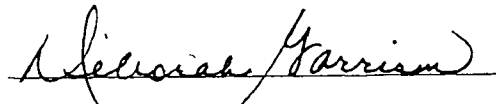
Earl Norris White v State of South Carolina
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Before The Honorable Kristie Harrington

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Certificate OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable Kristie Harrington on
May 24, 2012;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
	)	CASE NO.: 2010-CP-10-9745
Norris Earl White Jr.)	
	)	SUPPLEMENTAL MEMORANDUM OF
v.	)	LAW IN SUPPORT OF POST-CONVICTION
	)	RELIEF
<u>State of South Carolina</u>)	

Comes Now Norris Earl White Jr., by and through his counsel, Milton D. Stratos, and files this supplemental memorandum of law in support his application for Post-Conviction Relief.

MEMORANDUM OF LAW

Petitioner filed this post-conviction relief application alleging that North Charleston Police Officer Sierra Shivers, acting as both the arresting officer and the prosecuting attorney, misrepresented "facts material to the finding of guilt" to the trial court, averred "that said evidence is tantamount to fraud" and concluded that the fraud perpetrated by Officer Shivers was a "substantial violation of the Defendant's constitutional rights." Applicant contends that evidence discovered after the date of his trial, including but not limited to evidence that Officer Shiver's gave perjured testimony of material facts to obtain conviction, warrants a reversal of the finding of guilt. Petitioner contends his fundamental rights and privileges as set forth in the Constitution of the United States and the Constitution of the State of South Carolina were violated, and accordingly, submits that the violation of his constitutional rights warrants a reversal of his conviction.

FACTS

Applicant was arrested on November 5, 2009 by Officer Sierra Shivers, North Charleston Police Department. He appeared without counsel before the local magistrate, Thaddeus Doughty, on November 24, 2009, and entered a plea of not guilty. The court proceeded with a bench trial and the Defendant was found guilty based on testimony of Officer Shiver's: the Defendant received a suspended sentence, five (5) days in jail suspended on his payment of a Four Hundred, Seventy (\$470.00) Dollars. When the Defendant asked the trial judge how he could appeal his conviction, the Defendant was informed that he

could not appeal his conviction until he paid the fine. When the Petitioner failed to pay his fine under the conditions of his suspended sentence, a bench warrant was issued and Petitioner was arrested and incarcerated without a hearing and held in the Charleston County Detention Center until he was able to pay the fine.

On October 22, 2010, Defendant filed a Motion in the North Charleston Municipal Court for reconsideration pursuant to Rule 29(B) South Carolina Rules of Evidence, requesting that the trial court review the video recording taken at the incident location that Petitioner believe would show that Officer Shiver's statement of fact was inaccurate. A hearing date was scheduled for May 18, 2012; however, Defendant's attorney was going to be on out of town on vacation on the same date and a letter was faxed to the clerk's office for the City of North Charleston requesting that the matter be continued and rescheduled. The North Charleston clerk's office claims not to have received the request to continue and the Motion was summarily dismissed. Defendant did not appeal.

ISSUE

Per the Petitioners filing of his PCR Application, Counsel for the Office of the Attorney General filed for summary judgment alleging that the exclusive remedy for addressing claims that the prosecuting officer gave perjured testimony to obtain a conviction is a matter exclusively within the jurisdiction of the trial court under Rule 29(b), and thus that the Petitioner does not have standing to file an action pursuant to 17-27-45(b).

ARGUMENT

In South Carolina, the PCR Act was "designed to incorporate all rights available under federal habeas corpus," thereby replacing "all other common law, statutory or other remedies." S.C. Code Ann. § 17-27-20(b). Claims raised on PCR must be cognizable under the Post-Conviction Relief Act and the Act recognizes almost any abridgment of a state created right. Specifically, the statute permits the following six categories of claims: (1) the conviction or sentence was in violation of the Constitution of the United States, the South Carolina constitution, or South Carolina state law; (2) the court was without jurisdiction to impose the sentence; (3) the sentence exceeds the maximum authorized by law; (4) there is evidence of

material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice; (5) the sentence has expired; probation, parole or conditional release has been unlawfully revoked; or that the applicant is otherwise unlawfully held in custody or other restraint; and (6) the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error previously available under any common law, statutory or other writ, motion, petition, proceeding or remedy. S.C. Code Ann. § 17-27-20(a)(1)-(6).

In *Williams v. Ozmint*, 380 S.C. 473, 671 S.E.2d 600 (S.C. 2008), the South Carolina Supreme Court set forth the depth and degree to which an applicant may obtain relief under the Act:

“At common law, habeas relief was only available to a convicted defendant to attack the jurisdiction of the court imposing the sentence. *See Ex parte Klugh*, 132 S.C. 199, 128 S.E. 882 (1925) (recognizing that habeas corpus is a collateral remedy and calls in question only the jurisdiction of the court where judgment is challenged). However, during the 1950s and 1960s, South Carolina courts greatly expanded the use of the writ in order to ensure that our state afforded prisoners a proceeding where they could assert claims regarding constitutional violations. *See Simpson v. State*, 329 S.C. 43, 44, 495 S.E.2d 429, 430 (1998) (recognizing that the appeals in habeas matters increased between 1950 and 1970 apparently in response to United States Supreme Court decisions relating to the exhaustion of state remedies requirement for federal habeas corpus relief). In 1969, South Carolina adopted our version of the Uniform Post-Conviction Relief Act (UPCA), which drastically limited the availability of habeas corpus. *See James Blume, note, An Introduction to Post-Conviction Remedies, Practice and*

Procedure in South Carolina 45 S.C.L.Rev. 235, 263 (recognizing that following the adoption of the UPCA, post-conviction relief largely replaced habeas corpus relief). The UPCA directed that post conviction relief (PCR) was to encompass the relief available under the common law writ of habeas corpus, the relief available under the expansion of the writ, and the relief available by collateral [380 S.C. 477] attack under any common law, statutory or other writ, motion, petition, proceeding, or remedy. *See Simpson*, 329 S.C. at 44, 495 S.E.2d at 430; S.C.Code Ann. § 17-27-20(b) (2007).”

In a PCR proceeding, a defendant collaterally attacks his conviction and may raise any claims of constitutional violations relating to his conviction. *See*, S.C. Code Ann. § 17-27-20(a) (2007). Historically, the South Carolina Supreme Court has favored broadening the scope of persons protected under the Act. Pursuant to S.C. Code Ann. § 17-27-20(a), the Act confers standing to “any person who has been convicted of, or sentenced for, a crime...” *Id.*

The Act does not contain an express “in custody” requirement. In fact, one has standing to apply for PCR if in custody, or the “results of his prior conviction still persist.” *Jackson v. State*, 489 S.E.2d 915, 331 S.C. 486 (1997), *Jones v. State*, 322 S.C. 101, 102, 470 S.E.2d 110, 110 (1996) (emphasis added); see also *McDuffie v. State*, 276 S.C. 229, 277 S.E.2d 595 (1981). Further, the Act does not expressly require the applicant receive a sentence of imprisonment before bringing a PCR action. Under the Act, any convicted persons or those sentenced for the commission of a crime may institute a PCR proceeding. S.C. Code Ann. § 17-27-20(a). A sentence is not limited to a term of imprisonment; instead, it may be either a term in prison or a fine or both. *Id.* A conviction is interpreted as “prove[ing] a person guilty of a crime,” and “a sentence is not limited to a term of imprisonment; instead, it may be either a term in prison or a fine or both.” *Id.*

In 1991 the petitioner in Jackson was convicted by the magistrate of possession of marijuana; he did not appeal his case and he was not incarcerated as a result of the sentence imposed by the trial court. Nonetheless, the S.C. Supreme Court held that Jackson was entitled to proceed with his PCR application alleging a violation of his constitutional rights, if the lower court determined that he was suffering continuing consequences as a result of his alleged invalid conviction, including where sentence is already fully served. *Jackson*, 489 S.E.2d 915, 331 S.C. 486 (1997)

Applicants generally frame PCR actions as one based upon ineffective assistance of counsel. *Al-Shabazz v. State*, 527 S.E.2d 742, 747 (S.C. 2000) (transfer of prisoner not affecting duration of a sentence). However, ineffective assistance of counsel is not required. In fact, the notion that an applicant must assert ineffective assistance of counsel is underinclusive and conflicts with the PCR Act. *Gibson v. State*, 334 S.C. 515, 514 S.E. 2d (1999) (The court addressed a PCR claim where the alleged violation of constitutional rights went beyond ineffective assistance of counsel.)

In *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (S.C. 2006) the Court's focus was not ineffective assistance of counsel, but rather the misconduct of the State's officer. The Court quoting *Kyles* opined, "The question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial "resulting in a verdict worthy of confidence." *Kyles*, 115 S.Ct., at 434. In *Riddle*, the Court reversed a death sentence based on the fact that the petitioner discovered after his conviction that the prosecutor had withheld a witnesses statement made shortly before the defendants first trial. Far short of an allegation of fraud, the Court reversed the jury verdict in the sentencing phase of both trials based on the prosecuting attorney's failure to satisfy his affirmative duty to notify defense counsel of the statement. On that single issue the S.C. Supreme Court reversed the PCR courts denial of applicant's application finding that "petitioner's trial was rendered fundamentally unfair by prosecutorial misconduct." *Riddle*, 369 S.C. 39, at 76.

We are concerned here not with the routine PCR issue whether trial counsel was ineffective, but instead with whether prosecutorial misconduct, the presentation of false evidence and state misconduct denied Applicant his constitutional right to due process. Applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence. Evidence implicating fraudulent prosecution, state misconduct, and presentation of false evidence were uncovered after obtaining evidence through the filing of a FOIA, request of information. Said evidence was recovered in April 2012, pursuant to the filing of a FOIA request of information with North Charleston Police Department and contemporaneous motion to compel, filed on March 1, 2012. This evidence remained concealed by the State even after the Petitioner filed his PCR application.

The results of the FOIA request are outrageous. The response contained an audible file of petitioner's trial, as well as information known to the prosecution and never disclosed to petitioner prior to or after trial following numerous requests for the same. The results of the FOIA disclose that The City of North Charleston, North Charleston Police Department, Office of Professional conduct, and members of North Charleston Police Department, to include Chief Zumalt, had actual knowledge and evidence of constructive misconduct and violations of due process, and this evidence was not disclosed by the State for nearly three years. In addition, the FOIA results prove that false testimony and false evidence was presented by prosecuting Officer Shiver's, the arresting officer, and that this evidenced was the basis of a guilty finding.

