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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

DARRELL GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001625

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE) 2014-GS-21-01453

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

October 19, 2015

DARRELL GREEN,)

Defendant.)

B E F O R E:

Honorable D. Craig Brown
Florence County Courthouse
Florence, South Carolina

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

John Charles Jepertinger, Esquire
Attorney for Plaintiff

J. Leon Parrott, Esquire
Attorney for Defendant

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Circuit Court Reporter

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9	<u>E X H I B I T S</u>		
10	<u>No.</u>	<u>ID</u>	<u>EV</u>
11			
12	(No Exhibits were marked during hearing.)		
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BY THE COURT

3

1 (October 19, 2015 - 10:06 A.M.)

2 MR. JEPERTINGER: If is please the Court, Your Honor.
3 Standing in front of you is Darrell Green on 2014-GS-21-1453.
4 Initially, in the indictment Mr. Green was charged with
5 trafficking in cocaine between 200 to 400 grams, Your Honor.
6 Pursuant to the SLED report, it was 243 grams, Your Honor. He
7 is pleading to a lesser included offense of trafficking in
8 cocaine 28 grams or more but less than 100 grams. Taken as a
9 first offense, Your Honor, for a negotiated sentence of
10 eighteen years. He is represented by -- well, he was
11 represented initially by Stuart Axelrod and Mr. Parrott works
12 with Mr. Axelrod and I've been in communication with both Mr.
13 Axelrod and Mr. Parrott and they represent him in this case,
14 Your Honor.

15 THE COURT: All right. Sir, if you'll raise your right
16 hand to be sworn, please.

17 DARRELL GREEN HAVING BEEN DULY SWORN,
18 TESTIFIES AS FOLLOWS:

19 THE COURT: All right. You can put your hand down. You
20 are Darrell Green?

21 MR. GREEN: Yes, sir.

22 THE COURT: Have you ever been treated for alcohol abuse,
23 drug abuse or mental illness?

24 MR. GREEN: Yes, sir.

25 THE COURT: You have?

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1 MR. GREEN: Yes, sir.

2 THE COURT: What have you been treated for?

3 MR. GREEN: Alcohol and drugs.

4 THE COURT: When was that?

5 MR. GREEN: 2011.

6 THE COURT: Did you complete the program?

7 MR. GREEN: Yes, sir.

8 THE COURT: Does that in any way affect your ability to
9 know and understand what you're doing here today?

10 MR. GREEN: No, sir.

11 THE COURT: Within the last twenty-four hours, have you
12 taken any medication, drugs or alcohol?

13 MR. GREEN: No, sir.

14 THE COURT: Are you aware of any physical, emotional or
15 nervous problem that would prevent you or keep you from
16 understanding what's going on here today?

17 MR. GREEN: No, sir.

18 THE COURT: The State indicates you're pleading guilty to
19 trafficking 28 grams or more but less than 100 grams cocaine;
20 is that correct?

21 MR. GREEN: Yes, sir.

22 THE COURT: You understand it carries a minimum of seven
23 years up to twenty-five?

24 MR. GREEN: Yes, sir.

25 THE COURT: The State has indicated that they've

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1 negotiated a sentence of eighteen years with your lawyer; is
2 that your understanding?

3 MR. GREEN: Yes, sir.

4 THE COURT: And you understand under a negotiated plea I
5 can either accept it or set it aside and let you plead on a
6 different day in front of another judge; you understand that?

7 MR. GREEN: Yes, sir.

8 THE COURT: Is it your desire that accept this
9 negotiation and impose a sentence on you of eighteen years?

10 MR. GREEN: Repeat that, please.

11 THE COURT: Is it your desire that accept this
12 negotiation that your lawyers have worked out on your behalf
13 and sentence you to the eighteen years?

14 MR. GREEN: Not the whole eighteen but I accept it.

15 THE COURT: Sir?

16 MR. GREEN: I said not the whole eighteen but I accept
17 it.

18 THE COURT: I mean, I either got to go with the eighteen
19 or you gonna -- we gonna pick your jury downstairs and we're
20 gonna go to trial. Do you understand that?

21 MR. GREEN: Yes.

22 THE COURT: Do you want me to along with what they've
23 negotiated?

24 MR. GREEN: Yes.

25 THE COURT: All right. You understand that this offense

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1 is considered to be a violent offense as well as a serious
2 offense?

