

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Spartanburg County

SEP 10 2013

J. Mark Hayes, II, Circuit Court Judge ~~S.C. Supreme Court~~

FREDERICK JETER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE No. 2013-000181

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Frederick Jeter,) 2008-GS-42-6758
7 Defendant.) June 3, 2009
8) Spartanburg, South Carolina
9
10 B E F O R E:
11 HONORABLE E. C. BURNETT, III, JUSTICE/JUDGE; and a
12 jury
13
14 A P P E A R A N C E S:
15 ABEL ORLANDO GRAY, ESQUIRE
16 Attorney for the State
17 BEVERLY JONES, ESQUIRE
18 Attorney for the Defendant
19
20
21
22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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5	S-3	Photograph	9	
6	S-4	Photograph	9	75
7	S-5	Photograph	9	75
8	S-6	Drugs	10	105
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1		<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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Jury qualification

1 (Proceedings June 3, 2009)

THE COURT: Are y'all ready for the jury?

3 MS. JONES: The defense is.

4 MR. GRAY: Yes, sir, Your Honor.

5 THE COURT: All right. Bring the panel down then,
6 please.

7 (The following takes place in the presence of the jury
8 venire.)

9 THE COURT: Morning, ladies and gentlemen. Welcome
10 back. I trust your evening was restful and you're prepared
11 to go forward and to do the work that we've required you to
12 come here to do. We do welcome you back.

13 Ladies and gentlemen, we are about to begin the trial
14 of the case of State vs. Frederick Jeter. Mr. Jeter is
15 charged with the crime of distribution of cocaine, having
16 alleged it occurred here in Spartanburg County on July the
17 1st of 2008.

18 As you are aware, it is brought here by way of this
19 indictment. I tell you again, as I shall again and again,
20 that this indictment is not evidence. But the indictment
21 serves to give this Court jurisdiction of this defendant
22 in this crime and allows us to begin the process in which
23 we are now entering.

24 Keep in mind that the indictment is not evidence, nor
25 is the fact that he's been indicted evidence of his guilt.

Jury qualification

1 We'll discuss that in much greater detail as the trial
2 progresses.

3 Mr. Jeter is here represented by his attorney, Beverly
4 Jones. The state is represented by Assistant Solicitor
5 Abel Gray.

6 A few questions I would ask you.

7 Mr. Jeter, if you would, stand and face the jury,
8 please.

9 (Whereupon, the defendant stood.)

10 THE COURT: Is any member of the jury panel related by
11 blood or by marriage to this defendant, Mr. Frederick
12 Jeter? Do any of you know him in any way?

13 (No response.)

14 THE COURT: Thank you. Be seated.

15 Have any of you been involved in any kind of legal
16 matter where you have been represented by or opposed by
17 Ms. Jones or Mr. Gray or any member of the Spartanburg
18 County Solicitor's Office or Public Defender's Office?

19 (No response.)

20 THE COURT: There will be several witnesses in this
21 case, ladies and gentlemen. And I need to know whether you
22 know them or whether you're related by blood or by marriage
23 to them.

24 They are Henry Beck with the Spartanburg County
25 Sheriff's Department; Paul Norris with the Spartanburg

Jury qualification

1 County Sheriff's Department; Ashley Harris with the
2 Spartanburg County Sheriff's Department. And he's not
3 here. Okay. And Michael Foster.

4 Any relation or any knowledge of any of these
5 witnesses?

6 JUROR NO. 15: Judge, I attended --

7 THE COURT: Yes, sir. What's your number, please?

8 JUROR NO. 15: No. 15, Ryan Bell.

9 THE COURT: Yes, sir.

10 JUROR NO. 15: I attended school with the prosecutor.

11 THE COURT: With Mr. Gray?

12 MR. GRAY: Yes, sir.

13 THE COURT: Would the fact that y'all went to school
14 together affect your ability to give a fair trial to both
15 the state and the defendant?

16 JUROR NO. 15: No, sir.

17 THE COURT: Thank you kindly, sir.

18 Do any of you, ladies and gentlemen, know of any
19 reason whatsoever why you could not give a fair trial to
20 both the state and to this defendant? Any reason?

21 (No response.)

22 THE COURT: As I impressed upon you yesterday, our
23 purpose is to give every defendant a fair trial. It
24 doesn't matter who they are or what the charge is. A fair
25 trial is required. And that requires the utmost from you,

Jury qualification

1 as from me.

2 All right. Any other questions by the state?

3 MR. GRAY: No, sir, Your Honor.

4 THE COURT: The defense?

5 MS. JONES: No, sir.

6 THE COURT: All right. Give us a jury, please, ma'am.

7 (Whereupon, a jury was impanelled.)

8 THE COURT: Mr. Jasionowski, I am going to ask you to
9 serve as the foreman of this jury. I'm going to send the
10 jury to the room for a few minutes while I do some things.

11 When you come back in you'll have the first seat on
12 the front row there. You'll be the foreman of this panel.

13 And, Mr. Padgett, as the alternate juror, that'll be
14 the seat you'll occupy when the panel is in the courtroom.
15 The rest of them, there are no reserved seats. So just
16 make it easy on each other.

17 If y'all will, step back in the jury room for a
18 moment, please.

19 (The following takes place outside the presence of the
20 jury.)

21 (D. V. D. marked State's Exhibit No. 1 for
22 Identification; D. V. D. marked State's Exhibit No. 2 for
23 Identification; photograph marked State's Exhibit No. 3 for
24 Identification; photograph marked State's Exhibit No. 4 for
25 Identification; photograph marked State's Exhibit No. 5 for

Jury qualification

1 Identification; drugs marked State's Exhibit No. 6 for
2 Identification; report marked State's Exhibit No. 7 for
3 Identification; letter and doctor's statement marked Court's
4 Exhibit No. 1.)

5 THE COURT: All right. What is it that y'all need to
6 do?

7 MS. JONES: Your Honor, at this point I have an issue
8 with regard to the audio recording of the telephone call
9 and also the video recording of the undercover transaction
10 involved.

11 THE COURT: And are you -- do you know what she's
12 talking about, or do we need to go ahead and play it?

13 MR. GRAY: I think we need to go ahead and play it for
14 Your Honor.

15 THE COURT: That will be good. Let's just go ahead
16 and do that.

17 (Whereupon, the C. D. was played for the Court.)

18 MS. JONES: Your Honor, the portion that the defense
19 deems objectionable is the 15 seconds at the beginning
20 where the narcotics officer, Henry Beck, says he's going to
21 have his C. I. call the number and order up a quantity of
22 crack.

23 At no point on that phone call is anything identified
24 as crack. In fact, the term crack is never used other than
25 the way the narcotics officer identified it.

1 And also the portion at the end which is a 9-second
2 interval between 1:51 and two minutes where Mr. Foster says
3 he's really getting himself in trouble, and then Beck says
4 you say you've got an order up for \$40, that's an exchange
5 between them, not part of the telephone conversation. Your
6 Honor, I would ask --

7 THE COURT: And I didn't even hear that, but my ears
8 are older than yours are.

9 What do you say about that, Mr. Gray?

10 MR. GRAY: Your Honor, I think all of this goes merely
11 to intent in this situation. There is nothing prejudicial
12 about, in this regard that gives the jury an overview of
13 the situation that's happening.

14 It's not just a situation that's prejudicial to the
15 defendant in this case. It shows what was happening, the
16 entire picture, a clear picture. I think it's highly
17 relevant to the jury in the initial part that Ms. Jones is
18 talking about.

19 The last part, I believe the C. I.'s comment to
20 Mr. Beck about him getting into trouble, that, Your Honor,
21 I believe may be prejudicial.

22 THE COURT: Yeah. I will take that last part off.

23 As a practical matter, Ms. Jones, Mr. Beck is here.
24 He's going to testify about setting up a drug deal. And
25 all that first part is, when I heard him talking, when I

1 knew who it was, I see no prejudice at all to him.

2 Mr. Beck's here. You can ask him anything you want to
3 know about it.

4 MS. JONES: Okay. Your Honor, and I understand then
5 the state is now consenting to end the tape prior to the --

6 THE COURT: They're consenting to it. And I'm
7 ordering that those last nine seconds be taken off it.

8 MR. GRAY: Yes, sir.

9 THE COURT: And he agrees with you on that.

10 MS. JONES: Thank you, Your Honor.

11 MR. GRAY: Let me get the other video started, Your
12 Honor.

13 THE COURT: Now, are you going to be able to manage
14 all of that electronic stuff when we get the jury back in
15 here?

16 MR. GRAY: I'm not going to have any other choice,
17 Your Honor.

18 (Whereupon, the C. D. was played for the Court.)

19 MR. GRAY: That's the conclusion of it, Your Honor.

20 THE COURT: All right. What's your objection?

21 MS. JONES: From the point of 47, 44 on, that's when
22 he arrived back at the officers. They engaged in --
23 although they don't call it this on the tape -- a
24 debriefing and essentially take an oral statement from
25 Mr. Foster about what he did during the operation, some of

1 which is not audible or even visible on the video.

2 So I think it's, it's objectionable because it's like
3 they've interviewed him and want to offer that in evidence
4 just bootstrapped on to the end of this undercover
5 operation.

6 Your Honor, I don't have any objection to the, to the
7 video portion of it showing for whatever benefit it is.
8 It's just the audio portion where they debrief him, because
9 I think that goes beyond the tape itself and allows him to
10 supplement what is visible and audible to the officers.
11 And it creates a confrontation issue because you can't
12 cross him on those statements in the recording.

13 THE COURT: Are both of those guys going to be here?

14 MR. GRAY: Yes, sir.

15 MS. JONES: Yes, sir, Your Honor.

16 But it's still a recording. And I just think it's,
17 it's objectionable because it's as though they're taking a
18 statement of him, which is not in and of itself, wouldn't
19 be admissible.

20 If they had created that statement and said -- and
21 during the testimony tried to offer the statement that they
22 took from him as a debriefing after the operation, that
23 wouldn't be admissible. So I don't see why because it was
24 on the end of this recording it makes it admissible.

25 We obviously can't really object to the rest of the

1 recording for what it's worth, because it does depict what
2 happened.

3 MR. GRAY: Your Honor, I think it is very relevant.
4 This debriefing is not a statement in this situation. The
5 officer will testify about the debriefing and the purpose
6 of the debriefing.

7 What happens here is they go through this entire
8 scenario of what happened, how it happened and who the
9 confidential informant got the drugs from. He identifies
10 them and how much he got them -- \$40 worth.

11 It's not a statement, Your Honor, in this situation.
12 If they wanted to hear a statement from him, they would
13 have done so, a written statement. It's debriefing.

14 The state has proven the chain in this situation. We
15 have -- we can prove it through this video tape. It came
16 from the defendant, to the confidential informant, to the
17 officers during the debriefing. That is what the situation
18 is for.

19 It also shows he stopped nowhere else. He didn't buy
20 any other drugs. He didn't get any other drugs except from
21 the defendant. So that shows, and our officers can explain
22 what exchange took place from the defendant, to the C. I.,
23 to the officers, and on and on, Your Honor, to show the
24 chain in this situation.

25 We're not offering it for the truth of the matter

1 asserted. But, as she said, it shows what happened that
2 day.

3 The officers can testify to it. They put it into
4 their reports which is in the discovery. We briefed them
5 beforehand. We do certain other things. Do the buy.

6 It also shows that they followed him the entire time.
7 At the end of the buy and stop, they're right there, Your
8 Honor, to get the drugs from him that he got from
9 Mr. Jeter.

10 So I don't think it's a statement in this situation,
11 rather police procedure. We're not offering a statement
12 from Mr. Foster. We're not offering the incident reports.
13 We have the officers here. They can talk about that.

14 I think it's relevant for the full picture, that also
15 for the chain of custody, Your Honor.

16 MS. JONES: And if I may, I am not objecting to the
17 video portion of the recording.

18 My objection is, goes to the debriefing where they
19 interview, in essence. That's exactly what took place.
20 They interviewed their confidential informant and took an
21 oral statement from him.

22 If they had taken a written statement or an oral
23 statement, I think I would disagree with Mr. Gray. That
24 would not necessarily be admissible in the state's case in
25 chief. So trying to bootstrap it into a recording after an

1 operation I think doesn't change its admissibility.

2 I don't object, as I've stated now two or three times,
3 to the video portion of it. I do -- so if he has some
4 concern about being able to show the chain issue, I can see
5 that's a relevant concern. And I'm not objecting to the
6 video portion.

7 I do strenuously object to the audio because I think
8 it, again, in essence, they interview their informant, take
9 a statement that independently would not be admissible but
10 for the fact that it ends up being on the end of this
11 recording. And I don't think that changes its
12 admissibility.

13 THE COURT: I agree.

14 The audio portion would not be admissible but for
15 their presence, and they will testify, and I will play the
16 whole thing.

17 Any way we can speed up the getting to the scene and
18 leaving the scene? I don't know how all of this stuff
19 works.

20 MR. GRAY: Yes, sir. There is a way I could speed it
21 up just for the jury's benefit, Your Honor. That's why I
22 played the entire thing. But if she doesn't have an
23 objection --

24 MS. JONES: Well, we do have an objection.

25 Once Mr. Foster receives the drugs, his handling of

1 the drugs are relevant. And if you watch what he is doing,
2 a portion of it, you can figure out what he's doing. He,
3 in essence, passes this crack back and forth between his
4 hands or somewhere.

5 THE COURT: No. I'm not talking about that. I'm
6 talking about the trip to the scene --

7 MS. JONES: Oh.

8 THE COURT: -- and riding down the street.

9 MS. JONES: Your Honor, the only part of that I think
10 is relevant is the portion that shows that he actually gets
11 stopped for speeding.

12 THE COURT: Well, play it all.

13 MS. JONES: Oh.

14 THE COURT: That's a part you can hammer on.

15 MS. JONES: Yeah.

16 THE COURT: I don't know whether it's relevant.

17 MS. JONES: Yeah. I don't know how conclusive it will
18 be.

19 THE COURT: But it's admissible. I don't think it
20 makes a hill of beans, but we'll just play the whole thing.

21 MR. GRAY: All right.

22 THE COURT: What else? We're going to have to keep
23 turning that speaker so the jury can hear it because
24 they're working next door, and we're blowing them out with
25 this.

1 MR. GRAY: That won't be a problem. I can turn it
2 around and face it any way you want to.

3 THE COURT: I just don't want to disturb Judge Hill
4 next door.

5 MR. GRAY: Yes, sir, Your Honor.

6 MS. JONES: And, Your Honor, also just to, and I think
7 I had mentioned to Mr. Gray that I wanted to do this.

8 I want, because we have a confidential informant
9 testifying who is a layperson and not an officer I want, to
10 explain a little background so that we potentially can have
11 a joint reminder by the Court with us of topics that are
12 not admissible to be discussed.

13 By way of background, this one case is one of three
14 distributions that the state has charged took place between
15 C. I. Mr. Foster and Mr. Jeter.

16 There was a June 27th which was tried already with
17 myself, Bob Coler in front of Judge Cole and ended in a
18 hung jury.

19 Mr. Foster's identity was revealed at that point. I
20 was given the contents of his C. I. file including
21 contracts. I have rap sheets and all of that with regard
22 to him so that I can cross-examine him with regard to his
23 motives and his bias and so forth.

24 But/and there is pending another charge that took
25 place seven or eight days after this one. And we, quite

1 honestly -- Mr. Foster did relatively well in limiting
2 himself in his testimony with regard to his knowledge of
3 Mr. Jeter as to not be specific as to other dates.

4 But I just want to join Mr. Gray. I think he's
5 already done this in reminding him he needs to limit
6 information that he's going to testify today to as to this
7 particular transaction only. And we redacted --

8 THE COURT: Well, I think both of you will be in
9 agreement. We're going to try this case. We're not going
10 to try the one that hung; we're not going to try the one to
11 come.

12 MR. GRAY: That's fine, Your Honor. Yes, sir.

13 THE COURT: Okay.

14 MS. JONES: And in that regard, we have, Mr. Gray has,
15 premarked the redacted lineup. The date has been removed
16 because the date predates this sale by almost a week that
17 was on there, and we removed that to ensure that.

18 MR. GRAY: And his signatures.

19 THE COURT: All right. What else?

20 MR. GRAY: One other thing, Your Honor, is just on a
21 packet on the bench about the evidence custodian in this
22 case.

23 He is out eight to 12, excuse me, ten to 12 weeks for
24 surgery. I made it a part of the record, Your Honor.
25 We're not hiding him in any way. It is a medical issue.

1 And that's why I asked to be marked as a court
2 exhibit, not a state exhibit. We're not trying to
3 introduce that to the jury or anything of that nature.

4 THE COURT: My question, and we talked about it
5 briefly, when this officer, Jack Westmoreland, when he got
6 it, it was already sealed in a packet.

7 MR. GRAY: Yes, sir.

8 THE COURT: And it went from him to SLED.

9 MR. GRAY: No. To Ashley Harris. He's a SLED
10 qualified chemist with the county.

11 THE COURT: Oh. And Harris is going to testify as to
12 the condition when he got it, it was still sealed.

13 MR. GRAY: Yes, sir, Your Honor.

14 THE COURT: I think that meets our law. You can have
15 whatever objection you would like to it.

16 MS. JONES: Yes, sir, Your Honor.

17 On behalf of Mr. Jeter, he objects. However I have
18 already alerted him at least once what the status of the
19 law is and I believe that Your Honor obviously would follow
20 the law, and because the packet was received sealed and not
21 tampered with or didn't appear to have been tampered with
22 when the next person in the chain got it, that that
23 probably met in the Court's eyes the requirements of the
24 law and the Court would not require Mr. Westmoreland.

25 I'm just not in a position because of Mr. Jeter's

1 objection to consent.

2 THE COURT: I understand; I understand.

3 What else?

4 MR. GRAY: That would be it, Your Honor, except for

5 the redacting of the 9-1-1, not 9-1-1, but the phone call,

6 Your Honor, if I can have a few moments to do that.

7 THE COURT: Yes, sir. We're going to take a short

8 recess, and you can do that.

9 MR. GRAY: Yes, sir.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Folks, are we ready?

12 MR. GRAY: Let me get this out of the way.

13 THE COURT: All right. Folks, are you ready for the

14 panel?

15 MS. JONES: Yes, sir, Your Honor.

16 MR. GRAY: Yes, sir.

17 THE COURT: Bring them in, please, sir.

18 (The following takes place in the presence of the

19 jury.)

20 THE COURT: All right. Would you swear the panel,

21 please?

22 (Whereupon, the jury was duly sworn.)

23 THE COURT: Mr. Foreman, ladies and gentlemen, I

24 apologize for the length of time I kept you back there.

25 There were several matters we had to take care of. But we

1 are ready to go forward now.

2 And it is a trial, as you are aware, of the State
3 against Frederick Jeter. It is a charge of distribution of
4 crack cocaine. It is brought here in the courtroom by way
5 of this document. It's the indictment.

6 I have told you, and I remind you, that the indictment
7 is not evidence of his guilt. The fact that he's been
8 indicted is not evidence that he's guilty. The document
9 serves to give us jurisdiction to try him in this
10 courtroom.

11 And, Mr. Foreman, the jury will of course have this
12 document when you retire to deliberate. You're welcome to
13 review it at that time. There's a use you will make of it
14 that I'll explain a little bit later.

15 As to the charge on the indictment the defendant has
16 entered a plea of not guilty. Under our system of laws
17 when any defendant pleads not guilty the state then is
18 required to prove the defendant's guilt.

19 No defendant is ever required to prove his or her own
20 innocence. The burden always rests upon the state to prove
21 guilt, and to prove that guilt beyond any reasonable doubt.

22 The lawyers are going to make some comments to you now
23 in opening. I will tell you that their comments are not
24 evidence. But their comments are important in that it will
25 help orient you and direct you on where we plan to go in

Opening statements

1 this case.

2 Your job as jurors is to find the truth in the
3 testimony and the evidence that you will hear and see in
4 this case.

5 Nobody can tell you what truth you ought to determine.
6 But by the exercise of your good sound judgment you make
7 that determination of which of the witnesses you believe or
8 what portion of a witness' testimony you might accept. And
9 you determine what the truth is in the evidence that will
10 come in before you. And to the truth that you determine
11 you will apply the law that I will tell you at the
12 conclusion of the trial. And in that way our system
13 ensures that a verdict will be based upon the truth of what
14 happened in the case and the law that applies in the case.

15 And so I urge you to give your very close attention to
16 the witnesses who will testify.

17 Mr. Abel Gray appears on behalf of the state in this
18 case; Ms. Beverly Jones on behalf of the defendant.

19 Mr. Gray.

20 MR. GRAY: Thank you, Your Honor.

21 Ladies and gentlemen of the jury, my name is Abel
22 Gray. I work in the solicitor's office.

23 My job here today is to present a case to you, to
24 prosecute Mr. Jeter. The allegations are that Mr. Jeter
25 distributed some illegal substances, crack cocaine, on July

Opening statements

1 the 1st of 2008. I believe it was at Boot's and Sonny's
2 near the post office on Henry Street.

3 It's not very complicated in this situation, ladies
4 and gentlemen. You're going to have to jump through a lot
5 of hoops. We just have to prove that he distributed crack
6 cocaine, he gave it to somebody else. That's distribution,
7 that he knowingly gave it to somebody else.

8 In this case he knowingly sold it to another person.
9 There was an exchange of money for the drugs. That's
10 distribution.

11 We have to prove that the substance that Mr. Jeter
12 sold to this informant is a controlled substance under
13 South Carolina, an illegal substance under South Carolina
14 law.

15 We also have to prove, ladies and gentlemen, that it
16 happened here in Spartanburg County. And, as you know,
17 Boot's and Sonny's is here in Spartanburg County.

18 Ladies and gentlemen, please use your common sense.
19 Once you hear all the evidence and all the testimony, weigh
20 it. And I believe at the end of this trial you will find
21 Mr. Jeter guilty of distribution of crack cocaine. Thank
22 you.

23 THE COURT: Ms. Jones.

24 MS. JONES: Thank you, Your Honor.

25 Mr. Foreman and ladies and gentlemen of the jury, my

Opening statements

1 name is Beverly Jones. It is my honor to represent
2 Frederick Jeter today.

3 Mr. Jeter participated with me in the process of
4 selecting you as jurors because he trusts you. He trusts
5 your judgment and he values your impartiality and your
6 willingness to pay attention, close attention.

7 Now, my comments, like Mr. Gray's, will be brief. As
8 a matter of fact, although I don't profess to have a
9 crystal ball, I think the trial of this case will be brief.
10 But the length of the trial is not a judge of how important
11 this case is.

12 This case and this day in and your valuable
13 participation in this case is the most important thing in
14 Frederick Jeter's life right now. This is the most
15 important day.

16 So don't let the brevity or the number of witnesses
17 determine your opinion or to lead you to the belief that
18 this is simple or not complicated as Mr. Gray told you in
19 his opening.

20 This is, this whole process of jurisprudence, of a
21 trial by a jury, is a complicated valuable right in this
22 country, and it should never be viewed as not complicated
23 or simple. It is very important.

24 It's why this country has become the enemy of some
25 other countries in the world over the last ten or 15 years,

Opening statements

1 because of the incredible list of rights that each citizen
2 of this county, of this state and every other state in the
3 Union has when accused of a crime.

4 And one of the biggest rights of all is the fact that
5 Mr. Jeter sits in this courtroom as an innocent man. And
6 he cannot be convicted until all of you in your collective
7 wisdom and common sense have eliminated every possible
8 doubt that the crime he is accused of was committed.
9 Whether that takes place three hours from now, five hours
10 from now or two days from now doesn't determine the
11 importance of it to Mr. Jeter and in this system.

12 Listen very carefully to the evidence that will be
13 presented, because Mr. Gray was very correct in one aspect
14 of his opening when he said the state has the absolute
15 burden to convict -- in order to convict Mr. Jeter they
16 have to prove beyond any doubt every single element.

17 And they have to bring the evidence in here that
18 convinces you. Whether it's a recording, video or audio,
19 examine it carefully, listen to it carefully. Does it
20 convince you? If it doesn't convince you, then you have an
21 absolute duty under the oath that you have taken from
22 Justice Burnett to acquit Mr. Jeter.

23 He trusts you and he understands and recognizes your
24 wisdom. And you will also play -- pay close attention.
25 And you recognize how important this day is in his life.

Paul Anthony Norris
Direct examination by Mr. Gray

1 Thank you.

2 THE COURT: Call your first witness.

3 MR. GRAY: Thank you, Your Honor. The state calls
4 Investigator Paul Norris.

5 PAUL ANTHONY NORRIS, having
6 been first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. GRAY

8 MR. GRAY: May it please the Court, Your Honor.

9 Q Please state your full name and occupation.

10 A My name is Paul Anthony Norris. I'm an investigator
11 with the sheriff's office.

12 Q What are your duties on a daily basis?

13 A With the narcotics division it could be anywhere
14 between reference to vice, narcotics, gambling,
15 prostitution. It varies.

16 Q About how much time do you spend on narcotics, drug
17 aspects?

18 A I'd say probably 90 percent of my duties on a daily
19 basis is in reference to narcotics.

20 Q I want to take you back to July the 1st of 2008. For
21 lack of a better word, you had an operation scheduled that
22 day.

23 A Yes, we did. We had a -- Henry came to me that day
24 and told me that he --

25 Q Excuse me. Who is Henry?

Paul Anthony Norris
Direct examination by Mr. Gray

- 1 A Henry -- Investigator Beck. Came to me that morning
2 and asked if we needed help in reference to making a U. C.
3 buy.
- 4 Q What's a U. C. buy?
- 5 A It's an undercover buy.
- 6 Q Did you make this undercover buy?
- 7 A No, I did not.
- 8 Q And who was used to make this undercover buy?
- 9 A C. I. was used.
- 10 Q What's a C. I.?
- 11 A Confidential informant.
- 12 Q Is that a law enforcement officer?
- 13 A No, it's not. It's an individual that's used in
14 reference to go out and make purchases.
- 15 Q Thank you. Did you initiate this operation?
- 16 A No, I didn't. This is an operation that's headed up
17 by Investigator Beck.
- 18 Q Were you present when this operation began?
- 19 A Yes, I was.
- 20 Q Was a phone call made in your presence?
- 21 A Yes, it was. It was made from the BP station located
22 at 29, and I can't think of the name, right there near the
23 Burlington Coat Factory on 29.
- 24 Q And who made this phone call?
- 25 A The confidential informant did.

Paul Anthony Norris
Direct examination by Mr. Gray

1 Q And who was present during this call?

2 A Myself, Investigator Beck and the confidential
3 informant.

4 Q Was the phone call recorded?

5 A Yes, it was.

6 Q Who recorded that phone call?

7 A Investigator Beck used a, what we call an induction
8 kit, which is a recording device that recorded the phone
9 call.

10 Q Who was the phone call made to?

11 A It was made to a Fred Jeter.

12 Q Also known as Mr. Frederick Jeter?

13 A Yes, sir.

14 Q Thank you.

15 On this date I understand you were not the lead officer
16 on this case. Were you present throughout the entire
17 operation?

18 A Yes, sir, I was.

19 Q Did you give the C. I. any monies in this situation?

20 A No, sir, I didn't. My main thing on this case was
21 that I used my vehicle to follow the C. I. in.

22 Q All right. Did you search the C. I. --

23 A Yes, sir, I did.

24 Q -- before the operation?

25 A I did.

Paul Anthony Norris
Direct examination by Mr. Gray

1 Q What did you search him for?

2 A Making sure mainly -- what we search for is making
3 sure that they don't bring any contraband, any drug
4 paraphernalia, drugs or money to the buy location.

5 Q Did the C. I. in this case have any of those things on
6 his person?

7 A No, he did not.

8 Q Was the vehicle searched also?

9 A Yes, it was. It was searched by Investigator Beck.

10 Q Pardon me if I'm wrong. What type of vehicle was used
11 in this situation?

12 A It's a Dodge product. I don't even remember what,
13 what kind it was. It's a vehicle that we've used in the
14 past. It's what we call an undercover vehicle that was
15 seized many years ago. And we use it sometimes, allow C.
16 I.s to drive the vehicle.

17 Q So it wasn't the C. I.'s vehicle.

18 A No, sir. It was not.

19 Q After you talked to the C. I. and searched the C. I.,
20 what happened next?

21 A After we made the phone call we followed the C. I.
22 from that location, the BP, to down Highway 29 into the
23 city.

24 Once we got into the city, the buy was supposed to
25 take place at the downtown post office. Followed the C. I.

Paul Anthony Norris
Direct examination by Mr. Gray

1 to that location.

2 Once we get there we noticed that the suspect was
3 leaving. The C. I. beeped his horn.

4 We pulled through the parking lot of the post office
5 and pulled back out and followed the C. I. across two or
6 four lanes of the highway there on Main Street, get behind
7 them.

8 Can't tell if they're talking to each other or not.
9 And then we followed them into Boot's and Sonny's there
10 located on Henry Street.

11 Q Into the establishment or into the parking lot?

12 A Into the parking lot of Boot's and Sonny's.

13 Q Now, did you rely on just your memory and just
14 following the C. I., or did you record him in any other
15 way?

16 A In reference to having the recorder --

17 Q Yes.

18 A -- placed on the C. I.?

19 Q Yes, sir.

20 A Yes. There's a what we call, it's a digital recorder,
21 camera and audio.

22 There's an audio and camera that's placed on the C. I.
23 prior to the -- when we do the prebuy search and everything
24 on the C. I.

25 The recorder is placed on, and it does recording and

Paul Anthony Norris
Direct examination by Mr. Gray

1 audio recording, and also video. But it's placed on the C.

2 I.

3 Q And was one placed on this C. I. in this situation?

4 A Yes, sir, it was.

5 Q Who placed it upon him?

6 A Investigator Beck did.

7 Q And who recovered the video from that situation?

8 A Investigator Beck.

9 Q All right. During the drive to the post office and
10 Boot's and Sonny's -- they're both here in Spartanburg
11 County, correct?

12 A Yes, sir, it is.

13 Q And what's the exact address where the transaction
14 took place?

15 A I'm not sure. It's, I know it's, Henry Street and
16 Main. I don't know the exact address.

17 Q Thank you very much.

18 Once you got there, how long were the C. I. and the
19 defendant together?

20 A I would say anywhere two to three minutes roughly.

21 Q Okay. Did you see with your naked eye the
22 transaction?

23 P A3 Did I see the transaction taking place inside the car?

24 No, I did not.

25 Q Okay. But you say the traction was recorded on video.

Paul Anthony Norris
Direct examination by Mr. Gray

- 1 A Yes, sir. That's correct.
- 2 Q And you have seen that video.
- 3 A Yes, sir, I have.
- 4 Q All right. During the trip from the initiation of
- 5 this operation to the buy, to the transaction, did the C.
- 6 I. stop anywhere?
- 7 A In route?
- 8 Q Yes.
- 9 A And from, he did not stop anywhere.
- 10 Q Okay.
- 11 A He, he was spinning around. He was actually stopped
- 12 in reference to the -- the, a city officer was sitting at
- 13 the intersection of 29 -- I am not sure if everybody is
- 14 familiar with where they sit at the bottom of 29 when you
- 15 approach back into the city, the old Vic Bailey.
- 16 There's a city officer setting down there running
- 17 radar. And then the C. I. was stopped prior to getting up
- 18 to the old Vic Bailey.
- 19 We passed. As we passed the city officer was walking
- 20 back to his car. And the C. I. comes back and gets back
- 21 into place.
- 22 Q But you didn't see him stop anywhere?
- 23 A No. Nowhere else.
- 24 Q Any illegal contraband or anything else?
- 25 A No, sir. That's all.

Paul Anthony Norris
Direct examination by Mr. Gray

1 Q Was he given money for his operation?

2 A Yes, he was.

3 Q To make the purchase?

4 A Yes.

5 Q After the purchase for drugs in this situation, what
6 happened?

7 A After he made the purchase?

8 Q Yes, sir.

9 A We followed him back to a predetermined location where
10 we met him, met C. I., myself and Investigator Beck.

11 Investigator Beck gets out of the car and approaches
12 the C. I. and gets him to explain to him on audio, video
13 what happened.

14 I go back to my vehicle and get what we call a BEST
15 bag, which is the evidence bag that the drugs goes into,
16 and go give it to Investigator Beck. He places the
17 evidence into the bag. I place the evidence bag on my car
18 and go back to my vehicle and get some more paperwork that
19 needs to be signed. And I believe that's when the -- that
20 was it. That's --

21 Q And during the trip between the transaction and the
22 undisclosed location, did the C. I. stop his vehicle
23 anywhere?

24 A No, he did not.

25 Q Were you in sight of him the entire trip?

Paul Anthony Norris
Direct examination by Mr. Gray

1 A Yes, I was from the beginning, prebuy search, all the
2 way to the -- when the evidence was recovered, we were in
3 touch with the C. I.

4 Q May I show you something? You mentioned a BEST bag
5 before. Is this an example of a BEST bag, State's Exhibit
6 No. 6?

7 A Yes, sir, it is.

8 Q What exactly is a BEST bag?

9 A It's a, it's a drug evidence bag. And what it is is
10 once we obtain the evidence, we place it inside the bag.

11 We have paperwork that we have to fill out. After
12 everything is completed the bag is sealed on top. And it
13 has to be cut open to retrieve the evidence out of it.

14 Q And in this case you saw the C. I. place the drugs
15 into the BEST bag?

16 A The C. I. gave Investigator Beck, handed him the
17 evidence. And then Investigator Beck placed the evidence
18 inside the BEST bag.