CONCLUSION

The Supreme Court of the United States has consistently held that premeditated misrepresentation cannot be tolerated if we are to maintain any integrity and/or confidence in our judicial system. *Giglio v. U.S.*, 405 U.S. 150, 153, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) ("a prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice."); *U.S. v. Bagley*, 473 U.S. 667, 678, 105 S.Ct. 3375, 87 L.Ed.2d 481(1985) (a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment.) *See, State v.*

Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000) (Our judicial system relies upon the integrity of the participants.), *Washington v. State*, 324 S.C. 232, 478 S.E.2d 833 (1996) (The failure to correct false evidence is as reprehensible as its presentation).

The case at bar presents an opportunity to redress the most egregious violation of the Constitution of the United States and the State of South Carolina. The conviction and incarceration of an individual based on false testimony of the arresting officer acting as the prosecuting officer of this State is far more than an abuse of the fundamental rights of the Petitioner, it is the desecration of all that our legal system represents. If there is a purpose for the Post-Conviction Relief Act, it is to remedy willful corruption by an arm of the State and to cure the denial of liberty to any citizen based on false testimony. We have here a rare chance to protect the integrity of the Constitution and the elementary principles of justice demand that we should not contemplate the denial of this Applicant's opportunity to be heard.

Accordingly, based on the above authority and just cause, Applicant respectfully requests that this honorable Court grant the Petitioner the right to be heard.

Respectfully submitted,

STRATOS LAW, LLC
MILTON D. STRATOS

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1041 Johnnie Dodds Blvd., Suite 14A
Charleston, SC 29464
(843) 216-7739
(843) 216-0804 (f)
milton@stratoslaw.com
ATTORNEY FOR APPLICANT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Norris Earl White, Jr.)
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-10-09745

FILED
 2012 JUL -3 PM 4:24
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY *[Signature]*

ORDER

This matter is before the Court on Norris Earl White, Jr.'s (the "Applicant") application for post-conviction relief filed November 24, 2010. The Respondent made its Return on August 11, 2011. A hearing was held at the Charleston County Courthouse on May 24, 2012 at which time the Applicant and his attorney, Milton D. Stratos, were present. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General.

I. PROCEDURAL BACKGROUND

The Applicant is not presently confined in the South Carolina Department of Corrections. On November 8, 2009, the Applicant was arrested and issued a uniform traffic ticket (#83928EN) for disorderly conduct. On November 25, 2009, the Applicant appeared at the Municipal Court for the City of North Charleston and proceeded to trial, after which Magistrate Judge Thaddeus Doughty found him guilty as charged for disorderly conduct. The presiding judge imposed a penalty of \$470.00. Attorney for the Applicant indicated that on October 22, 2010, a Motion for Reconsideration was filed with the North Charleston Municipal Court alleging that a video taken of the incident would show that the arresting officer's statement at the Applicant's trial was inaccurate. This Motion was summarily dismissed because Defense Counsel was not present to argue the

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 7/3/12

Motion.¹ The Applicant did not appeal the conviction or the fine.

II. ALLEGATIONS

The Applicant alleges the following grounds for relief in his Application:

1. There exists evidence of material fact, not previously presented and heard, which requires vacation of the conviction and sentence in the interest of justice. Officer Shiver, the arresting officer, provided false testimony to support a wrongful arrest, lacking in probable cause, and later a finding [of] guilt. Real and uncontroverted evidence in the form of a video surveillance was not immediately available, nor known at the time of trial. Officer Shiver's bias and false testimony supported a finding of guilt.
2. The relief requested is based upon evidence discovered within one year after sentencing and the evidence could not have been discovered earlier by exercise of reasonable diligence. Following trial, a complaint was filed with the City of North Charleston, Police Department, Internal Affairs, citing civil rights violations and police misconduct in instituting Applicant's arrest and later perpetuating a fraud upon the court providing false testimony. After several months it was discovered that Internal Affairs had located a video recording of the arrest and the events leading up to the arrest. Applicant attempted to obtain a copy of said video evidence, however his demand was denied by both the owner of the video as well as North Charleston Police Department. At this point in time Applicant did not know exactly what the video surveillance may have captured at the time of the arrest. A copy of the video evidence was obtained only after hiring an attorney and service of a subpoena duces tecum.
3. Newly discovered video evidence speaks plainly to Applicant's innocence, and denying relief would result in patent injustice and a denial of fundamental fairness. The newly discovered video evidence reveals that the arrest for disorderly conduct was wrongful, lacking in probable cause, and unsupported by any evidence that a crime had been committed. Conversely, the evidence is dispositive of wrongful arrest and a gross miscarriage of justice.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the PCR Application, the uniform traffic ticket, the case history from the North Charleston Municipal Court, arguments of counsel, and the Supplemental Memorandum of Law in Support of Post-Conviction Relief submitted by Applicant's Counsel, and

¹ In the Applicant's Supplemental Memorandum of Law in Support of Post-Conviction Relief, Applicant's Counsel alleges the hearing date for the Motion for Reconsideration was scheduled for May 18, 2012. Because Counsel was going to be out of town on vacation on the same date, he claims he faxed a letter to the Clerk's Office for the City of North Charleston requesting that the matter be continued. The Clerk's Office claims not to have received the request for continuance; therefore the Motion for Reconsideration was summarily dismissed.

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makes the following findings of fact and conclusions of law.

Pursuant to the Uniform Post-Conviction Procedure Act (the Act), S.C. Code Ann. §§ 17-27-10 et seq. (2003), an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

However, S.C. Code Ann. § 17-27-20(b) of the Uniform Post-Conviction Procedure Act states that post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." In Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975), the South Carolina Supreme Court reiterated that errors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings. Simmons gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (citing Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981); Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973); Sellers v. Boone, 261

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7/2/12

S.C. 462, 200 S.E.2d 686 (1973)). Furthermore, issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel. *Id.* at 9, 430 S.E.2d 520 (citing *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983)).

The allegations raised in the Applicant's PCR application were not directly appealed. Accordingly, this Court finds and concludes this matter should be summarily dismissed for failure to state a claim cognizable under the Act.

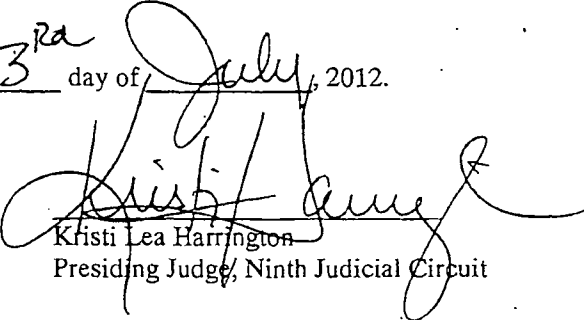
IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented, this Court finds the PCR application must be dismissed based upon the Applicant's failure to articulate a cognizable claim for relief under the Uniform Post-Conviction Procedure Act. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. The Applicant's post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED this 3rd day of July, 2012.


Kristi Lea Harrington
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



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www3.charlestoncounty.org

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MILTON DEMETRIOS STRATOS
ATTORNEY AT LAW
1041 JOHNNIE DODDS BLVD STE 14A
MT PLEASANT SC 29464-6190

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Continuance

CASE NO: 2010CP1009745
Norris Earl White Jr VS South Carolina State Of

This judgment was entered on the 16th day of September, 2011, and a copy mailed first class on Wednesday, September 21, 2011, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 THE CITY OF N. CHARLESTON,)
 Plaintiff,)
 v.)
 NORRIS EARL WHITE, JR.,)
 Defendant.)

IN THE MUNICIPAL COURT FOR
 THE CITY OF NORTH CHARLESTON

Case Number: 83928EN

RECEIVED

OCT 22 2010

MOTION FOR NEW TRIAL PURSUANT
 TO RULE 28(b) SCRPC

CLERK OF COURT
 OF NORTH CHARLESTON

NOW COMES the Defendant, Norris Earl White, Jr., by and through his undersigned attorney, on Motion for New Trial pursuant to Rule 28(b) of the South Carolina Rules of Criminal Procedure. The basis for this Motion is that the Defendant was illegally arrested without probable cause or reasonable grounds on or about November 8, 2009 by North Charleston Police Officer Shivers and charged with the criminal offense of Disorderly Conduct. Officer Shivers alleged that the Defendant was committed a breach of the peace in his presence inside the Waffle House located at 2571 Ashley Phosphate Road, Officer Shivers specifically averred that Mr. White was being loud and belligerent and accosting customers and Waffle House personnel.

Mr. White appeared before the Honorable Thad Doughty, Municipal Court Judge for the City of North Charleston, on or about November 25, 2009. At the bench trial of the Defendant, Officer Shivers testified under oath that the Defendant was causing a disturbance inside the Waffle House Restaurant and recited facts consistent with the allegations set forth above. The Defendant denied the said allegations and testified that he did not engage in any act supporting a finding consistent with said charge. Rather, Defendant stated and believes that Officer Shivers misrepresented the facts to the trial court. Based on the evidence presented, the court found the Defendant guilty and sentenced him to a fine of Four Hundred and Seventy (\$470.00) Dollars.

After the trial, the Defendant contacted the Office of Internal Affairs for the City of North Charleston Police Department and filed a complaint against Officer Shivers charging Officer Shivers with making an illegal arrest, and thereby further alleged that Officer Shivers committed fraud having misrepresented the facts before the Municipal Court.

Internal Affairs determined that a video tape of the incident was recorded by camera's at Waffle House and obtained a copy of the video tape. After reviewing the video recording, the North Charleston Police Department's Office of Professional Standards investigating the complaint of misconduct on the part of Officer Shivers determined that "a violation of Department policy occurred and (they have) taken corrective action." Neither the particular violation nor the level of corrective action was disclosed in the letter forwarded to the Defendant, and no action was taken by the North Charleston Department of Internal Affairs to correct Mr. White's criminal conviction for Disorderly Conduct.