3 MR. GREEN: Yes.

4 THE COURT: Do you understand that?

5 MR. GREEN: Yes.

6 THE COURT: Mr. Parrott, you've explained the
7 consequences to him of pleading to this offense which is a
8 violent offense as well as a serious offense?

9 MR. PARROTT: I have, Your Honor.

10 THE COURT: Satisfied he understands it?

11 MR. PARROTT: I believe that he does.

12 THE COURT: All right. Pretty much count on doing day-
13 for-day on this, you understand that?

14 MR. GREEN: Yes, sir.

15 THE COURT: All right. And you understand this falls
16 under the three-strike rule; do you understand that?

17 MR. GREEN: Yes.

18 THE COURT: You still want to plead guilty?

19 MR. GREEN: Yes.

20 THE COURT: When you plead guilty, Mr. Green, you
21 understand you give up certain important constitutional
22 rights. You have a right to a jury trial. At a jury trial, I
23 would tell the jury that you are presumed innocent, that you
24 are presumed not guilty. The State would be required to prove
25 your guilt beyond a reasonable doubt. You'd have the right to

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1 question any witnesses against you, you'd have a right to
2 remain silent and if you did remain silent, I'd tell the jury
3 they could not hold that against you. You would have the
4 right to present a defense, although you're not required to do
5 so. If you made any incriminating statements, you'd have a
6 right to challenge the admissibility of those statements. Do
7 you understand those rights?

8 MR. GREEN: Yes, sir.

9 THE COURT: Do you understand when you plead guilty, you
10 give up those rights?

11 MR. GREEN: Yes, sir.

12 THE COURT: Understanding your rights and understanding
13 that when you plead guilty you give them up, how do you plead
14 here today guilty or not guilty?

15 MR. GREEN: Guilty.

16 THE COURT: You are represented by Mr. Parrott. Are you
17 satisfied with him?

18 MR. GREEN: Yes.

19 THE COURT: Talked to him enough?

20 MR. GREEN: Yes, sir.

21 THE COURT: Need any more time to talk to him?

22 MR. GREEN: No, sir.

23 THE COURT: Have any complaints about him?

24 MR. GREEN: No, sir.

25 THE COURT: Has anyone promised you anything or held out

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1 any hope of reward to get you to plead guilty here today? Has
2 anyone promised you anything or held out any hope of reward to
3 get you to plead guilty today?

4 MR. GREEN: Yes, sir.

5 THE COURT: Sir?

6 MR. GREEN: Yes, sir.

7 THE COURT: And what is that?

8 MR. GREEN: Time cut.

9 MR. JEPERTINGER: Your Honor, we did say and let's put
10 this on the record, Your Honor, that pursuant to the
11 provisions of 17-25-65, he will be providing, it's my
12 understanding, ongoing information to Trefor Howlett who is
13 here in the courtroom with the South Carolina Law Enforcement
14 Division. If this information pans out, we have agreed to
15 come forward in the future and asking -- moving for a sentence
16 reduction.

17 THE COURT: Is that correct?

18 MR. HOWLETT: Yes, sir. Mr. Green will have the
19 opportunity to testify in some ongoing investigations that
20 weren't concluded prior to his guilty plea today.

21 THE COURT: Now, okay. Thank you. Mr. Green, you
22 understand, and I want to be specific on this with you, okay?

23 MR. GREEN: Yes, sir.

24 THE COURT: Mr. Jepertinger, who is the prosecutor here
25 just said this, if, if it pans out, that under the law, they

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1 will move to get your sentence reduced. It's not a guaranty,
2 you understand that?

3 MR. GREEN: Yes.

4 THE COURT: Okay. Other than what you've told me here,
5 is anybody promised you anything, held out any hope of reward
6 to get you to plead guilty?

7 MR. GREEN: No, sir.

8 THE COURT: Okay. Has anyone used any threats, force,
9 pressure or intimidation to get you to plead?

10 MR. GREEN: No, sir.

11 THE COURT: Has anyone mistreated you in any way, whether
12 it be law enforcement or Solicitor's office?

13 MR. GREEN: No, sir.

14 THE COURT: You've had enough time to make up your mind
15 as to whether or not you want to plead guilty or go to trial?