19 Q All right. Thank you for clearing that up.

20 And Investigator Beck filled out all the paperwork
21 regarding the situation?

22 A Yes, sir. That's correct.

23 Q Did you search the C. I. after this operation?

24 A Investigator Beck searched the C. I., and also the
25 vehicle after the, the buy took place.

Paul Anthony Norris
Cross-examination by Ms. Jones

1 Q You didn't search the vehicle.

2 A No, no, not after the buy.

3 Q Thank you. Answer any questions Ms. Jones may have.

4 CROSS-EXAMINATION

5 BY MS. JONES

6 Q Investigator Norris, is Michael Foster your informant?

7 A No, ma'am, he's not.

8 Q Okay. Was he at that time?

9 A No, ma'am.

10 Q Okay. So any agreement or working agreement to use
11 him to buy drugs was Investigator Beck's responsibility and
12 not your own.

13 A Yes, ma'am. That's correct.

14 Q Okay. Now, explain if you would, or let me just ask
15 you some questions.

16 Those of you that are narcotics investigators are
17 allowed to cultivate informants, correct?

18 A Yes, ma'am. That's correct.

19 Q That's people who for whatever reason, including
20 working off charges or just the ability to make money, will
21 go and buy things for you, is that correct?

22 A Yes, ma'am. That's correct.

23 Q Do you have any information about why Mr. Foster was
24 willing to participate on this day in this operation?

25 A No, ma'am. The only thing I know, I believe he was a

Paul Anthony Norris
Cross-examination by Ms. Jones

1 paid informant at that time.

2 Q Okay. So if he originally got involved and indicated
3 there was any informant paperwork that he was working to
4 help work off charges for a friend, you wouldn't know
5 anything about that.

6 A No, ma'am. I would not.

7 Q Okay. Now, let's talk about specifically what you
8 were in charge of on this day.

9 They used, you, Beck and yourself used, your vehicle as
10 a tail vehicle, correct?

11 A Yes, ma'am. That's correct.

12 Q Okay. And where is the predetermined location where
13 you met Mr. Foster and did both searches?

14 A The first location would be behind the Burlington Coat
15 Factory on 29, would be the first place.

16 Q Behind it? Is that behind the building?

17 A Behind the building. There's a little place there
18 that drops off. It's a loading-dock area.

19 Q Okay. So there's dumpsters and trees and all of that
20 back there.

21 A Trees, yes, ma'am. That's correct.

22 Q Okay. And in the portion of the operation prior to
23 letting Mr. Foster drive to the post office did -- what
24 part of the search did you conduct?

25 A Searched Mr. Foster's person --

Paul Anthony Norris
Cross-examination by Ms. Jones

1 Q Okay.

2 A -- prior to the buy.

3 Q Prior to the buy. Okay. And how complete was that
4 search?

5 A Our search when we search someone in reference to
6 that, it's a pat-down, pull-pockets-out, making sure
7 there's nothing in the pockets. I'll search any coat
8 pockets if they have coat pockets, around the belt area,
9 shirts, any bulky area or anything like that is what's
10 searched.

11 Q Okay. Of the person.

12 A Of the person, yes, ma'am.

13 Q Okay. You had no responsibility for searching the
14 vehicle at that point.

15 A No, ma'am. I did not.

16 Q Okay. And during the making of the phone call that
17 you referenced at the BP, were you physically present on
18 the telephone?

19 A No, ma'am. I was standing beside Mr. Foster when the
20 phone call was placed.

21 Q Okay. So is it, in fact, the case that a phone call
22 was made? And could you even hear the course of the
23 conversation at that point?

24 A All I could hear was whatever Mr. Foster was stating.

25 Q Okay. So except for any recordings or what Mr. Foster

Paul Anthony Norris
Cross-examination by Ms. Jones

1 told you, you have no way of knowing whether it was a male,
2 female, English speaking, non-English speaking or any
3 substantive portion of that conversation, correct?

4 A Yes, ma'am. That would be correct.

5 Q Okay. And did you have any involvement in the money
6 transaction with Mr. Foster?

7 A No, ma'am. That was handled by Investigator Beck.

8 Q Okay. So any paperwork that was generated about the
9 money and how much he was paid over and above the cost --

10 A There was -- we have the sheet that we fill out in
11 reference to that where we give the C. I. or whoever the
12 money to, and it's going to be a payment receipt. I had to
13 witness that. If I witness, which I did, Investigator Beck
14 giving him the money, I'll sign that form.

15 Q Okay. Do you recollect independently how much money
16 was given to Mr. Foster for the participating?

17 A \$40 -- to him? Usually \$50. But I don't recollect on
18 that date.

19 Q Okay. So this is a money-making proposition for
20 Mr. Foster.

21 A Yes.

22 MR. GRAY: Objection, Your Honor, objection.

23 THE COURT: Just ask him the question. You make the
24 jury argument later.

25 MS. JONES: Yes, sir, Your Honor.

Paul Anthony Norris
Cross-examination by Ms. Jones

1 Q Was Mr. Foster paid to participate this day?

2 A Yes, ma'am. My understanding, he was paid for that,
3 that day.

4 Q Okay. And as to the amount, you have no specific
5 knowledge.

6 A I don't remember. No, ma'am.

7 Q Okay.

8 THE COURT: Wait just a minute, Ms. Jones. Somebody
9 out here is making too much noise. How about asking them
10 to hold it down in the hallway, Mr. Turner?

11 I'm sorry, Ms. Jones. Go ahead.

12 MS. JONES: Thank you, Your Honor.

13 Q After the completion of the operation did Mr. Foster
14 return to the predetermined location behind Burlington Coat
15 Factory?

16 A There was another location we went to. There was a
17 vacant residence we went to.

18 Q And where was that?

19 A It was off 29. I don't know the exact address. The
20 residence is located in a wooded area way off of the, off
21 the roadway. It's been abandoned for several years.
22 There's no one that could see us from the roadway. There's
23 no one lives in the residence, so.

24 Q Okay. And at the conclusion of the operation did you
25 participate in either a search of Mr. Foster or the vehicle

Paul Anthony Norris
Cross-examination by Ms. Jones

1 you had let him use?

2 A No, ma'am.

3 Q Okay. And your participation in the handling of the
4 drugs was merely what?

5 A When the C. I. gave Investigator Beck the evidence, I
6 brought Investigator Beck the evidence bag. He put it into
7 the bag. I had -- the bag was in my hand. Then I placed
8 it up. I believe it was on the car, the back of the car.
9 And then I walked back to my vehicle.

10 Q Okay. And did you observe the procedure that
11 Investigator Beck used after you say he placed the drugs
12 into the bag?

13 A I'm not sure exactly what you're asking.

14 Q Did you see him do anything, or did he just put it in
15 the bag?

16 A Investigator Beck?

17 Q I'm sorry. Yes, sir.

18 A Yes, ma'am. He just placed the evidence in the bag.
19 And then I placed the bag which has an envelope that it
20 goes into, I believe 'twas on the back of the car, the back
21 of the car that was there.

22 Q Okay. So you put the drugs in a bag and laid the bag
23 on the car.

24 A Yeah. Right there in front of us.

25 Q Okay.

Paul Anthony Norris
Redirect examination by Mr. Gray

1 MS. JONES: One moment, Your Honor.

2 (Pause.)

3 Q Thank you. Appreciate you answering my questions.

4 REDIRECT EXAMINATION

5 BY MR. GRAY

6 Q Just one question. Did Investigator Beck seal the bag
7 that you gave him?

8 A I'm not a hundred percent sure. Usually what we do is
9 seal it right after we put the evidence in there.

10 Q Thank you.

11 MR. GRAY: Nothing further, Your Honor.

12 THE COURT: Thank you, sir. Step down.

13 Next witness.

14 MR. GRAY: Thank you. The state calls Mr. Michael
15 Foster.

16 MICHAEL E. FOSTER, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. GRAY

19 Q Please state your -- I'm sorry, sir. Please state
20 your full name, sir.

21 A Michael E. Foster.

22 THE COURT: Mr. Foster, you're going to have to speak
23 up a little bit so we can hear you very well.

24 A Michael Lee Foster.

25 Q Thank you.

Michael E. Foster
Direct examination by Mr. Gray

- 1 Mr. Foster, you're commonly known as what's known as a
2 C. I.
3 A Yes, sir.
4 Q Confidential informant.
5 A Yes, sir.
6 Q And you make undercover buys, don't you?
7 A Yes, sir..
8 Q Is that your job?
9 A No, sir.
10 Q Okay. But you do make undercover buys for the
11 Spartanburg County Sheriff's Office.
12 A Yes, I do.
13 Q How long have you been doing that?
14 A Almost two years.
15 Q Take you back to July the 1st of 2008.
16 A Yes, sir.
17 Q Did you make a phone call to Mr. Frederick Jeter?
18 A Yes, I did.
19 Q Who was in your presence when you made this phone
20 call?
21 A Detective Henry Beck and Detective Paul Norris, sir.
22 Q Now, when you made this phone call, what was the
23 purpose of that phone call?
24 A To call Mr. Jeter and to order up a quantity of crack
25 cocaine.

Michael E. Foster
Direct examination by Mr. Gray

- 1 Q How much did you order over the phone from Mr. Jeter?
- 2 A I ordered \$40. Basically said, conversation was four
- 3 pennies, four pennies. They turn me. When I talk to
- 4 somebody about drugs, is \$40 worth of crack cocaine.
- 5 Q Why would you say four pennies?
- 6 A Basically because if anybody listening in on the phone
- 7 that day, they basically wouldn't understand the
- 8 conversation that was going on.
- 9 Q But you said four pennies. He knew what you meant?
- 10 A Yes, sir. I meant \$40.
- 11 Q Okay. Were you searched before this operation began?
- 12 A Yes, I was.
- 13 Q During this operation I understand that you were
- 14 driving, I believe, a county vehicle.
- 15 A Yes. I was.
- 16 Q You did not drive your own vehicle.
- 17 A No. I wasn't.
- 18 Q Where did you and Mr. Jeter prearrange to meet for
- 19 this transaction?
- 20 A At the post office in Spartanburg on South Church
- 21 Street.
- 22 Q Did you make any transactions with Mr. Jeter at the
- 23 post office on Church Street?
- 24 A No, I didn't.
- 25 Q What happened, sir?

Michael E. Foster
Direct examination by Mr. Gray

1 A Well, when I got there Mr. Jeter was pulling, he was
2 pulling out. He was already across the street at the four,
3 the four-lane on Church Street. And I blew my horn to let
4 him know that I was pulling, I had pulled up. And he
5 motioned for me to pull over at Boot's and Sonny's
6 restaurant.

7 Q How do you know it was Mr. Jeter?

8 A Because he was driving a car that I'm familiar that he
9 be's in. And that's who was sitting in, on the driver's
10 side driving it.

11 Q Do you know what kind of car this is?

12 A Yes, sir. It was, it was a Lincoln, green Lincoln.

13 Q All right. Now, you say you're familiar with
14 Mr. Jeter. How long have you known Mr. Jeter?

15 A I been knowing Mr. Jeter probably about, about 13
16 years or longer, since '96. He used to sing in the choir.

17 Q Okay. And you have no problem knowing Mr. Jeter's
18 voice on the phone?

19 A No. I didn't.

20 Q Okay. Now, have you heard the audio tape of that
21 phone conversation?

22 A Yes, sir, I have, sir.

23 Q And you're positive that the conversation you had that
24 day was with Mr. Frederick Jeter.

25 A Yes, I am.

Michael E. Foster
Direct examination by Mr. Gray

1 Q You say you have known him since 1996.

2 A Yes, sir.

3 Q I'll get to that in a minute.

4 When you got to Boot's and Sonny's, what happened
5 there?

6 A I parked the car, and I got out. And he was parked a
7 couple of spaces over. I got out, and I went to his car.
8 He told me to get in the back seat. I got in the back
9 seat.

10 Q And what happened after you got in the back seat?

11 A I got in the seat. And he, Mr. Jeter, was in the car
12 next to his wife, the young lady that was with him in the
13 car. And I got in. And I, I reached and told him. Well,
14 he knowed what I wanted. And a little conversation kind of
15 started.

16 He, he reached back and he got the drugs, the crack
17 cocaine, and gave me two rocks. And I gave him the money.
18 He reached back and gave, like I say, reached back and gave
19 me the dope because I was in the back seat. And I, as I
20 got out, I told him I would probably contact him in about
21 an hour or so to get some more.

22 Q Now, you gave him some money for these drugs?

23 A Yes. I gave him \$40 that the sheriff's office had
24 gave me.

25 Q Who from the sheriff's office gave you this \$40?

Michael E. Foster
Direct examination by Mr. Gray

- 1 A Detective Henry Beck.
- 2 Q Now, before -- let's explain here. You get paid to do
- 3 this, correct?
- 4 A Yeah. Well, they pay me. They pay me for doing it,
- 5 yes, sir.
- 6 Q Did you get paid before this operation began?
- 7 A No, sir.
- 8 Q Did you get paid after the transaction was over?
- 9 A Yes, sir, after everything was over with.
- 10 Q How much did you get?
- 11 A If I'm not mistaken, Detective Beck gave me either, it
- 12 was either \$40 or \$60, one of the two.
- 13 Q So on top of the forty that you used for the buy from
- 14 Mr. Jeter, he gave you another forty or sixty dollars.
- 15 A Yes, sir, for myself personally. He gave me \$40 to
- 16 buy the drugs with.
- 17 Q Now, you were searched after the transaction was over?
- 18 A Yes, sir.
- 19 Q The drugs that you gave to Detective, excuse me,
- 20 Investigator Beck, were those the same drugs that you got
- 21 from Mr. Frederick Jeter?
- 22 A Yes, it was.
- 23 Q You did not have those drugs on you before you gave
- 24 Mr. Jeter that \$40.
- 25 A No, sir.

Michael E. Foster
Direct examination by Mr. Gray

- 1 Q Now, I understand that the phone call was recorded.
2 A Yes, sir.
3 Q Have you heard a copy of that phone call?
4 A Yes, sir.
5 Q Have you seen a copy of the disc, that phone call?
6 A Yes, sir.
7 Q State's Exhibit No. 2. And you've listened to this
8 also, correct?
9 A Yes, sir.
10 Q Has anything changed on this phone call from July the
11 1st of 2008 to today?
12 A No, it hasn't, not a thing.
13 Q And this is an accurate recording of that
14 conversation.
15 A Yes, sir, it is.
16 Q You're positive.
17 A I'm positive.
18 Q All right. Now, I want to ask you about something
19 else.
20 You've heard about this recorder, recording, that
21 Investigator Harris, Norris, excuse me, talked about. What,
22 what was that?
23 A Well, the recording device, are you talking about the
24 one that I wore on me?
25 Q Yes, sir.

Michael E. Foster
Direct examination by Mr. Gray

- 1 A The recording device I wore, it's a little button
2 that, that, that you wear, that you wear in your shirt.
3 And that's the device that I had on me. It records audio
4 and video.
- 5 Q This was a camera?
- 6 A Yes, sir, it was a camera.
- 7 Q And it recorded audio also.
- 8 A Audio and video. See, I wore it numerous times.
- 9 Q You've worn it numerous times?
- 10 A Yes, sir.
- 11 Q On this July the 1st of 2008, were you wearing it that
12 day?
- 13 A Yes, sir, I was.
- 14 Q Was it in full working order?
- 15 A Repeat again, sir.
- 16 Q Was it in full working order?
- 17 A Yes, sir. It was working full.
- 18 Q And Mr. Investigator Beck put that device on you.
- 19 A Yes. He did.
- 20 Q Were you wearing that device during your travel to
21 Mr. Jeter?
- 22 A Yes, I was, sir.
- 23 Q Were you wearing that device at this transaction with
24 Mr. Jeter?
- 25 A Yes, I was.

Michael E. Foster
Direct examination by Mr. Gray

- 1 Q And you continued to wear the device to meet
2 Investigator Beck, correct?
- 3 A Say that again, sir.
- 4 Q You continued to wear the device after the transaction
5 to meet Mr. Beck.
- 6 A Yes. I was.
- 7 Q Who took that device off you?
- 8 A Detective Beck took it off me after it was over with.
- 9 Q Now, did you ever see a recording of this entire
10 operation?
- 11 A Yes. I have.
- 12 Q I'd like for you to look at State's Exhibit No. 1, and
13 ask you if you recognize that.
- 14 A Yes.
- 15 Q What is that?
- 16 A That's the video part of the transaction that went
17 down.
- 18 Q And you viewed that video, correct?
- 19 A Yes, sir.
- 20 Q Does that video accurately depict everything that
21 happened with you and Mr. Jeter, and as far as your travels
22 from Mr. Beck, to Mr. Jeter, to Mr. Beck again?
- 23 A Yes. It is.
- 24 Q And you're positive.
- 25 A I'm positive, sir.

Michael E. Foster
Direct examination by Mr. Gray

1 Q Now, you didn't pull any pictures off this video,
2 correct?

3 A No, sir.

4 Q Did you see any pictures pulled from this video? Did
5 you see any still pictures pulled from this video?

6 A Yes, I seen still pictures from it, sir.

7 Q Okay. I want to ask you about State's Exhibits 4 and
8 5 and ask you if you recognize those.

9 A Yes, I do. I recognize them.

10 Q What are those still pictures of, sir?

11 A They're still pictures of me, the vehicle.

12 The first one is the vehicle outside of Boot's and
13 Sonny's. And I was going toward the car. And the one at
14 the bottom is a picture after I had got out of the car and
15 Mr. Jeter had gave me the drugs, a picture of me standing
16 in front of him and telling him I would probably talk to
17 him in about an hour or so. And this picture right here
18 is --

19 Q Which exhibit is that, sir?

20 A This is -- not see too good. Exhibit -- what does
21 that say? I can't see it too good. I can't see without my
22 glasses.

23 Q That's all right. No. 5.

24 A Okay. Exhibit No. 5, top is a video, a still picture
25 of Mr. Jeter reaching me the drugs. And this video, this

Michael E. Foster
Direct examination by Mr. Gray

1 picture down here at the bottom, is where I was, that I was
2 handing Mr. Jeter the money where he reached and got it.

3 Q You say reaching the drugs. He gave you the drugs?

4 A Yes, sir.

5 Q And you gave him the money.

6 A Yes, sir.

7 Q After you did that, basically when you met up with
8 Investigator Norris and Investigator Beck, correct?

9 A Yes, sir.

10 Q Did you stop anywhere else?

11 A No, sir, didn't stop nowhere.

12 Q After you stopped and talked to Investigator Beck, and
13 Investigator Norris was present, did you give anybody
14 anything at that time?

15 A Yes. When we got back to the location after we
16 stopped that day, Detective Beck, the drugs that I had
17 purchased from Mr. Jeter.

18 Q I see here this is Exhibit No. 7. I ask you if you
19 recognize this.

20 A Yes, I do.

21 Q And that's a Form B, I believe. Did you sign that?

22 A Yes, I did.

23 Q And it indicates that you gave the drugs to Mr. Beck.

24 A Yes. It says I gave Mr. Beck the drugs.

25 Q On July the 1st of 2008?

Michael E. Foster
Direct examination by Mr. Gray

- 1 A Yes, sir.
- 2 Q And those are the drugs that you bought from
- 3 Mr. Frederick Jeter.
- 4 A Yes, it was, sir.
- 5 Q Now, did Investigator Beck show you a lineup also that
- 6 day?
- 7 A Yes, he did.
- 8 Q And this is State's Exhibit No. 3. Did you look
- 9 through that lineup for a long time, a short time?
- 10 A Yeah. I looked at it. I glanced at it. He wanted me
- 11 to see if I recognized the person that was on the photo.
- 12 Q Now, did Investigator Beck tell you who to pick out
- 13 from that lineup?
- 14 A No, he didn't. He, Investigator Beck, asked me once
- 15 he gave me this piece of paper here, asked me if I
- 16 recognize the person that's on this picture that sold me
- 17 the drugs.
- 18 Q And did you?
- 19 A Yes, I did.
- 20 Q And did you make a circle around that person?
- 21 A Yes, I did.
- 22 Q And who was that person?
- 23 A It was Mr. Frederick Jeter.
- 24 Q Do you see the person in the courtroom today who sold
- 25 you drugs on July the 1st of 2008?

Michael E. Foster
Cross-examination by Ms. Jones

1 A Yes, I do, sir.

2 Q Would you point him out?

3 A Mr. Frederick Jeter.

4 Q That's the gentleman in the white shirt?

5 A Yes, sir, sitting at the defense table.

6 Q You have no doubt about that.

7 A No, sir.

8 Q And you've known Mr. Jeter for how long, again?

9 A For about 13 years.

10 Q Thank you. Please answer any questions Ms. Jones may
11 have.

12 CROSS-EXAMINATION

13 BY MS. JONES

14 Q Mr. Foster, is your work with the sheriff's office
15 governed by an actual working agreement?

16 A Say that again, ma'am.

17 Q Is your work with the sheriff's office governed by a
18 written agreement, if you know?

19 A Well, no, ma'am. I signed some papers, you know,
20 saying that, you know, signed up, you know, to do a little
21 C. I. work for them.

22 Q Okay. You signed some papers and signed up to do C.
23 I. work. Do you remember when that was?

24 A Yes, ma'am.

25 Q When?

Michael E. Foster
Cross-examination by Ms. Jones

- 1 A It was April of, April of this year, made, make it,
2 made it two years ago.
- 3 Q And so in April or thereabouts of 2007, right?
- 4 A Yes, ma'am.
- 5 Q Okay. Do you know how much money you have made from
6 the sheriff's office since then?
- 7 A No, ma'am.
- 8 Q If, if I told you it was approximately \$4,000 or more,
9 would that surprise you?
- 10 A No, ma'am.
- 11 Q Okay. And do you have any idea how many times you
12 have made money off the sheriff's office?
- 13 A Roughly maybe, not, probably maybe 60 or 70 times.
- 14 Q Okay. Do you remember how much that money averages?
- 15 A No, ma'am.
- 16 Q Okay. Are you often paid in something other than just
17 cash as well?
- 18 A No, ma'am.
- 19 Q Okay. Do you ever get money for specific items such
20 as cell phone minutes or gas?
- 21 A Well, I don't, I don't personally have a vehicle,
22 ma'am, but money, money have been given for gas when
23 someone else was with me but not given to me personally for
24 my own personal use.
- 25 Q Okay. Do you have a female friend who also works for

Michael E. Foster
Cross-examination by Ms. Jones

1 the sheriff's office?

2 MR. GRAY: Objection, Your Honor.

3 THE COURT: Sustained.

4 Q And do you recollect in the paperwork that you signed
5 in April of 2007 with the sheriff's office, wasn't there a
6 clause that required you not to get in any trouble while
7 you were working as an informant for the sheriff's office?

8 A Well, ma'am, it specifically states that you will not
9 get in any trouble at that time while you're working for
10 the sheriff's office.

11 Q Okay. So your interpretation of the agreement you
12 have with the sheriff's office allows you to continue to be
13 charged even though you work on operations for them, is
14 that correct?

15 A Ma'am, I've been charged one time since, since that,
16 since that happened.

17 Q Okay. And do you consider that a violation of your
18 working agreement?

19 A No, ma'am.

20 Q Now, you think that the agreement says you cannot be
21 charged while you're actually working.

22 A Yes, ma'am.

23 Q Do you think it precludes, prevents you also from
24 breaking the law?

25 A No, ma'am. I'm just like anybody else. If I break

Michael E. Foster
Cross-examination by Ms. Jones

1 the law, I'm expected to be charged and get in trouble just
2 like anybody else.

3 Q Except if you happen to be speeding to go make a drug
4 buy in the city of Spartanburg, is that correct?

5 A Yes, ma'am.

6 Q Okay. So you can speed, although it's illegal and you
7 won't be charged like anybody else.

8 A No, ma'am; no, ma'am. I expect to get a ticket, but,
9 like I said, the officer talked to Detective Beck, and they
10 settled that. I'm expected to get a ticket and charged
11 just like everybody else if I break the law.

12 Q Well, then instead of saying immediately I'm working
13 undercover, I'm wired, I'm with them, go talk to them, why
14 didn't you say, please, may I have my ticket, I need to go
15 on?

16 A Because I was in a hurry to go meet Mr. Jeter. I was
17 running late.

18 Q Okay. And you were running late, and you wanted to be
19 paid that day, correct?

20 A No. It wasn't about no money, ma'am. It wasn't about
21 the money.

22 Q If you had not met up with someone, you would not have
23 been paid.

24 A Not really.

25 Q Is that correct?

Michael E. Foster
Cross-examination by Ms. Jones

1 A No, ma'am, not really, no, ma'am. I have done this
2 before and haven't been paid because didn't nothing happen.

3 Q Okay. Why were you in such a big hurry then to speed?

4 A Because Mr. Jeter informed me that he, that he was
5 over near the post office and that he wasn't going to be
6 there long. He was taking care of some business.

7 Q Now, you indicate, indicated in answers to Mr. Gray's
8 question that several things happened that day as you
9 pulled up at the post office.

10 A Yes, ma'am.

11 Q You said Mr. Jeter motioned you over to Boot's and
12 Sonny's. Is that visible on the recording?

13 A No, ma'am. I don't know if you could hear him because
14 he, he was across the street, and I was in the parking lot
15 at the post office.

16 Q Okay. I asked you if it was visible on the recording.
17 Could you see him motion you on the recording?

18 A No, ma'am. If I'm not mistaken, I mentioned on it
19 that he told me to pull over at Boot's and Sonny's.

20 Q Did you -- and you also indicated that he told you and
21 motioned for you to get into the back seat. Is that
22 visible on the recording?

23 A No, ma'am.

24 Q Okay. How long were you inside a Lincoln in the
25 Boot's and Sonny's parking lot on July 1st of 2008?

Michael E. Foster
Cross-examination by Ms. Jones

- 1 A Possibly two to three minutes.
- 2 Q Two to three minutes. Have you watched the video to
3 see if you were in the video, in the car two to three
4 minutes?
- 5 A I didn't time it, but I know I was in the car.
- 6 Q Okay. If the video shows one minute, you can't
7 dispute that, can you?
- 8 A I mean, I didn't keep the timing. I didn't know how
9 much time. But I figured it was two to three minutes
10 because a short conversation went on.
- 11 Q Okay. You've reviewed the video. You stated that.
12 Do you see any portion on the video where you hand
13 Investigator Beck the drugs?
- 14 A No, ma'am.
- 15 Q Okay. In fact, if you view the video, you handle the
16 drugs back and forth between both hands while driving,
17 changing the radio station, smoking a cigarette, beating on
18 the dash. At points it's not even clear where the drugs
19 are, is that true?
- 20 A No, ma'am. If you view the video you see that I have
21 my hands clutched like this. And I keeps the drugs in this
22 hand here.
- 23 Q Okay. Do you see the video where that hand later
24 though was holding a cigarette like this? There are no
25 drugs cupped. Did you see that on the video?

Michael E. Foster
Cross-examination by Ms. Jones

1 A If I had, if I had a cigarette in my hand, then I had
2 it in my left hand smoking.

3 Q Okay. Do you see a point when the left hand, now that
4 we're talking about the left hand, is up on the dash
5 beating, hands opened, to the rhythm of the music from the
6 radio?

7 A Not, not, not after I done purchased the drugs, no,
8 ma'am.

9 Q Okay. So if that's on the video, you didn't see it
10 either.

11 A I didn't see, I didn't see myself beating on the dash,
12 not when I had the drugs in my hand.

13 Q Okay. And, Mr. Foster, you have been convicted of
14 crimes before, have you not?

15 A Yes, ma'am.

16 Q Okay. Drug crimes.

17 A Yes, ma'am, back in '96.

18 Q Okay. What state was that?

19 A It was here in the state. It was in Spartanburg,
20 South Carolina.

21 Q And do you remember what those convictions were for?

22 A Yes.

23 Q What were they for?

24 A They're for distribution of crack cocaine, and they,
25 they dropped the charges down to just possession of powder

Michael E. Foster
Cross-examination by Ms. Jones

1 cocaine.

2 Q Do you remember being charged in another state?

3 A Yes. I was.

4 Q What state was that?

5 A That was in the State of Georgia.

6 Q What were you charged and convicted of in Georgia?

7 A Possession of crack cocaine.

8 Q When was that?

9 A This was in '98 if I'm not mistaken.

10 Q Now, is it your testimony that you have never received
11 any help on charges as a result of your agreement with the
12 sheriff's office?

13 A No, ma'am. I never received any help.

14 At one time when a bench warrant was issued for me and
15 I was locked up, but it was just a misunderstanding between
16 another investigator in the solicitor's office. And that's
17 why I was locked up on the bench warrant.

18 Q So that bench warrant wasn't, in fact, for failure to
19 appear at a second appearance in 2007?

20 A It, it might have been. But what it was, I didn't
21 show. I didn't show up. And another detective, Detective
22 Joe Farris, had talked to someone in the solicitor's office
23 and told him that he would let them know when they finished
24 with me working for them and they could go forward with my
25 case. And, like I say, that was the mixup then. That's

Michael E. Foster
Cross-examination by Ms. Jones

1 why a bench warrant was issued. But it was soon
2 straightened out.

3 Q Okay. A bench warrant was issued on a pending charge
4 because you failed to appear for court. But because you
5 were still working, they said, well, never mind, we'll let
6 you out of jail, you don't have to sit there until your
7 case is resolved like normally happens with the bench
8 warrant, is that correct?

9 A No, ma'am. The agreement was when Detective Farris
10 talked to the solicitor and he, he made agreement with the
11 solicitor that once, once they was finished working with
12 me, then my case would go forward then. But until then my
13 case would be put on hold.

14 Q Okay.

15 A So a basic misunderstanding between some peoples.

16 Q And, Mr. Foster, when was the last time that you made
17 a buy for the sheriff's office?

18 A A few days ago.

19 Q Okay. How much money did you make?

20 A \$60.

21 Q And so the pending charges that you have for forgery
22 and shoplifting, use of vehicle without owner's consent are
23 all being held open so you don't have additional
24 convictions while you continue to work for the sheriff's
25 office.

Michael E. Foster
Redirect examination by Mr. Gray

1 A No, ma'am; no, ma'am. I been coming to court, coming
2 to roll call on them charges.

3 Q But they're still pending as you continue to work.

4 A They don't have nothing to do with this, this here
5 though. Like I said, I was still coming to roll call on
6 them charges there. I'm coming to court like I 'posed to.

7 Q Okay. Thank you for answering my questions,
8 Mr. Foster.

9 THE COURT: Redirect?

10 MR. GRAY: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. GRAY

13 Q So no agreement was made with you and anyone in the
14 sheriff's department to dismiss any of your charges, is
15 that correct?

16 A No. There's no agreement about dismissing none of my
17 charges.

18 Q You just get paid forty or sixty dollars?

19 A Yes, sir.

20 Q And Ms. Jones says about \$4,000 over a 2-year span?

21 A I would say so roughly around there, sir.

22 Q Do you have another job?

23 A No, sir.

24 Q You're unemployed.

25 A Yes, sir.

Michael E. Foster
Recross-examination by Ms. Jones

1 Q So you make roughly \$2,000 a year --

2 A Yes.

3 Q -- doing this?

4 A Yes, sir.

5 Q Did you get rich doing this?

6 A Say that again, sir.

7 Q Did you get rich doing this?

8 A No, not hardly.

9 Q Thank you. Nothing further.

10 A Yes, sir.

11 RECROSS-EXAMINATION

12 BY MS. JONES

13 Q Mr. Foster, did you file an income tax return that
14 reflected this income with the federal government or the
15 state government?

16 A No, ma'am, I never filed income.

17 Q Okay. Thank you.

18 THE COURT: Step down, sir. Thank you.

19 Next witness.

20 MR. GRAY: The state calls Investigator Beck.

21 HENRY BECK, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. GRAY

24 MR. GRAY: May it please the Court, Your Honor.

25 Q Please state your full name and occupation.

Henry Beck
Direct examination by Mr. Gray

- 1 A My name is -- excuse me -- Henry Beck. I'm an
2 investigator with the Spartanburg County Sheriff's Office.
- 3 Q How long have you been with the sheriff's office?
- 4 A I've been with the sheriff's office for eight years.
- 5 Q What are your primary duties and responsibilities now?
- 6 A I'm assigned to the narcotics unit. I investigate
7 drug transactions, vice, gambling houses, anything that
8 would fall under what we kind of consider, I guess,
9 victimless crimes, the vice, the narcotics. Most of my
10 time, I'd say probably 90 percent, consisted of
11 investigating narcotics.
- 12 Q How long have you been doing that?
- 13 A About two and a half years.
- 14 Q Do you have any special training or --
- 15 A Yes. I've been to several narcotic investigation
16 schools put on by different state agencies. I've had
17 training in undercover work, handling confidential
18 informants, drawing up search warrants, just basic, and
19 advanced narcotics investigation techniques.
- 20 Q Okay. July 1st of 2008, I believe you initiated an
21 operation or whatever you call it. What do you call it?
- 22 A In this particular case it's what we call a
23 controlled-buy operation. It's basically we take someone
24 like Mr. Foster who is a paid confidential informant and
25 has established a record of being accurate in his

Henry Beck
Direct examination by Mr. Gray

1 information that he provides us. We take him out, set up
2 drug transactions. We use Mr. Foster to help us facilitate
3 that operation.

4 Q Let's talk about Mr. Foster briefly.

5 You said someone like that. Why Mr. Foster or someone
6 like that?

7 A In certain -- in most circumstances -- I'm not going
8 to be able to go out and deal with someone who we think may
9 be dealing drugs. Sometimes we can do that. It just kind
10 of depends on how that particular drug dealer is operating.

11 In a case like this, Mr. Foster already had a
12 relationship with Mr. Jeter. Sometimes we'll use an
13 informant like Mr. Foster to maybe introduce me into the
14 picture. And then I'll start buying from that person.

15 In this particular case we didn't feel that would
16 work, especially since Mr. Foster had known Mr. Jeter for
17 so long.