On March 29, 2010, the Defendant contacted the office of the undersigned attorney after failing in his attempts to obtain the particularized findings of the North Charleston Office of Internal Affairs and/or a copy of the video recording. Although counsel immediately forwarded notice of his representation and requested a copy of the video and written reports, the Office of Internal Affairs refused to respond even after several attempts were made to acquire these documents. Defendant's frustrations continued until approximately August of 2010 when a copy of only the video recording was provided to his attorney.

In order to insure the accuracy of the allegations set forth herein, on June 23, 2010 counsel forwarded a written request to the Clerk of Court for the City of North Charleston seeking to obtain a copy of the audio recording of the proceeding held before the Honorable Thadeus Doughty. Several more written requests were forwarded to the Clerk between June and September of 2010, and on September 30, 2010, counsel was advised that the recording taken during that proceeding was inaudible and the only account of the findings was the Case History Report. A copy of the report was provided to counsel at that time.

Defendant has knowledge and believes that the video recording of the incident is incontrovertible evidence that he engaged in no action warranting his arrest and that the evidence related by Officer Shivers to the trial court was neither accurate nor consistent with the scene depicted in the video. Furthermore, the video reveals that the testimony of Officer Shivers, under oath before the Honorable Thadeus Doughty, was a gross

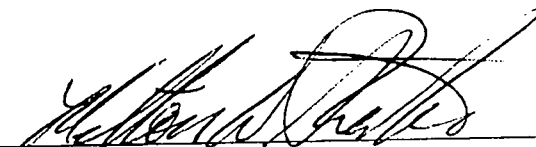
misrepresentation of the facts to the level of fraud perpetrated upon the court.

Based on the foregoing, the Defendant now moves before this Honorable Court for new trial pursuant to Rule 28(b) of the South Carolina Rules of Criminal Procedure and for an Order setting aside the finding of the trial court based on after discovered evidence that was in the possession of North Charleston Police, but withheld from the Defendant. But for the due and diligent efforts of the Defendant this evidence would not have been discovered.

Defendant moves to set aside the judgment and for a new trial pursuant to Rule 28(b) of the South Carolina Rules of Criminal Procedure. Defendant avers that the Court's testimony of Officer Shivers was a misrepresentation of the facts material to the finding of guilt, that said evidence is tantamount to fraud, and that a substantial violation of Defendant's constitutional rights, as well as a blatant violation of SC Code 23-17-90, (Illegal Arrest) be sanctioned if relief is not granted allowing Defendant a new trial in this matter.

Defendant now pleads upon this court to grant his Motion for New Trial and setting aside the judgment..

RESPECTFULLY SUBMITTED on this the 22nd day of October,
2010 in the Municipal Court for the City of North Charleston, South Carolina.


MITLON D. STRATOS
ATTORNEY FOR DEFENDANT
1041 JOHNNIE DODDS BLVD., SUITE 14A
MOUNT PLEASANT, SC 29482
OFF: (843)216-7739 FAX: (843)216-0804

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

NORRIS EARL WHITE)

Plaintiff(s))

vs.)

THE CITY OF NORTH CHARLESTON AND S.)

SHIVERS)

Defendant(s))

(Please Print)

Submitted By: Milton D. Stratos

Address: 1041 Johnnie Dodds Blvd. Suite 14-A, Mt.
Pleasant, SC 29464

IN THE COURT OF COMMON PLEAS ⁴⁵

CIVIL ACTION COVERSHEET

2011-CP - 10- 8196

SC Bar #: 7972

Telephone #: 843.216.7739

Fax #: 843.216.0804

Other:

E-mail: milton@stratoslaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 -CP- - - - - <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input checked="" type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture—Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature:

[Handwritten Signature]

Date:

46

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
 COUNTY OF CHALRESTON)
 NORRIS EARL WHITE,)
 Plaintiff,)
 v.)
 The CITY OF NORTH CHARLESTON)
 & S. SHIVERS,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 11-CP-10-_____

SUMMONS
 JULIE J. ARMSTRONG
 CLERK OF COURT
 2011 NOV -4 PM 3:04
FILED

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said complaint upon the subscriber at his office at 1041 Johnnie Dodds Blvd., Suite 14A, Mount Pleasant, South Carolina 29464, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to Answer the Complaint within the time aforesaid, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

Milton D. Stratos
 MILTON D. STRATOS
 ATTORNEY FOR PLAINTIFF
 1041 JOHNNIE DODDS BLVD., SUITE 14A
 MT. PLEASANT, S.C. 29464
 OFF: (843) 216-7739 FAX: (843) 216-0804
 SC BAR #: 7972

DATED: *November 4*, 2011.

STATE OF SOUTH CAROLINA)
 COUNTY OF CHALRESTON)
 NORRIS EARL WHITE,)
 Plaintiff,)
 v.)
 The CITY OF NORTH CHARLESTON)
 & S. SHIVERS,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 11-CP-10-_____

**COMPLAINT
 FALSE ARREST
 MALICIOUS PROSECUTION
 ABUSE OF PROCESS
 JURY TRIAL DEMANDED**

FILED
 2011 NOV -4 PM 3:04
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

The Plaintiff herein, complaining of the Defendant above named, alleges and would respectfully show unto This Honorable Court as follows:

FOR A FIRST CAUSE OF ACTION

1. The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina.
2. Upon information and belief, the Defendant S. Shivers is also a citizen and resident of the County of Charleston, State of South Carolina. At all times mentioned herein, said individual was employed by the Police Department of the Defendant, City of North Charleston, and was acting within the scope of his employment and under color of State law.
3. The Defendant, City of North Charleston, is a municipality organized under the laws of the State of South Carolina; said Defendant, as part of its governmental functions, operates a police department known as the North Charleston Police Department (NCPD).

4. At all times relevant hereto, the individual defendant was acting within the scope of his employment as an officer of The City of North Police Department and, therefore, his acts are attributable to the municipal Defendant.
5. On November 8, 2009, Plaintiff was in the Waffle House Restaurant located on Ashley Phosphate Road in Charleston, SC seated in a booth near the exit door with his girlfriend and male companion preparing to order from the menu.
6. Shivers, who had been seated with a female companion in the rear of the Restaurant, was walking alone toward the exit door when the Plaintiff stood, pointed toward Officer Shivers female companion, who was still seated in the back of the restaurant, and asked Shivers if his companion was a police officer.
7. In response, Shivers asked the Plaintiff, who was again seated in his booth, if he was a police officer.
8. Shivers then told the Plaintiff to walk outside and when the Plaintiff refused, Shiver's told the Plaintiff's girlfriend to move out of the way; Plaintiff was seated in a booth toward the inside wall along the counter.
9. When Plaintiff's girlfriend moved out of the way, Shivers drew his taser and threatened to taser the Plaintiff if he did not comply.
10. Shivers then reached in violently dragging the Plaintiff from his seat and slamming the Plaintiff up against the cemented wall while squeezing tight a set of handcuffs as he restrained Plaintiff's arms behind his back.
11. The Plaintiff was then used as a battering ram as Shivers pushed the Plaintiff's face and shoulders into the two glass doors as they exited the restaurant.
12. Once outside Shivers continued the assault slamming the Plaintiff's head into the

- patrol car and then throwing the handcuffed Plaintiff down onto the asphalted parking lot causing numerous lacerations to the Plaintiff's body.
13. Shivers took the Plaintiff to the Charleston County Detention center where he lodged him without seeking any medical attention and charged the Plaintiff with Disorderly Conduct.
 14. A police report drafted by Shivers dated November 8, 2009, alleges that the Plaintiff was talking in a "loud" manner and "creating a disturbance in the restaurant" and that Plaintiff's behavior was "unnecessary and intolerable."
 15. On November 25, 2009, Plaintiff appeared at the Municipal Court for the City of North Charleston. Shivers gave testimony under oath that the Plaintiff was being loud and disturbing the patrons and employees at the restaurant and that Plaintiff would not discontinue his actions when directed to by Shivers.
 16. Based on the evidence presented by Shivers, the Court found Plaintiff guilty and fined \$470.00.
 17. Shivers did this by fabricating evidence of Plaintiff's alleged actions and misrepresenting the facts to the municipal court judge to allege the Plaintiff engaged in behavior constituting disorderly conduct.
 18. That there was no probable cause to believe Plaintiff had committed any crime, let alone engaged in disorderly conduct.
 19. Plaintiff contested the conviction and filed a complaint with the North Charleston Department of Professional Standards.
 20. As a result of their investigation, North Charleston obtained a copy of the video maintained by Waffle House at the scene and issued a statement to Plaintiff

finding Shivers "violated Department policy", but did nothing to correct the charge and/or conviction of Plaintiff.

21. North Charleston issued a bench warrant on May 27, 2010, to arrest the Plaintiff for failure to pay the fine levied by the trial court. Plaintiff was arrested on July 12, 2010 and remained incarcerated until North Charleston received full payment on or about July 19, 2010.
22. Pursuant to the South Carolina Tort Claims Act, the actions of Shivers in procuring the warrant and obtaining a conviction by misrepresenting the facts are attributable to Defendant City.
23. Pursuant to the South Carolina Tort Claims Act, the actions of Shivers in arresting Plaintiff without probable cause are attributable to Defendant City.
24. This action is brought pursuant to the South Carolina Tort Claims Act and no cause of action under 42 U.S.C. is alleged.
25. Alternatively, in the event Defendant City claims Defendant Shivers committed criminal acts in unlawfully arresting the Plaintiff; was committing perjury; was acting maliciously; was acting beyond the scope of his employment; or any other exception to respondent superior liability under the Tort Claims Act, the Defendant Shivers is personally liable for the South Carolina common law tort of false arrest, abuse of process and malicious prosecution; no cause of action under 42 U.S.C. 1983 is alleged.
26. Plaintiff was falsely imprisoned; deprived of his rights and liberties; humiliation; embarrassment; mental anguish; anxiety; attorney's fees and damages for which he is informed and believes he is entitled to recover actual damages against the

municipal defendant, actual and punitive damages against the individual defendant, as determined by the trier of fact, as well as costs for the bringing and prosecution of this action.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT SHIVERS

27. Plaintiff re-alleges and incorporates paragraphs one through twenty-six as if set forth in full herein.
28. Upon information and belief, Shivers instituted the original acts against the Plaintiff and engaged in an assault and battery against the person of the Plaintiff.
29. Defendant Shivers instituted original judicial proceedings against Plaintiff, the charge of disorderly conduct.
30. Defendant Shivers gave false statements against the Plaintiff in the trial court to obtain a conviction.
31. Defendant Shivers was motivated by malice in instituting such proceedings.
32. There was no probable cause for the charge.
33. Plaintiff was falsely imprisoned; maliciously prosecuted; deprived of his rights and liberties; humiliation; embarrassment; mental anguish; anxiety; attorney's fees and damages for which he is informed and believes he is entitled to recover actual damages as determined by the trier of fact as well as costs for the bringing and prosecution of this action.