16 MR. GREEN: Yes.

17 THE COURT: What do you wish to do?

18 MR. GREEN: Guilty.

19 THE COURT: Are you doing so of your own freewill?

20 MR. GREEN: Yes, sir.

21 THE COURT: Have you understand my questions?

22 MR. GREEN: Yes, sir.

23 THE COURT: Mr. Jepertinger?

24 MR. JEPERTINGER: Your Honor, this started off as an
25 ongoing investigation and I have Trefor Howlett with the South

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1 Carolina Law Enforcement Division who will kind of give you a
2 little bit of the context and then I will get to the specifics
3 of the traffic stop here in Florence County that led to the
4 seizure of the drugs in this case.

5 If you can just tell the Judge a little bit about the
6 background of the case dealing with Mr. Green.

7 MR. HOWLETT: We received information from a confidential
8 informant, a SLED confidential informant that Mr. Green was
9 selling crack cocaine in the Loris to Aynor area of Horry
10 County. We did approximately five controlled crack cocaine
11 buys from Mr. Green and during that investigation we applied
12 for and obtained a GPS tracker order to install a GPS on his
13 vehicle. While monitoring that GPS, we tracked the vehicle of
14 Mr. Green to an area in Holly Hill, South Carolina where a
15 subject of another SLED investigation lived that led us to
16 believe that Mr. Green purchased -- was purchasing cocaine
17 from this group in Holly Hill. When the tracker and vehicle
18 left Holly Hill, we notified the Florence County Sheriff's
19 office and provided them with a description of the vehicle,
20 where it was at on Interstate 95 as it traveled through
21 Florence County.

22 MR. JEPERTINGER: And what happened, you have Deputy
23 Shane Keith of the Florence County Sheriff's office did see
24 that vehicle. The vehicle was exceeding the posted speed
25 limit at the time. It was also hitting the white line. The

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1 officer made a stop and eventually -- during the stop there
2 were several indicators that there was criminal activity
3 afoot. The Defendant was very, very nervous. He stated that
4 he'd been stopped earlier, which I think was true, he had been
5 stopped somewhere on I26 because the officer here noticed that
6 there was a strong odor of marijuana about his person and he
7 was very nervous. And like I said, just several indicators
8 that there was something going on. At that point, Deputy
9 Keith began to read him his Miranda warnings. As soon as he
10 started the Miranda warnings, this gentleman started running
11 down I95 in the middle of -- there was no traffic coming at
12 that point but he was going straight down I95. They had to
13 catch him. And the they would've been Austin Spell (spelled
14 phonetically) and Shane Keith. The brought him back around
15 the vehicle, set him between his vehicle and I think it was
16 Austin Spell asked him, man, why were you running? And he
17 said because I have a bunch of drugs in the car and I think he
18 told them that he may've purchased -- or I'm not sure about
19 that, whether -- he didn't say that but he said there were
20 drugs in the car. And obviously, that led to a further
21 search of the vehicle and they found what ultimately turned
22 out to be 243 grams of cocaine. They had initially listed it
23 at 207 but according to -- report at SLED, it was 243 grams,
24 which equals about a half or maybe slightly more than a half a
25 pound of cocaine.

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1 That's pretty much the case.

2 MR. HOWLETT: Yes, sir.

3 MR. JEPERTINGER: He still has pending charges in Horry
4 County, I think, out of your initial investigation; is that
5 correct?

6 MR. HOWLETT: Yes, sir.

7 MR. JEPERTINGER: So, that's where we find ourselves. In
8 terms of criminal history, he's had -- pretty much minor
9 things, simple possession of marijuana, failure to stop for
10 blue light, DUSs, that type of thing, malicious injury to
11 property. He had a resisting arrest. He had an assault --
12 assaulting a police officer while resisting arrest charge as
13 well. He did have a prior possession of cocaine back in 2006.
14 And another possession of other controlled substance in 2007
15 but it's mostly blue light and DUSs and malicious injuries
16 that I see here. He had an assault and battery third degree.
17 Then he had a what looks like in 2010 a possession of cocaine
18 second offense, five years suspended upon successful
19 completion of -- and that might be -- is that the Drug Court
20 program?

21 MR. PARROTT: He completed Drug Court successfully.

22 MR. JEPERTINGER: But that's pretty much it, Judge. I
23 don't think -- does any of the other officers have anything to
24 add? Anybody else? Trefor, anything else?

25 MR. HOWLETT: No, sir.

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1 MR. JEPERTINGER: That'll do it. Thank you.

2 THE COURT: All right, Mr. Green. You heard the facts as
3 stated by law enforcement as well as Mr. Jepertinger with the
4 Solicitor's office. Do you agree with those facts?