18 Q Why use someone else with a relationship with
19 Mr. Jeter? Mr. Foster has a criminal history.

20 A Well, most people that can purchase drugs for the
21 sheriff's office or introduce an undercover officer,
22 they're going to have a checkered background. They're
23 going to be involved in the drug world, certain criminal
24 element. That's how the relationship is established.

25 They're known to them through their either criminal

Henry Beck
Direct examination by Mr. Gray

1 activities. And that's how they develop a relationship.
2 And it's just, it's easier to take a confidential informant
3 who is known and does have a little bit of a checkered
4 background, because they have a confidence in them. They
5 trust them. And that's, that's how we use people like
6 Mr. Foster to help us initiate investigations.

7 Q All right. Now, you said that Mr. Foster has bought
8 for you in the past. Has this information or operation led
9 to arrests or convictions?

10 A Yes. He has conducted probably 60 undercover
11 operations for the sheriff's office. It's ranged from
12 counterfeit goods, liquor houses, various types of drugs.

13 He had -- the last I counted, and I haven't checked in
14 a while, he had at least 15 convictions. Most of them or
15 all of them were guilty pleas, or some of them had gone
16 through pretrial intervention or some, some other form of
17 disposition on a case. But it's at least 15 convictions
18 from the work that he has done in, I'd say, probably over,
19 at least over, 60 people, have been arrested based on the
20 information that he has provided and the work he had done
21 for us.

22 Q July the 1st of 2008 this controlled-buy operation was
23 initiated by you, is that correct?

24 A That's correct.

25 Q You met somewhere on Highway 29.

Henry Beck
Direct examination by Mr. Gray

1 A Yes. We met on W. O. Ezell behind the Burlington Coat
2 Factory.

3 Q Who was present?

4 A Actually, I actually had to go and pick Mr. Foster up
5 first at his house. I pick him up, and then we meet
6 Investigator Norris who is waiting on us, so.

7 Q So you brought him to the location to get the county
8 vehicle.

9 A Right, right, I drove. The vehicle that he was using,
10 it's an undercover. It's the plain looking car just like
11 any other car. I used it to go to his house to pick him
12 up. And Investigator Norris was waiting for us behind the
13 Burlington Coat Factory. That's where this whole thing
14 started off.

15 Q So before this operation and transaction the sheriff's
16 office had control of this vehicle.

17 A Yes. It's a sheriff's office controlled vehicle.

18 Q Okay. So after you get there and deal with Detective
19 Norris, a phone call was made, correct?

20 A That's true, that's correct.

21 Q What did you do to initiate this phone call,
22 facilitate this phone call?

23 A We used, in this particular case we used, after we met
24 with Mr. Foster behind the Burlington Coat Factory,
25 searched him, searched his vehicle, put the camera that's

Henry Beck
Direct examination by Mr. Gray

1 been talked about, put the camera on him, we went and used
2 the pay phone at the BP station.

3 I have what's called an induction kit. It's a digital
4 recorder. It's got a USB plug-in. You just plug it right
5 into your computer. Mr. Foster takes an ear piece and
6 sticks it in his ear and holds the phone up to it and dials
7 the number. It records both sides of the conversation.

8 Q Did you hear the other side of that conversation as
9 Mr. Foster made this phone call?

10 A No. I only heard -- during, while the phone call's
11 actually going on, I can only hear Mr. Foster's side of the
12 conversation. After it's over, I can play it back and I
13 can listen to it.

14 Q Okay. Did you -- this induction device, does that
15 make a recording of the phone call and preserve it somehow?

16 A I did. I recorded it, basically stuck it on my
17 computer at the office and then placed it onto a disc.

18 Q Do you remember when you put it on that disc?

19 A Probably that day. I don't remember the specific day,
20 but either later on that day or sometime that week when I
21 was preparing the case, making my reports and making,
22 getting everything prepared to sign a warrant.

23 Q And after you listened to that conversation -- well,
24 excuse me. After you put it on a disc, when did you listen
25 to the conversation, before it was put on disc or --

Henry Beck
Direct examination by Mr. Gray

1 A Oh, I listened to it before just from the recorder
2 right there after the phone call was made just so I could
3 hear and verify and make sure I've got all of my facts
4 right and make sure I've heard both sides of the
5 conversation so I can note as much as I can about what's
6 fixing to happen.

7 Q So before the transaction you listened to both sides
8 of the conversation.

9 A Correct.

10 Q You heard Mr. Foster's voice.

11 A I did.

12 Q Who else did you hear?

13 A I heard another voice that had been identified to me
14 as by Mr. Foster, as Frederick Jeter.

15 Q Okay. The recording that you made, you put on disc, I
16 show you Exhibit No. 2 and ask if you recognize that.

17 A Yes, I do. This is my handwriting. It's a disc I
18 made. That is the phone call from January the 1st, I'm
19 sorry, July the 1st of 2008.

20 Q Is that the phone call that was made between
21 Mr. Foster and Mr. Jeter?

22 A Yes, it is.

23 Q Is that the phone call that was made to set up this
24 transaction between Mr. Foster and Mr. Jeter?

25 A Yes, it is.

Henry Beck
Direct examination by Mr. Gray

1 Q Have you listened to that recording since then?

2 A Yes, I have.

3 Q Is this recording an accurate representation of that
4 phone call between Mr. Foster and Mr. Jeter?

5 A Yes, it is.

6 Q Has it been tampered with or altered in any way?

7 A No. Once it's placed on the disc, you can't tamper
8 with it.

9 MR. GRAY: At this time, Your Honor, I'd like to move
10 State's Exhibit No. 2 into evidence.

11 THE COURT: Any objection?

12 MS. JONES: Nothing except previously stated
13 objections.

14 MR. GRAY: Thank you, Your Honor.

15 (C. D. marked State's Exhibit No. 2.)

16 Q Now, there's been some discussion about a recorder --

17 A Yes.

18 Q -- placed on. You say a button.

19 A Yes.

20 Q Can you elaborate? What do you mean?

21 A It's, it's basically a button. It looks like a button
22 that would be on your shirt. It goes through the button
23 holes just like you see here. And that's the camera. And
24 it's got a wire that runs down through and connects to a
25 recorder box. And that records the audio and the -- all

Henry Beck
Direct examination by Mr. Gray

1 the audio and video is recorded into that box.

2 And it's like a button, just like any other button.

3 And it fits just like a regular button would. It's taken
4 back to a computer at the sheriff's office, downloaded.

5 And we view it to make sure we've got everything recorded
6 to the best of the camera's ability.

7 Q And you placed this device on Mr. Foster.

8 A Yes, I did.

9 Q And where did you do this?

10 A I did this behind the Burlington Coat Factory before
11 we made the phone call.

12 Q All right. Did you view this video tape?

13 A Yes, I did.

14 Q Are you the one that actually moved it from the
15 recorder, to the computer, to a disc?

16 A Yes.

17 Q What kind of training have you had in this area?

18 A It's not really any specialized training. It's just a
19 -- this is computer software that comes with the camera.

20 It's pretty simple basically. You just click on some
21 things, and it downloads it.

22 Q How many times have you used this camera and software?

23 A I don't know. A lot. I'd say at least over a
24 hundred. Probably more than that.

25 Q And you're very familiar with its workings and

Henry Beck
Direct examination by Mr. Gray

1 operation.

2 A Yes.

3 Q All right. I'm going to ask you to look at State's
4 Exhibit No. 1 and ask if you recognize that.

5 A Yes, I do.

6 Q What is that?

7 A This is a disc that's got my handwriting on it. It's
8 a D. V. D. that I made from the video in this case,
9 transferred it from the computer on to this disc.

10 Q Does that disc depict everything that happened like, I
11 guess, during this operation before and after?

12 A It depicts everything that is in the camera's view.

13 Q All right.

14 A No. It doesn't give a 360-degree angle. But
15 everything that the camera, is in the camera's view is what
16 you're going to see.

17 Q Does this video depict the transaction between
18 Mr. Foster and Mr. Jeter?

19 A Yes. It did.

20 Q Has there been any alterations, deletions, tampering
21 with this video?

22 A No.

23 Q And you've seen this video.

24 A Yes, I have.

25 Q Thank you.

Henry Beck
Direct examination by Mr. Gray

1 MR. GRAY: At this time I'd like to introduce State's
2 Exhibit No. 1 into evidence, Your Honor.

3 THE COURT: Any objection?

4 MS. JONES: Subject to my previous objections, Your
5 Honor.

6 THE COURT: All right. Thank you.

7 (D. V. D. marked State's Exhibit No. 1.)

8 Q Now, part of this computer program -- are you able to
9 remove it, move pictures from the video?

10 A Yes. I can take, freeze the frame and save it onto
11 the computer as a still photo and basically make pictures
12 from what's happening during the buy, what's on the video.

13 Q I show you State's Exhibit No. 4 and No. 5 and ask you
14 if you recognize those.

15 A Yes. I do.

16 Q What are those?

17 A These are still photos that I have made from this
18 video.

19 Q Those pictures came directly from the video that
20 Mr. Foster, I guess, made with the -- what device is that
21 called again?

22 A We call it a button cam. But, yeah, it's made from
23 the audio and video surveillance equipment that we use.

24 Q And those still pictures depict the transaction?

25 A Yes. They do.

Henry Beck
Direct examination by Mr. Gray

1 Q And you made those still pictures.

2 A Yes, I did.

3 Q Have they been altered in any way?

4 A No, they have not.

5 MR. GRAY: At this time, Your Honor, I would like to
6 move State's Exhibits 4 and 5 into evidence, Your Honor.

7 THE COURT: Any objection?

8 MS. JONES: No, sir, Your Honor.

9 (Photographs marked State's Exhibits Nos. 4 and 5.)

10 MR. GRAY: Request permission to publish these to the
11 jury, Your Honor.

12 THE COURT: Proceed.

13 Q Now, after the transaction was over you met with
14 Mr. Foster somewhere else?

15 A Correct. This is a, basically an, abandoned house
16 that we've used before. It's -- sets back in the woods off
17 of W. O. Ezell. It's a place where we told him to go. And
18 we followed him from the buy location to that place.

19 Q Now, at that time did you receive some items from
20 Mr. Foster?

21 A Yes. Once we got to the location he handed me two
22 off-white rocks of items that based on my training and
23 experience I believe to be cocaine base or crack cocaine.

24 Q During this entire operation from the beginning when
25 you put the recording devices on him until the end when you

Henry Beck
Direct examination by Mr. Gray

1 took the drugs from him, was Mr. Foster in your view?

2 A He was in my view the entire time. I observed him. I
3 actually observed Mr. Jeter backing out of his parking
4 space at the post office. Mr. Foster passed him kind of
5 from across the street. I think Mr. Foster was still in
6 the parking lot. He beeped his horn.

7 I saw Mr. Jeter pull into the Boot's and Sonny's. I
8 saw Mr. Foster pull into the Boot's and Sonny's. I saw
9 Mr. Foster get into the vehicle with Mr. Jeter. I saw them
10 interacting together. I couldn't say exactly what they
11 were doing. But I saw them together interacting in
12 Mr. Jeter's vehicle.

13 I saw Mr. Foster get out of Mr. Jeter's vehicle,
14 followed him directly to this secluded location where I
15 collected the evidence in this case and searched the
16 vehicle and searched Mr. Foster again.

17 Q Did you find any drugs on Mr. Foster?

18 A No.

19 Q Any drugs in the vehicle --

20 A No.

21 Q -- besides the ones he gave to you? Were they in his
22 pocket, in his pants?

23 A They were in his hand.

24 Q They were in his hand and he gave them to you. What
25 did you do then?

Henry Beck
Direct examination by Mr. Gray

1 A Investigator Norris brought me this bag. It's what we
2 call a BEST bag. It stands for best evidence system. It's
3 basically a drug bag that we place items that we believe
4 are drugs, controlled substances. It's sealed up. I seal
5 it. And then we send it to the lab to be tested to confirm
6 that it is, in fact, an illegal substance.

7 Q When Mr. Foster gave you this substance, what did you
8 do with it? You said you put it in the BEST bag.

9 A Yes. I put it in this bag.

10 Q Did you seal it immediately?

11 A Not immediately. I take it. I get Mr. Foster to sign
12 some forms basically establishing the chain. He's given it
13 to me. I take it back to my office. I weigh. I field
14 test it. And then after I weigh it and field test it, I
15 will then seal it up. And then it's placed into evidence
16 to be sent to the lab.

17 Q They say they have some paperwork that must be filled
18 out. I'm going to show you State's Exhibit No. 7. There
19 is a Form B, Form C and other things. What, what do these
20 mean?

21 A The Form B is the initial chain-of-custody document.
22 The person who initially comes into contact with the
23 drugs -- in this case it's Mr. Foster -- basically signs
24 it. He signs that he's given it to me. That's what the
25 Form B is.

Henry Beck
Direct examination by Mr. Gray

1 He -- in it, it tells who it was seized from, in this
2 case Frederick Jeter. It gives a description of what the
3 item is. And he signs it saying that he gave it to me.
4 That's the Form B.

5 Q I see a number at the top of that form. What is that
6 number?

7 A It's a number. It is called a control number. On the
8 BEST bag there is a -- what we call the S number. It's
9 basically a number that's assigned to that bag. It
10 connects these documents to this evidence bag. And we put
11 that up in the corner where it says control number.

12 Q Now, Mr. Foster gave these items to you.

13 A Yes.

14 Q You sealed it and filled out some paperwork.

15 A Yes.

16 Q Did you sign anything also?

17 A Yes. After Mr. Foster turns them over to me, I fill
18 out what's called the Form C basically stating that I got
19 these items from Mr. Foster, a brief description of what
20 they were. And of course the control number goes on top of
21 it just to keep these two together.

22 Q And you put them in what?

23 A Yeah. I sign. If I were to give it to another
24 person, their name would go on it. In this particular
25 case, I place it into the evidence drop box. It's a locker

Henry Beck
Direct examination by Mr. Gray

1 at the sheriff's office.

2 Q Can you describe that evidence drop box?

3 A It basically looks like a huge mailbox. It's made out
4 of metal. It's locked. It's got a door on it that you
5 pull down. You drop your evidence in it, lift it back up.
6 And it drops down into the box just like a mailbox would.

7 Q Now, when you dropped that BEST bag with that same "S"
8 number on there --

9 A Yes.

10 Q -- was it sealed?

11 A Yes, it was.

12 Q Was it -- did you tamper with it before you dropped it
13 into the evidence locker?

14 A No, I did not.

15 Q So the drugs that you got from Mr. Foster that he said
16 he got from Mr. Jeter were put into evidence.

17 A Yes, they were.

18 Q What was the purpose of putting those drugs into
19 evidence?

20 A As I stated, they have to be confirmed by -- I'm
21 obviously not a chemist. They have to be tested before
22 they can use it in any prosecution. It has to be tested
23 and confirmed by a state certified chemist that this is, in
24 fact, a controlled substance, and in this case the
25 controlled substance of cocaine base. That's the purpose

Henry Beck
Direct examination by Mr. Gray

1 of having it tested by a chemist.

2 Q What's the point of a chain of custody?

3 A The chain of custody is to establish who has had the
4 drugs, what condition they were in when they had them, to
5 determine if they had been tampered with at any point
6 during the, the handling of the evidence.

7 Q And as far as you know that did not happen in this .
8 case, correct?

9 A That's correct. Evidence appears to all be handled
10 correctly in this case.

11 Q One last thing. We heard Investigator Foster --
12 Mr. Jeter's voice. Did you do a lineup for Mr. Foster?

13 A Yes, I did.

14 Q How did you prepare that lineup?

15 A Basically, it's a computer program we have at the
16 sheriff's office. We take photos. I pick out the person
17 that it is. I click on it.

18 The computer basically does a random selection. It
19 will put -- the target person that I'm looking to put in,
20 the main person that we're looking to put in a lineup,
21 it'll assign it to a different -- there's six different
22 slots. The computer will just randomly throw it into a
23 slot. And then I'll do a random search based on that
24 person. And then the computer basically spits out matches.

25 Q Okay. You didn't tell Mr. Foster who to pick out that

Henry Beck
Direct examination by Mr. Gray

1 day, did you?

2 A No, I did not.

3 Q You didn't show him which position Mr. Jeter was in on
4 this lineup, did you?

5 A No, I did not.

6 Q How long did Mr. Foster look at this lineup before he
7 made a decision?

8 A It was, you know, he's known it for years. It was
9 immediate. He was, yeah, that's him, I mean.

10 Q Did he circle?

11 A Yes, he did.

12 Q I show you what's been marked already as State's
13 Exhibit No. 3. I ask you if you recognize this.

14 A Yes, I do.

15 Q What is that?

16 A This is the, a copy of the photo lineup that I
17 prepared to show Mr. Foster.

18 Q You showed that to Mr. Foster when? Was this before
19 the operation took place, or after?

20 A This was before. *

21 Q This was after the operation -- before or after the
22 controlled buy?

23 MS. JONES: Your Honor, I think we have an issue that
24 we need to address.

25 THE COURT: All right. Come up here.

Henry Beck
Cross-examination by Ms. Jones

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 Q July 1st of 2008, this operation --

4 A Yes.

5 Q -- involving Mr. Foster and Mr. Jeter, when did you
6 show him that lineup after the operation?

7 A I believe I showed him this particular lineup before.

8 Q Did you show it to him after also?

9 A I don't know. I don't remember.

10 Q Okay.

11 A I'm not sure when I showed it. I'm pretty sure I
12 showed it to him before the operation.

13 Q All right.

14 A I don't know if I showed it to him again after it or
15 not.

16 Q Thank you.

17 MR. GRAY: No further questions, Your Honor.

18 MS. JONES: Your Honor, may we approach again, please?

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 CROSS-EXAMINATION

22 BY MS. JONES

23 Q Investigator Beck --

24 A Yes, ma'am.

25 Q -- let me go back and talk to you some about these

Henry Beck
Cross-examination by Ms. Jones

1 devices that you used.

2 When discussing the device that you hook to the
3 telephone at the BP to assist Mr. Foster, you indicated that
4 Mr. Foster told you he heard a voice that he identified to
5 you as Mr. Jeter, is that correct?

6 A Yes.

7 Q Okay.

8 A That's correct.

9 Q You did not know Mr. Jeter's voice.

10 A No, I did not.

11 Q Okay. Thank you.

12 Now, let's talk a little bit more and in a greater
13 detail about the button cam -- I think is what you referred
14 to it as, a button camera.

15 The, the lens of this camera is -- it is the entire
16 size of the button, or is it more like a pinhole lens?

17 A It's more like a pinhole.

18 Q Okay. And does the button camera come unattached from
19 a shirt and it's attached to the next informant shirt, or
20 does the shirt come with it, if you follow my question?

21 A Yeah, I understand. No. It goes. It's a separate
22 unit. It can go on any, any shirt that you want to put it
23 on.

24 Q Okay. And the material obviously, you testified, that
25 it's not just a button. There's recorders, both audio and

Henry Beck
Cross-examination by Ms. Jones

1 video, and wires, I guess maybe even battery pack, that are
2 attached to it. How is that actually -- how is that
3 contraption actually put on a person's body so that they
4 can use it to video tape?

5 A There's several different ways.

6 Q Well, let's talk about this particular day and
7 Mr. Foster.

8 A Okay. I think the way if I remember right, we stuck
9 it in his, basically just ran the wire down and stuck it in
10 his pocket in the box like Ms. Jones said, just got the
11 batteries in it and basically just runs down. And in this
12 particular case we stuck it in his pocket.

13 Q Okay. But the business end of it, if I can use that
14 term, is the button itself. So the button controls the
15 view that's going to be recorded by all the other
16 contraptions that are in the pocket, correct?

17 A That's true.

18 Q Okay. And to a certain extent not only does the
19 button control it, but the person wearing it controls
20 what's being filmed, correct?

21 A To a point, yes.

22 Q Well, if I want to film you out of my button on my
23 blouse, I'm certainly not doing it right now, am I?

24 A No.

25 Q Okay. But if I want to film you, I can merely turn a

Henry Beck
Cross-examination by Ms. Jones

- 1 quarter turn and I can film you, correct?
- 2 A As long as your shirt doesn't twist when you twist,
3 yes.
- 4 Q So do you acknowledge through my example that the
5 wearer of the button does determine the direction of the
6 filming?
- 7 A It does determine the general direction, yes.
- 8 Q Okay. And at the point on July 1, 2008, how many
9 times had Michael Foster worn this button camera?
- 10 A A lot.
- 11 Q Over 30 times?
- 12 A I'd say over 30 or 40.
- 13 Q And sometimes the result is good, sometimes it's bad,
14 and sometimes it's in the middle, correct, as far as the
15 footage?
- 16 A That's correct, true. Different variables play into
17 it, but, yes, that's true.
- 18 Q Okay. So when you made the statement in direct
19 testimony that the camera depicts everything within the
20 camera's view, that is also controlled to a certain extent
21 by the informant.
- 22 A Like I said, to a certain degree, yes.
- 23 Q Okay. You also stated on direct that you had
24 Mr. Foster within your view the entire time of this
25 operation.

Henry Beck
Cross-examination by Ms. Jones

1 A Yes.

2 Q Okay. Was there ever a point he got ahead of you in
3 the drive to the post office and might have crested a hill
4 before you did and you didn't see the vehicle until it was
5 stopped by the city police department?

6 A Correct. That's, there was a, if you know the section
7 there on, I think it's called West Main or W. O. Ezell,
8 right through there where Vic Bailey is, there are some
9 certain hills.

10 Basically, he was going a little bit faster than we
11 were. And we crested the hill, and there was like a split
12 second where he was down at the bottom of the hill, and we
13 were at the bottom of the hill. And he was at the top of
14 the hill. And maybe we didn't see him. But other than
15 that, he was in my view the entire time, yes.

16 Q Is it clearer to say the vehicle that contained him
17 was within your view the whole time except for those split
18 seconds?

19 A Yeah. I mean, I can't see, obviously especially
20 during certain portions of this operation, I can't be close
21 enough to actually say I can see Michael Foster, but I can
22 say I can see his vehicle.

23 Q Okay. So that is actually a clearer and more accurate
24 and truthful statement that the vehicle that contained him
25 was within your view, right?

Henry Beck
Cross-examination by Ms. Jones

1 A That's a true statement, yes.

2 Q Okay. So what's going on inside, how many times he
3 changed the radio station, how many cigarettes he smoked
4 and all of that, you can't really say that.

5 A No. I cannot.

6 Q Okay. And is it likewise true, except for what is on
7 the camera or has been lifted now into a still, the same
8 situation existed when Mr. Foster got into this Lincoln in
9 the Boot's and Sonny's parking lot?

10 A I'm not sure what you're asking us.

11 Q Okay. You can see the car that contained Mr. Foster.
12 But you admitted you couldn't always see exactly what
13 Michael Foster was doing in the car.

14 A Right, right, that's true.

15 Q Is the same thing true with the Lincoln except for
16 that part that is depicted on the video?

17 A Yeah. I saw Mr. Foster get into the vehicle. I saw
18 him walking from our vehicle and get in Mr. Jeter's
19 vehicle.

20 And I could actually see him in the vehicle. I
21 couldn't see what was going on, everything that was going
22 on in the vehicle. No, I couldn't. But from where I was I
23 could see him in Mr. Jeter's vehicle enough to say that's
24 Michael Foster in Mr. Jeter's vehicle.

25 Q Okay.

Henry Beck
Cross-examination by Ms. Jones

1 A But to be able to tell you everything that transacted
2 in the vehicle, no, I can't tell you that.

3 Q Okay. Thank you. I appreciate that. That was going
4 to be the next question. And you've handled that.

5 So did you ask as part of your instructions or give as
6 part of your directions to Mr. Foster that he should get out
7 of the vehicle and walk to the side of the car --

8 A Yes, I did.

9 Q -- and capture special footage? And was that on the
10 recording of instructions?

11 A Yes, it is.

12 Q Okay.

13 A At the end you'll see he gets out and gets a face shot
14 of Mr. Jeter.

15 THE COURT: Just a minute, Ms. Jones.

16 Is there a problem over here?

17 THE JUROR: She needs a break.

18 THE COURT: Oh, you need a short break.

19 Okay. Step on back into the jury room.

20 I'm sorry, Ms. Jones.

21 All of you go. Yeah, all of you. Let's just take ten
22 minutes while we're at it.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: All right. Yes, sir. You can step down.

Henry Beck
Cross-examination by Ms. Jones

1 We will just take a short recess.

2 Don't talk to the state about your testimony while
3 you're off the stand.

4 THE WITNESS: Yes, sir.

5 THE COURT: We'll come back in a few minutes.

6 But let me ask you a question. The electronic media
7 will be shown when?

8 MR. GRAY: I was thinking about showing it after he
9 finishes testifying.

10 THE COURT: Okay. Is he going to be on the stand
11 while you're doing that?

12 MR. GRAY: Yes, sir.

13 THE COURT: Okay. Well, when we come to the end of
14 his live testimony before we go to the video, let's break
15 then for lunch. Would that be a good time to do that?

16 MR. GRAY: Yes, sir.

17 THE COURT: Okay. We'll just take a short break.

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. Everybody is here. Bring them
20 in.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: All right, sir. Yes, ma'am.

24 MS. JONES: Thank you, Your Honor.

25 BY MS. JONES

Henry Beck
Cross-examination by Ms. Jones

1 Q At the point of the break, Investigator Beck, I think
2 I had asked or was attempting to ask that once Michael
3 Foster got out of the SUV or whatever the police vehicle is
4 he was using as an undercover vehicle and got into the
5 Lincoln, other than being able to discern there were three
6 individuals inside and recognizing Michael Foster as one of
7 them, what was going on in there, you really couldn't see
8 with any certainty, correct?

9 A That's true.

10 Q Okay. And I think that's reflected by at least one of
11 these pictures because of the tint on the windows of the
12 car a little bit.

13 A I don't know that it has tint, but there is a glare.
14 If it does, it's light tint.

15 Q Okay. Once Mr. Foster got out of the vehicle and got
16 back into the police-owned SUV, he came back out to the
17 west side of town -- I've forgotten now -- an abandoned
18 house off 29, correct?

19 A Yes.

20 Q And that was the point at which you disconnected all
21 of your equipment from him and he gave you the drugs,
22 correct?

23 A Yes.

24 Q Okay. Do you recollect from reviewing the video
25 whether that's visible on this recording?

Henry Beck
Cross-examination by Ms. Jones

1 A I, I don't think it is, but I don't specifically
2 remember.

3 Q Okay. So is that one, just one, example of perhaps
4 something, if we could perfectly have recorded this whole
5 process, probably should have been on the recording?

6 A I don't know that it should have been. I guess it
7 just kind of depends on how. I don't know.

8 Q Well, isn't that one thing that by having a recording
9 of it would allow someone watching it to know something for
10 certain?

11 A Oh, yeah. In general, yeah, for it, yeah, yeah.

12 Q So this whole process, because this, this button
13 camera is simple technology -- I think you might have even
14 said yourself it's relatively simple, at least the program
15 is -- it's not the most sophisticated technology. There
16 are going to be some gaps in what it is able to produce for
17 us, correct?

18 A That's true.

19 Q So in this case that video by itself doesn't answer
20 all the questions, correct?

21 A That's true.

22 Q And a very, very, very large part of this rests on the
23 shoulder of Michael Foster, correct?

24 A A good portion of it does, yes.

25 Q Okay. Thank you. That's all I have.

Henry Beck
Cross-examination by Ms. Jones

1 THE COURT: Anything further --

2 MR. GRAY: Well.

3 THE COURT: -- at this time?

4 Okay. We're going to do this in view of the hour.

5 We're going to break for lunch. I'll just tell you
6 after lunch the audio and the video will be heard and seen
7 by you. And this witness will be still on the stand as
8 part of that as I understand it.

9 MR. GRAY: Yes, sir.

10 THE COURT: But, in any event, since we are going to
11 recess for lunch at this time, I'll just caution you don't
12 talk about the case among yourselves, don't speculate about
13 the case.

14 Don't let anybody talk to any of you about the case.
15 It will just simply be wrong for you to do that.

16 And then be back in your jury room at 2:30. We'll
17 begin promptly at 2:30 this afternoon. Y'all have a good
18 lunch.

19 I will ask everybody to remain seated while my jury
20 leaves.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: You can step down. Sergeant Beck,
24 Lieutenant Beck -- what are you?

25 THE WITNESS: I will take the promotion. I'm just an

Henry Beck
Cross-examination by Ms. Jones

1 investigator, sir.

2 THE COURT: Anything then before we recess?

3 MS. JONES: No, sir, not from the defense.

4 THE COURT: 2:30.

5 MR. GRAY: Thank you, Your Honor.

6 (Whereupon, a recess was taken.)

7 THE COURT: All right. The state's ready?

8 MR. GRAY: Yes, sir, Your Honor.

9 THE COURT: The defense is ready?

10 MS. JONES: Yes, sir..

11 THE COURT: Okay. Bring them in, please, Mr. Turner.

12 MR. GRAY: Is that okay, Your Honor?

13 THE COURT: As long as they can still see the witness.

14 That's the main thing. Don't have the volume so it knocks
15 the walls down.

16 MR. GRAY: No, sir.

17 (The following takes place in the presence of the
18 jury.)

19 (Juror No. 24, Akeisha K. Boyd, did not return after
20 lunch recess.)

21 THE COURT: Let me ask you if there is any objection
22 replacing this juror with the alternate.

23 MR. GRAY: None from the state, Your Honor.

24 MS. JONES: If I may --

25 THE COURT: This is why we have the alternate.

Henry Beck
Cross-examination by Ms. Jones

1 MS. JONES: Yes, sir, I understand.

2 (Pause.)

3 MS. JONES: Mr. Jeter himself has an objection to her
4 being removed and the alternate replacing her.

5 But I understand the position of the Court that that
6 is what your alternate jurors are provided for, is to
7 prevent delays.

8 THE COURT: Well, in order that we'll eliminate one
9 other ground of prejudice to this young man, I'll wait
10 until she gets here.

11 MS. JONES: Thank you.

12 (Whereupon, a recess was taken.)

13 THE BAILIFF: She has arrived.

14 THE COURT: Bring them in, then.

15 (Whereupon, the jury returned to the courtroom at 2:45
16 p.m.)

17 THE COURT: Ladies and gentlemen, before we begin let
18 me inquire during the time you have been away from us if
19 anybody has talked to you or tried to talk to you about
20 this case. Has anything happened during the time you've
21 been away that might affect the ability of any of you to
22 give a fair verdict in this case?

23 (No response.)

24 THE COURT: Thank you.

25 All right. Solicitor.

Henry Beck
Redirect examination by Mr. Gray

1 MR. GRAY: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. GRAY

4 Q Detective, there was some mention in Ms. Jones' cross
5 of you about video and audio there, and I think everything.
6 What type of camera was this, again, on the video?

7 A It's a -- as Ms. Jones stated, it's like, it's a
8 buttonhole, a pinhole camera that's built into a button.
9 It looks just like a normal button that would be on a
10 shirt. We try to put it as close to the center of the
11 up-and-down on the shirt as possible. And it catches. I'm
12 not sure of the precise angles that it catches, but it for
13 the most part catches the front of the person that's
14 wearing it.

15 Q Pretty much whatever the person was wearing is looking
16 at.

17 A For the most part.

18 MR. GRAY: Sir?

19 THE COURT: I didn't say anything. I don't know why
20 you don't just go ahead and show them what it's on.

21 Q And the audio, you also listened to that. It's
22 awesome, is that correct?

23 A I am sorry. Say that again.

24 Q You have also listened to the audio.

25 A Yes, yes, I have.

Henry Beck
Redirect examination by Mr. Gray

1 (Whereupon, the C. D. was played for the jury.)

2 THE COURT: Are you going to do the video?

3 MR. GRAY: Yes, sir.

4 THE COURT: Are you able to see the screen from back
5 here?

6 THE JUROR: I would have to wait until it was on to
7 see if I could see it clearly.

8 THE COURT: Okay. Let's see if we can't put some
9 chairs down there, maybe my bailiffs, and Judge Chumley if
10 you'll let the jurors. And let me take these last two. I
11 believe everybody else -- can y'all see it okay?

12 THE JUROR: Yes, sir.

13 THE COURT: Yeah. If these last two here would just
14 come down here and just sit outside the jury box in those
15 chairs, I think you'll have a better view than back there.
16 Can you see the screen okay? All right. That's good.
17 Y'all are okay here, you two.

18 THE JUROR: Yes, sir.

19 THE COURT: Okay.

20 MR. GRAY: Thank you, Your Honor.

21 (Whereupon, the C. D. was played for the jury.)

22 MR. GRAY: No further questions of this witness, Your
23 Honor.

24 THE COURT: Ms. Jones.

25 MS. JONES: Nothing further, Your Honor.

Ashley Carlton Harris
Direct examination by Mr. Gray

1 THE COURT: Thank you, sir. Step down.

2 Next witness.

3 MR. GRAY: The state calls Ashley Harris.

4 ASHLEY CARLTON HARRIS, having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. GRAY

7 MR. GRAY: May it please the Court, Your Honor.

8 Q Please state your full name.

9 A Ashley Carlton Harris.

10 Q Where do you work, sir?

11 A I work for the Spartanburg County Sheriff's Office.

12 Q What are your primary duties and responsibilities?

13 A I am a lieutenant over the forensic lab at the
14 sheriff's office responsible for testing any trouble
15 substances or drugs for their identity and their weight.

16 Q How long have you been working for the sheriff's
17 office?

18 A I've been at the sheriff's office for a little over
19 ten years. And prior to that I worked for the South
20 Carolina State Law Enforcement Division in Columbia, SLED,
21 in their forensic drug lab.