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT SHIVERS

34. Plaintiff re-alleges and incorporates paragraphs one through thirty-three as if set forth in full herein.
35. Shivers committed battery upon the Plaintiff without lawful cause.

36. Shivers ulterior purpose in arresting the Defendant and Shivers malicious prosecution thereafter were motivated by Shivers attempt to cover up his unlawful acts.
37. Plaintiff is informed and believes that Shivers engaged in an abuse of process causing Plaintiff a deprivation of his rights and liberties, humiliation, embarrassment, mental anguish, anxiety, attorney's fees and damages for which he is informed and believes he is entitled to recover actual damages as determined by trier of fact as well as cost for bringing and prosecution of this action.

WHEREFORE, Plaintiff prays for actual damages against the Defendant City; for actual damages and punitive damages against the Defendant Shivers; for costs against all defendants; and for such other and further relief as may be just and equitable.



Milton D. Stratos
Attorney for Plaintiff
1041 Johnnie Dodds Blvd., Suite 14A
Mount Pleasant, SC 29464
(843) 216-7739
Fax: (843) 216-0804
Email: Milton@stratoslaw.com

November 4, 2011
Charleston, South Carolina

Form S-438
Rev. 12/08

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Nichols VERSUS:
FIRST NAME Norman MIDDLE NAME Earl LAST NAME White Sr

STREET AND NO. 5170 White W CITY Sum STATE SC ZIP CODE 25487

STATE LICENSED SC DRIVER'S LICENSE NO. 211778824 CDL YES NO DRI. LIC. CLASS. D

VEH. LIC. NO. STATE MAKE OF VEH YEAR COMB VEH AUTO PASSENGER VEH COMB HAZ. MT. MOPED MTRCYCL OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER Melvin Court STREET AND NO. 2536 Park St

DATE OF TRIAL 11-25-09 TIME OF TRIAL 1:00 PM CITY Nichols STATE SC ZIP CODE 25487

VIOLATION COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO. 15-7-1-17

OWNER OF VEHICLE D. ROY L. COURT DATE OF ARREST 11-18-09

ADDRESS OF OWNER DATE OF VIOLATION 11-18-09

BAIL DEPOSITED 5.00 NAME OF ARRESTING OFFICER S. HAVEL RANK 172

PRESENT THIS SUMMONS TO THE TRIAL OFFICER SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

COUNTY	<u>CL</u>	NUMBER	<u>102</u>
BADGE	<u>727</u>	DISTRICT	<u>102</u>
DATE	<u>11-18-09</u>	TIME OF VIOLATION	<u>8:43 PM</u>
WEATHER	<u>CL</u>	DISTANCE IN FEET FROM INTERSECTION	<u>77</u>
MILES	<u>1.5</u>	HWY NO.	<u>102</u>
CITY	<u>CL</u>	OFFENSE CODE	<u>86</u>
B.A. LEVEL	<u>EN</u>		

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET

VIOLATOR'S COPY

83928 EN

5170

5345700 - NCPD c. 43 H-11

09/28/2009 15:00

8517878

EXP

PAGE 81
508-4725

North Charleston Police Department
Administrative Internal Investigation Complaint Affidavit

MAIL TO: NORTH CHARLESTON POLICE DEPARTMENT
P. O. BOX 52558
NORTH CHARLESTON, SC 29415-2358
ATTN: PROFESSIONAL STANDARDS BUREAU

INCIDENT LOCATION: Waffle House

INCIDENT DATE: _____ INCIDENT TIME: _____ REPORT NUMBER: _____

COMPLAINANT: Norris White RACE: B SEX: M AGE: _____ DOB: _____

ADDRESS: _____

HOME PHONE: (843) 810 9154 WORK PHONE: _____

OFFICER/EMPLOYEE NAME: Shivers RACE: _____ SEX: _____ AGE: _____

OFFICER/EMPLOYEE NAME: _____ RACE: _____ SEX: _____ AGE: _____

OFFICER/EMPLOYEE NAME: _____ RACE: _____ SEX: _____ AGE: _____

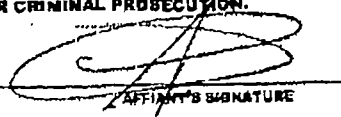
OFFICER/EMPLOYEE NAME: _____ RACE: _____ SEX: _____ AGE: _____

BRIEF SUMMARY OF INCIDENT AND ALLEGATION(S)

~~NOTE~~ Eugene PRAZIER, CELINA Johnson and ~~myself~~ NORRIS WHITE was at the Waffle House for five minutes maybe little more, a little less we notice that officer Shivers was sitting at the other end of the restaurant next to another young lady side-by-side to where elbows are touching I asked Eugene PRAZIER if he thinks she's accp he said he don't know, so when CELINA Johnson walked in some question was asked some response was given OFFICER Shivers got up to walk out of the restaurant and I Norris White asked him a question for I quote "Excuse me is that young lady sitting next to you an OFFICER" to "His response officer Shivers was quote "No But I fucking am are you" I responded "NORRIS WHITE" and I said "No then said officer Shivers" sit your ass down, so I sat down I ^{brushed him off} brushed him off and said "Bitch chill with dat bullshit" I just asked a simple question, He then asked me to walk outside with him so he can talk to me, I mean white rebach, ~~my response was~~ my response was we can talk right here, He then OFFICER Shivers pulled out his taser and said he will tase my ass if I didn't get up, my response was can you tell me what I did and I will do whatever you want He then said officer Shivers oh that's how you wanna play this shit I sat you He then reholstered his taser took off his jacket walked and sat it by the cash register walked backed in our table, snatched me from the table and threw me up against the glass and hand cuffed me took me outside ~~threw~~ threw me on the car and emptied my pockets, I asked again what did I do he said -

I HAVE READ THE FORGOING AFFIDAVIT OR HAVE HAD IT READ TO ME AND I DO HEREBY AFFIRM THAT THE INFORMATION PROVIDED BY ME IN THIS AFFIDAVIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT ANY FALSE, MISLEADING OR UNTRUE STATEMENTS, ACCUSATIONS OR ALLEGATIONS HEREIN MADE BY ME IN RELATION TO THIS COMPLAINT MAY BE SUBJECT TO CIVIL AND/OR CRIMINAL PROSECUTION.

DATE



AFFIANT'S SIGNATURE

Defendants 0020

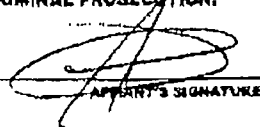
North Charleston Police Department
Administrative Internal Investigation Complaint Affidavit

NEW OFFICER SHIVERS about the fuck up another officer walked up name unknown to me but he was a white male early 30's asked what are you charging him with he said disorderly conduct then he sat me in the car the white male officer told me to hold on until he sees what's going on, he then came back and said my charges and told me its nothing he can do because he was not in there. In the process of OFFICER SHIVERS arresting me he patted my shirt and gave me a scare off my back from his belt or the handcuffs. While OFFICER SHIVERS WAS driving me to the station I asked him what did I do for real because all I did was ask you a question his response was I don't give a fuck what you asked me you should of just left me alone, when I then started telling him that I was on probation he sometimes I pleaded guilty to because I always admit to being wrong but this time I couldn't do it. He then said oh you're on probation and started laughing. I said nothing else to the officer. When we got to the station the booking officer an heavyset black male ask me what happened and I told him his response was I probably caught him with is mistress of something. I laugh and said who ~~the~~ KNOWS. NEW.

I HAVE READ THE FORGOING AFFIDAVIT OR HAVE HAD IT READ TO ME AND I DO HEREBY AFFIRM THAT THE INFORMATION PROVIDED BY ME IN THIS AFFIDAVIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT ANY FALSE, MISLEADING OR UNTRUE STATEMENTS, ACCUSATIONS OR ALLEGATIONS HEREIN MADE BY ME IN RELATION TO THIS COMPLAINT MAY BE SUBJECT TO CIVIL AND/OR CRIMINAL PROSECUTION.

DATE

AFFIDANT'S SIGNATURE



North Charleston Police Department
Administrative Internal Investigation Complaint Affidavit

Mrs. Melena Johnson

On a sat nite at 430 in the morning, I myself
 Celia Johnson, Norris White & Eugene Frasier
 were in the waffle house. They had ~~had~~ a
 conversation prior to me arriving so I was
~~explained~~ explained what was said. Which
 was do I think that the young lady sitting
 by the cop was a police officer too. I replied
 she looks like she could be. They were
 commenting on her looks. Eugene then
 responded that he didnt think she was.
 so officer shivers goes to walk out of the
 building and Norris white says "Excuse me sir
 but the young lady sitting next to you is she
 police?" shivers responded "No, But I fucken am are
 you?" Norris then says "No sir but you dont have
 to cuss at me. Shivers responds by saying "you need
 to sit your ass down. so ~~norris~~ Norris sit down
 while saying "Imma sit down but you dont have
 to cuss this is bullshit. Shiver then asked Norris
 to walk out side. Norris denies his invitation.
 Shivers then walks over to our table tells me
 I need to move. I move to the next table. He then
 proceeds to ask Norris to step out side with
 him. Norris asks "officer what did I do? When you
 tell me what I did then I will step out side with
 you." Shivers ~~to~~ would not tell Norris what he
 did. Shivers ~~putted~~ pulled his tazer gun out at Shivers
 walked away to ~~to~~

I HAVE READ THE FORGOING AFFIDAVIT OR HAVE HAD IT READ TO ME AND I DO HEREBY AFFIRM THAT THE INFORMATION PROVIDED BY ME IN THIS AFFIDAVIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT ANY FALSE, MISLEADING OR UNTRUE STATEMENTS, ACCUSATIONS OR ALLEGATIONS HEREIN MADE BY ME IN RELATION TO THIS COMPLAINT MAY BE SUBJECT TO CIVIL AND/OR CRIMINAL PROSECUTION.