5 MR. GREEN: Yes.

6 THE COURT: Are you guilty of this charge?

7 MR. GREEN: Yes, sir.

8 THE COURT: How do you plead, guilty or not guilty?

9 MR. GREEN: Guilty.

10 THE COURT: I find that there is a substantial factual
11 basis for this plea, also find Defendant's decision to plead
12 has been entered into freely, voluntarily, knowingly and
13 intelligently and he's had the advice and counsel of an
14 attorney with whom he's indicated he's completely satisfied.
15 I will accept his plea.

16 Be happy to hear from you, Mr. Parrott.

17 MR. PARROTT: Thank you, Your Honor. I just think it is
18 a little bit ironic that I'm standing here. Thirty-one years
19 ago, just a little over thirty-one years ago, my very first
20 day as a lawyer working for Judge Kinon was in this very
21 courtroom. I remember reading those words up there on the
22 wall and they've stuck with me since that time.

23 It's no secret that Mr. Jepertinger or Solicitor
24 Clements, my feelings about this guilty plea, I certainly
25 think that it's, you know, the only option Mr. Green has here

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1 but I'm fairly upset about the amount of the sentence that's
2 been -- gonna be imposed on him. There doesn't seem to be a
3 whole lot of mercy here in that regard and I want to put that
4 on the record because it is -- this thing has made me a little
5 sick to be honest with you, Judge, I've been agonizing about
6 it over the weekend thinking about Darrell Green. He's a dad.
7 He's got four kids. He's got twenty years old, nine years
8 old, five years old and two years old. He's got a two-year-
9 old grandchild. He owns his own business which he's been
10 successful at. You know, he's gonna go away and do eighty-
11 five percent of this eighteen-year sentence and he's gonna
12 miss most of their lives. Now, I realize that he's the one
13 who has put himself in this predicament and he realizes that,
14 too. But none the less, it is a little bit of a tragedy,
15 Judge. He's not a bad guy, Your Honor. I've, I've prosecuted
16 and defended bad guys before and Mr. Green is -- I don't think
17 he's a bad guy, I think he's a guy that made a couple of
18 really bad decisions. He got himself in a predicament where
19 there was not a good thing. He's been very cooperative with
20 law enforcement. He's working with the SLED agents, he's done
21 everything he's asked. And we would ask the Court obviously
22 to go along with the negotiated sentence. But further than
23 that, Your Honor, I'd ask you to consider delaying the
24 imposition of the sentence on him until after the first of the
25 year, give him a chance to be with his children during the

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1 holidays, his grandchild. Give him a chance to close down his
2 business, get his affairs in order before he has to turn
3 himself in because he's going away for quite a long stretch.
4 He wears a monitoring bracelet right now, Your Honor. He's
5 always showed up on time for court either here and he's got
6 some charges pending in Horry County, he shows up there. If I
7 call him, he comes and he's very responsive. I don't think
8 he's -- I can honestly say, Your Honor, I don't think he's a
9 flight risk. I think he's standing here today and, you know,
10 he's standing up and taking his responsibility for these
11 events. But we would just ask you to consider that, Your
12 Honor, and based on the fact that he is a family man and he
13 does run his own business.

14 He's -- he's never served a day in jail for any drug
15 offense at all. He did what most people can't do. Most of
16 the folks that get into Drug Court can't get through it but he
17 managed to do that. Everything else on his record -- you
18 know, certainly it's not a clean record but it's not, you
19 know, that serious of a record in terms of a lot of things.
20 So, we'd ask you to consider that. As an alternative, Judge,
21 if you could -- if could maybe give him some credit for the
22 time that he has been wearing this bracelet, I think he's been
23 wearing it for how many months now?

24 MR. GREEN: About fourteen.

25 THE COURT: About fourteen months. You know, in a sense,

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1 that is kind of like being on house arrest, he can't really go
2 too far with it. We'd ask the Court to consider that as well
3 and consider the other things in mitigation here.

4 I know Mr. Green wants to address the Court and I hope
5 that you'll hear from him and if I have anything further to
6 say after that, Your Honor, I hope you'll hear from me as
7 well.