22 Q So your entire career you've been testing items.

23 A Yes, sir.

24 Q What type of education or training have you had?

25 A I have a bachelor's degree in chemistry from Wofford

Ashley Carlton Harris
Direct examination by Mr. Gray

1 College here in Spartanburg. I have a master's degree in
2 analytical chemistry from Furman University in Greenville.

3 Upon being hired by the South Carolina State Law
4 Enforcement division I went through their 6-month training
5 course in forensic drug analysis. And I have continued to
6 take year, yearly training recertification to keep my
7 certification intact.

8 Q Have you had occasion to test narcotics for narcotic
9 type drugs?

10 A Yes, sir, I have.

11 Q How many times?

12 A I'd say I'm somewhere above 20,000 cases by now. I've
13 been doing this for 12 years. Been moving for a while.

14 Q Have you testified before today as an expert in the
15 field of analysis of narcotics?

16 A Yes, sir. I've been qualified as an expert in the
17 State of South Carolina and federal courts I believe 91
18 times prior to today.

19 MR. GRAY: Your Honor, at this time I'd like to
20 qualify Officer Ashley Harris as an expert in the field of
21 chemistry and the analysis of narcotics.

22 THE COURT: Any objection?

23 MS. JONES: No, sir, Your Honor.

24 THE COURT: Really only needed the degree from Wofford
25 College, being a graduate thereof.

Ashley Carlton Harris
Direct examination by Mr. Gray

1 Q When your lab receives a substance for determining if
2 it contains narcotics, what steps are taken to ensure that
3 the substance is -- hasn't been tampered with?

4 A The very first thing when an item is received by the
5 lab, the first thing we do is look at the bag and make sure
6 that it hasn't been tampered with, that there's no visible
7 evidence.

8 At that point if it passes that test we assign it a
9 lab number and take it back to the lab. And it goes into a
10 file where it waits its turn to be tested.

11 At that point when it's time for it to be tested we
12 take it out and we do another inspection of the bag and
13 make sure it hasn't been tampered with and then right
14 simply the letters "OK", initials and the date in which I'm
15 opening it on the outside of the bag.

16 If at either point the bag is found to be tampered
17 with or something doesn't seem right or there's any
18 questions whatsoever, at that point we contact the officer
19 and have them come in and fix it.

20 If it's found in the initial inspection, it's never
21 received in the first place and never assigned a lab
22 number.

23 Q So if it's been tampered with, you can't find a reason
24 why it's been tampered with or opened, you don't test it.

25 A That's correct, sir. Everything has to be sealed when

Ashley Carlton Harris
Direct examination by Mr. Gray

1 it comes into the lab and not tampered with.

2 Q And there's a bag that it comes in. What's that
3 actually called, what type of bag?

4 A The heat-sealed bag on the outside is one that I place
5 it in after I -- and analyze it.

6 The bag with the blue marks down the side and the red
7 glue strip across the stop is referred to as a BEST bag.
8 It's a system that was created by SLED back in the 80's.
9 And BEST stands for best evidence sample testing with 46
10 different counties and 200 different agencies submitting
11 agent -- submitting drugs to SLED, they came up with this
12 system.

13 After being there approximately two years and seeing
14 how well it worked, when I started the lab at SLED (sic) I
15 sort of stole their idea and kind of have a uniform way of
16 drug submission within -- with all the municipalities in
17 Spartanburg County, Spartanburg County Sheriff's Office and
18 then all the state and local and federal agencies that used
19 to use us, we end up having submissions from 26 different
20 agencies to the lab. So we follow the same technique of
21 using a tamper-evident bag that is uniform for all
22 agencies.

23 The bag doesn't keep anybody out, but it's -- lets you
24 know if someone has tried to get in by being tamper
25 evident. There's markings down the side, a glue strip

Ashley Carlton Harris
Direct examination by Mr. Gray

1 across the top and markings across the bottom and top that
2 if someone tries to open it, it's going to stretch the bag
3 and be obvious that someone has tried to get in it.

4 Q Okay. When you received the bag in this case was it
5 tampered with?

6 A No, sir, it was not.

7 Q Was it opened at all?

8 A No, sir. Upon initial inspection, I assigned it a lab
9 number. It was assigned lab No. L080599. It's the 599th
10 case submitted to the lab in the calendar year 2008. It
11 was taken into the lab. And I inspected it again. And I
12 placed my initials and the letters "ok" and the date on the
13 outside of the bag.

14 Q All right. Now, you say you assigned it a lab number.
15 Is there something called an "S" number on the Exhibit
16 No. 6?

17 A Yes, sir. It's referred to as a control number. Each
18 individual bag has its own tracking number similar to a bar
19 code that we use to track the bag itself. The control
20 number in this case is S154870. It's located in the top
21 corner of the bag itself.

22 Q So you know that S154870 is something that came from
23 the -- from who? How would, how would you connect that?

24 A We use that control number. The lab number we assign
25 it, the case number and the subject's name to track one

Ashley Carlton Harris
Direct examination by Mr. Gray

1 piece of evidence. That way if one of those numbers or
2 names does not match, we have to find out why. And it's
3 our way of ensuring that a piece of evidence that belongs
4 to a case stays with that case and there's no
5 discrepancies, there's no possibility of that being a piece
6 of evidence from other cases.

7 It is one in -- it's a fail-safe to make sure that
8 every piece of evidence belongs to the case it's assigned
9 to.

10 Q Who was this assigned to? What's the defendant's
11 name?

12 A The case for this one, the defendant's name is
13 Frederick Jeter.

14 Q All right. You assigned a lab number to that and
15 opened the BEST bag. What type of test did you perform?

16 A Every piece of evidence that comes through our lab has
17 two tests to perform on it, a presumptive test, which is
18 something as simple as a chemical test. We drop a couple
19 of chemicals and look for a color change. And then a
20 confirmatory test. And that's where it's placed under an
21 instrument and actually an analysis is done to determine
22 its correct identity.

23 Those two have to correlate. They have to come up
24 with the same answer. If at any point they don't, we go
25 back and figure out why, perform another presumptive test

Ashley Carlton Harris
Direct examination by Mr. Gray

1 and another confirmatory test to make sure that they match.

2 After all of the samples are taken for analysis, the
3 last thing before we seal it up is to take a weight, obtain
4 a weight for that sample.

5 Q All right. You tested lab No. 08599. What was the
6 results, sir?

7 A It was the off-white rock substance that was found
8 within the bag was found to be cocaine base, which is
9 commonly known as crack cocaine, with a total weight of
10 0.72 grams.

11 Q Is that cocaine base or crack cocaine a legal
12 substance in South Carolina, or illegal substance?

13 A It's an illegal substance. It's considered a Schedule
14 Two controlled substance. And it's controlled by the
15 government of South Carolina and the federal government.

16 Q And, again, you got this from the evidence locker, is
17 that correct?

18 A Yes, sir. I received it from the Spartanburg County
19 Sheriff's Office Evidence Division.

20 Q No one gave it to you. You went and got it?

21 A Yes, sir.

22 Q How do you retrieve that?

23 A Once a piece of evidence is dropped by an officer into
24 the drop box or taken into evidence, they log it into their
25 computer and place it into a drug room, a secure room

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Direct examination by Mr. Gray

1 within the evidence room. So it has multiple pathways to
2 get in multiple doorways to get into it.

3 When we receive drugs we assign it to the evidence
4 room. We go in and actually take them directly from the
5 drug room and assigned them -- inspect them and assign them
6 a lab number out in the evidence room.

7 Q I also see you prepared a report.

8 A Yes, sir.

9 Q I want you to look at this, State's Exhibit No. 7.

10 A Okay.

11 Q And see if you recognize that.

12 A Yes, sir. This is the orig -- a copy of the report
13 that I produced after analyzing evidence, and also obtains
14 a -- what we refer to as a Form A, which is basically a
15 statement of qualifications, and then the chain of custody
16 that this piece of evidence had prior to being tested.

17 Q Also initials on those different forms.

18 A Yes, sir.

19 Q Whose initials are those?

20 A Those are mine. Every piece of evidence, every piece
21 of paper, that goes, that goes through our lab has to have
22 the lab number on it and at least my initials or my
23 signature.

24 And when the chain of custody -- to show that I looked
25 at them and made sure that everything matched up on them, I

Ashley Carlton Harris
Cross-examination by Ms. Jones

1 placed the number of the page this is in the, in the case
2 file, my initials and the lab number. And on the chain of
3 custody it's always placed in the top corner.

4 Q Thank you very much, sir.

5 MR. GRAY: At this time, Your Honor, I would like to
6 introduce State's Exhibit No. 6 and No. 7 into evidence,
7 Your Honor.

8 THE COURT: Any objection?

9 MS. JONES: No, sir.

10 (Drugs marked State's Exhibits No. 6; report marked
11 State's Exhibit No. 7.)

12 MR. GRAY: No further questions, Your Honor.

13 THE-COURT: Your witness.

14 CROSS-EXAMINATION

15 BY MS. JONES

16 Q Agent Harris, the information contained on the report,
17 which I believe the number is seven, which states a suspect
18 name, that information is not, was not generated out of
19 your office, correct?

20 A No, ma'am. All the information that we have prior to
21 the case being submitted to the lab is taken from the drug
22 analysis request form, which is a form that the officer,
23 the arresting officer or the officer who is making the case
24 agent, as we refer to them, fills out. And we don't have
25 any prior knowledge to the, the drugs, the information

Ashley Carlton Harris
Cross-examination by Ms. Jones

1 anything, along those lines until it's submitted to the
2 lab. We simply type that into our database, and that's
3 where that information is printed from.

4 Q Okay. And just as that name was not assigned by your
5 office, you, you personally have no information with regard
6 to any undercover operation, transaction, purchase or
7 anything that resulted in these drugs being sent to you, is
8 that correct?

9 A No, ma'am. I have no prior knowledge of anything.
10 Like I received it and analyzed it. That's my role.

11 Q You received it sealed in a bag, and you tested it
12 along with your very expensive machinery and determined
13 chemically what that substance was.

14 A That is correct.

15 Q And that's the extent of your knowledge, correct?

16 A Yes, ma'am.

17 Q Thank you. I appreciate your time.

18 MR. GRAY: No redirect, Your Honor.

19 THE COURT: Thank you, sir. Step down.

20 THE WITNESS: Thank you.

21 MR. GRAY: At this time the state rests, Your Honor.

22 THE COURT: All right. Folks, step back in your room
23 just a few minutes.

24 (The following takes place outside the presence of the
25 jury.)

1 THE COURT: All right. Do you want to put your motion
2 on the record?

3 MS. JONES: Thank you, Your Honor.

4 At this point on behalf of Mr. Jeter the defense would
5 make a motion for a directed verdict.

6 THE COURT: All right. Anything else at this time?

7 MS. JONES: Your Honor, the defense does not intend to
8 present a case. And it's my understanding that Mr. Jeter
9 doesn't intend to testify. But I understand Your Honor has
10 a colloquy that you will want to do on the record with him
11 with regard to that.

12 THE COURT: Oh, indeed.

13 Mr. Jeter --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: -- have you talked to your lawyer about
16 your right to testify and not testify?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And have you decided whether you would or
19 would not testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Well, would you or would you not?

22 THE DEFENDANT: I rather not, sir.

23 THE COURT: All right. And that's been your decision.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And nobody has forced you in any way to

1 make that decision.

2 THE DEFENDANT: Nobody, sir.

3 THE COURT: It's been your decision after being fully
4 advised by your lawyer.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you're satisfied with everything she's
7 told you.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right, sir. Do you want me to tell
10 the jury that they cannot hold that against you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I will. Thank you, sir.

13 THE DEFENDANT: Thank you.

14 THE COURT: All right. Defense will close.

15 Do y'all need a few minutes? Let's take just a few
16 minutes before we go to the jury, because that's going to
17 stretch them out a little bit. We will take about ten
18 minutes.

19 (Whereupon, a recess was taken.)

20 THE COURT: All right. Bring them in.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: Mr. Foreman, ladies and gentlemen, the
24 testimony in the case has concluded.

25 The defendant has exercised his constitutional right

Closing arguments

1 not to testify. I would tell you now, as I think I had
2 mentioned earlier, that that is a right that every
3 defendant has in every criminal prosecution. And the fact
4 that he has exercised the right to remain silent you cannot
5 hold against him.

6 Your -- the burden always rests upon the state to
7 prove guilt, never upon a defendant to prove innocence. So
8 your duty will be to determine the truth from the testimony
9 and the evidence you have seen, and apply to that the law
10 that I will talk with you about in a few minutes.

11 The lawyers are going to make their final comments to
12 you at this time. I simply remind you that their comments
13 are not evidence. But their comments are very helpful. So
14 I do urge you, of course, to listen to them very closely.

15 Mr. Gray.

16 MR. GRAY: Yes, sir, Your Honor.

17 July 1st of 2008 at Boot's and Sonny's right out here
18 that man sold Mike Foster some drugs. He sold him crack
19 cocaine, plain and simple. You saw him exchange the money
20 in exchange for the crack, had that is.

21 I want to talk about the doubt in this case. At the
22 beginning Ms. Jones said it, the state has to prove beyond
23 any doubt. That's not true. We have to prove beyond a
24 reasonable doubt that that man is guilty of distribution of
25 crack cocaine. He handed it to him; he sold it to him; he

Closing arguments

1 delivered it to him. He gave it to Mr. Foster.

2 What's beyond a reasonable doubt? Mr. Foster made a
3 phone call to Mr. Jeter, Frederick, I believe, to set up a
4 sale, four pennies, street language so in case somebody is
5 listening in. He wanted \$40 worth of crack.

6 Mr. Jeter said meet me at the post office. But beyond
7 a reasonable doubt they went to the post office, drove over
8 to Boot's and Sonny's. You saw him carrying it, get out
9 and started running toward the green car where Mr. Jeter
10 was located. He got in the back seat, gave him the money,
11 took the drugs.

12 Beyond a reasonable doubt, ladies and gentlemen.
13 There is the exchange; there is Mr. Jeter; there is
14 Mr. Jeter; there is Mr. Jeter.

15 You've got the testimony actually corroborated by
16 these pictures and the video. That's Mr. Jeter.

17 Mr. Foster told you I knowed Mr. Jeter since 1996. I
18 had no problem picking him out. I know his face, I know
19 his voice. I know him beyond a reasonable doubt.

20 Beyond a reasonable doubt Boot's and Sonny's is here
21 in Spartanburg County. It's beyond a reasonable doubt that
22 the drugs that Mr. Jeter sold to Mr. Foster, that
23 Mr. Foster gave to Investigator Beck, and Investigator Beck
24 sealed in this BEST bag, the bag inside, took it to the
25 evidence locker. And you heard the chemist testify that

Closing arguments

1 these small, little pieces, small little run, cocaine.

2 He distributed an illegal substance here in
3 Spartanburg County. That's distribution of crack cocaine
4 beyond a reasonable doubt.

5 Now, I know -- well, I'm not presumed to know what you
6 know. But you're probably thinking why show that long
7 video. For one reason. To remove, to take it past the
8 point of reasonable doubt, because Mr. Foster.

9 You heard testimony that the officers met with him.
10 They searched him. It wasn't Mr. Foster's car. There were
11 no drugs in that car. That's the sheriff's car that he
12 used. They searched Mr. Foster anyway, even though Ms.
13 Jones harped on this working agreement.

14 He made \$4,000 over two years. That's not in the
15 record. They fitted him with a microphone and made a call.
16 They fitted him with a camera. And the driver shows that
17 he never stopped anywhere else.

18 He never stopped at any crack houses. He never
19 stopped anywhere except to see Mr. Jeter buy the drugs.
20 That's why they do a chain of custody. That's why they're
21 so careful about putting it in a heat-sealed bag. That's
22 why the officers are so careful to give it the correct
23 numbers on the bag, the correct lab numbers, even to a
24 point where initially the change of custody, the chemist,
25 he'd have to sign on the chain of custody, who did it come

Closing arguments

1 from, who did it go to next, who did it go to next. We
2 wanted to show that before, during and after.

3 There was only one place these drugs could have come
4 from -- Mr. Jeter -- beyond a reasonable doubt, not beyond
5 all doubt. That's impossible. Beyond a reasonable doubt.

6 Because, ladies and gentlemen, you know if somebody
7 walks in the door right now with an umbrella and they're
8 soaking wet, beyond a reasonable doubt it's raining
9 outside. Is it beyond any doubt? No. That's not the
10 burden of proof the state has.

11 We have proven through testimony and evidence, not by
12 conjecture or what somebody might have done or should have
13 done or could have done. It is what it is, plain and
14 simple.

15 Mr. Jeter sold Mike Foster some drugs on July 1st of
16 2008 here in Spartanburg County. Thank you for your
17 attention.

18 THE COURT: Ms. Jones.

19 MS. JONES: Thank you, Your Honor.

20 Mr. Foreman and ladies and gentlemen of the jury,
21 again, in closing Mr. Gray is simplifying the matter and
22 using the word simple repeatedly.

23 If it was as simple as that, every question that needs
24 to be answered in this case would be on that video tape,
25 and there are some things that are not on the video tape.

Closing arguments

1 There are some issues that have not been resolved. And
2 those are the issues that His Honor will charge you. Since
3 His Honor is the judge of the law, he will instruct you at
4 the end of my comments. And he'll tell you what law and
5 legal principles guide your deliberation when you go into
6 the jury room.

7 He is also going to tell you don't leave your common
8 sense in here. You take that with you in your life
9 experience.

10 But he will tell you the definition for reasonable
11 doubt, and he will tell you something along the lines of a
12 doubt is a reasonable doubt if it's something that causes
13 you to hesitate to act or it leaves a question in your
14 mind.

15 In looking at the matter, Investigator Beck stated
16 that the technology of the buttonhole camera or pinhole
17 camera attached to a button is simple technology.

18 The sheriff's office is providing you only with
19 evidence produced from simple technology when there is
20 complex technology out there that could answer these
21 questions. But the simplistic technology produced the tape
22 you watched where you see a lot of the ceiling.

23 We definitely get to determine exactly what
24 Mr. Foster's musical preferences are because he jumps
25 across the radio constantly, probably a little bit out of

Closing arguments

1 nervousnesses.

2 But, in any event, we know probably more about the
3 radio selections at 10:30 in the morning on that day and
4 what the roof and the ceiling liner of the car look like
5 than we do know about some other matters.

6 The -- in this particular case, as I asked you to
7 remember, and reminded you in a brief civics type lesson in
8 opening, this is Mr. Jeter's day in court. And this is
9 because of that the most important day in his life.

10 He deserves and the law dictates and His Honor will
11 tell you your oath mandates due deliberation. And you must
12 give him any doubt. If you have a doubt about something,
13 you have to resolve it in his favor.

14 And in this particular case there are some general
15 areas that the film, the video, doesn't answer. And I'll
16 say video or film. I'm a creature of old technology where
17 we're used to using tapes versus discs. But you understand
18 it's the recording itself.

19 There are some areas that that -- some questions still
20 exist about the informant's handling of the evidence. You
21 don't see what he does with the evidence completely on the
22 tape. You see snatches of his hands.

23 His assertion that he had it wadded up the whole time
24 is obviously not true because you see the snatches of both
25 hands where they're at various times not flinched.

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1 One of the biggest issues that's unresolved in this
2 case revolves and involves the search process of Mr. Foster
3 and the vehicle at the beginning of this whole episode or
4 operation. Consistently -- Norris, Foster, Beck.

5 Mr. Foster was searched. His vehicle was searched.
6 Nobody ever told you they searched items he had with him.
7 We clearly know that he had a cigarette pack with him.
8 Nobody even mentioned that, even though in one of my
9 questions I said something to them about smoking
10 cigarettes. They didn't dispute that he was smoking
11 cigarettes. He had a cigarette pack with him.

12 Nobody ever mentioned that item or potentially other
13 items he had with him. They consistently tell you they
14 searched him and they searched the vehicle. We don't know
15 what other items he had with him.

16 So we don't know what was in those items at the
17 beginning of this whole situation. Because you don't have
18 a consistent technology or consistent film or, I guess, a
19 view, consistent view, of what is happening inside the
20 vehicle once he has the drugs, you can't answer the
21 question of was there a cigarette pack. Well, we see it.
22 We know that.

23 What was in it at the beginning of this, we haven't
24 been told my anybody that was searched, so we don't know
25 what was in it. We don't know what happened completely

Closing arguments

1 with the drugs here.

2 We also don't even know from the testimony of Beck and
3 Norris exactly what happened to the evidence that they
4 claim Foster gave them.

5 It was put in a bag that went unsealed for some time
6 period. The officer told you that himself. At one point
7 the open bag's laying on the hood of a car. At one point
8 it travels to the sheriff's office. At one point it gets
9 field tested. Nobody even explained to you what that
10 meant.

11 They have created issues about the handling of their
12 own evidence and the answers and the lack of answers to
13 some of those issues.

14 Both of the officers, Beck and Norris, were quite
15 forthright when they told you we were not, although Beck
16 didn't say it directly, Norris did -- I was not a witness
17 to the transaction.

18 Beck finally acknowledged, although he had said I kept
19 Mr. Foster in my view the entire time, he had to
20 acknowledge that was not correct, because Foster was
21 driving so fast he got away from them and ended up getting
22 pulled as they were cresting a hill. So they didn't have
23 him in their view the whole time.

24 He also acknowledged that inside the vehicle he did
25 not know or could not tell what Mr. Foster was doing. And

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1 even their own tape does not answer those questions.

2 Now, perhaps on the way out there that's not as
3 significant, but on the way back when they want to vouch
4 for the credibility and the chain of their evidence that
5 becomes important. He did acknowledge, other than being
6 able to say there were three people in a Lincoln, he didn't
7 know what happened in the Lincoln.

8 Now, also with regard to the chain and the evidence,
9 Officer Beck acknowledged that whatever the substance was
10 that Michael Foster produced and purported to have gotten
11 from Jeter, he told them this is what I got from Jeter. We
12 don't even see him put it in the bag.

13 Okay. If you go back and watch the video, all you see
14 is the bag being flashed around. You don't even see Foster
15 actually put it in there. You're having to rely on the
16 word that that's what was put in and then laid on the front
17 of the car and then taken to the sheriff's office and left
18 open and field tested. We're not getting the answers to
19 those kind of questions either.

20 Now, it's interesting in the observation or when you
21 listen to -- listened to the telephone call and watched the
22 recording of the, the buttonhole camera, the only people in
23 both of those recordings, the only person who ever refers
24 to this whole transaction and what it is supposed to be
25 about as ordering up crack or calls this crack, is Beck.

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1 You don't hear Foster say that. You don't hear Jeter say
2 anything.

3 If, you know, you don't know, the only person
4 assigning the word crack to the whole transaction is what
5 the instruction of the narcotics officer was to Foster
6 before he sent him to do whatever he did that day.

7 Okay. Now, you've got to do something that you need
8 to implore your common sense very much in when you get into
9 the jury room to begin your deliberations.

10 If the technology of this buttonhole camera was
11 perfect and more sophisticated, you might not have to rely
12 on Michael Foster. But because there are gaps and holes
13 and a lot of footage of the ceiling, you've got to rely on
14 Michael Foster, because the officers told you we weren't
15 there. I wasn't a witness to the transactions, the way
16 Norris put it. That says and I wasn't in the car. I can
17 keep up with the cars, but I wasn't in the cars.

18 So what you've got to do in this case because you
19 can't answer all the questions with the video and the
20 audio, you've got to rely on Michael Foster. You've got to
21 make an assessment based on your common sense, your life
22 experience as to whether that person, a paid confidential
23 informant who has a record for dealing drugs in two
24 different states is a credible witness.

25 Okay. And in doing that, along with other

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1 instructions, Justice Burnett is going to give you an
2 instruction about the credibility of witnesses. And he's
3 going to give you the factors.

4 You can determine whether you accept any of, all of or
5 a portion of any single witness' testimony, whether it's
6 Beck, Norris or the paid informant, Mr. Foster, who makes
7 thousands of dollars from the sheriff's office and doesn't
8 file a tax return about it -- Mr. Foster, the convicted
9 drug dealer in two states who has pending charges, who gets
10 special consideration when there's a misunderstanding about
11 his bench warrant and he gets let out of jail and his
12 pending charges remain pending so he has no convictions,
13 other convictions, on his record and he continued to work
14 for the sheriff's office.

15 The informant, Mr. Foster, who although having an
16 agreement telling him when you are working you are not to
17 violate the law, speeds down the road so fast that he not
18 only loses his tail car, but he gets pulled by the city in
19 the middle of an operation, an embarrassment, if nothing
20 else, to the sheriff's office, he gets special
21 consideration because they intervene and he doesn't get the
22 ticket that is very common in that area at Vic Bailey there
23 in the stretch on 29.

24 That's the person because their technology of their
25 tape is not complete and it's too simple and it has holes

Closing arguments

1 and gaps, you have to rely on him.

2 Now, there are some other questions that remain
3 unanswered at this point, questions that if they cause you
4 to hesitate and wonder meet the definition of a reasonable
5 doubt.

6 Did you hear any testimony about running the phone
7 number to determine whose phone that was, whether they, in
8 fact, even called someone named Frederick Jeter or called a
9 number assigned to Frederick Jeter assigned by a cell phone
10 company that day? I did not hear that.

11 Now, these are police officers. It's relatively easy
12 to get that information. They had a number. They could
13 have backed it up. And somebody could have come in here
14 and said blah, blah, blah, whatever the number was, was
15 assigned to whomever.

16 Perhaps a reason we're not hearing it is another
17 doubt. Do we even know that -- and I'd have to look the
18 number up. I think it was 529. They say it on the
19 recording. Do we even know that if you called that number
20 Frederick Jeter would answer that phone? Why didn't they
21 tell us that?

22 Did we hear anything about whether Frederick Jeter is
23 even the registered owner of a Lincoln? Now, that's a
24 pretty simple thing. Nobody even said anything about the
25 tag. I thought that's one of the first things that cops

Jury charge

1 did when they ran up on a car they wanted to know something
2 about. They ran the tag. We know nothing about that
3 vehicle.

4 Who is the second person in the vehicle? We don't
5 know anything about that. Again, we're having to rely. If
6 we believe it is Frederick Jeter's wife, who tells us that?
7 Michael Foster, confidential informant who is a convicted
8 dope dealer in two states who has pending charges who gets
9 paid to do this.

10 Again, this is Frederick Jeter's most important day.
11 This is not a case that is plain and simple. That was a
12 direct quote from Mr. Gray's closing.

13 Your oath requires you to give earnest, serious
14 deliberation to the issues. If any one of the things I
15 have brought to you has a doubt, or an unanswered question
16 in this case creates a doubt in your mind, the judge is
17 going to tell you that it's your absolute duty to resolve
18 that doubt in favor of Mr. Jeter and acquit him. Thank
19 you.

20 THE COURT: Mr. Foreman and ladies and gentlemen, it
21 becomes now my responsibility to talk to you about the law
22 that applies in the case. You of course must follow the
23 law as I give it to you and apply it to the truth that you
24 determine. That's how you and I come together to
25 administer justice in our system of justice.

Jury charge

1 The indictment in the case charges Frederick Jeter
2 with the crime of distribution of cocaine. I remind you,
3 ladies and gentlemen, that this is not evidence of guilt.
4 It's an administrative vehicle. But you of course, as I've
5 told you, will have it when you retire to deliberate.

6 And you will use it, Mr. Foreman, and I'll tell you in
7 a minute how you will, but I of course invite your review
8 of it during the process of your deliberations.

9 I remind you that the defendant has not testified and
10 that you cannot hold against him the fact that he is not,
11 has not testified.

12 Every person in every criminal prosecution is entitled
13 to remain silent, and every person in every criminal
14 prosecution is presumed to be innocent. And they remain
15 protected by this presumption of innocence until and unless
16 the state proves beyond a reasonable doubt that they are
17 guilty.

18 This presumption of innocence is a substantial right
19 to which every defendant is entitled. And it of course
20 remains with the defendant during the process of your
21 deliberation and continues to protect him until you are
22 satisfied that the state has proved guilt, and proved that
23 guilt beyond a reasonable doubt.

24 The state is not required to prove guilt beyond all
25 possible doubt. Such a burden could never be met in

Jury charge

1 anything. The test is one of reasonable doubt.

2 Proof beyond a reasonable doubt must be proof of such
3 convincing character that you would be willing to rely and
4 act upon it in the most important of your own affairs. And
5 if you have a reasonable doubt of the guilt of this
6 defendant, it is of course your duty to resolve that doubt
7 in his favor and acquit him.

8 However, if you have no reasonable doubt of his guilt,
9 you may find him guilty. But no defendant should ever be
10 convicted on mere suspicion, mere conjecture.

11 I have impressed upon you, ladies and gentlemen, that
12 you are the judges of the facts in this case. It is your
13 duty to listen to the testimony, consider the evidence and
14 find the truth in all of that. And that rests entirely
15 within your province.

16 I am not even allowed to suggest to you any opinion I
17 might have about any of the evidence in the case, or any of
18 the testimony. All of that rests with you and with your
19 good sound judgment.

20 As judges of the facts you must of necessity pass upon
21 the believability of the witnesses. In deciding
22 believability you may take into consideration the interest
23 that a witness may have in the outcome of these
24 proceedings. You may consider the bias of the witness; you
25 may consider the prejudice of the witness; you may consider

Jury charge

1 the demeanor, the behavior, the manner of the witness while
2 testifying before you.

3 You may consider anything in the case which aids you
4 in doing the job that you have of finding the truth in this
5 case. And I do urge you and remind you to use your common
6 sense, your intellect, your life experience as you decide
7 believability and you find truth.

8 Now, in addition, ladies and gentlemen, our law allows
9 you certain very broad discretions as you fulfill the
10 responsibility of being judges of the facts. Under South
11 Carolina law you folks have a right to believe one witness,
12 and you can disbelieve another. You can believe a part of
13 what a witness tells you. You can disbelieve the rest.
14 You can believe one witness against many, or many witnesses
15 against one.

16 The only limitation that our law places on your
17 exercise of these discretionaries is that our law requires
18 that you exercise good sound judgment in deciding
19 believability and in finding the truth.

20 You must determine the believability of these
21 witnesses, and you must find the truth in the testimony and
22 the evidence that you have heard and seen and to that truth
23 apply the law that I will give you.

24 The charge in this case, ladies and gentlemen, is
25 distribution of crack cocaine. The statute law of South

Jury charge

1 Carolina says very plainly it is unlawful for any person to
2 manufacture, distribute, dispense, or conspire to
3 manufacture, distribute or dispense, or to possess with the
4 intent to distribute or dispense methamphetamine or cocaine
5 base, which is crack cocaine.

6 The state must prove each element of that crime before
7 you could find the defendant guilty. And here are the
8 elements that the state has to prove.

9 First of all, they have to prove that there was a
10 controlled substance. That's what our law is directed
11 against. I will tell you that the substance in this case
12 is -- if it is crack cocaine, that that is a controlled
13 substance.

14 So you must determine, first of all, based on the
15 testimony and the evidence is that crack cocaine, is that
16 cocaine base.

17 The second thing is that you must decide that the
18 defendant knew the substance was a controlled substance or
19 reasonably should have known it was a controlled substance.

20 And, number three, that the defendant did distribute
21 the substance. And distribute, ladies and gentlemen,
22 simply means that the defendant did transfer or sell or
23 deliver the substance with or without payment. That's the
24 definition of distribution under our law.

25 And the verdict you will return in this case, ladies

Jury charge

1 and gentlemen, must be a unanimous verdict. The 12 primary
2 jurors must be in agreement upon that verdict.

3 Mr. Foreman, I direct your attention here to the
4 reverse of the indictment, the lower left-hand corner.
5 There's a space entitled verdict. The verdict of the jury
6 will be either guilty or not guilty.

7 Whichever it is, write that verdict in that space,
8 sign your name beneath that as foreman. That'll complete
9 your responsibility.

10 Now, Mr. Padgett, your responsibility of course was to
11 take the place of any juror not able to complete what we
12 asked of them. They look like they're going to be all
13 right. So when they go back to the jury room, you stay
14 here in the courtroom with us.

15 Folks, I'll ask you to go on back to the jury room,
16 but I'll ask you not to begin your deliberations until I
17 send in the exhibits and the indictment.

18 Mr. Foreman, when you get them, deliberate. We will
19 have you back in the courtroom. Thank you.

20 (Whereupon, the jury retired to deliberate at
21 4:10 p.m.)

22 (Whereupon, the alternate juror was excused.)

23 THE COURT: Any exceptions or additions by the state?

24 MR. GRAY: No, sir, Your Honor.

25 THE COURT: By the defense?

Jury charge

1 MS. JONES: No, sir.

2 THE COURT: Gather it up, gentlemen, and give it to
3 them.

4 (Whereupon, a recess was taken.)

5 THE COURT: Ms. Jones, while we are waiting on your
6 client, they want to watch the video again.

7 (Pause for defendant.)

8 THE COURT: Mr. Gray, they want to watch it from the
9 time that the C. I. got into the car. And they want to see
10 it, the exchange, and when he dumped it over, from there to
11 when he turned it over to the officer.

12 MR. GRAY: Yes, sir.

13 (Bench conference held off the record.)

14 THE COURT: Are you ready?

15 MR. GRAY: Yes, sir.

16 THE COURT: All right. Bring them in.

17 (Whereupon, the jury returned to the courtroom at
18 4:40 p.m.)

19 THE COURT: Who are we missing? We're missing a
20 juror. Oh, you're down there. Got you. I was a little
21 panicky there.

22 Mr. Foreman, ladies and gentlemen, I have received a
23 note, Mr. Jasionowski, that you sent in. You want to watch
24 the video.

25 As I understand it, you want to start at the time

Jury charge

1 the -- Mr. Foster got into the Lincoln automobile with the
2 defendant. And you want to -- then you want to watch just
3 that part while he's in the car. And then at the end, you
4 don't want to watch the ride. You want to watch what
5 happened when he got to the end and he met the two police
6 officers.