DATE

AFFIANT'S SIGNATURE

09/23/2009 19:00

0517878

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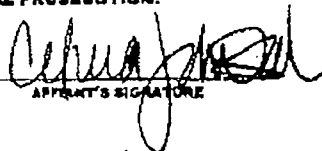
PAGE 03

North Charleston Police Department
Administrative Internal Investigation Complaint Affidavit

Shivers pulled his tazer out and tells norris if he doesnt step outside he will taze him. Norris replies, you would be tazing me for no reason and I just wanna know what i did and I will go. he the walks away to take of his jacket and put the tazor away. meanwhile norris still has his hands in the air. Shivers walks back puts his hand on the back of his collar and a hand on his arm pulls him up and slams him in to the window. then puts him in cuffs and pushes him out the building to his car, where he slams him on the hood of his car to search him. Eugene and I followed them out the building wondering what had just happen. I asked the officer what had happen. He asked me if I wanted some too? and I said I just want to know what he did. he told me I need to back the fuck up. Eugene asked him what his badge num. was and his name. Shivers told him to back the fuck up while walking towards him so Eugene leaned in to look and Shiver yanked him up, threw him on the car and handcuffed him. I then was like what did he do he said do you want some to again asked he is walking towards me and I repn no sir. He screams the BACK THE FUCK UP! I am already at least 2 cars away from him. But I turn and go into waffle house. they let Eugene go w/ a ticket of 47D for disorderly conduct. & take Norris to jail resulting in the same a ticket for 47D for disorderly conduct. I would also like to add that at Norris court date ~~the~~ Shivers report ~~about~~ counteracts itself. We also saw him in the hallway and he laughed as he walked by us.

I HAVE READ THE FORGOING AFFIDAVIT OR HAVE HAD IT READ TO ME AND I DO HEREBY AFFIRM THAT THE INFORMATION PROVIDED BY ME IN THIS AFFIDAVIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT ANY FALSE, MISLEADING OR UNTRUE STATEMENTS, ACCUSATIONS OR ALLEGATIONS HEREIN MADE BY ME IN RELATION TO THIS COMPLAINT MAY BE SUBJECT TO CIVIL AND/OR CRIMINAL PROSECUTION.

DATE


AFFIANT'S SIGNATURE

Defendants 0023

*City of North Charleston, SC*R. KEITH SUMMEY, MAYOR
POLICE DEPARTMENT JON ZUMALT, CHIEF OF POLICE

From the desk of Corporal T. DiCenzo-Driggers
Phone: (843) 740-2818
Date: 11/11/2009

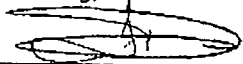
Background Investigation: Internal Investigation



To whom it may concern;

I am requesting a copy of the video that you have from November 8th at 4am until 5am. The video was taken at the Ashley Phosphate location in North Charleston. Upon receiving the video I will also provide the store manager with a chain of custody from our agency for your records. Any and all consideration in this request is greatly appreciated.

Sincerely,

 # 118

Corporal T. DiCenzo-Driggers
(843) 740-2818

City of North Charleston, SC

R. KEITH SUMMEY, MAYOR
POLICE DEPARTMENT JON ZUMALT, CHIEF OF POLICE

CITY OF NORTH CHARLESTON POLICE DEPARTMENT
P. O. Box 62558
North Charleston, SC 29419-2558

Facsimile Cover Sheet

For Immediate Delivery To:	<i>Jay</i>
Company:	<i>Waffle House Corporate Security</i>
Phone:	<i>800-432-4365</i>
Fax:	<i>770-729-5812</i>
From:	<i>Cpl. DiCenzo-Driggers</i>
Company:	<i>North Charleston Police Department</i>
Phone:	<i>843-740-2818</i>
Fax:	<i>843-308-4725</i>
Date:	<i>11/11/2009</i>
Pages including this cover page:	<i>2</i>

**The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of the communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to the above address via the U.S. Postal Service. Thank you.

Jay,

Hope this letter of request is exactly what you needed. Thank you for your assistance and the information. If you need anything else please feel free to contact me at 843-813-8552.

Tami

**NORTH CHARLESTON POLICE DEPARTMENT
ADMINISTRATIVE INTERNAL INVESTIGATION**

OFFICER'S REPORT

ATTENTION: Jon R. Zumalt
Chief of Police

SUBJECT: Administrative Internal Investigation, Number EX2009-018

DATE: 12-11-2009

INCIDENT TYPE:

1. Unlawful Arrest
2. Conduct Unbecoming
3. Excessive Force

INCIDENT LOCATION:

STREET ADDRESS: 2571 Ashley Phosphate Road (Waffle House)

CITY, STATE, ZIP: North Charleston, SC 29418

ZONE:

INCIDENT DATE AND TIME:

INCIDENT DATE: 11-08-2009

INCIDENT TIME: 0430 HRS

COMPLAINANT:

NAME: Morris E. White Jr **RACE:** B **SEX:** M **AGE:** 28 **DOB:** 09-24-1981

ADDRESS: 472 Winter Drive Summerville SC 29483

SUMMARY OF INCIDENT:

On November 08, 2009 MPO Shivers was working in an off duty capacity at 2571 Ashley Phosphate Rd (Waffle House). During the course of his assignment he made an arrest for disorderly conduct. During this arrest the complainants are alleging Unlawful arrest, excessive force and rudeness. MPO Shivers advised that his reason for arrest was due to the complainant being loud, disruptive and intoxicated inside of the business. Complainants state that no one was being rude, disruptive or disrespectful and that MPO Shivers did not have a reason to arrest him or place his hands on him.

Defendants 0037

**NORTH CHARLESTON POLICE DEPARTMENT
ADMINISTRATIVE INTERNAL INVESTIGATION**

OFFICER'S REPORT

ALLEGATION(S):

FOCUS OFFICER/EMPLOYEE: Shivers, Sierra

ALLEGATION: Unlawful Arrest

POLICY/REGULATION: Policy A-35 IV (A-1)

Arrests, Detentions and Bookings
The common law rule, and the rule in South Carolina, is that an officer is permitted to make a warrantless arrest in a public place for a misdemeanor or felony committed in his or her presence, as well as for a felony not committed in his or her presence, if the officer has probable cause to believe a felony has been committed and the arrestee committed it. However, an arrest can be made for a misdemeanor committed outside the officer's presence only if the facts and circumstances observed by the officer establish probable cause to believe a crime has been freshly committed.

RECOMMENDED CLASSIFICATION: Sustained

FOCUS OFFICER/EMPLOYEE: Shivers, Sierra

ALLEGATION: Excessive Force

POLICY/REGULATION: Policy O-02 II

Use of Force
An officer of the North Charleston Police Department, while he/she is engaged in the lawful execution of his/her legal duties as a law enforcement officer, will use only that force which is reasonable and necessary to effect his/her objectives.

RECOMMENDED CLASSIFICATION: Sustained

FOCUS OFFICER/EMPLOYEE:

ALLEGATION: Conduct Unbecoming

POLICY/REGULATION: Policy A-26 IV A-7

Conduct unbecoming an officer are actions committed by police officers of the department that bring the department into disrepute, or reflects discredit upon the officer as a member of the department, or that which impairs the operation or efficiency of the department or officer.

RECOMMENDED CLASSIFICATION: Sustained

Defendants 0038

NORTH CHARLESTON POLICE DEPARTMENT
ADMINISTRATIVE INTERNAL INVESTIGATION

OFFICER'S REPORT

INVESTIGATION:

Chief of Police Jon R. Zumalt directed the Professional Standards Bureau to initiate an administrative internal investigation into the conduct of MPO Sierra Shivers regarding his actions on November 08, 2009. The purpose of the investigation was to address any possible violations of policies/regulations. The incident was brought to Chief Zumalt's attention via a Field Form from Professional Standards alleging Unlawful Arrest, Use of Force and Conduct Unbecoming an officer. For the purpose of documenting the facts of the incident I conducted a variety of interviews and learned the following:

On November 09, 2009 Mr. Norris White came to the station to file a complaint against MPO Shivers in regards to his arrest on the morning of the 8th. Sgt. Dean advised Mr. White that we normally do not conduct investigations until the court date and that he could come back after court if he still felt as if he wanted to pursue with his complaint. On November 10, 2009 Ms Celina Johnson arrived at the station and advised that she wanted to pursue with a complaint against MPO Shivers due to how he spoke to her. Since Ms Johnson was not arrested or cited during the incident we did not have to wait on court proceedings. While speaking with Ms Johnson she advised that MPO Shivers used foul language while talking to her and that when he approached her that she felt intimidated. Ms Johnson further stated that when she asked MPO Shivers for his name and badge number that he would not answer her and she felt as if he was refusing to give it to her. Ms Johnson stated that MPO Shivers did not have a reason to arrest Mr. White because Mr. White was only asking about a female who was sitting with MPO Shivers and in her opinion was not rude or disrespectful.

On November 12, 2009 Sgt Dean and I spoke with Officer C. Pace who was witness to the events that occurred outside the business. During Officer Pace's statement he was working in an off duty capacity at the Motel 6 which is directly behind the Waffle House parking lot. Officer Paces' attention was drawn to the Waffle House's parking lot due to a disturbance that MPO J. Hill was handling. Officer Pace advised that MPO Hill had the situation under control and did not appear to need further assistance. Officer Pace then went to go back into his vehicle and stated that when he looked back over at the Waffle House parking lot he saw that MPO Shivers had a black male in custody and was physically escorting him out of the parking lot. Officer Pace stated "when I observed MPO Shivers physically escorting a black male around the corner of the Waffle House and slam the suspect on the hood of his patrol car. The suspect was offering no resistance that I witnessed." When Officer Pace walked over to MPO Shivers to offer assistance he observed a white female and black male walk towards them. Officer Pace stated "Around the corner came another black male and a white female. They were asking what was going on with their friend. MPO Shivers replied to the male and female, You better get the fuck on!" Officer Pace further advised that MPO Shivers had walked away from the cruiser towards the other two and had left his eye sight. Officer Pace stated "A minute or two later MPO Shivers came around

**NORTH CHARLESTON POLICE DEPARTMENT
ADMINISTRATIVE INTERNAL INVESTIGATION**

OFFICER'S REPORT

the corner physically escorting the black male that went around the corner; again this male was offering no resistance. MPO Shivers slammed the male across the hood of the patrol car. MPO Shivers continued to curse at the male."