8 THE COURT: Okay. Thank you, Mr. Parrott.

9 Mr. Green, happy to hear from you, sir.

10 MR. GREEN: Like my lawyer said, Your Honor, I mean, I'm
11 not a bad person. True indeed, I made bad decisions in life
12 and I got to accept the consequences behind those bad
13 decisions. Eighteen years, I feel is -- I mean, that's kind
14 of steep, you know, for the crime and, I mean, but it could be
15 a lot worse and like Mr. Jepertinger said, you know, other
16 people has kids as well, the peoples that I was, you know,
17 dealing or involved with the drugs with and I, you know, to
18 hear it come from somebody else, you know, you think about
19 what they say. You know what I mean? Just out there being
20 involved sometimes you don't look at it from that aspect, you
21 know, but when the words come at you and you hearing them, I
22 mean, you have to accept them for what they are. And it's
23 true, you know, I ruined my life, I ruined others' life. I
24 got a two-year-old. Life is gonna be ruined is as well
25 because he's gonna have to grow up without a father, you know.

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1 And just like I -- I lost my child -- my daddy when I was two.
2 When I was two years old, I lost my father, he got killed in
3 the streets. And I can say and I can't say that could be a
4 impact on some of the decisions that I made, you know, but at
5 the same time, you know, I got to pay the consequences for
6 things I did. I wish you would be a little lenient. I know
7 that you don't have to go with what the Solicitor says but
8 it's negotiated.

9 THE COURT: I do have to -- I either go with what they've
10 negotiated or I don't accept the plea and we go pick a jury.

11 MR. GREEN: I mean, well, I ---

12 THE COURT: You understand that?

13 MR. GREEN: Yes.

14 THE COURT: Okay.

15 MR. GREEN: And I just, you know, wish you would just
16 give me -- I'm gonna be gone for his entire life, my
17 grandchild, my grandson. I just would ask for the holiday
18 with them, that's all I ask, if you will take that into
19 consideration.

20 THE COURT: How much time did he do in jail before he was
21 bonded out?

22 MR. GREEN: Two months.

23 THE COURT: Here in Florence?

24 MR. GREEN: No, sir. I did like three days in Florence
25 and they ship me to Horry County where I got the ankle

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1 bracelet. I never violated my monitor or ankle bracelet.

2 MR. HOWLETT: Your Honor, I ---

3 THE COURT: Give me your name for the record, please,
4 sir.

5 MR. HOWLETT: Trefor Howlett.

6 THE COURT: Okay. Spell your last name for my court
7 reporter, please.

8 MR. HOWLETT: H-O-W-L-E-T-T.

9 THE COURT: Thank you very much.

10 MR. HOWLETT: Yes, sir. We immediately had him
11 transferred from Florence to ---

12 THE COURT: Horry?

13 MR. HOWLETT: --- to Horry. It was logistically, it was
14 a better place to have him housed for the pending
15 investigation and to do interviews.

16 THE COURT: Okay. What's the -- Mr. Green -- stay right
17 there if you will Mr. Howlett, please.

18 Your lawyer and Mr. Jepertinger came to talk with me this
19 morning in my office before we came up here and Mr. Parrott
20 conveyed to me in my office that he wasn't too happy about the
21 very thing he's put on the record here today. All right. And
22 asked me about allowing you to remain out and I told him then
23 that I wasn't giving him an answer in my office as to what I
24 would do in that situation. I certainly heard your lawyer out
25 on that issue.

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1 Let me ask you, Mr. Howlett, what are -- and I think Mr.
2 Jepertinger and Mr. Parrot conveyed to me down in chambers
3 what his pending charges in Horry County are -- is it another
4 trafficking case, did I hear that right, Mr. Jepertinger?

5 MR. JEPERTINGER: Is it trafficking or a distributions?

6 MR. HOWLETT: Trafficking.

7 THE COURT: How many?

8 MR. HOWLETT: Five.

9 THE COURT: Five trafficking charges?

10 MR. HOWLETT: Yes, sir.

11 THE COURT: What are the amounts there? Do you know?

12 MR. HOWLETT: One is 14 to 28.

13 THE COURT: Okay.

14 MR. HOWLETT: And four would be 28 to 100.

15 MR. JEPERTINGER: It'd be 10 to 28.

16 MR. HOWLETT: 10 to 28.

17 MR. JEPERTINGER: Instead of 14.

18 MR. HOWLETT: One was under, yes, sir. I'm sorry. 10 to
19 28.

20 THE COURT: Okay.

21 MR. HOWLETT: They were roughly an ounce and a half
22 increments.

23 THE COURT: Conveyed to the Court a little while ago that
24 you all, pursuant to CI -- SLED CI, you conducted five
25 controlled buys. Is that what you're referring to here?