7 THE FOREMAN: That is correct.

8 THE COURT: Okay. That's what we're going to show
9 you.

10 (Whereupon, a portion of the D. V. D. was played for
11 the jury.)

12 THE COURT: All right. Is that good? That's what you
13 needed?

14 THE FOREMAN: Yes.

15 THE COURT: Fast forward to whatever point the -- that
16 he meets the officers.

17 (Whereupon, a portion of the D. V. D. was played for
18 the jury.)

19 THE COURT: Is that what you needed, Mr. Foreman?

20 THE FOREMAN: Yes, sir.

21 THE COURT: All right. Folks, step on back in your
22 room.

23 (Whereupon, the jury retired to deliberate at
24 4:46 p.m.)

25 THE COURT: Any objection to the procedure that we

Verdict

1 have just followed from the state?

2 MR. GRAY: None from the state, Your Honor.

3 THE COURT: The defense?

4 MS. JONES: Only the original objection as to the
5 audio portion at the end, just the replay.

6 THE COURT: I understand.

7 MS. JONES: Thank you, Your Honor.

8 THE COURT: I'll ask that the note be marked and
9 placed with the record.

10 MS. JONES: Thank you.

11 THE COURT: All right. Thank you, folks.

12 (Question from the jury marked Court's Exhibit No. 2.)

13 (Whereupon, a recess was taken.)

14 THE COURT: Mr. Gray and Ms. Jones, I'm advised the
15 jury has reached a verdict.

16 Will you bring the panel in, please?

17 (Whereupon, the jury returned to the courtroom at
18 4:52 p.m. to report its verdict.)

19 THE COURT: Have you reached a verdict, Mr. Foreman?

20 THE FOREMAN: Yes, we have.

21 THE COURT: Would you hand it up, please?

22 All right. Would you publish the verdict, please?

23 THE CLERK: On Indictment 2008-GS-42-6758, the State
24 vs. Frederick Jeter, indictment for distribution of cocaine
25 and/or crack cocaine, the verdict is guilty. Signed by the

Verdict

1 foreperson June 3rd of 2009.

2 Ladies and gentlemen of the jury, is this your verdict
3 and still your verdict? If so, please raise your right
4 hand.

5 (Whereupon, all responded in the affirmative.)

6 THE CLERK: Thank you.

7 THE COURT: All right. Thank you.

8 Anything from the state?

9 MR. GRAY: Not at this time, Your Honor.

10 THE COURT: From the defense?

11 MS. JONES: Your Honor, could we request polling of
12 the jury?

13 THE COURT: Poll the jury, please.

14 THE CLERK: Okay. Ladies and gentlemen --

15 THE COURT: Okay. You can go ahead. You can do it.

16 THE CLERK: Ladies and gentlemen of the jury, I will
17 pose a question to you, after which I will ask you to stand
18 individually and respond to my question.

19 Juror No. 94, Joe Lee, is this your verdict and still
20 your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Juror No. 34, Leslie Caldwell.

23 THE JUROR: Yes.

24 THE CLERK: Juror No. 79, John Jasionowski.

25 THE JUROR: Yes.

Verdict

1 THE CLERK: Juror No. 149, Lamilia Smith.
2 THE JUROR: Yes.
3 THE CLERK: Juror No. 185, Marvena McKensie.
4 THE JUROR: Yes.
5 THE CLERK: Juror No. 164, Terra Thompson.
6 THE JUROR: Yes.
7 THE CLERK: Juror No. 64, Phillip Halford.
8 THE JUROR: Yes.
9 THE CLERK: Juror No. 169, Gaylea Turner.
10 THE JUROR: Yes.
11 THE CLERK: Juror No. 146, Alice Smith.
12 THE JUROR: Yes.
13 THE CLERK: Juror No. 24, Akeisha Boyd.
14 THE JUROR: Yes.
15 THE CLERK: Juror No. 113, Kara Moody.
16 THE JUROR: Yes.
17 THE CLERK: Juror No. 16, Katherine Bellew.
18 THE JUROR: Yes.
19 THE CLERK: Your Honor, the jury has been polled.
20 THE COURT: All right. Thank you very much.
21 Anything else from the defense?
22 MS. JONES: Your Honor, at this point we would make
23 the standard motion for a new trial based on legal rulings
24 and other evidence issues as the case has progressed
25 through trial.

Sentence

1 THE COURT: Yes, ma'am. My conclusion is there is no
2 merit to any of the positions that you have taken.

3 Any reason why sentencing should not proceed?

4 MR. GRAY: Not from the state, Your Honor.

5 THE COURT: From the defense?

6 MS. JONES: Your Honor, I did request in light of
7 other matters pending against Mr. Jeter the opportunity to
8 attempt to consolidate those issues until in the morning.

9 Mr. Gray does not seem inclined to consent to allowing
10 us to try to resolve anything in the morning.

11 THE COURT: Sure. I'm going to resolve this one
12 tonight.

13 MS. JONES: Yes, sir.

14 THE COURT: And whatever y'all do with the other
15 thing, you can do. I need a sentencing sheet.

16 (Pause.)

17 THE COURT: All right. Mr. Gray.

18 MR. GRAY: Thank you, Your Honor.

19 Mr. Jeter has been found guilty of distribution of
20 crack cocaine. That is his third or subsequent offense.

21 For the record, Your Honor, he has a conviction from
22 1985 for distribution of marijuana; 1986, possession of
23 marijuana second; 1992, possession of crack cocaine; 1996,
24 two convictions, one possession of crack, one possession
25 with intent to distribute crack; also, 2005, possession of

Sentence

1 crack second and a possession of marijuana second.

2 THE COURT: Is that his record, Ms. Jones?

3 MS. JONES: Yes, sir, it is.

4 THE COURT: As I understand that, it will fall under
5 44-53-375(b) (3).

6 MR. GRAY: Yes, sir.

7 THE COURT: Anything else for the record?

8 MR. GRAY: Your Honor, as you can tell from his
9 record, he's been a thorn in the county's side for a while.
10 And we would like him not to be a thorn any longer, Your
11 Honor.

12 THE COURT: Ms. Jones.

13 MS. JONES: Thank you, Your Honor.

14 Your Honor, Mr. Jeter is 45 years of age. He is not
15 married. He does have one son who is 24 years of age.

16 Mr. Jeter as far as a medical history, he has been
17 diagnosed as being positive for hepatitis C, Your Honor.

18 Mr. Jeter has been incarcerated continuously on this
19 and other related charges since July 15th of '08. I would
20 ask Your Honor obviously indicate whatever Your Honor's
21 sentence is that he get credit since that time. As of the
22 date of this offense he was living with Virginia
23 Washington, a girlfriend, and had been for a couple of
24 years, even though they'd been involved for five or six
25 years.

Sentence

1 Mr. Jeter does have in his own history a history of a
2 drug problem. He sought and received a drug treatment at
3 Faith Homes in Greenwood in 1993 and also participated at
4 least once in incarceration in an addiction treatment unit.

5 Your Honor, I do not contest the record. And just for
6 the, for the, to make a complete record, Mr. Jeter has been
7 a client of the public defender's office since the date of
8 his arrest, very early on after his arrest, because at the
9 same time he was arrested subject to a -- or as a result of
10 a search warrant that was executed on the 15th of July of
11 2008 at an address at which he resided with Virginia
12 Washington, his girlfriend, she was also arrested. And her
13 son was arrested.

14 Mr. Cheek, as Your Honor knows, is an attorney with
15 our office who undertakes and does a very vigilant job of
16 managing our jail clientele. He undertook quick, speedy
17 and what should have been very productive negotiations with
18 then Solicitor Bob Coler who had this case prior to
19 Mr. Gray getting it recently.

20 Mr. Jeter's cases of three counts of distribution and
21 a trafficking, which was going to be allowed to plead to
22 trafficking second, were going to be resolved only a plea
23 to a trafficking second for 17 years. And that was an
24 offer that Mr. Jeter rejected in writing.

25 As Your Honor is aware from some of the pretrial

Sentence

1 issues, I tried this case with Mr. Coler on a previous
2 situation June 27th -- back in December for two days. And
3 that jury was hung and did not reach a verdict, so there
4 was a mistrial declared.

5 Your Honor, I would ask for any consideration you can
6 give Mr. Jeter. He has maintained his innocence throughout
7 this. And, Your Honor, I would simply ask that the Court
8 be as merciful as Your Honor sees fit and not sentence
9 Mr. Jeter to the maximum.

10 THE COURT: Mr. Jeter, anything you'd like to tell me?

11 THE DEFENDANT: Yes, sir. I made a lot of mistakes.
12 And me and Mr. Foster been friends for a while. He got
13 upset with me, and it cost me my life because he got upset
14 with me. We both drug users. And I would like to just
15 apologize to him, because I don't deserve this.

16 I've had a lot of problems with drug use in my, my
17 lifetime. And I'm sorry for a lot. I made a lot of
18 mistakes, especially when it came to drug use.

19 And I just had a grandson, and I never even got to
20 touch him, never even got to touch him. The police came in
21 my house before I even got -- the day before he was born.
22 The day after he was born I got locked up and never even
23 had a chance to even touch him. And that, Your Honor,
24 hurts me more than anything. I seen him at the county
25 through a glass but never got to touch him.

Sentence

1 THE COURT: All of that is your fault. It's your
2 fault. You're not blaming that on somebody else, are you?

3 THE DEFENDANT: No, sir; no, sir.

4 THE COURT: And you've been through the A. T. U.,
5 you've been through Faith Home. And you don't seem to have
6 the will power to stop using drugs; much less using them,
7 but selling them.

8 It is a way of life for you. I mean, your record goes
9 back so far. And it's all drugs. I don't understand it.
10 I don't know that you'll ever learn.

11 But in prison you'll have an opportunity to choose
12 good ways or bad ways. But it's your choice. Nobody will
13 make you be bad and nobody can make you be good. It's all
14 your choice, just like you've been on the outside where you
15 made bad choices.

16 Anything else you'd like to say?

17 THE DEFENDANT: I don't think that prison is the
18 answer. I do need help. I don't really think prison is
19 the answer. But I just want to apologize for the hurt and
20 all the time that I've taken with the jury. And ready to
21 proceed, sir.

22 THE COURT: All right, sir. On Indictment
23 08-GS-42-6758, State against Frederick Jeter, on the
24 verdict for the jury, the Sentence of the Court, Mr. Jeter,
25 is that you be confined to the South Carolina Department of

Sentence

1 Corrections for 28 years. Good luck.

2 (Lineup marked Court's Exhibit No. 3.)

3 END OF REQUESTED TRANSCRIPT OF RECORD

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Certificate

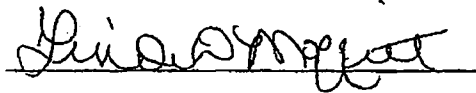
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 3rd day of June 2009.

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

September 18, 2009



Linda D. Moffitt
Circuit Court Reporter

Spartanburg County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Burnett, E C
 TRIAL TYPE : Criminal
 PANEL ID : 2008-GS-42-6758
 COURTROOM WB

DESCRIPTION : STATE -VS- FREDERICK JETER

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STRIKE	DEF	GR	REMARKS
1 Rhoney, Elizabeth K	133	W	F	(✓)	(X)	()	
2 Lee, Joe	94		M	(✓)	(✓)	()	
3 Saucier, Alfred R	140	W	M	(✓)	(X)	()	
4 Hensley, Mary M	71	W	F	(✓)	(X)	()	
5 Coldwell, Leslie V	34	W	F	(✓)	(✓)	()	
6 Jasionowski, John M	79	W	M	(✓)	(✓)	()	
7 Smith, Lamilia A	149	B	F	(✓)	(✓)	()	
8 Mckenzie, Marvena D	185	B	F	(✓)	(✓)	()	
9 Bailey, Theresa K	9	W	F	(✓)	(X)	()	
10 Thompson, Terra N	164	W	F	(✓)	(✓)	()	
11 Halford, Philip L JR	64	W	M	(✓)	(✓)	()	
12 Turner, Gaylea G	169	W	F	(✓)	(✓)	()	
13 Gibbes, Lida E	181	W	F	(✓)	(X)	()	
14 Smith, Alice M	146	B	M	(✓)	(✓)	()	
15 Boyd, Akeisha K	24	B	F	(✓)	(✓)	()	
16 Moody, Kara M	113	W	F	(✓)	(✓)	()	
17 Bellew, Kathryn E	16	W	F	(✓)	(✓)	()	
18 Krueger, Melissa M	88	W	F	(✓)	(X)	()	
19 Padgett, Timothy A	122	W	M	(✓)	(✓)	()	
20 Baier, Michael F	6	W	M	()	()	()	
21 Lamb, Arthur P	89	W	M	()	()	()	
22 Bennett, Janet O	17	W	F	()	()	()	
23 Cates, Bobby J JR	32	B	M	()	()	()	
24 Gray, Amanda H	61	W	F	()	()	()	

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FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

Frederick Jeter, 233386
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2011-CP-42-4770

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 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 Perry Corr. Inst.
2. Name and location of Court which imposed sentence Spartanburg General
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) 2008-65-42-6758
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 3, 2009 28 yrs 85%
 - (b) _____

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- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 18, 2011
- ii. _____
- iii. _____
- (d) If known, citations of any written opinion or orders entered pursuant to each results:
- i. Unpublished Opinion No. 2011-UP-99
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) Ineffective Assistance of Trial Counsel
 (b) Due process Violation
 (c) _____

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

- (a) Memorandums will be filed once
 (b) Per Attorney is appointed
 (c) _____

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

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

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. _____

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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. _____

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CLERK OF COURT
HARTFORD COUNTY
JAN 21 2003
M. HOPE BLACKLEY

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) Because there are PCR Issues and

(b) this can only be raised in PCR

(c) _____

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

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

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

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

- i. Beverly Jones - Trial
- ii. Celia Robinson - Appeal
- iii. _____

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

- i. Trial
- ii. Appeal
- iii. _____

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

Vacated and remanded for New Trial

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

NO

FILED
CLERK OF COURT
HARRISBURG COUNTY
2011 NOV -2 PM 3:43
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

County of _____

VERIFICATION

I, _____, 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.

Fredrick Jeter

SWORN to and subscribed before me this 27th
day of Oct 2011.

Dwight H. Hume (L.S.)
Notary Public

My Commission Expires: Jan 28, 2018

CLERK OF COURT
Spartanburg County
2011 NOV -2 PM 3:43
M. HOPE BLACKLEY

DATE: 10-27-2013 ¹⁴⁷

FREDERICK JETER #253386
PERRY CWR INST. Q-4/B-124
430 OAKLAWN RD
PELZER, S.C. 29669

DEAR CLERK OF COURT,

WOULD YOU PLEASE STAMP,
CLOCK, AND FILE, ALSO SEND ME
A COPY.

THANK YOU FOR YOUR HELP
IN THIS MATTER.

FILED
CLERK OF COURT
PARTABURG COUNTY
NOV -2 PM 3:43
M. HOPE BLACKLEY

SINCERELY,

Frederick Jeter
FREDERICK JETER

DATE: 3-31-1.

FREDERICK JETER #333586
PERAY CORR. INST. Q-4/B-124
430 OAKLAWN Rd
PELZER, SC. 29669

MR. KENNETH P. SHABEL, ESQ.
CAMPBELL & SHABEL, LLC
P.O. Box 1793
SPARTANBURG, SC. 29304

RE: CLOCK, STAMP ISSUES WITH CLERK OF COURT AND
RETURN Clocked copy TO PETITIONER. PCR #11-CP-42-4770.

DEAR MR. SHABEL,

AT THIS TIME I AM REQUESTING THAT YOU HAVE
MY "ATTACHMENT FACTS" CLOCK STAMPED IN THE CLERK OF COURT'S
OFFICE AND A Clocked COPY RETURN TO ME FOR MY RECORDS.
THIS IS THE ONLY WAY MY ISSUES CAN BE RAISED BY YOU SO
I CAN GET A FULL BITE OF THE APPLE. UNDER FOSTER V.
STATE 298 SC. 306, 379, SE2d 907 (1989), COUNSEL IS TO BE
APPOINTED TO FOSTER THE CASE SO IT'S NOT TANTED AT A
LATER DATE. SO IN OTHER WORDS, YOU HAVE TO DO YOUR DUTY
BY HAVING THESE ISSUES Clocked IN THE CLERK'S OFFICE.
I ALSO NEED THE ARRESTING OFFICER "SUBPOENA" TO THE
HEARING TO SHOW HE VIOLATED THE STATUTE UNDER S.C.
CODE OF LAW, ALSO THE CI HAS TO BE AT THE HEARING TO
TESTIFY ABOUT HIS DEALS THAT WAS NEVER TURNED OVER TO
ME THIS IS A BRADY VIOLATION UNDER RULE(5). PLEASE PUT
IN A MOTION IN FRONT OF THE ADMIN JUDGE TO HAVE CI'S
TRANSCRIPT PRODUCED TO SHOW DEALS THAT HE MADE. PLUS, I
NEED ALL OF HIS ARREST WARRANTS AND INDICTMENTS TO SEE IF
THEY WERE NOLLE PROSSED AND "WHY". THAT WILL BE EVIDENCE TO SHOW
THE DEALS HE MADE WITH THE STATE.

I AWAIT YOUR RETURN LETTER AND Clocked COPIES, TO BE
RETURNED TO ME. GOD BLESS AND THANK YOU FOR YOUR
COOPERATION IN THIS MATTER.

Sincerely

S/Fredrick Jeter
FREDERICK JETER

FREDERICK JETER #233386
PENNY CORRECTIONAL INST. Q-4/B-124
430 OAKLAWN RD.
PELZER, SC. 29669

MARCH 31, 2012

SPARTANBURG COUNTY, CLERK OF COURT
MS. HOPE BLACKLEY, (CLERK)
P.O. BOX 3483
SPARTANBURG, S.C. 29304-3483

RE: FREDERICK JETER VS. STATE OF SOUTH CAROLINA
C.A. NO. 2011-CP-42-4770

DEAR HON. BLACKLEY:

ENCLOSED PLEASE FIND PETITIONERS MOTION TO AMEND HIS ORIGINAL PCR APPLICATION WITH NINE (9) ARGUMENTS AND FIVE (5) EXHIBITS; AND A PROOF OF SERVICE.

ALSO ENCLOSED IS A PRE-PAID SELF-ADDRESSED ENVELOPE FOR THE RETURN OF SAID ABOVE COPY HERE WITH. PLEASE CLOCK STAMP & FILE THE SAME.

THANKING YOU IN ADVANCE.

/s/ Frederick Jeter
FREDERICK JETER #233386

ATTACHMENT FACTS #11-CP-42-4770

INEFFECTIVE ASSISTANCE OF COUNSEL

1) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CALL EVIDENCE CUSTODIAN TO TESTIFY. PETITIONER HAS THE RIGHT TO CONFRONT THE ACCUSER (MR. WESTMORELAND EVIDENCE CUSTODIAN). *Bullcoming v. New Mexico* CITE AS 131 S.Ct. 2705 (2011).

2) TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING OR CHALLENGING RULE 6(B) CERTIFIED OR SWORN STATEMENT FROM THE STATES WITNESS MR. WESTMORELAND. THE REQUIREMENTS FOR RULE 6(B) WERE NOT MET. THEREFORE DRUG EVIDENCE SHOULD NOT HAVE BEEN ALLOWED IN WITH-OUT THE STATE ESTABLISHING A COMPLETE CHAIN OF CUSTODY WHEN A PARTY OFFERING DRUG EVIDENCE, PARTY MUST ESTABLISH A COMPLETE CHAIN OF CUSTODY AS FAR AS PRACTICABLE. (*BENTON V. PELLUM*, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957)).

WHERE AN ANALYZED SUBSTANCE HAS PASSED THROUGH SEVERAL HANDS, THE IDENTITY OF INDIVIDUALS WHO ACQUIRED THE EVIDENCE AND WHAT WAS DONE WITH THE EVIDENCE BETWEEN THE TAKING AND THE ANALYSIS MUST NOT BE LEFT TO CONJECTURE. *Id.* AT 33-34 100 S.E.2d AT 537. CONTROL NUMBER WAS NOT ON CHAIN OF CUSTODY FORM, ALSO NO CERTIFIED SIGNATURE OF CUSTODIAN. SEE EXHIBIT 1

THE STATE COULD HAVE TAKEN A SWORN STATEMENT FROM MR. WESTMORELAND AND PRODUCED THE STATEMENT AT TRIAL UNDER THE PROCEDURES OF RULE 6(B). *SCRIPPT* SEE *CHISOLM* 355 S.C. AT 175, 584 S.E.2d AT 401 AND BECAUSE THE STATE DID NOT PRODUCE A SWORN STATEMENT, THE CHAIN OF CUSTODY WAS DEFECTIVE. (SEE BACK)

ATTACHMENT FACTS #11-CP-42-4151

3) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO REASONABLE DOUBT INSTRUCTION. TRIAL COURT WHEN DEFINING REASONABLE DOUBT FOR JURY, SHOULD GIVE NO FURTHER INSTRUCTION THAN THAT "REASONABLE DOUBT" IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO ACT. THEREFORE THE TRIAL JUDGE CONFUSED THE JURY. TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING (TR. PG. 123 LINES 2-25)

STATE V. MANNING CITE AS 409 S.E.2d 372 (S.C. 1991)

SOUTH CAROLINA CONST. ART. 5 SUBSECTION 21 ("JUDGES SHALL NOT CHARGE JURIES IN RESPECT TO MATTERS OF FACT, BUT SHALL DECLARE THE LAW")

BURDEN SHIFTING - SANDSTORM V. MONTANA, THE JUDGE SHIFTED THE BURDEN OF PROOF TO THE DEFENDANT SANDSTORM V. MONTANA 442 U.S. 510, 524 (1979) HOLDING THAT "BURDEN SHIFTING" DEPRIVES A DEFENDANT OF THE DUE PROCESS OF LAW AND ARE THEREFORE UNCONSTITUTIONAL.

4) TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING AND CHALLENGING THE CLOSELY CONNECTED OFFENSES AS ONE OFFENSE; 17-25-50. CONSIDERING CLOSELY CONNECTED OFFENSE AS ONE OFFENSE: IN DETERMINING THE NUMBER OF OFFENSES FOR THE PURPOSE OF IMPOSITION OF SENTENCE, THE COURT SHALL TREAT AS ONE OFFENSE ANY NUMBER OF OFFENSE WHICH HAVE BEEN COMMITTED AT TIMES SO CLOSELY CONNECTED IN POINT OF TIME THAT THEY MAY BE CONSIDERED AS ONE OFFENSE, NOTWITHSTANDING UNDER THE LAW THEY CONSTITUTE SEPARATE AND DISTINCT OFFENSE.

THE STATES WITNESS MICHAEL FOSTER (C.I.) WAS THE SAME WITNESS IN MY FIRST DISTRIBUTION CASE DATED 6-27-08, WHICH ENDED IN A MIS-TRIAL. TRIAL COUNSEL SHOULD HAVE OBJECTED AND MOVE TO DISMISS THE OTHER CLOSELY CONNECTED OFFENSES

DATED 7-1-2008 AND 7-8-2008 AND ALSO OBJECTING TO MICHAEL FOSTER'S (C.I.) TESTIMONY. IF COUNSEL WOULD HAVE OBJECTED AT THE BEGINNING OF MY TRIAL IT WOULD HAVE CHANGED THE WHOLE OUTCOME OF MY TRIAL.

5) TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING AND CHALLENGING THE STATE FOR USING PHOTO LINE UP SHEET FROM PREVIOUS DISTRIBUTION CASE DATED 6-27-2008.

SEE EX. 2

6) TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE SHOWING OF THE VIDEO AND NOT PUTTING IN A MOTION BEFORE THE TRIAL TO SUPPRESS EVIDENCE DUE TO ILLEGAL WIRETAP AND SURVEILLANCE. MICHAEL FOSTER (C.I.) BROKE THE LAW BY WEARING AUDIO AND VIDEO BECAUSE THERE WAS NO WARRANT FOR AUTHORIZATION OF ELECTRONIC SURVEILLANCE. THEY ALSO VIOLATED PETITIONERS DUE PROCESS AND CONSTITUTIONAL RIGHTS FOR LETTING WARRANT AND INDICTMENT BE SERVED ON ME, AND ALSO VIOLATED SOUTH CAROLINA CODE OF LAW STATUTE 17-30-70. THIS TANTS THE WARRANT / INDICTMENT AND OUTCOME OF THE WHOLE PROCESS. TRIAL COUNSEL SHOULD HAVE MOVED TO DISMISS THE WARRANT / INDICTMENT BECAUSE CI OBTAINED INFORMATION ILLEGALLY.

§17-30-65. CODE OF LAW OF SOUTH CAROLINA: ADMISSIBILITY OF CONTENTS OF OR EVIDENCE DERIVED FROM INTERCEPTED COMMUNICATIONS; CONTENTS AS PUBLIC RECORD.

(A) WHENEVER ANY WIRE, ORAL, OR ELECTRONIC COMMUNICATION HAS BEEN INTERCEPTED, NO PART OF THE CONTENTS OF THE COMMUNICATION AND NO EVIDENCE DERIVED THEREFROM MAY BE RECEIVED IN EVIDENCE IN ANY TRIAL HEARING OR OTHER

proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter.

*§ 17-30-70. CODE OF LAW OF SOUTH CAROLINA: ORDERS

AUTHORIZING INTERCEPTION; APPLICATION PROCESS; AGENCIES AND INDIVIDUALS AUTHORIZED TO CONDUCT INTERCEPTION.

A) AN APPLICATION FOR AN ORDER AUTHORIZING OR APPROVING THE INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS MUST BE INITIATED BY THE CHIEF OF SLED. AFTER REVIEWING THE APPLICATION, THE ATTORNEY GENERAL OR HIS DESIGNATED ASSISTANT ATTORNEY GENERAL MAY AUTHORIZE THE SUBMISSION OF THE APPLICATION TO A JUDGE OF COMPETENT JURISDICTION FOR AND JUDGE MAY GRANT IN CONFORMITY WITH THIS CHAPTER, AN ORDER AUTHORIZING OR APPROVING THE INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS BY:

2) ANY INTERCEPTION CONDUCTED UNDER THIS CHAPTER BY PERSONS AUTHORIZED BY THIS SUBSECTION MUST CONDUCT THE INTERCEPTION UNDER THE DIRECT SUPERVISION OF AN AGENT OR OFFICER OF THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

B) ANY PERSON AUTHORIZED TO INTERCEPT WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS PURSUANT TO THIS SECTION MUST HAVE COMPLETED TRAINING PROVIDED BY SLED PURSUANT TO SECTION 17-30-145.

UNDER PROSECUTOR'S MISCONDUCT THE SOLICITOR SHOULD HAVE MOVED TO SUPPRESS EVIDENCE DUE TO ILLEGAL WIRETAP AND SURVEILLANCE BECAUSE PETITIONERS CONSTITUTIONAL RIGHTS HAS BEEN VIOLATED.

SEE: U.S. V GIODANO, 416 U.S. 505, 94 S.Ct 1820 (1974) WIRETAP MUST BE AUTHORIZED BY ATTORNEY GENERAL OR ASSIST. ATTORNEY GENERAL.
SEE EXHIBIT 3

ATTACHMENT FACTS #11-CP-42-4770

7) TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING AND CHALLENGING THE UNREDACTED AUDIO AND VIDEO RECORDING AS A WHOLE UNDER STATUTE 17-30-65 AND 17-30-70, ALSO THE TRIAL JUDGE ERRED IN ALLOWING IN EVIDENCE THE UNREDACTED AUDIO RECORDING OF THE PHONE CALL INCLUDING THE OFFICER'S COMMENTS REFERENCING "CRACK". TRIAL COUNSEL ONLY OBJECTED TO THE 15 SECONDS AT THE BEGINNING WHERE NARCOTICS OFFICER HENRY BECK PLACES IN THE JURY MIND THAT HE GOING TO HAVE (C.I) MICHAEL FOSTER CALL THE NUMBER AND ORDER UP A QUANTITY OF "CRACK" (TR. P. 10, LINES 18-22). FACTS STATE THAT AT NO POINT ON THE PHONE CALL IS ANYTHING IDENTIFIED AS CRACK. IN FACT, THE TERM "CRACK" IS NEVER USED. TRIAL COUNSEL POINTED OUT THAT HENRY BECK WAS THE ONLY PERSON THAT MENTIONED CRACK COCAINE. THE C.I NEVER CALLED THE PETITIONER AND ORDERED UP A QUANTITY OF CRACK COCAINE. ALSO HENRY BECK CONFUSED AND PLACED IN THE JURY'S MIND THAT C.I ORDERED "CRACK". RULE 403 SCAR PROVIDE THAT WHERE THE UNFAIRLY PREJUDICIAL EFFECT OF EVIDENCE SUBSTANTIALLY OUTWEIGHS THE PROBATIVE VALUE, THE EVIDENCE MUST BE EXCLUDED. EVEN IF EVIDENCE IS RELEVANT, IT SHOULD BE EXCLUDED IF IT'S PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, MISLEADING THE JURY, OR BY CONSIDERATION OF UNDUE DELAY, WASTE OF TIME, OR NEEDLESS PRESENTATION OF CUMULATIVE EVIDENCE. RULE 403, SCAR. DETERMINATION OF THE PREJUDICIAL EFFECT OF THE EVIDENCE MUST BE BASED ON THE ENTIRE RECORD AND THE RESULT WILL GENERALLY TURN ON THE FACTS OF EACH CASE.

STATE V. GILLIAM 373 SC. 601, 609, 646 SE.2D, 872, 876 (2007).

IN THE PARTICULAR CASE, EVEN IF THE JUDGE PROPERLY

ATTACHMENT FACTS #11-CP-42-4770

FOUND THAT THE OFFICER'S COMMENT WAS RELEVANT, THE JUDGE ERRED IN ADMITTING THE UNREDACTED AUDIO RECORDING OF THE PHONE CALL INCLUDING THE OFFICER'S COMMENTS REFERENCING "CRACK", WAS UNFAIRLY PREJUDICIAL TO THE DEFENSE ALSO PLAYING AUDIO IN IT'S INTIRITY. TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE UNREDACTED AUDIO AND VIDEO RECORDING BEING PLAYED IN IT'S INTIRITY AS A WHOLE UNDER STATUE 17-30-65 AND 17-30-70. TRIAL COUNSEL WAS IN FACT INEFFECTIVE AND TRIAL JUDGE ABUSE HIS DISCRETION AND WOULD HAVE CHANGED THE WHOLE OUTCOME OF PETITIONERS TRIAL.

8) TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO RULE(6), CHAIN OF CUSTODY BASED ON THE FOLLOWING: THERE ARE SOME ISSUES THAT HAS NOT BEEN RESOLVED IN THIS CASE THAT IS NOT ON VIDEO AND WOULD HAVE CHANGED THE WHOLE OUTCOME OF PETITIONERS TRIAL. TRIAL COUNSEL SHOULD HAVE MOVE TO DISMISS WARRANT AND INDICTMENT.

CHAIN OF CUSTODY IS NOT ESTABLISHED BETWEEN CI MICHAEL FOSTER, OFFICER HENRY BECK AND PAUL NORRIS. VIDEO DOES NOT SHOW THAT THE EVIDENCE WAS ACTUALLY CRACK COCAINE AND WAS ACTUALLY BEING PUT INTO EVIDENCE BAG AND SEALED AT THAT POINT. P. NORRIS STATED THAT HE WENT TO HIS VEHICLE TO GET THE EVIDENCE BAG AND GAVE IT TO H. BECK. HE PLACE THE EVIDENCE INTO THE BAG THEN I (P. NORRIS) PLACE THE EVIDENCE BAG ON MY CAR. NO ONE SAYS ANYTHING ABOUT SEALING THE BAG AT THIS POINT TR. pg 34 LINES 14-18. HENRY BECK SAID THAT HE DID NOT SEAL THE BAG IMMEDIATELY. HE TAKES THE UNSEALED BAG BACK TO HIS OFFICE, WEIGHS IT, FIELD TEST

IT AND THEN SEAL IT UP, TR. pg. 77 LINES 7-16

THERE IS EVIDENCE THAT THE EVIDENCE BAG WAS NOT SEALED AFTER THE CI GAVE H. BECK THE ALLEGED DRUGS TR. pg. 42 L. 6-9. THE EVIDENCE BAG WAS ALSO PASSED TO P. MORRIS HANDS UNSEALED AND THEN PLACED ON THE CAR UNSEALED. NO BODY KNOWS WHO PICK THE EVIDENCE BAG UP OFF THE CAR NEXT. THE OFFICERS TOOK NO PRECAUTION AGAINST TAMPERING. JUST HOW LONG DID THE EVIDENCE BAG REMAIN UNSEALED OR WAS THERE ANY DRUGS EVER PUT IN THE BAG? VIDEO DOES NOT SHOW.

THE STATE HAS NOT ESTABLISHED BEYOND REASONABLE DOUBT THE CHAIN OF CUSTODY OR PROVEN THAT NOTHING ELSE HAS NOT BEEN PUT INTO EVIDENCE BAG OR TAKEN OUT OF EVIDENCE BAG OR WAS THE ALLEGED DRUGS THE SAME DRUGS THAT CAME FROM THE PETITIONER BECAUSE IT IS FACT THAT EVIDENCE BAG WAS NOT SEALED IMMEDIATELY AFTER ALLEGELY PUTTING DRUGS IN EVIDENCE BAG, TR. pg. 77 LINE 11. THEREFORE SUCH EVIDENCE SHOULD HAVE BEEN EXCLUDED FROM THE JURY FOR LACK OF PROPER IDENTIFICATION AS STATED IN RODGERS V. COMMONWEALTH, 192 VA. 522, 90 SE2D 257, 260. ALSO RULE(6) STATES "WHERE THE SUBSTANCES ANALYZED HAS PASSED THROUGH SEVERAL HANDS THE EVIDENCE MUST NOT LEAVE IT TO CONJECTURE AS TO WHO HAD IT AND WHAT WAS DONE WITH IT BETWEEN THE TAKING AND THE ANALYSIS". ALSO BENTON V. PELLUM 232 S.L. 26, 100 SE.2D 534 (1957).

9) TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO INVESTIGATION AND CHALLENGING THE RELIABILITY, CREDIBILITY AND PRIOR CONVICTIONS OF STATES WITNESS CI MICHAEL FOSTER BEFORE THE TRIAL FOR IMPEACHMENT PURPOSES UNDER RULE 404 A & B - STATE V. MUELLER 460 SE2D 409 S.L. (1995).

JUST BECAUSE CI HAS GIVEN INFORMATION IN THE PAST

ATTACHMENT FACTS # 11-CP-42-4770

DOES NOT MAKE him A RELIABLE AND CREDIBLE WITNESS.
 REASON why: ① CI MICHAEL FOSTER HAS BEEN CHARGED WITH giving FALSE INFORMATION TO POLICE OFFICER in THE PAST, (SEE RAP SHEET); ② CI HAS BEEN CONVICTED OF SIMPLE POSSESSION AND POSSESSION OF MARIJUANA; DISTRIBUTION OF CRACK COCAINE; BURGLARY; GRAND LARCEN (SEE RAP SHEET) ③ CI HAS BEEN CONVICTED OF DRUG DEALING in TWO (2) STATES, GEORGIA AND SOUTH CAROLINA, (Tr. pg. 60 LINES 13-25 AND pg. 61 LINES 1-9) (ALSO SEE RAP SHEET) ④ CI WAS GIVEN A CONTRACT TO SIGN WITH THE SPARTANBURG SHERIFF'S OFFICE STATING THAT HE WILL NOT GET INTO ANY TROUBLE OR GET ANY CHARGES WHILE WORKING UNDERCOVER FOR SHERIFF'S OFFICE. CI HAS ALSO BROKEN CONTRACT, (SEE ^{EX. 4} CONTRACT) ALSO Tr. pg. 56 LINES 11-16; pg. 61 LINES 18-24; pg. 62 LINES 21-25. INFORMANT WAS AND IS INVOLVED IN CRIMES OF DISHONESTY, THEREFORE CI MICHAEL FOSTER IS NOT A RELIABLE AND CREDIBLE WITNESS.

STATE V. VIARD CITE AS SC. 276 S.E.2d 531; ALSO CAMARGO, SUPRA; TAMBURLINO V. COMMONWEALTH 218 VA. 821, 241 S.E.2d 762 (1978). THESE CASES HOLD THAT AN AFFIDAVIT BASED UPON INFORMATION SUPPLIED BY A CONFIDENTIAL INFORMANT MUST DESCRIBE SOME OF THE UNDERLYING CIRCUMSTANCES FROM WHICH THE MAGISTRATE CAN DETERMINE THE AFFIANT-OFFICER'S UNNAMED INFORMANT WAS "CREDIBLE" OR HIS INFORMATION "RELIABLE".

AFFIDAVIT WAS DEFECTIVE BECAUSE AFFIANT FAIL TO GIVE MAGISTRATE ALL UNDERLYING FACTS ABOUT CI MICHAEL FOSTER BEFORE MAGISTRATE MADE HIS DECISION WHETHER TO SIGN WARRANT WHICH LED TO PETITIONERS ARREST AND, COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING BEFORE AND DURING TRIAL, ALSO FOR NOT OBJECTING TO CRIMES OF DISHONESTY THAT CI HAS BEEN INVOLVED IN. TRIAL COUNSEL WAS ALSO INEFFECTIVE FOR NOT OBJECTING TO THE CI'S TESTIMONY BEFORE TRIAL BECAUSE CI WAS NOT A RELIABLE AND CREDIBLE WITNESS. TRIAL COUNSEL WAS ALSO INEFFECTIVE FOR NOT OBJECTING TO DEFECTIVE "BARE BONES" AFFIDAVIT BECAUSE AFFIANT

ATTACHMENT FACTS #11-CP-42-4770

AND AFFIDAVIT FAIL TO MEET THE REQUIREMENTS BY NOT SPECIFYING THE FACTUAL BASIS FOR THE MAGISTRATE TO FORM A DECISION REGARDING ISSUANCE; OFFICERS NEED TO OUTLINE THE FACTUAL BASIS FOR THE SEARCH WHICH LED TO MY ARREST ALSO FACTS ABOUT THE INFORMANT IE: CRIMINAL HISTORY ETC...

THE TWO PRONG TEST - ① IN WHAT CAPACITY DO OFFICERS KNOW THE INFORMANT; ② AND HAS THE INFORMANT PROVIDED RELIABLE INFORMATION IN THE PAST? THIS IN SHORT, IS THE TWO PRONG TEST OF INFORMANT RELIABILITY, AGUILAR V. TEXAS, CITE AS 378 U.S. 108, 84 S. CT. 1509 (1964); ALSO SPINELLI V. UNITED STATES CITE AS 394 U.S. 410, 89, S. CT. 584 (1972).

OFFICER HENRY BECK IN PETITIONERS CASE FAIL TO GIVE MAGISTRATE ALL UNDERLYING FACTS ABOUT THE CI, A DRUG USER, DRUG DEALER IN TWO STATES, CONVICTED FELON. ALSO CI WAS MOTIVATED TO ASSIST LAW ENFORCEMENT BECAUSE HE WAS TRYING TO WORK OFF HIS PENDING CHARGES, AND BENCH WARRANTS. SEE INMATES HISTORY EXHIBIT 5

CONCLUSION

I AM REQUESTING THAT THIS SENTENCE BE VACATED AND SET ASIDE, BECAUSE OF THE DUE-PROCESS VIOLATIONS AND THE CONSTITUTIONAL RIGHTS THAT HAVE NOT BEEN AFFORDED TO ME AT THIS TIME.

St. Frederick Jeter
FREDERICK JETER

(00/00/00)

000004

11-CP-42-4770

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EXH. B. 7

NTROL NO.

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)

CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

(Subsequent Change of Custody)

7 ACH
108-0599

This is to certify that I JACK WESTMORELAND am employed by
(Name)

SPARTANBURG COUNTY SHERIFF as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)

7 1, 2008, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)

From DROP BOX of SPARTANBURG COUNTY SHERIFF
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

DI # 2586
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

Beet bag

On 7 1, 2008, I made delivery of the above described
(Date) (Year)

substance(s) or container(s) to DRUG ROOM of
(Name)

SPARTANBURG COUNTY SHERIFF in substantially the same condition
(Law Enforcement Agency)

is when I received it.

J. Westmoreland
(Signature)

face: _____
date: _____

worn to me on this _____ day of _____

(Book) RULES OF CRIMINAL PROCEDURE

Rules For CHEMICAL ANALYSIS AND CHAIN OF CUSTODY

(B) CERTIFIED OR SWORN STATEMENT. - For the purpose of establishing a chain of physical custody or control of evidence entered under PART (A) of this Rule, a CERTIFIED OR SWORN STATEMENT signed by each successive person having custody of the evidence THAT HE OR SHE DELIVERED IT TO THE PERSON STATED IN EVIDENCE THAT THE PERSON HAD CUSTODY AND MADE DELIVERY AS STATED W/OUT THE NECESSITY OF THE PERSON WHO SIGNED THE STATEMENT BEING PRESENT IN COURT PROVIDED:

(1) THE STATEMENT CONTAINS A SUFFICIENT DESCRIPTION OF THE SUBSTANCE OR ITS CONTAINER TO DISTINGUISH IT; AND (2) THE STATEMENT SAYS THE SUBSTANCE WAS DELIVERED IN SUBSTANTIALLY THE SAME CONDITION AS WHEN RECEIVED.

RULE 6(B) SCRIMP, ALLOWS FOR THE ADMISSION OF SWORN STATEMENTS TO PROVE CHAIN OF CUSTODY IN LIEU OF THE APPEARANCE OF A CHAIN OF CUSTODY WITNESS



1545797



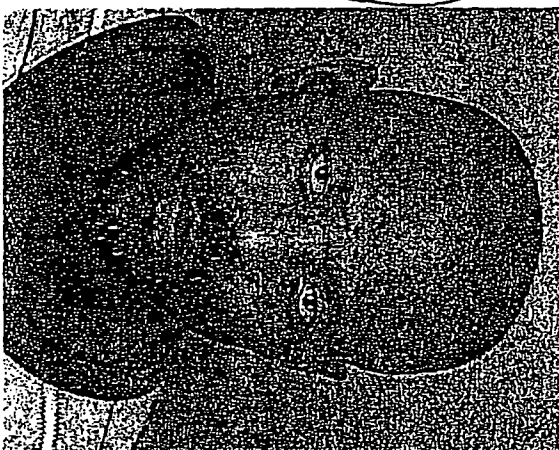
1578621



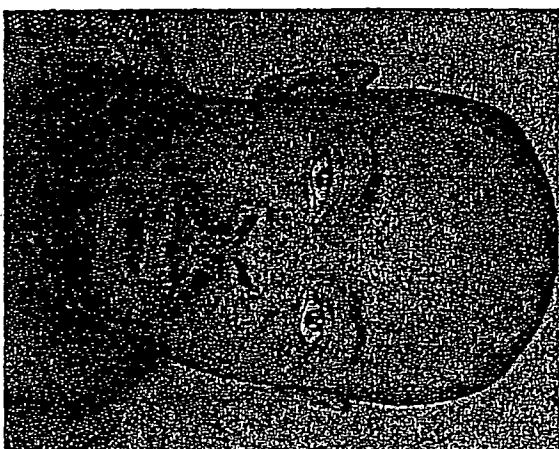
1577340



1536748



1066204



1545387

COPY

Photo lineup
from previous case

6-27-08

P.18 L.16-18 Proof of

Handy JURY 6-27-08

<http://10.0.60.100/webuniversalplus/UniversalReport.aspx>

EXHIBIT 1. X

UNITED STATES V. GIORDANO, 416 U.S. 505, 94 S.Ct. 1820 (1974)

Electronic Surveillance, Wiretapping

According to RICO statute, federal judges were authorized to approve wiretaps of telephones of those suspected of violating federal laws. An application for a wiretap was authorized by a specially designated executive assistance to the Attorney General for the purpose of investigation. Dominic Giordano, once Giordano was arrested and charged with various narcotics violations, the wiretap was removed. Nevertheless, the wiretap revealed considerable incriminating information, which was intended to be used against Giordano.

AT HIS LATER FEDERAL TRIAL, HE WAS CONVICTED. HIS ATTORNEY, IN ORDER SUCCESSFULLY TO SUPPRESS THIS INCriminating INFORMATION, THE GOVERNMENT APPEALED AND THE SC HEARD THE CASE. THE SC UPHOLD THE SUPPRESSION DECISION, HOLDING THAT PRIMA FACIE DETENTIVE EVIDENCE SECURED BY WIRETAPS PURSUANT TO COURT ORDER ISSUED IN RESPONSE TO AN APPLICATION THAT WAS NOT IN FACT AUTHORIZED BY THE ATTORNEY GENERAL OR ASSISTANT ATTORNEY GENERAL SPECIFICALLY DESIGNATED BY HIM MUST BE SUPPRESSED FOR PROPER JUSTICE. IN GIORDANO'S CASE, IT CAME OUT THAT THE EXECUTIVE ASSISTANT TO THE ATTORNEY GENERAL WAS NOT EMPOWERED BY STATUTE TO IN FACT APPLY FOR THE WIRETAP ORDER.

EX. 3

* Wiretapp must be authorized by Attorney General or Assistant Attorney General.

Executive Assistant is not empowered
by statute to authorize application for
wiretap orders.

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

FREDERICK JETER #233386
PETITIONER,

VS.

STATE OF SOUTH CAROLINA
RESPONDENT.

IN THE COURT OF COMMON PLEA
FOR THE 7TH JUDICIAL CIRCUIT

C/A, No.: 2011-CP-42-4770

NOTICE OF MOTION AND MOTION
TO AMEND PETITIONER'S ORIGINAL
POST-CONVICTION RELIEF
APPLICATION.

NOW COMES PETITIONER "FREDERICK JETER" MOVING
THIS HONORABLE COURT TO AMEND HIS ORIGINAL
APPLICATION PURSUANT TO THE SOUTH CAROLINA
POST-CONVICTION RELIEF ACT AND ALL APPLICABLE
STATUTES, LAWS, AND RULES.

PETITIONER IS ATTACHING NINE (9) ARGUMENTS
CONCERNING INEFFECTIVE ASSISTANCE OF COUNSEL AND
FIVE (5) EXHIBITS, TO SUPPORT HIS ORIGINAL PCR
APPLICATION. PETITIONER ASSERTS HIS ARGUMENTS AND
EXHIBITS ARE MERITORIOUS AND SHOULD BE HEARD.

CONCLUSION

FOR THE FOREGOING REASONS, PETITIONER SHOULD BE
ALLOWED TO AMEND HIS ORIGINAL PCR APPLICATION.

DATED: MARCH 31, 2012

/s/ Frederick Jeter
FREDERICK JETER #233386

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

FREDERICK JETER #233386
PETITIONER,

VS.

STATE OF SOUTH CAROLINA
RESPONDENT.

IN THE COURT OF COMMON PLEAS
FOR THE 7TH JUDICIAL CIRCUIT

C/A. No.: 2011-CP-42-4770

PROOF OF SERVICE

NOW COMES PETITIONER "FREDERICK JETER" SERVING HIS NOTICE OF MOTION AND MOTION TO AMEND HIS ORIGINAL POST-CONVICTION RELIEF APPLICATION WITH NINE (9) ARGUMENTS AND FIVE (5) EXHIBITS; UPON THE SPARTANBURG COUNTY CLERK OF COURTS OFFICE; BY DEPOSITION, ONE (1) ORIGINAL AND ONE (1) COPY OF THE SAME IN THE U.S. MAIL (BY AND THROUGH THE PERRY CORRECTIONAL INSTITUTIONS LEGAL MAIL SYSTEM).

THE BELOW PARTIES HAVE BEEN SERVED WITH THE ABOVE DOCUMENTS:

- | | | |
|---|--|---|
| ① SPARTANBURG COUNTY, CLERK OF COURT
MS. HOPE BLAKLEY (CLERK)
P.O. BOX 3483
SPARTANBURG, S.C. 29304-3483 | ② S.C. ATTORNEY GENERAL
ALAN WILSON
P.O. BOX 11549
COLUMBIA, S.C. 29211 | ③ KENNETH P. SHABEL, ESQ.
CAMPBELL & SHABEL, LL.
P.O. BOX 1793
SPARTANBURG, S.C. 29304 |
|---|--|---|

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 4TH DAY OF APRIL, 2012

NOTARY: James Mune

EXP.: JAN 28, 2018

FREDERICK JETER
FREDERICK JETER #233386
PERRY CORR. INST. Q4/B-124
430 OAK LAWN RD.
PELZER, S.C. 29669

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG)

Frederick Jeter, #233386,)

2011-CP-42-4770

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 2, 2011¹, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the October 2008 term of the Spartanburg County Grand Jury for distribution of crack cocaine (08-GS-42-6758). The Applicant was represented by Beverly D. Jones, Esquire. The Applicant proceeded to trial and was convicted of the charge. On June 3, 2009, the Applicant was sentenced by The Honorable E. C. Burnett III to twenty-eight years as a result of the conviction being Applicant's third or subsequent drug charge.

A timely Notice of Appeal was filed and an Anders brief was submitted on Applicant's behalf. The Applicant filed a *pro se* brief on his own behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jeter, Op. No. 2011-UP-394 (filed August 18, 2011). The Remittitur was returned on September 6, 2011.

¹ Applicant filed a *pro se* amendment to his application in April 2012; however at the time, he was represented by counsel and Respondent does not consider the amendment as a substantive filing.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's direct appeal files. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. Due process violation.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. **The 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.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which

would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

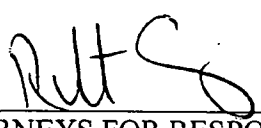
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 13, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Frederick Jeter,

2011-CP-

Applicant,

v.

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Kenneth P. Shabel, Esquire
Campbell & Shabel, LLC
P.O. Box 1793
Spartanburg, South Carolina 29306



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 13th day of July, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

FREDERICK JETER,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2011-CP-42-04770

NOVEMBER 9, 2012

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE MARK HAYES, JUDGE

APPEARANCES:

KEN SHABEL, ESQUIRE
ATTORNEY FOR THE STATE

SUZANNE WHITE, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Exhibit List

3

PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

18 MR. SHABEL: May it please the Court, Your Honor.
19 I don't believe that the State has raised any issues
20 regarding the time limits of my client's application for
21 post conviction relief. He did file it within the one year
22 after Remittur was filed, following the dismissal of his
23 appeal based on *Anders*. My client is here. He is ready to
24 go forward and is prepared to have testimony taken of
25 himself, as well as Ms. Jones, regarding his concerns and

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
PCR Hearing

5

1 those allegations in his post-conviction relief
2 application. With that, I'm ready to call my first
3 witness.

4 THE COURT: Sir, come on around right up here.
5 Is that going to be your first witness?

6 MR. SHABEL: Yes, Your Honor. Would the Court
7 allow him to take his materials with him?

8 THE COURT: Yes.

9 MR. SHABEL: Thank you, Your Honor.

10 THE COURT: If you would just lay your materials
11 up on that wooden bench.

12 THE WITNESS: Right here?

13 THE COURT: Yeah, that's fine. And if you would,
14 I need you to place your left hand on the Bible, raise your
15 right hand and let me swear you in.

16 THE WITNESS: Yes, sir.

17 THE COURT: Do you solemnly swear that the
18 testimony you're about the Court be the truth, the whole
19 truth and nothing but the truth, so help you God?

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you, sir. Just have a seat in
22 the red chair. And if you would, pull the red chair up to
23 the microphone.

24 THE WITNESS: Yes, sir.

25 THE COURT: The lady sitting over to my right,

1 she is the court reporter, so when you speak, please speak
2 up loud so that both she and I can hear you.

3 THE WITNESS: Yes, sir.

4 MR. SHABEL: May it please the Court?

5 THE COURT: Yes, sir.

6 FREDERICK JETER,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. SHABEL:

10 Q. Sir, would you please state your full name for the
11 record?

12 A. Frederick Fitzgerald Jeter.

13 Q. Mr. Jeter, how old are you?

14 A. I'm forty-eight, sir.

15 Q. And how far did you go in school?

16 A. Eleventh grade.

17 Q. Did you ever complete a GED?

18 A. No, sir.

19 Q. Prior to your current incarceration were you actively
20 employed?

21 A. Here and there.

22 Q. But you were able to hold a job before?

23 A. Yes, sir.

24 Q. And you can read and write the English language?

25 A. Yes, sir.

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Frederick Jeter - Direct Examination by Mr. Shabel

7

1 Q. Okay. In which correctional facility are you
2 currently residing?

3 A. Perry Correctional Institution.

4 Q. How long have you been in Perry?

5 A. For approximately two years now.

6 Q. And have you been in Perry since your conviction in
7 this particular case?

8 A. I don't understand the question.

9 Q. When you were convicted in this particular case, did
10 you go straight to Perry or ---

11 A. No. I went to McCormick Correctional Institution.

12 Q. Thank you. And are you currently serving a twenty-
13 eight year sentence for distribution of crack cocaine?

14 A. Yes, sir. Yes, I am.

15 Q. Who was your trial lawyer at that hearing?

16 A. Beverly Jones.

17 Q. And was she employed with the Spartanburg County
18 Public Defender's Office?

19 A. Yes, she was.

20 Q. Was she your designated public defender throughout
21 your entire case?

22 A. From the beginning, I think Mr. Kohler started off
23 being it, and then he got -- he went somewhere else and
24 then she took over.

25 Q. When you -- before you actually went to trial, were

1 you out on bond or were you in the detention center?

2 A. I was in the detention center.

3 Q. Approximately how many times did you meet with Beverly
4 Jones prior to going to trial in this case?

5 A. I would say two.

6 Q. Okay. And how long were those meetings?

7 A. About ten to fifteen minutes. Enough to see a film, I
8 guess you could say.

9 Q. Okay. I was going ask. There was a video introduced
10 at trial?

11 A. Right.

12 Q. Were you able to watch the video with her prior to
13 going to trial?

14 A. Yes, sir.

15 Q. Approximately how soon, prior to going to trial, were
16 you able to watch that movie?

17 A. Probably been in the next day or two, I guess.

18 Q. Okay. Now, let me talk a little bit about that video
19 for a moment.

20 A. Okay.

21 Q. Before you went to trial did you watch TV?

22 A. Yes, sir.

23 Q. Did you see law related shows, legal shows, on
24 television?

25 A. Yes, sir. Yes, sir, I did.

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Frederick Jeter - Direct Examination by Mr. Shabel

9

1 Q. Before you went to trial, what was your understanding
2 about the admissibility of these videos and audio?

3 A. From what I learned, sir, and since I've been at
4 Perry, that audio and video was inadmissible.

5 Q. Was that your understanding prior to going to trial?

6 A. That's always been my -- I've read a few books of law
7 since I've been at Perry and it's inadmissible.

8 Q. Did your lawyer ever explain to you what South
9 Carolina law is regarding the admissibility of surveillance
10 video and surveillance audio?

11 A. No. No, sir.

12 Q. Did she ever explain to you the concept that if one
13 person is aware that it's being videotaped or recorded that
14 it could be admissible in court?

15 A. No, she didn't explain that to me.

16 Q. Did you ever explain to Ms. Jones your concerns about
17 the admissibility of the video and the audio?

18 A. Well, at the time, I was dumbfounded. I didn't know
19 anything about it. I didn't know nothing about the
20 admissibility and stuff like that.

21 Q. Do you believe your lawyer did an adequate job of
22 advising you of what your rights were regarding the video?

23 A. No, I don't. No, I don't, sir.

24 Q. Do you believe your lawyer did an adequate job of
25 explaining your rights to you about the audio recordings?

1 A. No, sir.

2 Q. Had she given you correct advice, or what you believe
3 to be appropriate advice, would that have affected your
4 trial strategy?

5 A. Yes, I think it did. I think if she had a told me --
6 the only thing she really told me is that that was going --
7 that the CI had an audio and video. That's basically it,
8 you know.

9 Q. And you mentioned CI, confidential informant?

10 A. Yes.

11 Q. Was there a confidential informant that testified
12 against you at trial?

13 A. Yes, there was.

14 Q. What was his name?

15 A. His name was Michael Foster.

16 Q. And what sort of cross-examination did your lawyer do
17 with respect to Michael Foster?

18 A. Well, can you break that down?

19 Q. Sure. When Michael Foster was testifying -- did he
20 testify against you at trial?

21 A. Yes, he did.

22 Q. When he testified against you at trial did your lawyer
23 ask him questions?

24 A. Yes.

25 Q. And what was the basis -- what sort of questions did

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Frederick Jeter - Direct Examination by Mr. Shabel

11

1 she ask him?

2 A. Did she ---

3 Q. Did she ask him -- go ahead, I'm sorry.

4 A. Has he ever been a drug dealer or has he ever been
5 committed of a crime and about a contract that he was
6 supposed to have signed, that he broke a contract, which I
7 do have a copy of it right here.

8 Q. When you say contract, is that the confidential
9 informant contract?

10 A. Yes. Things that he was, that he was going to stay
11 out of trouble while he was working with the law
12 enforcement.

13 Q. Okay. And do you believe your lawyer did an adequate
14 job of cross-examining Mr. Foster?

15 A. No, I don't.

16 Q. Tell me what you thought she should have done?

17 A. I think she should have -- for impeachment, she should
18 have challenged his prior convictions, I think.

19 Q. Did she, at any point in her questioning, ask him if
20 he had been convicted of certain crimes?

21 A. Yeah.

22 Q. Okay. Did she go into a lot of detail?

23 A. Not really.

24 Q. Okay. Do you believe she should have gone into more
25 detail?

1 A. Yes.

2 Q. Okay. You do know that she did ask about whether or
3 not he got paid for this action?

4 A. Yes.

5 Q. But in your mind she didn't go into enough about the
6 criminal history that this gentleman had?

7 A. Right.

8 Q. Okay. Now, back up a little bit. When you went to
9 trial, was there discussion at trial of chain of custody?
10 I'm not asking whether you agreed with the discussion. I'm
11 asking, did that topic come up at trial?

12 A. Yes, it came up.

13 Q. Okay. I believe that a couple of law enforcement
14 officers testified at the trial regarding that issue. Is
15 that correct?

16 A. Yes, sir.

17 Q. How the substances ended up from Mr. ---

18 A. Right.

19 Q. --- the confidential informant, into a bag, and into a
20 lab?

21 A. Yes, sir.

22 Q. Was there somebody missing in that trial from the
23 chain of custody testimony?

24 A. Yes, it was.

25 Q. Was that Mr. Westmoreland?

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Frederick Jeter - Direct Examination by Mr. Shabel

13

1 A. Jack Westmoreland, sir.

2 Q. From your understanding of the case, what was Mr. Jack
3 Westmoreland's role in the chain of custody?

4 A. I think he was, as far as I -- he was the last link in
5 the chain of custody, which he was missing. He -- well,
6 from what I've learned that he was supposed to submit a
7 certified sworn document with control numbers, sworn,
8 certified, and which he didn't do.

9 Q. He didn't fill out the paperwork properly?

10 A. It was not filled out completely. That's right.

11 Q. And the jury never found that out; correct?

12 A. The jury never found that out.

13 Q. Mr. Westmoreland did not testify at trial?

14 A. He did not testify.

15 Q. And from your understanding, he was part of the chain
16 of custody link to get from the confidential informant to
17 the lab?

18 A. Exactly.

19 Q. Did you ever tell your lawyer it was okay, that Mr.
20 Westmoreland didn't have to testify?

21 A. No, sir, I didn't.

22 Q. Did she ever discuss that with you?

23 A. No, sir. No, sir.

24 Q. Did she ever tell you this guy is not going to be
25 here?

1 A. Well, I heard her telling the Judge that Mr.
2 Westmoreland wouldn't be here because he was out sick for a
3 certain amount of days, which is in my transcript from ---

4 Q. And I think there was record of a doctor's statement
5 making it into the record somehow?

6 A. Right. But I never seen it in my Rule 5.

7 Q. Okay.

8 A. I never seen it.

9 Q. You were never presented a copy of that?

10 A. No, sir.

11 Q. Were you made aware of your right to have all of those
12 witnesses testify against you at trial?

13 A. No, sir.

14 Q. Were you ever told that you had the right to have
15 every single witness to that chain of custody testify
16 against you before the jury?

17 A. No, sir, I wasn't.

18 Q. Do you believe that your attorney did an adequate job
19 of explaining that you?

20 A. No, I don't think she did an adequate job.

21 Q. Were you given your right to confront every element of
22 that chain of custody?

23 A. No, I wasn't.

24 Q. And as a result, do you think you were prejudiced by
25 the verdict of the jury?

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Frederick Jeter - Direct Examination by Mr. Shabel

15

1 A. I think I was prejudiced. I was supposed to have that
2 right to confront my witnesses.

3 Q. Okay. Was there a portion of this trial that you
4 weren't physically present for?

5 A. Yes.

6 Q. Tell the Court about that?

7 A. As I went through my transcript, I seen where the
8 Judge was talking to my lawyer or somebody and I wasn't
9 there and present. And from what I understand I'm supposed
10 to be there at every stage of my trial. I'm supposed to be
11 present at every stage of my trial, because it's a critical
12 stage of my trial and I needed to be there. I don't know
13 what was said. I don't know -- it could have been a guilty
14 -- they probably could have been plotting a guilty plea on
15 me. I don't know. But I think it was important for me to
16 be there.

17 Q. After reviewing your transcript, Mr. Jeter, do you
18 recall what, specifically, you were not present for?

19 A. I don't understand. I don't know -- just the trial,
20 period. Just to be there, period, just to see what was
21 said or whatever.

22 Q. Now, we started this conversation and I want to end
23 this conversation with the same topic, the video. At
24 trial, I believe your lawyer objected to a portion of that
25 video coming in. Is that correct?

1 A. Yes, sir.

2 Q. And that portion was granted -- that motion was
3 granted; correct? As far as you know, that fifteen seconds
4 at the beginning?

5 A. At first the Judge said that he would grant it. But
6 further on in my transcript he said, we'll just play the
7 whole thing.

8 Q. Okay. So the Judge changed his mind about halfway
9 through it?

10 A. Right.

11 Q. Okay.

12 A. But I expected my lawyer to object and she didn't.

13 Q. Okay. What was problematic about those first fifteen
14 seconds in the video?

15 A. If I'm not mistaken, Henry Beck or Able Gray, one of
16 the two, prejudiced me by saying there was a portion of the
17 tape where -- well, one part was -- at the end was where
18 they didn't actually see the drugs being put in the bag.

19 Q. Right.

20 A. Okay. The first part was Henry Beck said that Mr.
21 Jeter is going -- well, I'm sorry. Able Gray or Henry Beck
22 stated that Michael Foster was going to call me and order
23 up a quantity of crack cocaine, which was never mentioned.
24 When he called me, crack was not mentioned at all.

25 Q. Okay. So when you received a telephone call, there

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Frederick Jeter - Direct Examination by Mr. Shabel

17

1 was no reference to the word crack?

2 A. No, sir.

3 Q. The reference to the crack was from a law enforcement
4 officer, who apparently was recording the conversation?

5 A. Right. And Able Gray at the beginning of my trial.

6 Q. Okay.

7 A. He told the jury that Michael Foster was going to
8 order some crack from me. And that was a lie.

9 Q. Okay. Now, Mr. Jeter, do you understand that in a
10 post conviction relief application? This is not your
11 opportunity to receive a not guilty verdict? Do you
12 understand that?

13 A. Yes, sir.

14 Q. Do you understand that if you are successful, the only
15 relief this court can grant you is a new trial where you
16 have a new jury and evidence would be presented and you'd
17 have a right to representation and that jury could find you
18 guilty or not guilty based on the evidence that they hear.
19 Do you understand that?

20 A. No, I didn't get that understanding.

21 Q. All right. Let me back up a little bit. You
22 understand that you have asked this Court to grant you post
23 conviction relief?

24 A. Right.

25 Q. You understand that if you are successful, this Court

1 will grant you a new trial on these charges?

2 A. Right.

3 Q. Do you understand that that new trial, the results
4 could come out very differently than what you have? You
5 could come out with a not guilty verdict, you could come
6 out with a guilty verdict. Do you understand that?

7 A. Yes, sir.

8 Q. Do you understand that if you are found guilty at that
9 second trial, your sentence could be very different from
10 the sentence you're serving right now, if you're found
11 guilty? I know that's an if, but ---

12 A. Yes, sir.

13 Q. Okay. Knowing all of that, having testified today, is
14 it still your wish for this Court to grant you a new trial?

15 A. Yes, sir.

16 Q. Thank you, Mr. Jeter. Please answer any questions
17 that the attorney general's office may have, as well as the
18 Court?

19 A. Yes, sir.

20 MR. SHABEL: Thank you, Your Honor.

21 MS. WHITE: Thank you. May it please the Court.

22 **CROSS-EXAMINATION**

23 **BY MS. WHITE:**

24 Q. Mr. Jeter, just a couple of questions. You said that
25 you only met with your attorney maybe twice for about ten

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Frederick Jeter - Cross Examination by Ms. White

19

1 minutes at a time?

2 A. Yes, ma'am.

3 Q. So is your testimony that the video that y'all watched
4 was just ten minutes or so?

5 A. Well, it could have been. I said approximately ten to
6 fifteen minutes.

7 Q. Okay. So there wasn't up to maybe an hour of video?

8 A. No.

9 Q. Okay. And you said that your counsel didn't ask the
10 informant enough questions. She talked to him about the
11 fact that he had actually been previously convicted for
12 distribution of crack cocaine, which had been dropped down.
13 He was also charge with other -- a possession of crack
14 charge in Georgia. Isn't that right?

15 A. Yes, ma'am.

16 Q. And she asked him if anything had been given to him or
17 promised to him in order for him to testify against you?

18 A. Yes.

19 Q. And they also -- she also talked about the agreement
20 and you mentioned about the fact that he would remain out
21 of trouble or not get into trouble while he was working
22 with the state; right?

23 A. Right.

24 Q. So all of that was brought before the jury; wasn't it?

25 A. Yes. Yes, ma'am.

1 Q. Okay. And in regards to the chain of custody, you
2 testified that there was some mention, they did make it a
3 part of the record; right, that Mr. Westmoreland was out on
4 medical leave at the time? Do you recall that?

5 A. She didn't tell me. She told the Judge.

6 Q. But you were present when they were talking about that
7 with the Judge. Is that right?

8 A. Yeah, I heard it. I heard it.

9 Q. Okay. And the Judge actually -- do you recall the
10 Judge saying that the presentment of evidence from the
11 state was going to meet the law according to what he
12 determined in regards to chain?

13 A. I don't remember that, no.

14 Q. Do you have a copy of your transcript?

15 A. Yes, ma'am.

16 Q. Okay.

17 MS. WHITE: And I'll just approach, if I can,
18 Your Honor.

19 Q. I'm looking at page twenty, and if you'll just look
20 with me, if you can see, this is Mr. Gray talking and he
21 says, one other thing, Your Honor, is just on the packet on
22 the bench about the evidence custodian in this case, he's
23 out eight to twelve -- excuse me -- ten to twelve weeks for
24 surgery. And it presents -- and then the Court continues

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1 to ask him some questions. And do you see where the Court
2 says, I think that meets our law. You can have whatever
3 objection you'd like to it?