On November 12, 2009 Sgt Dean and I spoke with MPO J. Hill who was a witness to the incident. MPO J. Hill was working in an off duty capacity with MPO Shivers at the Waffle House. MPO J. Hill advised that he did not witness what initially occurred inside of the business that caused MPO Shivers to approach the complainant. MPO J. Hill advised that he was told by a female that MPO Shivers needed his assistance inside of the restaurant. MPO J. Hill stated "When I got inside MPO Shivers was lying his jacket down on one of the chairs inside and was directing a black male to get up that he was under arrest. The male subject was disregarding MPO Shivers verbal order and then MPO Shivers grabbed the individual and placed him against the wall and handcuffed the subject telling him he was under arrest." MPO J. Hill did advise that the black male whom MPO Shivers had arrested appeared to be intoxicated. MPO J. Hill advised that when he did witness the other two complainants walk towards them and begin questioning why their friend was arrested but when he told them to back off that they both did.

On November 28, 2009 I received the complainant, Mr. Norris White's written statement. Mr. White had court on November 25, 2009 and at which time he pled "Not Guilty" to the charge of Disorderly Conduct yet Judge Dowdy found the complainant guilty of Disorderly Conduct. Mr. White's written statement advised that he had engaged in conversation with MPO Shivers with the intent to find out who the female was that was sitting next to him at the business. Mr. White stated "Excuse me is that young lady sitting next to you an officer?" To his response Officer Shivers quote "No! But I fucking am are you?" I responded no I ain't he then said sit your ass down. So I sat down and brushed him off and said "brah chill wit dat bullshit I just asked a simple question" he then asked me to walk outside with him so he can talk to me. I, Norris White, refused. My response was we can talk right here, he then pulled out his taser and said he will tase my ass if I didn't get up, my response was can you tell me what I did and I will do whatever you want he then said oh that's how you wanna play this shit I got you. He then reholstered his taser, took off his jacket, walked and sat it by the cash register walked backed to our table, snatched me from the table and threw me up against the glass and hand cuffed me. Took me outside and threw me on the car and emptied my pockets. asked again what did I do he said shut the fuck up!" The complainant feels that he was unlawfully arrested and that MPO Shivers did not have a right to put his hands on him just because he refused to go outside with him.

On November 28, 2009 I received the complainant Ms Celina Johnson's written statement. Ms Johnson's complainant against MPO Shivers is that he was aggressive and rude to her during the incident and that she felt intimidated by him when trying to obtain information. Ms Johnson advised in her statement that Mr. White had asked a question about the female who was sitting with MPO Shivers and MPO J. Hill due to both men thinking she was attractive and wanted to know if she was an officer. Ms Johnson further stated that she did not know why MPO Shivers got so irate at them for asking a question and they always talk to cops. In regards to being unprofessional and aggressive towards her Ms Johnson stated "Eugene and I followed them out

Defendants 0040

**NORTH CHARLESTON POLICE DEPARTMENT
ADMINISTRATIVE INTERNAL INVESTIGATION**

OFFICER'S REPORT

the building wondering what had just happened. I asked the officer what had happened he asked me if I wanted some too and I said I just want to know what he did. He told me I need to back the fuck up. Eugene asked him what his badge number was and his name. Shivers told him to back the fuck up while walking towards him so Eugene leaned in to look and Shivers yanked him up, threw him on the car and handcuffed him. I then was like what did he do he said do you want some too again as he is walking towards me and I reply no sir. He screams then back the fuck up!! I am already at least 2 cars away from him but I turn and go into the Waffle House."

On December 11-2009 MPO Shivers arrived at the Office of Professional Standards in accordance to the letter that he was given. MPO Shivers was given his Garrity warning to which he read it and signed it. MPO Shivers was then interviewed by MPO Driggers and advised that the interview would be taped. During the interview MPO Shivers advised that he was working off duty with MPO Hill at the Waffle House and that MPO Hill had went outside to deal with another minor situation. He further advised that it was about a ¼ hour until they got off and he was headed out the front door to bring MPO Hill paperwork. MPO Shivers then stated "This guy stood up and started yelling across to this female that was sitting on the other side and then he asked me if um reference to am I a police officer or something or making reference to me being a police officer and I'm like "yea I'm a police officer are you?", he been like "no I ain't a police officer". I said "man just chill out" or whatever he was still standing and he said something loud again before he sat down. I said let me just go over there right now in my head I said go over there right now and talk to him before I leave to let him know to chill out and sit down or whatever but that's what I usually do when people act up so I went over there and I said "man", I said um "you ok?" He been like "yea" I say "let me talk to you outside for a second man" he been like "for what" I'm like "come on let me talk to you outside, I need you to come outside for a second, I need to talk to you" he been like "no I ain't moving". So he saying it a little loud I'm like um listen and I got a little closer and I'm like "listen man come with me and step outside real quick" he said "tell me what I did first". I said "step outside we'll talk", he been like "no I ain't moving, I ain't moving!" So I'm like "listen lets go outside for real this is it ok no jokes lets go outside" he said "no I ain't moving, I ain't moving". At the time he was sitting in the booth and there was another guy about here and another female right there so um u know I asked him several more times he still won't move he still kinda loud no, no, no tell me what I did first I ain't moving I ain't moving. So at that time I observed him to be disorderly and unreasonable behavior so I went to grab his arm and take him out the booth and he stiffened up on me and he kinda jerk away..." He went on to explain that the suspect was resisting so he pointed and presented his taser but then decided the taser was not needed and re-holstered it. At this time he was able to use hand controls to get the suspect/complainant out of the booth and advised he used the glass window to brace him against while detaining him. MPO Shivers further explained that he escorted the suspect outside, emptied his pockets and placed him in his cruiser. While dealing with the suspect/complainant outside, MPO Shivers advised that the other two who were sitting with him followed them outside. He advised that they kept approaching and asking questions and that he did curse at them in hopes that it would intimidate them to back off due to them not listening to his first commands to step away. Once the interview was completed MPO Shivers provided

Defendants 0041

**NORTH CHARLESTON POLICE DEPARTMENT
ADMINISTRATIVE INTERNAL INVESTIGATION**

OFFICER'S REPORT

a written statement to the facts in the case. During the interview I explained to MPO Shivers that when he was in contact with a member of the public that they did not have to follow him outside when asked. It is not until you advise that they are under arrest or being detained due to a specific charge that they would need to comply with his directions. MPO Shivers believed that the complainant/suspect was supposed to follow him outside and by not doing so he was not complying with a lawful order.

On December 11, 2009 I went to the Waffle House and met with the manager on duty James Foether in regards to obtaining a copy of the video from the night of the incident. After going through the proper channels a copy of the video was obtained for viewing. Upon viewing the video I was able to see MPO Hill exit the front door with what appears to be a Hispanic couple at 4:46:18 AM. The tables where the complainants are sitting are visibly looking towards the area that MPO Shivers and Ms. Cooper are sitting at 4:46:40. MPO Shivers is walking towards the front door seconds later and his first interaction with the complainant Mr. White is at 4:46:58 where it appears Mr. White is asking MPO Shivers a question as he points towards Ms. Cooper. MPO Shivers responds to Mr. White at 4:47:12 and then walks towards the table. The female complainant, Ms Johnson, moves from the table at 4:47:28 to which she advised that MPO Shivers told her to move. MPO Shivers grabs at Mr. White at 4:47:31 and Mr. White appears to have his hands up the entire time but does move his body so that MPO Shivers cannot grab a hold of him. At 4:47:48 it appears that MPO Shivers then pulls his taser from his side and points it at Mr. White as he is holding his shirt with his other hand. MPO Shivers then re-holsters his taser, turns his back on the table, takes his jacket off and throws it up on the counter and returns to the table. At 4:48:45 MPO Shivers uses hand controls to pull Mr. White from the booth and it appears that he is thrown against the wall. The video is choppy and not fluid motion, along with not having sound so it is not clear if MPO Shivers used excessive force during this point of the interaction. MPO Hill re-enters the business as MPO Shivers is handcuffing Mr. White. Both officers then escort Mr. White out of the business and go out of camera shot. Mr. Frazier and Ms Johnson follow behind seconds later.

On December 21, 2009 I obtained a copy of the digital recording of the court proceedings for November 25, 2009 at 1 pm that had Mr. White's testimony along with MPO Shivers. During the court proceedings MPO Shivers advised that Mr. White stood up and began to yell at a female across the restaurant and when MPO Shivers addressed him Mr. White questioned whether or not he was an officer. MPO Shivers further advised that Mr. White was loud and disorderly and causing a disturbance in the restaurant and asked him to step outside to which Mr. White refused. Mr. White then gave his testimony which was the same as previously stated above. The judge, Judge Dowdy, began to speak to Mr. White after his testimony. "Let me ask you this Mr. White, why is it that when he asked you to leave why didn't you leave?" To which Mr. White responded, "He never asked me to leave, he asked me to come step outside to talk to him." Judge Dowdy asks, "Ok, well when he asked you to step outside..." Mr. White interrupts and states "Cuz, he already cussed me out twice, see what I'm saying, I asked him one question. I did ask him was, excuse me officer that young lady sitting beside you a cop? I swear on everything I love those were my exact words. He said "No, I fucking am are you?" I said no, he said "well sit your ass down" and I said man go ahead with that bullshit cuz I ain't even come at you like that." Judge Dowdy then

Defendants 0042

**NORTH CHARLESTON POLICE DEPARTMENT
ADMINISTRATIVE INTERNAL INVESTIGATION**

OFFICER'S REPORT

asks "Why did you ask him who it was, the girl sitting beside him at the time?" Mr. White stated, "Cuz she was cute and if she was on duty I wasn't or he wasn't gonna come at her like that if she was on duty. So I thought I'd just ask him if she was a cop and if he said yea then come to find out she wasn't even a cop to my knowledge." Mr. White did plead not guilty but was found guilty by Judge Dowdy.