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20

1 MR. HOWLETT: Yes, sir. Yes, sir. That's what those
2 charges stem from. And then the other pending charges that's
3 from that investigation, we did a search warrant at his
4 residence in ---

5 THE COURT: And you found? What did you find there?

6 MR. HOWLETT: I would have to look back at my computer
7 for the weights but it would -- an additional crack charge, an
8 addition cocaine charge would've been trafficking weight.

9 MR. JEPERTINGER: And he was living in Loris at the time,
10 correct?

11 MR. HOWLETT: Yes, sir.

12 THE COURT: All right. Anything else from the State?

13 MR. JEPERTINGER: No, Judge, the only thing -- under --
14 and I know the lawyer asked if you would consider monitored
15 house arrest, then you can give him credit for the time,
16 whatever time he's done, I guess, if you consider under 24-13-
17 40. I don't know if you'd consider that monitored house
18 arrest and the State wouldn't really wouldn't have problem
19 with it if you did.

20 THE COURT: What was the terms of his bond? Was it just
21 GPS monitoring or was it house arrest?

22 MR. JEPERTINGER: He had -- I don't -- that I can't ---

23 MR. GREEN: GPS monitoring. It was at first house arrest
24 ---

25 THE COURT: For how long?

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1 MR. GREEN: I think I stayed on house arrest probably
2 like two months and then because it was like in slow session
3 of the year, like around this time when I got out and then
4 once my business picked back up, they allowed me to work, you
5 know, during the day, they took me off of the -- they just GPS
6 monitoring. I just couldn't leave the state of South
7 Carolina. But if you will consider -- if you will consider
8 allowing me to go home, I mean, you know, I wouldn't mind --
9 house arrest would be -- I would be cool with house arrest
10 just to be able to ---

11 THE COURT: How long were you in Horry County Detention
12 Center before you bonded out? You told me two months?

13 MR. GREEN: Two months, yes, sir.

14 THE COURT: And then when you came out on bond, you were
15 on house arrest for two more months?

16 MR. GREEN: Yes. But they never took the bracelet off.

17 THE COURT: I understand.

18 MR. GREEN: Yes, sir.

19 THE COURT: Mr. Parrott anything further?

20 MR. PARROTT: No, sir, Your Honor.

21 THE COURT: Now, I will say if there's a possibility of
22 coming back and getting his time reduced pursuant to matters
23 that may come to fruition as a result of his cooperation,
24 there are time constraints within that, within that statute
25 that everybody needs to be on the page about -- I mean, this

State v. Green - 2014-GS-21-1453
RULING OF THE COURT

22

1 is something that's been -- that's new -- I say new, it's been
2 within the last two years that they've enacted this statute
3 that allows time to be reduced. But just like the Federal
4 system, there are time constraints on being allowed to have
5 your time cut under that statute. So, I would just remind
6 everybody involved here, because once you get beyond that time
7 limit I think you're out-of-pocket, out-of-pocket.

8 MR. HOWLETT: Yes, sir.

9 THE COURT: Anything else Mr. Parrott?

10 MR. PARROTT: No, sir, Your Honor.

11 THE COURT: Mr. Green, anything further?

12 MR. GREEN: No, sir.

13 RULING OF THE COURT:

14 THE COURT: All right. On indictment 2014-GS-21-1453,
15 the Defendant is committed to the State Department of
16 Corrections for a period of eighteen years, given credit for
17 six months and credit for six months. Taking into
18 consideration a request that he be allowed to remain out, I've
19 thought about that. I've never done that in the past. I'm
20 not gonna start doing that now. He is to be taken into
21 custody immediately.

22 All right.

23 MR. JEPERTINGER: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (ADJOURNED - 11:58 A.M.)

ORIGINAL

State v. Green - 2014-GS-21-1453
CERTIFICATE OF COURT REPORTER

23

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Darrell Green, held in the Court of General Sessions for Florence County, Florence County Courthouse, Florence, South Carolina, on October 19, 2015.

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



Kay H. Richardson

Official Court Reporter

May 4, 2016.

STATE OF SOUTH CAROLINA

County of Florence

In the Court of Common Pleas

2016 CP 21 89

Darrell Green 249354

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

vs.

South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEFCOMM. CR. 402
FLORENCE

2016 MAR 30 PM 1:45

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 it clear to which question any such continued answer refers.