4 A. I see that.

5 Q. Okay. So -- and further on, I didn't show you but
6 right beneath that, your attorney says, yes, sir, Your
7 Honor. On behalf of Mr. Jeter, he does object. So do you
8 recall that?

9 A. She never explained it. She took it upon herself to
10 object. I didn't know what was going on at the time.

11 Q. Right. But you don't deny that she objected on your
12 behalf to Mr. Westmoreland not being present?

13 A. I didn't see that part where you said about she
14 objected.

15 Q. Okay. I'll be happy to show you again. Right
16 underneath where the Court says, I think that meets our
17 law. Yes, sir, Your Honor. On behalf of Mr. Jeter, he
18 objects.

19 A. I see that.

20 Q. Okay. So you don't deny that she objected to Mr.
21 Westmoreland not being present?

22 A. At the time. But now that I see it -- I see that.

23 Q. You just didn't recall?

24 A. Right.

25 Q. Okay. In regards to the audio where the police

1 officer references calling you for crack, you don't deny
2 that Ms. Jones made an objection to that, do you, pretrial?
3 Do you recall her arguing against allowing the part of the
4 audio CD in that references purchasing the crack?

5 A. She didn't at the time, I don't think. I don't, don't
6 remember that.

7 Q. Okay. And I'm just pointing to page ten, Your Honor,
8 counsel objects to the first fifteen seconds of the
9 beginning of the hearing where Henry Beck says he's going
10 to have someone call and order up crack. And then during
11 Mr. Beck's testimony, page seventy-one, counsel renews
12 objection, nothing new, except previously stated objections
13 to the CD being entered into evidence. So do you -- does
14 that refresh your memory or ---

15 A. Basically, I was trying to get her to object to the
16 whole audio and video period, not just the first fifteen
17 minutes, you know. First of all the audio/video was not --
18 requirements were not met for it to even come into evidence
19 in the first place, from what I've learned.

20 Q. Okay. So you wanted the entire audio and DVD out, not
21 just portions, is what you're saying?

22 A. Right. Just portions. And then on top of that, it
23 was supposed to have been ordered by a Magistrate Judge
24 before they could even use it. And by SLED, then the
25 Attorney General, Title XVII, I think is what it is, if I'm

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1 not mistaken. So that's why I wanted it alleviated,
2 period. If she had of objected to the whole audio, period,
3 we probably -- we wouldn't even be here. It would have
4 changed the whole outcome of my trial because everything
5 that would have derived from it or come from it, which
6 would have been admissible. It wouldn't have -- they
7 wouldn't have seen none of it.

8 Q. Okay.

9 A. That's the point I was trying to get across.

10 Q. All right.

11 MS. WHITE: Your Honor, I think that's all the
12 questions I have at this time.

13 THE COURT: Any redirect on what she went into?

14 MR. SHABEL: Briefly, Your Honor, if I may
15 approach?

16 THE COURT: Sure.

17 MR. SHABEL: The witness, I should say.

18 **REDIRECT EXAMINATION**

19 **BY MR. SHABEL:**

20 Q. Mr. Jeter, Ms. White asked you about page twenty of
21 the transcript where we're talking about Mr. Westmoreland
22 not being there.

23 A. Right.

24 Q. And she read the fact that I think that the Judge
25 said, I think that meets our law. You can have whatever

1 objection you'd like to. And she said, on behalf of Mr.

2 Jeter, he objects. You recall that now; correct?

3 A. At that particular time, I didn't -- she didn't ask me
4 did I want to object or not.

5 Q. That's what I wanted to ask.

6 A. She didn't ask me.

7 Q. The next line of the transcript says, however, I have
8 already alerted him at least once what the status of the
9 law is and I believe that Your Honor obviously would follow
10 the law. And because the packet was received, sealed and
11 not tampered with or didn't appear to have been tampered
12 with when the next person in the chain got it, that
13 probably met, in the Court's eyes, the requirements of the
14 law. Did Ms. Jones ever explain that to you?

15 A. No.

16 Q. Is that a true statement in your mind?

17 A. No, it's not a true statement. Because in my
18 transcript, I could show you where they never sealed the
19 packet. They never sealed it. Once Michael Foster
20 allegedly gave it to Henry Beck, it was never sealed. It
21 was never sealed. Ashley Harris say he got the bag and sit
22 it on the back of the car. Now, who got it from there --
23 and Ashley -- I mean, Henry Beck goes on to say he took it
24 way back to his office to test it before he even sealed it
25 up. Now, unless he sealed up and opened and reopened it,

1 he didn't say that.

2 Q. But bottom line is, the subject of Mr. Westmoreland's
3 role in the chain of custody never came up with you and Ms.
4 Jones before that moment; correct?

5 A. No.

6 Q. Thank you.

7 MR. SHABEL: That's all I have.

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

9 THE COURT: Thank you, sir. You may step down.

10 MR. SHABEL: With that, Your Honor, Petitioner
11 rests.

12 MS. WHITE: Your Honor, the State would call
13 Beverly Jones to the stand.

14 THE COURT: Ma'am, if you would, please come
15 around and place your left hand on the Bible and raise your
16 right hand and let me swear you in.

17 Do you solemnly swear that the testimony you're about
18 to give the Court be the truth, the whole truth and nothing
19 but the truth, so help you God?

20 THE WITNESS: Yes, sir, I do.

21 THE COURT: Thank you, ma'am. Just have a seat
22 in the red chair and pull the red chair up to the
23 microphone. And please speak up loud enough so the court
24 reporter to my right and I both can hear you.

25 BEVERLY JONES,

1 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MS. WHITE:**

4 Q. If you could, just state your name for the record?

5 A. It's Beverly Jones.

6 Q. And Ms. Jones you heard the testimony before. You
7 acknowledge that you represented Mr. Jeter in capacity at
8 the public defender's office?

9 A. Yes, I did.

10 Q. And at what point -- do you remember how long you'd
11 been at the public defender's office before you started
12 representing him?

13 A. I came to the public defender's office January of '08.
14 He became a client of the office shortly after being
15 arrested in July of '08. I was assigned the case after it
16 was processed through the office. Initially, and I think
17 he was confused when he said he initially worked with Bob
18 Kohler, he was confusing Mr. Kohler's role in this case.
19 Mr. Kohler was never his attorney because he was an
20 attorney with the solicitor's office. At the time he was
21 charged, Bob Kohler was assigned these cases. Mr. Jeter, I
22 believe, was referring to -- the initial attorney he worked
23 with in our office was James Cheek. He was also
24 represented by another one of our attorneys, Alex Wolff, at
25 a contested preliminary hearing sometime in August. I

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1 began to meet with Mr. Jeter after some point in September,
2 late August/September, when Mr. Jeter rejected an offer
3 that had been negotiated between Bob Kohler and Mr. Cheek
4 for a seventeen year sentence, which would have encompassed
5 all of the charges. And also would have led to the
6 dismissal of co-defendants' charges on Virginia Washington,
7 his girlfriend, with whom he resided, and at whose home
8 some of these events took place, as well as a young man
9 whose first name I don't remember, his last name was
10 Washington, Ms. Washington's son, who was also charged by
11 virtue of the search warrant, which resulted in the
12 trafficking charge that Mr. Jeter had. At any point you
13 want to stop me, but I can just go on and explain it.

14 Q. Okay.

15 A. These charges were multiple. He had multiple
16 distribution charges, I believe in and around June, July
17 and August of that -- of '08. Then they get a search
18 warrant on Ms. Washington's home, which was on the west
19 side. Mr. Jeter lived there with Ms. Washington and her
20 son. By virtue of the drugs that were recovered, pursuant
21 to the search warrant, all three of them were charged.
22 Initially, Mr. Jeter expressed some concern that Ms.
23 Washington, who had been an employee of Wofford College for
24 almost thirty years in housekeeping, was in danger of
25 losing her job because she got charged in this operation.

1 He initially expressed concerned, wanted to work something
2 out that would get her charges dismissed, as well as her
3 son's. But then once the deal was crafted, he rejected it.
4 And I actually have a document that Mr. Cheek prepared --
5 well, it's actually just the sentence sheet for the plea
6 where Mr. Jeter acknowledged in writing that he was
7 rejecting that offer.

8 Q. Okay.

9 A. After that point is when I began meeting with him.
10 For whatever reason, I got the impression that the
11 solicitor's office was going to kind of fast-track this,
12 because in November, I believe, I was notified either by
13 the publishing of the trial docket for December or through
14 a communication of some kind from Mr. Kohler, that they
15 were going to try Mr. Jeter in December of '08. And I
16 received the information and then saw him on the docket,
17 but all his counts were listed. So I began, by email and
18 personally, to pester Mr. Kohler as to which count he was
19 going to proceed on because I needed to know, of the
20 various counts, which one to prepare. Ultimately, Mr.
21 Kohler made that choice. But prior to that, I was meeting
22 with Mr. Jeter. And I can remember having a great deal of
23 discussion with him about the fact that these were
24 distributions, which meant -- except for the search warrant
25 case, but with the distributions, we talked a good deal

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1 about who might possibly be the CI. And I knew that the
2 procedure within the solicitor's office, as it remains,
3 they weren't going to give me the videos. They made me the
4 offer -- or gave me the opportunity to go watch them, but
5 until I filed a motion to compel, and it was at the very
6 eve of trial, within seventy-two hours is the way they do
7 it, you cannot actually physically get a copy of the video.
8 But that did not mean that I was not meeting with Mr. Jeter
9 and discussing it. Because I have -- in reviewing the
10 file, I have notes where he actually gives me options of
11 people he thinks the CI might be. With one of them, it was
12 a female. He even went so far as to give me directions of
13 how to get to this person, who I don't really know if they
14 exist, to their home. He gave me a partial name of another
15 one, indicated this person had at one time been in jail,
16 and I tracked that down through the jail website. So those
17 documents and that documentation in my file indicates, and
18 as I recollect, I was having conversation with him well in
19 advance of even knowing which tape we were going to go
20 forward on, or which buy.

21 Q. So let me ask you real quick about meetings. So he
22 testified that you met maybe twice for about ten to fifteen
23 minutes?

24 A. That's not true.

25 Q. What's your recollection of ---

1 A. I met multiple times. I know I probably met at least
2 a half a dozen times with him. And to say that anyone
3 who's going to trial can only meet with their attorney two
4 times is almost ludicrous because every time -- when you're
5 going to trial, every morning of trial you're meeting with
6 them. So it's terribly inaccurate to say that. There's no
7 way that happens.

8 Q. And what about the time frame on the videos that he
9 said he maybe watched in ten to fifteen minutes. Is that
10 your recollection that the videos that the state had only
11 even encompassed ten or fifteen minutes of time?

12 A. That's not accurate at all. As a matter of fact, in
13 reviewing the transcript, Justice Burnett even made several
14 comments about how long this is. At one point he asked Bob
15 -- asked Able Gray -- and I will explain why it was not Bob
16 Kohler in a moment, if you want. But Able even makes a
17 comment, Your Honor, I'll cut some of that out if you want.
18 I'm sorry. Because it's the drive time. And he's
19 listening to the radio. And on that point, to say that
20 there were only two or three meetings, he's totally
21 disregarding and being almost inaccurate to the Court,
22 because I not only defended him at this trial that you have
23 the transcript for, I tried another case with Mr. Jeter of
24 these charges. We had a separate jury trial in December of
25 '08 that lasted maybe two days. It might have run into a

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1 third day. I'd have to check the dates. But that case
2 ended in a mistrial. That was the one that Bob Kohler
3 actually handled. Then six months later after Bob had
4 left, Able Gray picked it up, chose a different count and
5 that whole preparation process started all over again. And
6 with regard to the CI preparation, the solicitor's office
7 doesn't freely give you your own disk of a controlled buy.
8 They -- I had to file a motion in both cases, both in
9 December and then again in May when they alerted me and the
10 docket alerted me that we would be trying this case that
11 you have a transcript for, I filed another motion. Well,
12 in December before the first trial, the one that ended in
13 the mistrial, based on that motion, I had a chambers
14 conference with Bob Kohler and Judge Cole. And Judge Cole
15 ordered that they give me a large group of documents about
16 the CI. They had to disclose who he was. They made
17 available to me the physical files from the solicitor's
18 office of every pending case he had. Also, of course, they
19 gave me a rap sheet. They were required to produce, which
20 they did, a copy of all of the CI agreement information.
21 And he even made them go back and get buy sheets for every
22 buy that this individual had made. But, now, those
23 documents, he wouldn't let me make copies of. But I sat in
24 Judge Cole's office for probably an hour to an hour and a
25 half one day, we were down from court for some reason,

1 flipping through these documents, making notes that I had
2 available to me to cross-examine Michael Foster, both in
3 December of '08 and then again when this trial came up, I
4 think, what, June of '09.

5 Q. So Michael Foster was the CI involved in both of the
6 cases?

7 A. All of the cases.

8 Q. All of the cases?

9 A. Correct. Yes.

10 Q. Okay. And so you had the information from December up
11 until June?

12 A. Correct.

13 Q. Okay. So when you prepared for cross-examination in
14 this case, you had the prior record and the CI agreement,
15 which is what brought on cross-examination questions about
16 that?

17 A. Correct. I had already cross-examined him once at a
18 prior trial. I also had some information, which is alluded
19 to in my cross-examination, about a bench warrant that they
20 had lifted for him at the request of one of the narcotics
21 officers. Because in being ordered to provide me those
22 files, there was basically an interoffice note from one of
23 their staff to the solicitor himself saying, y'all need to
24 lift this bench warrant; he's working, cooperating with
25 these narcotics officers. So I had all kinds of

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1 information that ordinarily you don't get if you don't file
2 a motion to compel.

3 Q. Okay.

4 A. Now, one interesting thing, and I think he understood
5 this, because in multiple letters that he sent me after his
6 conviction, he never asked for copies of these documents.
7 Based on Judge Cole's ruling -- Judge Cole told me, I'm
8 going to give you these documents. You can review them
9 with your client, but I'm not -- I'm going to order you not
10 to give him copies of those. And thereafter, Mr. Jeter
11 never asked me for that. So I took that to mean that he
12 understood what I had explained to him, that the Judge had
13 said I'm not going to be allowed to give it to you. The
14 Judge also ordered I couldn't even share it with others in
15 my office, which was kind of awkward, because I had to
16 assume, as much as Mr. Foster worked, he was probably
17 working against -- had worked against other clients of the
18 office. But I had to honor the Judge's order not to share
19 it.

20 Q. Okay. Tell me a little bit about Jack Westmoreland
21 that wasn't there for a -- I guess, as evidence custodian?

22 A. Well, I don't recollect finding out about that until
23 the day of trial. Could I have some water, please?

24 Q. Yes.

25 A. I was not made aware that Jack was not going to be

1 there. And once I was told, as the trial began, I
2 discussed it with Mr. Jeter. And I can remember -- we
3 actually had that trial in this courtroom. So I was seated
4 where you are standing and Mr. Jeter was seated next to me.
5 And I do remember explaining to him, as I reference in the
6 transcript, I explained to him what the law is and what we
7 had. If he, in his reference to not being a part of his
8 trial, he may be referring to bench conferences, but every
9 time we had a conference -- there was one about redacting
10 the lineup. We had kind of talked about how to do it.
11 Because there was a date on the lineup used in the June '09
12 trial that referenced the date of a different buy. And so
13 we had to clean that up. And the Judge does make a
14 comment. We're going to try this case. We're not going to
15 be trying these other cases. So he was assisting me in
16 keeping it contained to that one count. And when we would
17 have a conference, I would go back to the table and explain
18 it. Mr. Jeter didn't want to understand things. He didn't
19 want to accept positions. But he was provided with the
20 information. I did explain to him that the -- what the
21 case law is. You don't have to prove every single element
22 of the chain, but you prove it as far as practicable to
23 show there -- and eliminate all possibilities of tampering.
24 And that was the Court's rule. And as has been read a
25 couple of times, I told the Judge, he doesn't agree with

1 this process, but I understand the state of the law. I
2 told him what the state of the law is. He doesn't want to
3 accept it and he's not going to agree to it. And so for
4 him, I'm going to object.

5 Q. What about the audio tape? We talked about the fact
6 that you objected initially -- originally also to the first
7 fifteen seconds and I think some portion at the end, as
8 well. Was there anything that you saw that you could have
9 objected to the full audio or video evidence coming in?

10 A. No. I didn't -- we discussed that from the very
11 beginning because I knew, based on the reports, and I know
12 from the procedure they use, even before I physically
13 looked at them and physically got copies of them, that
14 there were going to be videotapes. I understand, you know,
15 I've been a defense attorney for a number of years. I was
16 a prosecutor. I've tried these cases. I know the
17 procedure and I know the law. He may be making some
18 reference to the wiretap statute, because after his
19 conviction, he wrote me several times asking me for orders
20 that authorized, you know, these surveillance recordings,
21 citing laws that don't apply to his situation. And we
22 talked about those surveillance videos and how they -- as
23 long they could produce somebody that could authenticate
24 it, most especially somebody who was present when it was
25 made, can say it's not been changed or altered, you know,

1 changed in any way, then they would be able to be
2 admissible. And then we had those discussions even before
3 we got them. Because there was a great deal of -- like I
4 said, a great deal of time spent trying to figure out who
5 the CI was so I could begin to gather whatever information
6 I could get to cross-examine that person because I knew
7 that person was so crucial.

8 Q. Okay. And at one time, I'm not quite sure, in
9 regards to the Best Bag, Mr. Jeter testified that it was
10 never sealed. From your recollection, was there an issue
11 with the Best Bag or the evidence not being properly
12 sealed?

13 A. The officer ultimately testified, I believe it was
14 Beck, ultimately testified that he sealed it. I think the
15 reference that Mr. Jeter is making to Beck's testimony
16 about when that came back to the location that the CI was
17 to return to in the vehicle, what the time frame was in
18 sealing it. Because then that was something that I -- an
19 argument that I made in closing, because in part of the
20 video you see Foster holding the drugs in his hand. And
21 then sometimes you can't see the drugs. So I was just
22 trying to raise an issue on that. But as far as the Best
23 Pack not being sealed, Beck said he sealed it. And Ashley
24 Harris thereafter said when he got it, it was sealed. It
25 had not been tampered with. Otherwise, the Judge was

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1 looking at -- the Judge had already been alerted to that
2 issue. The Judge was looking at that issue, too. And had
3 the testimony not matched up, the drugs would not have ever
4 been placed into evidence. Because, as you know, there's
5 discussion in there about we're just going to mark them for
6 identification at this point. We've got to match this up.
7 And once it matched up after Ashley testified, then the
8 evidence came in. So there wasn't an issue legally.

9 Q. Okay. Thank you, Ms. Jones.

10 MS. WHITE: I think that's all the questions I
11 have at this time, Your Honor.

12 THE COURT: Yes, sir.

13 MR. SHABEL: May it please the Court?

14 **CROSS-EXAMINATION**

15 **BY MR. SHABEL:**

16 Q. Ms. Jones, I'm a little confused from your testimony.
17 I want to make sure it's clear. You mentioned an in-
18 chambers conference where the Judge ordered that you be
19 provided with all the information regarding the
20 confidential informant. I'm a little unclear as to when
21 that took place in reference to the trial of this case?

22 A. That took place prior to the December '08 trial in
23 front of Judge Cole.

24 Q. That's the one that led to the mistrial?

25 A. That was a trial on another count.

1 Q. Correct. Were you made aware, as the result of what
2 you saw from that ruling, that this gentleman was also the
3 confidential informant in this charge?

4 A. Yes, I was made aware of that.

5 Q. All right. Because I'd heard something earlier in
6 your testimony about the fact that -- something about
7 seventy-two hours before trial, you learned it. So I just
8 wanted to make sure that I'm clear on the record.

9 A. No. That reference was to the fact that they won't
10 give you -- absent this unusual situation where I tried two
11 different counts with the same client ---

12 Q. Right. Okay.

13 A. --- generally speaking, if there were -- this was one
14 case ---

15 Q. Okay.

16 A. --- and had only been one case, I would have only
17 gotten it seventy-two hours ahead of time. In this
18 particular case, by the time we get to June of '08, I've
19 had information for seven months that I normally would have
20 only gotten seventy-two hours before the trial.

21 Q. I understand. Okay. Now, you mentioned you met with
22 Mr. Jeter approximately six times, maybe a little more?

23 A. Probably, right.

24 Q. But you've also indicated you've represented him in
25 trial on at least two different allegations, two different

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1 buys?

2 A. Correct.

3 Q. Can you tell the Court how many of those six visits
4 were related to the charge for which we're here today?

5 A. I don't know if it's possible to isolate it. Because
6 the early meetings encompassed everything.

7 Q. Okay.

8 A. Perhaps in the meetings just before, in reviewing the
9 count to be tried in December, dealt with that count, other
10 than just general issues regarding Mr. Jeter.

11 Q. Sure.

12 A. So I don't know that you could parcel them out.

13 Q. I understand. It would be fair to say that at least
14 the last couple of meetings dealt solely with this
15 particular charge; correct?

16 A. The last couple of meetings prior to the trial ---

17 Q. Prior to the trial.

18 A. --- or after the trial?

19 Q. Prior to the trial?

20 A. Probably specifically to show this video. And, again,
21 he -- at each meeting, once he knew about Michael Foster,
22 that tended to be a bigger topic because he, you know,
23 wanted to rant and rail about Michael Foster and, you know,
24 that type thing.

25 Q. Okay. Now, you mentioned the video.

1 A. Uh-huh (affirmative).

2 Q. Describe briefly what you actually see on the video?

3 I believe it starts off in a parking lot, right before Mr.
4 Fowler gets in the car and drives; right?

5 A. Foster.

6 Q. Foster. I'm sorry. I don't know where I got Fowler
7 from. I apologize.

8 A. And here, I have not watched it obviously since this
9 trial ---

10 Q. Sure. I understand.

11 A. --- so my recollection is fuzzy. But I do believe the
12 meeting prior to set up the -- to search the CI, to set him
13 up with the equipment, was behind the old Home Depot. I
14 was able to figure that out just by looking at it.

15 Q. All right.

16 A. And there they brief him. I'm not sure where the
17 location of the telephone call took place. I can't
18 honestly say that. But they set him up there and he left.
19 And this particular case took place -- started in the post
20 office parking lot. That's where Foster was trying to
21 catch up with Mr. Jeter.

22 Q. Okay.

23 A. Because he told him he was going to the post office.

24 Q. Okay.

25 A. The transaction itself actually took place across the

1 intersection in the parking lot of that hotdog place.

2 Q. At Boots' & Sonny's; right?

3 A. Yeah. And then there's driving footage from
4 Burlington into town, and then from that place to a drop-
5 off location that they said was behind a residence. And I
6 don't know that I ever determined exactly where that was.

7 Q. Okay. Were there portions of the video where it just
8 showed like the roof of a car while the gentleman's
9 driving?

10 A. Again, I haven't reviewed it. It seems like there was
11 more of the steering wheel, maybe the dash. Because this
12 is not the key fob camera that I think they're using now.

13 Q. Right.

14 A. This was the body through the pinhole, button hole
15 camera.

16 Q. Right.

17 A. So it's in the chest area of the CI. So as I
18 recollect, I specifically recollect seeing his hand, either
19 on the steering wheel or on the mirror because he held the
20 crack in his hand after the transaction.

21 Q. Understanding your profession ---

22 A. Uh-huh (affirmative).

23 Q. --- and understanding my profession and the fact that
24 these are the types of videos we see in these cases a lot,
25 is it an exciting video to watch?

1 A. I don't know that I would characterize it as exciting.

2 But like you said, we're professionals.

3 Q. Right.

4 A. You know, we don't watch -- I don't watch a video in a
5 case like most people; okay?

6 Q. Right. Right.

7 A. And ---

8 Q. You and I are ---

9 A. --- when I review a video with a client, we don't just
10 sit there, watch it straight through one time, up, you're
11 gone.

12 Q. Okay.

13 A. You stop. You back up. You pause. I specifically
14 recollect that in the other video with Mr. Jeter, we spent
15 a great deal of time looking -- because I think at one
16 point, he wanted to verify that he knew exactly who Michael
17 Foster was by seeing him. So we would pause frames so that
18 as Mr. Foster walked up the carport, past a car, and a
19 window and he was reflected.

20 Q. Right.

21 A. So, you know, we watch videos differently.

22 Q. Sure.

23 A. So I don't know how I could characterize it as
24 exciting or not.

25 Q. So a person sitting in a jury box, would you

1 characterize watching a video of somebody driving as
2 exciting?

3 A. Generally, without any education, they probably don't
4 view it as exciting. That's part of your function, is to
5 explained to them, they're looking for other things.

6 Q. And would you also agree that if something's not
7 exciting to experience, it may seem like it's taking longer
8 than it actually does?

9 A. Possibly.

10 Q. Okay. Thank you. Now, a lot of talk about the Best
11 Bag. I believe the officer testified that he did not
12 immediately seal the bag once the drugs ended up in the
13 bag; correct?

14 A. I think that's my recollection of it. We could find
15 it in the transcript.

16 Q. Right. Okay. And I believe that he testified that he
17 got Mr. Fowler to sign some forms before he actually sealed
18 the bag. Is that correct?

19 A. Foster.

20 Q. Mr. Foster. Why am I calling him Mr. Fowler. I don't
21 know. It's a mental block. I apologize to everybody.
22 I'll just call him Michael. Could you actually see
23 anything going into the bag on the video?

24 A. No. That's not, that's not on the video.

25 Q. Okay. Did you bring that out? Did you bring that to

1 the jury's attention?

2 A. I believe if you were to look at my closing that was a
3 topic.

4 Q. Okay. Did you mention that on cross-examination?

5 A. You'd have to review -- you've got the transcript. I
6 hope I did.

7 Q. Don't recall one way or the other?

8 A. (No verbal response.)

9 Q. Okay. To your knowledge, did any of the other charges
10 go to trial?

11 A. No. That's a whole other discussion.

12 Q. I won't bore you with the details.

13 A. No. They ultimately were dismissed after he got the
14 twenty-eight years. There was some attempt -- because I
15 met with him two or three times after this conviction
16 before he actually got shipped to the Department of
17 Corrections, in an attempt to resolve them all at one time,
18 because he had great peril facing him with all of those
19 other pending serious cases.

20 Q. Right. And I believe the solicitor's office didn't
21 want to do that. They just wanted to get this one out of
22 the way. But ultimately, they dropped the rest of the
23 charges; correct?

24 A. They dismissed them, right. And I notified him of
25 that.

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Beverly Jones - Cross Examination by Mr. Shabel

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1 Q. So to your knowledge, once this trial concluded or at
2 least shortly thereafter, he had no other pending charges
3 against him?

4 A. Ultimately they were dismissed. I can't tell you how
5 long that took.

6 Q. Sure. It might have taken a day, a week, or a month,
7 but ultimately ---

8 A. It was more like several months.

9 Q. So he's got nothing else hanging over his head?

10 A. Not to my knowledge.

11 Q. Not to your knowledge. Okay. You found out about Mr.
12 Westmoreland the day of trial; correct?

13 A. Uh-huh (affirmative).

14 Q. And it was pretty clear that while Mr. Westmoreland
15 wasn't going to be available for a significant period of
16 time, that he ultimately would be available, I think it was
17 ten to twelve weeks, if I'm remembering correctly?

18 A. Right. He's still employed. He still works with them
19 at the courthouse.

20 Q. Sure. So he could have been available two, three
21 months down the road to testify ---

22 A. Correct.

23 Q. --- to his role in the chain of custody; correct?

24 A. Correct.

25 Q. Did you at any point make a motion to continue the

1 trial to allow him to make himself available for trial?

2 A. I did not.

3 Q. Were you a part of any of the communications regarding
4 that seventeen-year offer?

5 A. You'll have to rephrase. Was I part of crafting that
6 or in that negotiation?

7 Q. Were you involved with any communications with Mr.
8 Jeter about the seventeen-year offer?

9 A. Again, I'm not sure exactly what you're getting to.

10 Q. Sure.

11 A. I found out about it after it was rejected, if that's
12 what you're asking.

13 Q. That is what I'm asking. Thank you very much.

14 A. Yeah.

15 Q. And you answered my question.

16 MR. SHABEL: Beg the Court's indulgence one
17 moment, Your Honor. I apologize, Your Honor. I beg the
18 Court's brief indulgence. One more moment, Your Honor. I
19 apologize.

20 Q. Ms. Jones, do you recall the testimony of Paul Norris
21 regarding the Best Bag?

22 A. Not specifically.

23 Q. Okay.

24 A. I mean, I know that that issue came up.

25 Q. Okay. Do you recall him actually being the one to

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Beverly Jones - Cross Examination by Mr. Shabel

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- 1 give Investigator Beck the Best Bag?
- 2 A. Not without reviewing the transcript.
- 3 Q. Do you recall a time where that bag was sitting
- 4 unsealed on the top of a car?
- 5 A. I do remember a reference to that.
- 6 Q. Okay. And was there also testimony about someone else
- 7 receiving the bag down the road, I think at the lab?
- 8 A. You mean Lieutenant Harris?
- 9 Q. Yes, Lieutenant Harris. I'm sorry.
- 10 A. Yes, there was.
- 11 Q. Okay. What was Mr. Westmoreland's specific role in
- 12 the chain of custody?
- 13 A. It's my understanding that he took, as an evidence
- 14 custodian, he took the bag as received from the drop box, I
- 15 believe, after being sealed, from whichever narcotics
- 16 officer put it in the drop box. Logged it in for however
- 17 long it was there, and then took it out and drove it --
- 18 gave it to Lieutenant Harris.
- 19 Q. Okay.
- 20 A. To evaluate. I mean, analyze.
- 21 Q. So he would have been the connection from Beck to
- 22 Harris?
- 23 A. Correct.
- 24 Q. And Harris was ultimately the one that did what?
- 25 A. Unsealed the bag and tested it.

1 Q. Right. Do you recall Officer Beck specifically
2 testifying that he sealed the bag?

3 A. Not without the transcript.

4 Q. Thank you.

5 MR. SHABEL: That's all I have.

6 THE COURT: Any redirect on what he went into?

7 MS. WHITE: Yes, sir, just briefly.

8 **REDIRECT EXAMINATION**

9 **BY MS. WHITE:**

10 MS. WHITE: If I may approach, Your Honor.

11 Q. The final question was if you recalled if Mr. Beck
12 sealed the Best Bag. If you can look on page 77, about the
13 middle of the line and read over some of that testimony.

14 Does that testimony indicate anything about the Best Bag?

15 A. Line 15 says -- I'm sorry. The end of 14 says, and
16 then I take -- after I weigh it and field test it, I will
17 seal it up and then it's placed into evidence to be sent to
18 the lab.

19 Q. Okay. So that was Mr. Beck's testimony about getting
20 the Best Bag and what his procedure is?

21 A. Correct.

22 Q. From your recollection, from reading that?

23 A. Uh-huh (affirmative).

24 Q. And page 78, the next page, and I should have pointed
25 that out to you, lines 14 and 15. He was asked, you sealed

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Beverly Jones - Redirect Examination by Ms. White

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1 it and filled out some paperwork? And he said, yes. So
2 from your recollection, he did testify that he sealed the
3 bag?

4 A. Yes. Based on what you've shown me, he did.

5 Q. Okay. Thank you.

6 MS. WHITE: Your Honor, that's all I have.

7 THE COURT: Thank you, ma'am. You may step down.

8 MS. WHITE: The State has no other witnesses,
9 Your Honor.

10 MR. SHABEL: Your Honor, I have no other
11 witnesses, but I would ask the Court to take judicial
12 notice of the entire page 77 and 78 of the transcript. I
13 believe Ms. White left off some important information. The
14 Solicitor asked Mr. Beck, did you seal it immediately? His
15 answer was, not immediately. I take it. I get Mr. Foster
16 to sign some forms, basically establishing the chain. He's
17 given it to me. I take it back to my office. I weight it
18 -- and that's where she started reading earlier. Thank
19 you, Your Honor.

20 THE COURT: All right. I will take a look at it
21 and let you know.

22 MR. SHABEL: Thank you, Your Honor.

23 MS. WHITE: Thank you, Your Honor.

24 THE DEFENDANT: Thank you, Your Honor.

25 THE COURT: Yes, sir. Good luck to you.

Frederick Jeter -vs- State of South Carolina (2011-CP-42-04770)
Beverly Jones - Redirect Examination by Ms. White

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1

[END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal, in
9 the Circuit Court for Spartanburg County, South Carolina,
10 on the 9th day of November, 2012.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 April 14, 2013

16

17

18

19



Circuit Court Reporter

RECEIVED

JAN 25 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Frederick Jeter, #233386,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-4770

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 2, 2011¹. The Respondent made its Return on or about July 17, 2012. An evidentiary hearing into the matter was convened on November 9, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Ken Shabel, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Beverly D. Jones, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the October 2008 term of the Spartanburg County Grand Jury for distribution of crack cocaine (08-GS-42-6758). The Applicant was represented by Beverly D. Jones, Esquire. The

Applicant proceeded to trial and was convicted of the charge. On June 3, 2009, the Applicant was sentenced by The Honorable E. C. Burnett III to twenty-eight years as a result of the conviction being Applicant's third or subsequent drug charge.

A timely Notice of Appeal was filed and an Anders brief was submitted on Applicant's behalf. The Applicant filed a *pro se* brief on his own behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jeter, Op. No. 2011-UP-394 (filed August 18, 2011). The Remittitur was returned on September 6, 2011.

ALLEGATIONS

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

1. Ineffective assistance of counsel; and
2. Due process violation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant

¹ Applicant filed a *pro se* amendment to his application in April 2012; however at the time, he was represented by

must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 186, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he only met with Counsel twice, for a total of ten or fifteen minutes each time. Applicant testified that he saw the video tape evidence with Counsel a day or so prior to trial. Applicant testified that he believed the audio and video tape evidence were inadmissible partially because the audio tape evidence included a reference to crack. Applicant testified that while Counsel did object pre-trial to the part of the audio relating to the word crack and renewed that objection during trial, he wanted Counsel to object to the entire audio and

video evidence. Applicant testified that Counsel never explained to him the South Carolina laws regarding the admissibility of this type of evidence.