FINDING OF FACT: (LIST ONLY THOSE FACTS THAT PROVE THE ALLEGATION(S) ARE FALSE OR NOT FACTUAL, OR PROVE/DISPROVE THE ALLEGATION(S))

VIOLATION OF UNLAWFUL ARREST. SUSTAINED

VIOLATION OF EXCESSIVE FORCE. SUSTAINED

VIOLATION OF CONDUCT UNBECOMING. SUSTAINED

- MPO Shivers gave a signed statement that had a detail account of the night's events. In his statement, from the video and from other statements it is clear that MPO Shivers did not have grounds for a lawful arrest. There was no probable cause to detain the complainant.
- MPO Shivers not having a lawful arrest should not have placed his hands on the complainant, presented a taser or used force to place the complainant in restraints.
- MPO Shivers presented his departmental issued taser at the complainant as a level 3 response even though the complainant was not presenting any aggressive or threatening behavior towards MPO Shivers.
- MPO Shivers oral interview was clear to state that he used foul language towards the public and he did this in an attempt to intimidate the other complainants so that they would back away from MPO Shivers.
- MPO Shivers admitted to MPO Driggers that he spoke to Felicia Cooper about this investigation and after he was advised of Garrity. Ms Cooper is a witness in the incident and is not MPO Shivers spouse, attorney or pastor as clearly stated in Garrity.
- MPO Shivers did not believe he unlawfully arrested Mr. White and believed that Mr. White was supposed to follow him outside or he was not obeying a lawful order. The law surrounding this incident had to be explained to MPO Shivers.

SPECIFIC VIOLATIONS: (OFFICER/EMPLOYEE MAY BE IN VIOLATION OF ONE OR MORE OF THE FOLLOWING POLICIES/REGULATIONS)

OFFICER/EMPLOYEE: Shivers, Sierra

POLICY/REGULATION:

VIOLATION:

Defendants 0043

**NORTH CHARLESTON POLICE DEPARTMENT
ADMINISTRATIVE INTERNAL INVESTIGATION**

OFFICER'S REPORT

Witnesses: (Include Officer/Employee Witnesses)

WITNESS: Hill, James
ADDRESS: 2500 City Hall Lane
HOME PHONE:
WORK PHONE: 843-554-5700

Witnesses: (Include Officer/Employee Witnesses)

WITNESS: Pace, Casey
ADDRESS: 2500 City Hall Lane
HOME PHONE:
WORK PHONE: 843-554-5700

Witnesses: (Include Officer/Employee Witnesses)

WITNESS: Johnson, Celina
ADDRESS:
HOME PHONE: 843-926-5648
WORK PHONE:

Tamara Driggers
MPO
Professional Standards Bureau

Defendants 0044

*City of North Charleston, SC*R. KEITH SUMMEY, MAYOR
POLICE DEPARTMENT JON ZUMALT, CHIEF OF POLICE

February 18, 2010

Attention: MPO Sierra Shivers**Subject:** Disciplinary Action (EX2009-018)

You are given a reduction of 80 hours of annual leave for violation of the below listed policies:

- Policy A-25 (Unlawful Arrest), Section IV, Paragraph A(1), which states, "The common law rule, and the rule in South Carolina, is that an officer is permitted to make a warrantless arrest in a public place for a misdemeanor or felony committed in his or her presence, as well as for a felony not committed in his or her presence, if the officer has probable cause to believe a felony has been committed and the arrestee committed it. However, an arrest can be made for a misdemeanor committed outside the officer's presence only if the facts and circumstances observed by the officer establish probable cause to believe a crime has been freshly committed."
- Policy A-26 (Conduct Unbecoming), Section IV, Paragraph G(1), which states, "Department members will treat the official business of the department as confidential. Information regarding official business will be disseminated only to those persons outside the department with a need and a right to know."

That on November 8, 2009 at 0430 hours, you were working off-duty at the Waffle House located at 2571 Ashley Phosphate Road. A patron inquired about a female that you were sitting with at the time. You then went over to the customer and engaged him in a brief conversation in which you instructed him to step outside with you. The customer refused to do this and you then removed your taser and pointed it at him. The patron still did not go outside, so you re-holstered your taser and forcibly took him outside. Once outside, you placed him under arrest for Disorderly Conduct and transported him to the County Jail.

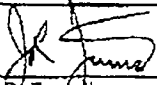
During the internal investigation, you were given your Garrity Rights in which it stated that you were not to discuss this investigation with anyone other than spouse, pastor or attorney. You proceeded to talk about the interview with Ms. Felicia Cooper who was a potential witness and had not been interviewed yet. Furthermore, you stated that you placed Mr. White under arrest for not going outside when you told him to do so.

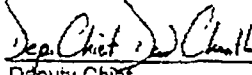
In addition to the above mentioned forfeiting of Annual Leave, you will be required to complete an Anger Management class through SAVE and undergo testing on Arrest Policy and Law via the Training Section.

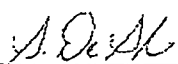
Your actions were not consistent with the policies and regulations of the Department and future violation(s) of Departmental policy and regulations may result in harsher disciplinary action.

In accordance with the City of North Charleston Executive Orders, as a non-probationary employee you can appeal this decision within ten (10) days of such action, in writing, the basis for your appeal, and your request for a hearing before the Board of Appeals. This request should be directed to the Human Resources Director and Mayor. If you have questions about your appeal rights, call the Human Resources Director at 740-2593.

Please be advised that if there are any personal matters you may be dealing with in your life that there is an Employee Assistance Program (EAP) that is available to you. You can contact the Human Resources Department at 740-2597 for additional information on the EAP program.

Chief's Signature:  2-18-2010
Jon R. Zuralt Date

Deputy Chief's Signature:  2-23-2010
Deputy Chief Date

Employee Signature
I hereby acknowledge receipt of this notice:  2-23-10
Employee Signature Date

Employee Refuses to Sign:

cc: Personnel File – HR Department
Office of Professional Standards
Robin Parish

February 18, 2010

Mr. Norris White
472 Winter Drive
Summerville, SC 29483

Dear Mr. White,

The North Charleston Police Department's Office of Professional Standards has investigated your complaint of misconduct on the part of one or more employees and submitted it to the reviewing authority. The reviewing authority has determined that a violation of Department policy occurred and has taken corrective action.

Thank you for allowing our office the opportunity to address your concern, and please ~~do not hesitate to contact me if I may be of any further assistance.~~

Sincerely,

Captain Karen R. Cordray
Captain Karen R. Cordray
Office of Professional Standards

cc: Chief of Police
Office of Professional Standards

Milton D. Stratos
Attorney at Law
1041 Johnnie Dodds Blvd., Suite 14A
Mount Pleasant, South Carolina 29464
Office: (843) 216-7739
Fax: (843) 216-0804

March 29, 2010

Via Fax: (843)745-1052

City of North Charleston
Attn: Captain Karen R. Cordray
Post Office Box 62558
N. Charleston, South Carolina 292

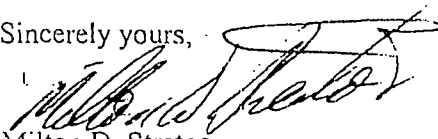
Re: The State v. Norris White
Ticket No: 83928 EN

Dear Captain Cordray:

Please be advised that the above referenced Defendant has contacted my office regarding the charge of Disorderly Conduct. According to Mr. White, he filed a complaint with your department and you found some irregularities on the part of Officer Shivers and found some unspecified violations of Department policy. I further understand that your findings were based on a video tape you acquired from the establishment where Officer Shivers arrested Mr. White. I would greatly appreciate your providing my office with a copy of the video as well as any and all investigative reports and/or statements you obtain during your investigation of this matter. If you have any questions or concerns, please do not hesitate to contact my office.

With kindest personal regards, I remain

Sincerely yours,


Milton D. Stratos
Attorney at Law

MDS/csc

Milton D. Stratos*Attorney at Law*1041 Johnnie Dodds Blvd., Suite 14A
Mount Pleasant, South Carolina 29464

Office: (843) 216-7739

Fax: (843) 216-0804

June 17, 2010

Via Fax: (843) 745-1052

North Charleston Police Department

Attn: Captain Karen R. Cordray

Post Office Box 62558

North Charleston, SC 29406-2558

Re: The State v. Norris White

Request Video Recording

Date of Incident: November 8, 2009

Place of Incident: Waffle House
2571 Ashley Phosphate Road
N. Charleston, SC 29418

Dear Captain Cordray:

Per my letter to you of March 29, 2010, I have received no response from you regarding my client's request for a copy of the video you obtained from the Waffle House Restaurant regarding the above referenced incident. As you know, North Charleston's Division of Internal Affairs investigated the matter and found "a violation of Department policy...". I assume this finding was obtained based, in part, on the video evidence now in your possession. It may also be evidence that would weigh heavily in determining the guilt or innocence of Mr. White regarding the criminal charge of Disorderly Conduct. I am again requesting that you provide my office with a copy of this evidence, so that we can determine whether or not further action is warranted. I would greatly appreciate your providing my office with some response at your earliest convenience.

With kindest personal regards, I remain

Sincerely yours,


Milton D. Stratos
Attorney at Law

MDS/csc

MILTON D. STRATOS
ATTORNEY AT LAW
1041 JOHNNIE DODDS BLVD., SUITE 14A
MOUNT PLEASANT, SOUTH CAROLINA 29464
OFFICE: (843) 216-7739
FAX: (843) 216-0804

FACSIMILE COVER SHEET

TO: CAPTAIN KAREN CORDRAY CITY OF N. CHARLESTONFAX NO.: (843)745-1052NO. PAGES (INCLUDING COVER SHEET): 2FROM: MILTON D. STRATOSSENT BY: MDS DATE: 6-17-10

REMARKS: _____

HARD COPY TO FOLLOW: YES NOCONFIDENTIAL

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Milton D. Stratos
Attorney at Law
1041 Johnnie Dodds Blvd., Suite 14A
Mount Pleasant, South Carolina 29464
Office: (843) 216-7739
Fax: (843) 216-0804

June 23, 2010

Via Fax: 843-745-1051

City of N. Charleston Municipal Court
Attn: Clerk of Court
2500 City Hall Lane
N. Charleston, South Carolina 29406

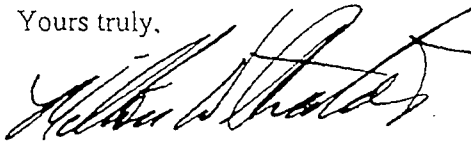
Re: The State v. Norris White
Charges: Disorderly Conduct (83928 EN)
Hearing Date: November 25, 2009 at 1:00 p.m.

Dear :

Please be advised that my office has been retained to represent the above named defendant on the above references charges. I am herein requesting that you make available any and all recordings, notes, and/or records of the trial of Norris White that was held on November 25, 2009 at 1:00 p.m. I would appreciate your contacting my office upon your securing these records. If you have any questions or concerns, please do not hesitate to contact my office.

With kindest regards, I remain

Yours truly,



Milton D. Stratos
Attorney at Law

MDS/csc

Milton D. Stratos
Attorney at Law
 1041 Johnnie Dodds Blvd., Suite 14A
 Mount Pleasant, South Carolina 29464
 Office: (843) 216-7739
 Fax: (843) 216-0804

June 23, 2010

9-30-10

Via Fax: 843-745-1051

City of N. Charleston Municipal Court
 Attn: Clerk of Court
 2500 City Hall Lane
 N. Charleston, South Carolina 29406

Pls. See

*CASE HISTORY
ATTACHED.*

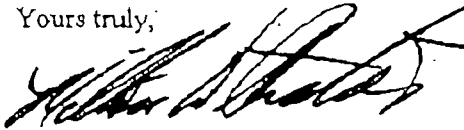
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With kindest regards, I remain

Yours truly,



Milton D. Stratos
 Attorney at Law

MDS/csc

STRATOS LAW, LLC

Milton D. Stratos, Esq.

1041 Johnnie Dodds Blvd., 14-A
Mt. Pleasant, SC 29464
843.216.7739
(f) 843.216.0804
www.stratoslaw.com

May 6, 2011

Via Fax: 843-745-1051

City of North Charleston Municipal Court
Attn: Scheduling Clerk
2500 City Hall Lane
North Charleston, South Carolina, 29406

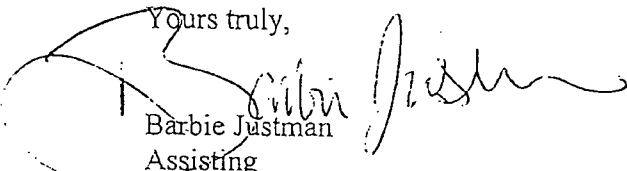
Re: The State v. Norris Earl White Jr.
Ticket/Charges: 83928 EN – Disorderly Conduct

Dear Sir or Madam:

Please be advised, I am in receipt of the notice of the Motion to Reopen Hearing scheduled in your court, Wednesday, May 18, 2011. Unfortunately, I have a previously scheduled family vacation and I will not be able to attend at this time. I would greatly appreciate your continuing this matter at your convenience and notifying my office of the new date and time as soon as you have an opportunity to schedule the same. I have attached a list of my unavailable dates to avoid further scheduling conflicts. If you have any questions or concerns, please do not hesitate to contact my office.

With kindest regards, I remain

Yours truly,


Barbie Justman
Assisting
Milton D. Stratos
Attorney at Law

MDS/bkjj

Milton Stratos' Unavailable Dates as of May 6, 2011

<u>Date</u>	<u>Description</u>	<u>Beginning at</u>
Monday, May 9, 2011	Magistrate Summey – Pre-Trial	10:00 a.m.
Wednesday, May 11, 2011	Charleston County Family Court – (McKEE)	9:00 a.m.
Thursday, May 12, 2011	Berkeley County Magistrate Court – (English)	9:00 a.m.
Friday, May 13, 2011	Berkeley County Family Court – Final Hearing (Cook)	10:15 a.m.
Monday, May 16, 2011 – Friday May 20, 2011	PERSONAL VACATION	
Wednesday, May 18, 2011	Berkeley County Family Court – Temporary Relief (Shimel)	2:30 p.m.
Thursday, May 19, 2011	Goose Creek Magistrate Court – Pre-Trial (Sanchez)	1:00 p.m.
Sunday, May 22, 2011 – Monday, June 6, 2011	VACATION - Order of Protection	
Tuesday, June 7, 2011	Charleston County Family Court – Continuation Rule to Show	9-11:00 a.m.
Tuesday, June 7, 2011	Berkeley County Family/Juvenile Court – (Richards)	??
Thursday, June 9, 2011	Berkeley County Family Court – Pre-Trial (Baker)	9:00 a.m.
Friday, June 10, 2011	Charleston County Family Court – Final Hearing (Peninger)	9:30 a.m.
Monday, June, 20, 2011	Charleston County Family Court – Rule to Show Cause (Jackson)	2:00 p.m.
Wednesday, June 22, 2011	Family Court Mediation – D. Allen Badger's Office (Marcey)	1:00 -5:00
Monday, July 11- Friday, July 22, 2011	VACATION - Order of Protection	

STRATOS LAW, LLC

Milton D. Stratos, Esq.

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Mt. Pleasant, SC 29464
843.216.7739
(f) 843.216.0804
www.stratoslaw.com

September 16, 2011

Via Fax: (843) 745-1051

The Honorable Mel Coleman
North Charleston Municipal Court
2500 City Hall Lane
N. Charleston, SC 29406

Re: The State v. Norris Earl White, Jr.

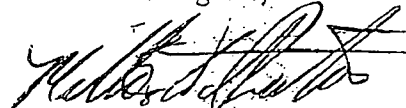
Ticket Number: 83928 EN

Motion to Reopen

Dear Mel:

During a hearing with Judge Jefferson, it appeared that the above captioned matter was set for a hearing on May 18, 2011 on a Rule 60(b) motion I filed on October 22, 2010. Judge Jefferson contacted the clerk's office and directed me to schedule a hearing before you on a motion to reopen. I would greatly appreciate your scheduling this matter next week.

With kindest regards, I remain



Milton D. Stratos
Attorney at Law

mds/CSC

STRATOS LAW, LLC

Milton D. Stratos, Esq.

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Mt. Pleasant, SC 29464
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CONFIDENTIAL FACSIMILE COVER SHEET

TO: North Charleston Municipal Court
NO.: (843)745-1051
NO. PAGES (INCLUDING COVER SHEET): 2
FROM: MILTON D. STRATOS
SENT BY: MDS DATE: 9/16/11 TIME: 12:50 p.m.

REMARKS: _____

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STRATOS LAW, LLC

Milton D. Stratos, Esq.

1041 Johnnie Dodds Blvd., 14-A
Mt. Pleasant, SC 29464
843.216.7739
(f) 843.216.0804
www.stratoslaw.com

September 20, 2011

Via Fax: 843-745-1051

City of North Charleston Municipal Court
The Honorable Mel Coleman
2500 City Hall Lane
North Charleston, South Carolina 29406

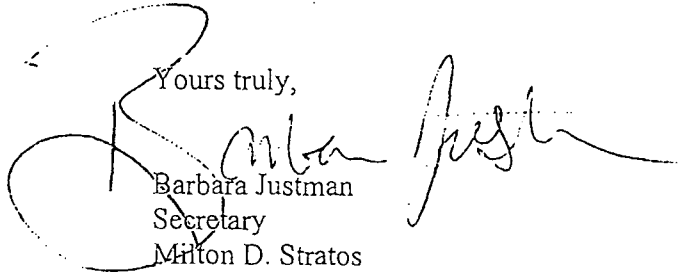
Re: The State of South Carolina v. Norris Earl White, Jr.
Ticket Numbers: 83928 EN
Motion to Reopen

To Whom It May Concern:

I am following up on my attached letter dated 9-16-2011 wherein I requested the above captioned matter be re-opened. I have yet to hear back from your office. I would appreciate someone from your office contacting my office to let us know the next date you will be hearing Motions as we would like to get the above matter scheduled as quickly as possible. If you have any questions or concerns, please do not hesitate to contact my office.

With kindest regards, I remain

Yours truly,



Barbara Justman
Secretary
Milton D. Stratos
Attorney at Law

MDS/bkjj

Confirmed
w/ Lauren - she will
give to ms. Barbara
10:04 AM 9-21-11
STRATOS LAW, LLC

Milton D. Stratos, Esq.

1041 Johnnie Dodds Blvd., 14-A
Mt. Pleasant, SC 29464
843.216.7739
(f) 843.216.0804
www.stratoslaw.com

CONFIDENTIAL FACSIMILE
COVER SHEET

TO: City of North Charleston Municipal Court - The Honorable Mel Coleman

FAX NO.: 745-1051

NO. PAGES (INCLUDING COVER SHEET): 3

FROM: MILTON D. STRATOS

SENT BY: Barbara Justman DATE: 9/20/11 TIME: 4:00 p.m.

REMARKS: Re: Norris Earl White - Ticket: 83928 EN

HARD COPY TO FOLLOW: YES X NO

CONFIDENTIAL

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STRATOS LAW LLC

Milton D. Stratos

1041 Johnnie Dodds Blvd., 14-A
Mt. Pleasant, SC 29464
843.216.7739
(f) 843.216.0804
milton@stratosalw.com

August 27, 2013

Supreme Court of South Carolina
Clerk of Court
Attn: Della White
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

AUG 30 2013

S.C. Supreme Court

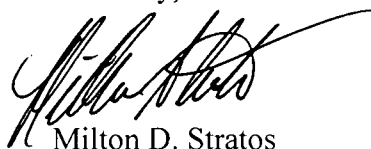
RE: The State of South Carolina, Respondent, v. Norris Earl White Jr., Appellant,
Case No. 2010-CP-10-9745.
Writ of Certiorari

Dear Ms. White:

Please find enclosed Motion to File Out of Time in association to the enclosed Writ of Certiorari. In accordance with Rule 243, I've enclosed the original, plus six (6) copies of Petitioner's Writ of Certiorari, two (2) copies of the Appendix, and proof of service showing the Appendix and petition have been served.

Should you have any questions or comments please don't hesitate to contact me. Thank you for your time and attention.

Sincerely,



Milton D. Stratos
Attorney for Petitioner

Enclosure

cc: Office of Attorney General
Attn: Ashleigh R. Wilson
Post Office Box 11549
Columbia, South Carolina 29211
(803)734-3737
Attorney for Respondent