Counsel testified that her office began representing the Applicant in January 2008 on several charges and she began working on his case following his arrest in July 2008. Counsel testified that in September 2008, she had negotiated an offer of seventeen years, which would have led to dismissal of several pending charges, but the Applicant rejected the offer. Counsel testified that she first represented Applicant on the charges at trial in December 2008, but that trial resulted in a mistrial. So, prior to this current trial, she had been working on the case for almost a year. Overall, Counsel testified that she met with the Applicant multiple times at least six or more. Counsel testified that she and the Applicant had a great number of discussions regarding the charge of distribution and who might possibly be the confidential informant ("CI"). Counsel also testified that she did review the video tape evidence with the Applicant prior to trial, but Applicant was not allowed to have any copies of documents related to the CI.

Applicant testified that he thought Counsel should have asked the confidential informant, Michael Foster, more about his prior record, but he also acknowledged that Counsel asked Mr. Foster about his motives, prior record, and the contract he had to work with the police. Applicant testified that the chain of custody as to the drugs was testified to at trial by the officers and the lab technician, but evidence officer, Jack Westmoreland, was unavailable and did not testify. Applicant argued that he should have had the opportunity to confront Mr. Westmoreland as a witness. Additionally, Applicant testified that the BEST bag was never sealed properly once it was recovered from the officer.

Counsel testified that she had made a motion in both cases for information on the CI and reviewed that information prior to the trials. Counsel testified that she thought she sufficiently

cross-examined Mr. Foster about his past record and motivation for testifying. Regarding Mr. Westmoreland, Counsel testified that she found out the day of trial that he was sick and would not be present to testify. Counsel testified that she discussed that with the Applicant and although he did not want to understand how the chain would still be intact without Westmoreland's testimony, he was provided with the information. Counsel acknowledged that she did not make a motion for a continuance based upon his absence. As to the BEST bag, the officer testified at trial that he sealed the bag and the lab technician testified that when he received the bag, it was sealed. Additionally, Counsel testified that she met with the Applicant following the trial and most of his remaining charges were dismissed.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation or meet with him enough are without merit. Following testimony and review of the transcript, it is clear that Counsel had prepared extensively for Applicant's trial. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896

F.2d 815 (4th Cir. 1990). The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or lack of meetings. Accordingly, this allegation is dismissed.

In regards to the Applicant's allegation that Counsel was deficient in her cross-examination of the CI, this Court finds that the Applicant has failed to meet his burden of proof. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. This claim is dismissed.

Regarding Applicant's allegations that Counsel failed to properly object to the introduction of the audio and video tape evidence during trial, this Court finds that this allegation lacks merit. This Court finds that the Applicant has failed to meet his burden of proof as to this claim. It is clear from the record and testimony that Counsel did object to items that were objectionable. This Court finds that the Applicant failed to establish that had Counsel made any additional objections or even a motion for continuance based upon Westmoreland's absence that those objections or motions would have been granted by the trial court. The Applicant has failed to establish that the outcome of his trial would have been different had Counsel made additional

motions or objections. Therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier *supra*. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453

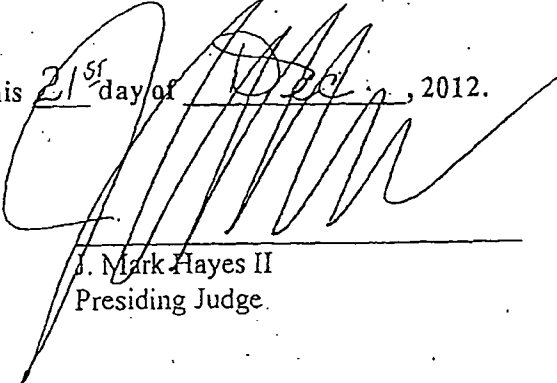
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APPELLATE DIVISION
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PHOTOGRAPHY

(1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g); SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 21st day of Dec, 2012.


J. Mark Hayes II
Presiding Judge.

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M. HOPE (LAWRENCE)

2011CP42-4770

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Frederick Jeter, #233386,

2011-CP-42-4770

Applicant,

vs.

ORDER

State of South Carolina,

Respondent.

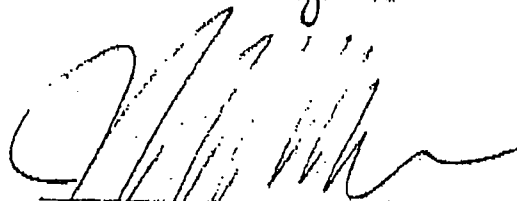
This matter comes before the Court by way of Applicant's *pro se* Motion to Alter or Amend, pursuant to Rule 59(e), SCRCF. The Respondent made its Return to this Motion on February 8, 2013.

This Court finds that the Order of Dismissal, dated December 21, 2012, contains findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 and Rule 52(a) SCRCF. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Furthermore, this Court finds that the Applicant was represented in the post-arrest relief proceedings by Ken Shabel, Esquire, and is now represented in his pending PCR Appeal by the South Carolina Office of Indigent Defense - Appellate Division. Pursuant to Rule 11, SCRCF, and authority of our Supreme Court, every motion of a party represented by an attorney shall be signed and submitted by counsel. See Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002)(stating there is no hybrid representation at trial or on appeal in South Carolina); Koon v. Clare, 338 S.C. 423, 527 S.E.2d 357 (2000)(Same); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998)(Same); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989)(Same); State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977). Therefore, this Court will not consider the *pro se* substantive filings submitted by the Applicant because he is represented by counsel.

This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the Order of Dismissal, which was filed on December 27, 2012, shall stand as it was written.

AND IT IS SO ORDERED this 18th day of February, 2013.


J. Mark Hayes II
Presiding Judge
Seventh Judicial Circuit

Spauldy South Carolina

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SPARTANBURG COUNTY
2013 FEB 20 AM 9:08
M. HOPE BLACKLEY

ORIGINAL

DATE: JAN. 16, 2013

STATE OF South CAROLINA
COUNTY OF SPARTANBURG

FREDERICK JETER #233386
Applicant,

v.

STATE OF South CAROLINA
Respondent,

IN THE COURT OF Common
PLEAS
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-4770

MOTION TO
ALTER / AMEND

THE APPLICANT IN THE ABOVE ENTITLED CASE
RESPECTFULLY REQUEST THAT THIS HONORABLE COURT
TO ALTER / AMEND his JUDGEMENT THAT WAS SIGNED
BY HONORABLE J. MARK HAYES II ON DEC 21, 2012
AND SERVED ON THE APPLICANT ON JAN. 7, 2013.

THIS MATTER CAME BEFORE THE COURT BY WAY
OF AN APPLICATION FOR PCR FILED NOV. 12, 2011
IN THE SPARTANBURG COUNTY COMMON PLEAS COURT.
THIS APPLICANT WAS PRESENT AND WAS REPRESENTED
BY KENNETH SHABEL ESQUIRE.

AT THE HEARING, THE APPLICANT TESTIFIED ON
his own behalf. THE APPLICANT RAISED THE
EXACT ISSUES THAT WERE DOCUMENTED IN
his ORIGINAL APPLICATION FOR POST-CONVICTION.

THE FOLLOWING ISSUES RAISED WERE AS FOLLOWS

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

- ① TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE 15 SECONDS AT THE BEGINNING OF THE AUDIO RECORDING OF THE PHONE CALL INCLUDING THE OFFICER'S COMMENT REFERENCING "CRACK". OFFICER BECK PLACED IN THE JURY'S MIND WHILE LISTENING TO THE AUDIO RECORDING THAT THE CI WAS GOING TO CALL AND ORDER UP A QUANTITY OF CRACK (TR. PG. 10 LINES 18-22 / PG. 117 LINES 20-25 & PG. 118 LINES 1-6). OFFICER BECK WAS THE ONLY PERSON THAT MENTIONED CRACK THROUGHOUT THE WHOLE TRIAL. THE TERM "CRACK" WAS NOT MENTIONED BY NO ONE ELSE. IT PREJUDICE ME BY ALLOWING THAT COMMENT TO BE HEARD BY THE JURY (ALSO TR. PG. 11 LINES 1-5).
- ② TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE USE OF AUDIO AND VIDEO. COUNSEL SHOULD HAVE PUT IN A MOTION TO SUPPRESS EVIDENCE DUE TO ILLEGAL WIRETAP AND SURVEILLANCE, ACCORDING TO THE CODE OF LAW OF SOUTH CAROLINA 17-30-65/17-30-70. INDIVIDUALS MUST HAVE COMPLETE TRAINING AND MUST BE INITIATED BY THE CHIEF OF SLED, AFTER REVIEWING, THEN ATT. GENERAL. INDIVIDUALS USING THIS EQUIPMENT MUST BE AUTHORIZED. ANY EVIDENCE DERIVING FROM ILLEGAL WIRETAP AND SURVEILLANCE MUST BE EXCLUDED. THIS IS A STATUTORY VIOLATION AND NO WARRANT FOR AUTHORIZATION OF ELECTRONIC SURVEILLANCE, AND VIOLATES APPLICANT DUE PROCESS AND CONSTITUTIONAL RIGHTS. THEREFORE REQUIREMENTS WERE NOT MET.
- ③ APPLICANT ARGUED ABOUT AN ALLEGATION AT HIS PCR HEARING BUT JUDGE NEVER RULED ON THE ALLEGATION BECAUSE IT WASN'T BROUGHT BACK UP IN APPLICANT'S ORDER OF DISMISSAL. WAS THE FACT THAT APPLICANT WAS NOT PRESENT AT EVERY STAGE OF HIS TRIAL UNDER RULE 16. APPLICANT'S TRIAL ^{PROCEEDED} PROCEEDED WITHOUT HIM BEING IN THE COURT ROOM. APPLICANT DID NOT WAIVE ANY RIGHTS NOT TO BE PRESENT. ^{BY NOT} BEING PRESENT AT ALL STAGES OF MY TRIAL, VIOLATES APPLICANT'S 6TH AMENDMENT CONSTITUTIONAL RIGHTS. APPLICANT HAS THE RIGHT TO BE PRESENT AND CONFRONT MY ACCUSER AT ALL STAGES OF HIS TRIAL (BULLCOMING V. NEW MEXICO LITE AS 131 S.C.T. 2705 (2011)); (TR. PG. 127 LINES 5-11).
- ④ TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO JACK WESTMORELAND NOT TESTIFYING AS STATES WITNESS. COUNSEL SHOULD HAVE MOTIONED FOR A CONTINUANCE BASED UPON HIS ABSENCE, THE STATE HAS FAIL TO ESTABLISH A COMPLETE CHAIN OF CUSTODY. SLIGH V. J. THUSON 2008 SC 364, 342, 58, 2d, 620 (C.T. APP 1986).

CHAIN OF CUSTODY FORM RULE 6(B) WAS NOT FILLED OUT COMPLETELY (CONTROL NUMBER WAS NOT ON CHAIN OF CUSTODY FORM AND NO CERTIFIED SIGNATURE OF CUSTODIAN). THE STATE DID NOT PRODUCE ANY DOCUMENTATION AS TO WHY MR. J. WESTMORELAND COULDN'T TESTIFY. APPLICANT ARGUES THAT HE SHOULD HAVE HAD THE OPPORTUNITY TO CONFRONT HIS ACCUSER TO TESTIFY WHAT WAS IN THE BEST BAG; WAS THE BAG SEALED ETC...

BULLCOMINGS V. NEW MEXICO CITE AS 131 S. CT 2705 (2011). ① IT SHOULDN'T HAVE BEEN A TRIAL WITHOUT JACK WESTMORELAND. ② I HAD A LEGAL RIGHT TO CROSS EXAMINE AND CONFRONT MY ACCUSER, ③ FOR IMPEACHMENT PURPOSES. ③ IT PREJUDICE APPLICANT FROM HAVING A FAIR TRIAL. THEREFORE APPLICANTS DUE PROCESS WAS VIOLATED ALSO 6TH AMENDMENT CONSTITUTIONAL RIGHTS WERE VIOLATED. CHAIN OF CUSTODY HAS BEEN BROKEN. THE OUTCOME WOULD HAVE BEEN DIFFERENT IF COUNSEL WOULD HAVE MOTIONED FOR A CONTINUANCE. CHAIN OF CUSTODY FORM WAS DEFECTIVE.

⑤ TRIAL COUNSEL WAS INEFFECTIVE AND SHOULD HAVE OBJECTED TO THE CI'S TESTIMONY AND CHALLENGED HIS CREDIBILITY AND RELIABILITY BECAUSE ① CI BROKE HIS CONTRACT WITH THE SPARTANBURG SHERIFF'S DEPARTMENT; ② CI IS INVOLVED IN CRIMES OF DISHONESTY (DOCUMENTATION IS IN THE ORIGINAL PCR APPLICATION (AMENDMENT FACTS). THEREFORE CI IS NOT A CREDIBLE OR RELIABLE WITNESS (TR pg. 60 LINES 13-25 pg. 61 LINES 1-9). ADDITIONALLY, APPLICANT TESTIFIED HEARING ON RECORD THAT THE BEST BAG WAS NEVER SEALED. ONCE IT WAS RECOVERED FROM CI, NOT FROM OFFICER BECK. APPLICANTS PCR ATTORNEY KENNETH SHABEL ENTERED INTO EVIDENCE TRIAL TRANSCRIPT pg. 77 LINES 7-16 ON THE RECORD TO JUDGE MARK HAYES PROVING THE FACT THAT AFTER HE GOT THE ALLEGED DRUGS FROM CI HE DID NOT IMMEDIATELY SEAL THE BAG, OFFICER BECK TOOK THE ALLEGED DRUG BACK TO HIS OFFICE (UNSEALED), WEIGH IT, FIELD TEST IT, AND THEN SEALED IT UP. OFFICER BECK HAD NO PRECAUTION AGAINST TAMPERING. THE VIDEO NEVER SHOW THE ALLEGED DRUGS BEING PUT INTO THE BEST BAG BY THE CI OR OFFICER BECK. EVIDENCE WAS INADMISSIBLE AND COUNSEL SHOULD HAVE MOTION TO HAVE SUCH EVIDENCE EXCLUDED FROM THE JURY FOR LACK OF PROPER IDENTIFICATION.

⑥ TRIAL COUNSEL WAS INEFFECTIVE FOR LACK OF PREPARATION TIME. APPLICANT ARGUES THAT TRIAL COUNSEL'S PERFORMANCE WAS DEFICIENT AND DID NOT VISIT BUT TWICE ON THIS OVER

PARTICULAR CASE. TRIAL COUNSEL TESTIFIED THAT SHE VISITED APPLICANT 6 OR MORE TIMES BUT HAS NO PROOF OR DOCUMENTATION. TRIAL COUNSEL'S TESTIMONY WAS NOT CREDIBLE AND A FEW ISSUES THAT COUNSEL BROUGHT UP WAS IRRELEVANT TO APPLICANT'S PCR ALLEGATIONS, SUCH AS WHEN AND HOW SHE REPRESENTED APPLICANT ON HIS FIRST TRIAL WHICH ENDED UP IN A MISTRIAL. YES, COUNSEL AND APPLICANT DID HAVE A GREAT NUMBER OF DISCUSSIONS REGARDING THE CHARGE OF DISTRIBUTION, IN MY FIRST TRIAL WHICH END UP IN A MISTRIAL AND WHO MIGHT POSSIBLY BE THE "CI" IN MY FIRST TRIAL WHICH ENDED UP IN A MISTRIAL BECAUSE BY THE TIME THE SECOND TRIAL CAME UP, I ALREADY KNEW WHO THE "CI" WAS, FROM MY FIRST TRIAL THAT ENDED IN A MISTRIAL.

⑦ TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT AND CHALLENGE THE STATE FOR USING PHOTO LINE UP SHEET FROM PREVIOUS DISTRIBUTION CASE DATED 6-27-08. (SEE EXHIBIT #2 IN ORIGINAL PCR APPLICATION AMENDMENT FACTS). OFFICER BECK HAD SHOWN THE CI AN OLD PHOTO LINE UP SHEET FROM PREVIOUS DISTRIBUTION CASE THAT HAS MY PICTURE ALREADY CIRCLED AND DATED 6-27-08. OFFICER BECK WAS SHOWN THE CI THAT SAME PHOTO LINE UP BEFORE THE CI EVEN CAME TO GET THE ALLEGED DRUGS WITH MY PICTURE ALREADY CIRCLED AND DATED WHICH IS ILLEGAL AND UNFAIR. TR. pg 81 LINES 13-25 & pg. 82 LINES 1-15. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO AND ALLOWING IN STATES EXHIBIT NO 3. OFFICER BECK PLAINLY STATED THAT HE SHOWN THE CI THE PHOTO LINE UP BEFORE THE OPERATION TOOK PLACE AND HE HAD SEVERAL CHANCES TO CHANGE HIS ANSWER BUT FAIL TO DO SO. BOTTOM LINE, THE PHOTO LINE UP THAT WAS USED IN 6-27-08 CASE SHOULD NOT HAVE BEEN USED IN THE 7-1-08 CASE.

⑧ TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO REASONABLE DOUBT INSTRUCTION. TRIAL COURT WHEN DEFINING REASONABLE DOUBT FOR THE JURY SHOULD GIVE NO FURTHER INSTRUCTION THAN THAT "REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO ACT. THE TRIAL JUDGE CONFUSED THE JURY AND TRIAL COUNSEL SHOULD HAVE OBJECTED (TR. pg. 123 LINES 2-25).

⑨ MY TRIAL COUNSEL SHOULD HAVE IMPEACHED THE CI'S TESTIMONY. BY NOT DOING SO, IT VIOLATED MY DUE PROCESS GUARANTEED UNDER THE 14TH AMENDMENT. AS A RESULT OF MY ATTORNEY NOT DOING SO, IT MADE APPLICANTS ATTORNEY INEFFECTIVE UNDER THE 6TH AMENDMENT. HAD IT BEEN DONE SO, THE OUTCOME OF APPLICANTS TRIAL WOULD HAVE BEEN DIFFERENT. (SEE TR. pg. 62 LINES 21-25)

⑩ APPLICANTS ATTORNEY SHOULD HAVE PUT UP A STRONGER DEFENSE TO THE JURY AND THE COURT. BY APPLICANT'S ATTORNEY NOT DOING SO, IT PREVENTED APPLICANT FROM GETTING A FAIR TRIAL. (SEE TR. pg. 107 LINES 4-7).

2013 JAN 24 AM 10:09
HOPE BEACON
FILED
CLERK OF COURT
JAN 24 2013
CLERK OF COURT

Sum it up

- ① If Applicants Trial Attorney would have objected to the Audio and Video being played in its integrity, The Jury would not have heard the 15 seconds at the beginning of the Audio or the prejudicial part of the Video about the Debriefing between Officer Beck and C.I. Audio was inadmissible and Counsel never explained to Applicant the South Carolina laws regarding the admissibility of this type of evidence, also requirements were not met when using equipment under statute 17-30-65 / 17-30-70
- ② Counsel should have put in a Motion to suppress evidence due to illegal wiretap and surveillance under statute 17-30-65 / 17-30-70. Additionally, this is a statutory violation and requirements were not met and Trial Counsel should have move to dismiss warrants & indictments, because information was obtained illegally. This is a due process and constitutional violation.
- ③ Counsel should have stop the proceedings and Applicant of discussion taken place without Applicant being in the presence of his accusers in the court room. Again, Applicants due process and 6th Amendment rights has been violated.
- ④ Trial Counsel should have Motion for continuance based upon Jack Westmorelands absence. Because Counsel fail to do so Applicants due process and 6th Amendment rights has been violated and there would have not been a trial without Applicants accuser, also Applicants outcome would have been different.
- ⑤ If Trial Counsel would have took more time with me on this

PARTICULAR CASE AND NOT ON THE CASE THAT ENDED IN A MISTRIAL, THE OUTCOME WOULD HAVE BEEN DIFFERENT.

⑥ COUNSEL SHOULD HAVE MOTIONED TO THE COURT THAT THE CI'S CREDIBILITY AND RELIABILITY WAS NO GOOD, BECAUSE CI HAS BROKEN HIS SIGNED CONTRACT WITH THE SPARTANBURG COUNTY SHERIFF'S DEPARTMENT. CI HAS BROKEN ALL THE RULES DEALING WITH CREDIBILITY AND RELIABILITY. COUNSEL SHOULD HAVE MOTION ALSO FOR EVIDENCE TO BE EXCLUDED BECAUSE BEST BAG WAS NOT SEALED IMMEDIATELY ONCE IT WAS RECOVERED FROM CI OR OFFICER BECK. OFFICER BECK NEVER TOOK ANY PRECAUTION AGAINST TAMPERING. ALSO CI LIED ON THE STAND TO THE JURY AND SAID THAT HE PUT A CIRCLE THE PERSON WHO SOLD HIM THE ALLEGED DRUGS, WHEN IN FACT APPLICANT'S PICTURE WAS ALREADY CIRCLED AND DATED 6-27-08 FROM AN OLD DISTRIBUTION CASE WHICH SHOULDN'T HAVE BEEN USED AS EXHIBIT #3 OR USED IN THE 7-1-08 CASE.

SEE TR. PG. 53 LINES 8-21 / SEE EXHIBIT 2 IN ORIGINAL PCR APPLICATION AMENDMENT FACTS.

⑦ TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT AND CHALLENGE THE STATE FOR USING OLD PHOTO LINE UP SHEET FROM PREVIOUS DISTRIBUTION CASE DATED 6-27-08. THE PHOTO LINE UP SHEET THAT WAS USED IN 6-27-08 CASE SHOULD NOT HAVE BEEN USED IN THE 7-1-08 CASE.

⑧ TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBTAIN TO REASONABLE DOUBT INSTRUCTIONS. TRIAL JUDGE CONFUSED THE JURY AND SHIFTED THE BURDEN OF PROOF TO THE DEFENSE, AND COUNSEL SHOULD HAVE OBJECTED.

⑨ APPLICANT'S TRIAL COUNSEL SHOULD HAVE IMPEACHED THE CI'S TESTIMONY. BY NOT DOING SO APPLICANT 6TH 14 AMENDMENTS HAS BEEN VIOLATED, ALSO DUE PROCESS.

⑩ APPLICANT'S ATTORNEY SHOULD HAVE AND COULD HAVE PUT UP A MUCH STRONG DEFENSE TO THE JURY AND THE COURT. BY APPLICANT'S ATTORNEY NOT DOING SO, PREVENTED APPLICANT FROM GETTING A FAIR TRIAL. I TRULY BELIEVE THAT THE DIRECT VERDICT WOULD HAVE BEEN "NOT GUILTY" IF APPLICANT'S ATTORNEY WOULD HAVE PUT UP A STRONGER DEFENSE.

CONCLUSION

- BASED ON ALL THE FOREGOING, THE APPLICANT FIND AND CONCLUDES THAT COUNSEL'S PERFORMANCE WAS DEFICIENT AND ALLEGATION DOES HAVE MERIT. THEREFORE APPLICATION FOR POST CONVICTION RELIEF MUST BE GRANTED.

SOME OF THE EXACT SAME ISSUES WERE RAISED IN THE HEARING BY THE APPLICANT. IF NOT ALL THE ISSUES WERE RAISED THEY ARE APART OF APPLICANTS ORIGINAL PCR APPLICATION AND THIS MOTION TO ALTER / AMEND. THE ORDER DOES NOT STATE THE FINDINGS OF FACTS AND CONCLUSIONS OF LAW TO EACH AND EVERY ALLEGATION THAT THE APPLICANT RAISED.

THE APPLICANT DO NOT WANT TO WAIVE ANY ISSUES IN THIS PROCEEDING. THE APPLICANT HAS TRIED TO NOTIFY HIS APPOINTED COUNSEL TO INFORM HIM THAT THERE WERE ISSUES THAT WERE NOT RAISED AND ADDRESSED BY THIS HONORABLE COURT.

BASED ON THE FOREGOING, THE APPLICANT RESPECTFULLY REQUEST THIS HONORABLE COURT TO ALTER / AMEND HIS JUDGEMENT SO THAT THE APPLICANT WOULD NOT BE CAUGHT IN A TRAP TRYING TO RE-RAISE THE ISSUES IN A SUCCESSIVE PCR APPLICATION, SEE PRUITT V. STATE, 423 S.E.2d 127

I AM THANKING YOU FOR YOUR HELP AND COOPERATION IN THIS MATTER.

DATE: JAN. 16, 2013

S/ Frederick Jeter
FREDERICK JETER

FILED
CLERK OF COURT
HARRISBURG COUNTY
2013 JAN 24 AM 9:31
HOPE BLACKLEY

DATE: JAN. 16, 2013STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURGIN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUITFREDERICK JETER #233386
Applicant,
v.

2011-CP-42-4770

STATE OF SOUTH CAROLINA
Respondent,PROOF OF SERVICE

I FREDERICK JETER #233386, CERTIFY THAT I HAVE SERVED THE RESPONDENTS WITH A COPY OF MY 59(E) MOTION BY PLACING A COPY OF THE SAME IN THE PERRY CORRECTIONAL INSTITUTION MAILROOM HANDS FOR MAILING, POSTAGE, PREPAID. THE RESPONDENTS COPY WERE ADDRESSED AS FOLLOWS:

SPARTANBURG COUNTY, CLERK OF COURT
MS. HOPE BLACKLEY (CLERK)
P.O. BOX 3483
SPARTANBURG, SC. 29304-3483

SC. ATTORNEY GENERAL
ALAN WILSON
P.O. BOX 11549
COLUMBIA, S.C. 29211

KENNETH P. SHABEL, ESQ.
CAMPBELL & SHABEL, LLC
P.O. BOX 1793
SPARTANBURG, SC. 29304

HONORABLE MARK HAYES II, J.
% MS HOPE BLACKLEY - CLERK
P.O. BOX 3483
SPARTANBURG, SC. 29304-3483

I FREDERICK JETER #233386 CERTIFY AND VERIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

s/ Frederick Jeter
FREDERICK JETER

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JAN 24 AM 9:37
M. HOPE BLACKLEY

DATE: JAN. 16, 2013

241

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

FREDERICK JETER #233386
APPLICANT,
v.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-4770

SWORN AFFIDAVIT

I FREDERICK JETER #233386, WENT TO A PCR HEARING THAT WAS HELD ON MY BEHALF ON NOV. 9, 2012, AND I WAS ALSO REPRESENTED BY KENNETH P. SHABEL ESQ. I RAISED SEVERAL ISSUES DURING MY PCR HEARING THAT WERE INADVERTANTLY LEFT OUT OF JUDGE'S FINAL ORDER.

I AM ATTEMPTING TO PRESERVE MY ISSUES THAT WERE RAISED IN MY ORIGINAL PCR APPLICATION, BY FILING A 59(E) MOTION BEFORE MY 20 DAY TIME LIMIT IS DUE.

AS OF THIS DATE, MY ATTORNEY HAS ABANDONED MY CASE BECAUSE I HAVE NO WAY OF CONTACTING HIM BY PHONE AND I AM FORCED TO MAKE A DECISION BY SAYING THAT I DO NOT WANT AN APPEAL RIGHT NOW BECAUSE MY ISSUES ARE NOT YET PRESERVED.

I MAKE THIS DECLARATION UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

S/ Frederick Jeter
FREDERICK JETER

FILED
JAN 24 2013
AM 9:31
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
HOPE BLACKLEY

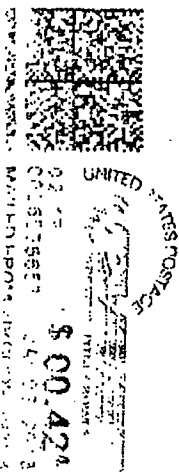
M. HOPE BLACKLEY
 Clerk of Court, Spartanburg County
 Post Office Box 3483
 Spartanburg, South Carolina 29304-3483

RECEIVED
 JAN 17 2018
 JAN 10 2018
 JAN 10 2018

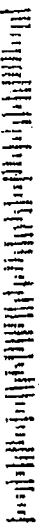
RETURN SERVICE
 REQUESTED

Frederick Jeter # 233386
 Perry Corr. Inst Q-4/B-124 430 Oaklwan Road
 Pelzer, SC 29669

RESORTED
 FIRST CLASS



29669



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Frederick Jeter, #233386,	)	2011-CP-42-4770
	)	
Applicant,	)	
	)	
vs.	)	RETURN TO APPLICANT'S PRO SE
	)	59(e) MOTION
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of the Applicant's *pro se* Motion pursuant to Rule 59(e), SCRCF, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Respondent submits that the Order of Dismissal of the Honorable J. Mark Hayes II, dated December 21, 2012, contains the findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003), and Rule 52(a) SCRCF. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Additionally, Applicant was represented in the post-conviction relief proceedings by Ken Shabel, Esquire, and now in his pending PCR Appeal by the South Carolina Office of Indigent Defense – Appellate Division. Pursuant to Rule 11, SCRCF, and authority of our Supreme Court, every motion of a party represented by an attorney shall be signed and submitted by counsel. See Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002)(stating there is no hybrid representation at trial or on appeal in South Carolina); Koon v. Clare, 338 S.C. 423, 527 S.E.2d 357 (2000)(Same); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998)(Same); Foster v. State, 298 S.C. 306, 379 S.E.2d 907

(1989)(Same); State v. Sanders, 269S.C. 215, 237 S.E.2d 53 (1977). Respondent submits that this Court should not consider the *pro se* substantive filings submitted by the Applicant because he is represented by counsel.

WHEREFORE, having made Return to the *pro se* Motion, the State requests that the motion be denied.

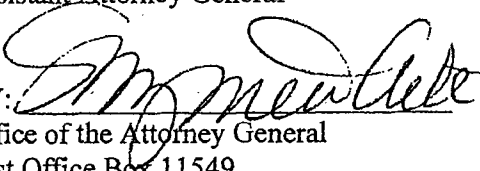
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

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

February 8, 2013

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Frederick Jeter,

) 2011-CP-42-4770

)
)
) Applicant,

)
)
) v.

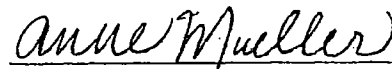
) CERTIFICATE OF SERVICE BY MAIL

)
)
) State of South Carolina,

)
)
) Respondent.
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Kenneth P. Shabel, Esquire
Campbell & Shabel, LLC
P.O. Box 1793
Spartanburg, South Carolina 29306



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 8th day of February, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Frederick Jeter, #233386,	)	2011-CP-42-4770
	)	
Applicant,	)	
	)	
vs.	)	
	)	ORDER
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of Applicant's *pro se* Motion to Alter or Amend, pursuant to Rule 59(e), SCRCPP. The Respondent made its Return to this Motion on February 8, 2013.

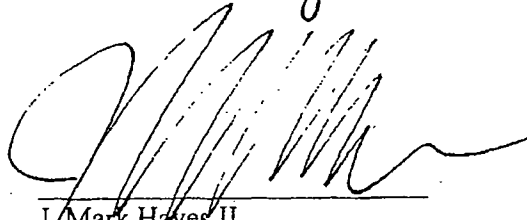
This Court finds that the Order of Dismissal, dated December 21, 2012, contains the findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 and Rule 52(a) SCRCPP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Furthermore, this Court finds that the Applicant was represented in the post-conviction relief proceedings by Ken Shabel, Esquire, and is now represented in his pending PCR Appeal by the South Carolina Office of Indigent Defense – Appellate Division. Pursuant to Rule 11, SCRCPP, and authority of our Supreme Court, every motion of a party represented by an attorney shall be signed and submitted by counsel. See Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002)(stating there is no hybrid representation at trial or on appeal in South Carolina); Koon v. Clare, 338 S.C. 423, 527 S.E.2d 357 (2000)(Same); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998)(Same); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989)(Same); State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977). Therefore, this Court will not consider the *pro se* substantive filings submitted by the Applicant because he is represented by counsel.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB 20 AM 9:08
M. HOPE BLACKLEY

This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the Order of Dismissal, which was filed on December 27, 2012, shall stand as it was written.

AND IT IS SO ORDERED this 18th day of February, 2013.


J. Mark Hayes II
Presiding Judge
Seventh Judicial Circuit

Spauldy, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB 20 AM 9:08
M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

February 22, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

CASE # 2011CP424750

Applicant

CERTIFICATE OF SERVICE

VS
Respondent

I certify that, on this date, I served a copy of the

In this action dated 2-18-2013 on

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Jane Miller
Susan White
Frederick J. Jeter
Kenneth Shabel

2-22-13

(Date)

Carrie Jay

(Signature)

WITNESSES

andy

SPTG CO SHERIFF'S OFFICE

1. SENTENCE MADE

2. REPORTED

3. CARD PULL

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT

8. FINE CARD N

9. TRAFFIC VIOLATION COPY

Computer

M022929

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 10-21-08

VERDICT

50674

Foreperson of Petit Jury

Date:

June 3, 2009

DOCKET NO.

08-GS-42-6758

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 27 2008

TERM

THE STATE

VS.

FREDERICK JETER

Indictment for

DISTRIBUTION OF COCAINE BASE AND/OR
CRACK COCAINE

SC Code: 44-53-375

2008 NOV -3 AM 11:38

FILED
CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

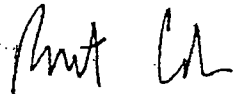
INDICTMENT

At a Court of General Sessions, convened on OCT 24 2008 the
Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF COCAINE BASE AND/OR CRACK COCAINE

That Frederick Jeter did in Spartanburg County on or about July 1, 2008, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Cocaine Base and/or Crack Cocaine, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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



ASSISTANT SOLICITOR