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

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

1. Place of detention Lee County Correctional Inst.
990 Wiscaky Hwy Bishopville SC 29010
2. Name and location of Court which imposed sentence Florence
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2014 A2110200814
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10-19-2015
 - (b) 18 years
 - (c) _____

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?
no

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) not informed by lawyer that I could appeal

(b) guilty plea

(c) _____

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

(a) Violation of Amendment

(b) insufficient representation

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) GPS tracker placed on vehicle without warrant

(b) officer never wrote citation for heavy infraction

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? no

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? no

(d) any other petitions, motions or applications in this or any other Court?
no

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) was not informed of all rights by lawyer
- (b) _____
- (c) _____

16. 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? yes
- (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? _____

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Axerod & Associates
4701 Oleander Dr. Myrtle Beach S.C 29577
- ii. _____
- iii. _____

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

- i. Bond Hearing
- ii. Plea agreement
- iii. _____

18. State clearly the relief you seek in filing this application.

release from prison

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

yes

County of

FLORENCE

VERIFICATION

I, Darrell Green, 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.

Darrell Green

SWORN to and subscribed before me this

24

day of

MARCH2014

Dena Eastudy
Notary Public

(L.S.)

My Commission Expires:

3/3/2024

2016 MAR 30 PM 1:45
CLERK
COUNTY OF FLORENCE

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

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

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

Darrell Green
Applicant

SWORN or affirmed to and subscribed before me this

24

day of

MARCH2014

Dena Eastudy
Notary Public

My Commission Expires

3/3/2024

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELTH JUDICIAL CIRCUIT

Darrell Green, #249354,

2016-CP-21-0801

Applicant,

v.

**RETURN AND PARTIAL MOTION
TO DISMISS**

State of South Carolina,

Respondent.

2016 NOV 21 PM 3:27
FILED
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed March 30, 2016, 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 Florence County Clerk of Court. The Applicant was indicted at the December 2014 term of the Florence County Grand Jury for Trafficking in Cocaine between 200 to 400 grams (2014-GS-21-1453). Stuart M. Axelrod, Esquire, and J. Leon Parrott, Esquire, represented the Applicant. On October 19, 2015, the Applicant pled guilty to a lesser-included offense of Trafficking in Cocaine 28 grams to 100 grams, first offense. Pursuant to a negotiated sentence the Honorable D. Craig Brown sentenced the Applicant to confinement for eighteen years. Applicant did not appeal his plea or sentence.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, the Applicant's SCDC records, the application, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "violation of 4 Amendment (sic)"
 - a. "GPS tracker placed on vehicle without warrant"
 - b. "Officer never wrote citation for hwy (sic) infraction"
2. "insufficient representation"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Applicant alleges infringement of his rights under the Fourth Amendment to the United States Constitution. Respondent submits that this allegation is without merit. "The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975)). Respondent submits that the guilty plea transcript indicates that the plea was knowingly and voluntarily entered, and Applicant has made no claim to the contrary. Therefore, Applicant's allegation should be dismissed.

IV.

Applicant's second allegation is a claim of ineffective assistance of counsel. Respondent contends that Applicant's plea counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, an applicant bears the burden of proving the allegations in his or her

application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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.” Id. at 442, 813 (quoting Strickland v. Washington, 466 U.S. 668 (1984)).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting Strickland, 466 U.S. at 668). Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits that 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. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel and that Applicant's remaining allegations be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

LINDSEY A. McCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

11/17/16, 2016.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2016-CP-21-0801

DARRELL GREEN, 349354,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

FILED
2016 NOV 21 PM 3:27
CLERK OF COURT
JONAS R. SHEARIN
COURT & CLERK
FLORENCE COUNTY, SC

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 **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this 17th day of November, 2016.



Mallory Morris, Legal Assistant
 For Respondent

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

2022 NOV 30 PM 2:42

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

DARRELL GREEN, # 249354,

DOCKET NO.: 2016-CP-21-801

DORIS PAULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC
PETITIONERAMENDED APPLICATION FOR
POST-CONVICTION RELIEF

-VS-

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFIED: A TRUE COPY
Don Pauls O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Petitioner, by and through counsel, submits the following:

1. **Place of Detention:** Turbeville Correctional Institution.
2. **Name and Location of Court Which Imposed Sentence:** Twelfth Circuit Court of General Sessions for Florence County.
3. **Name(s) of Co-Defendant(s):** None.
4. **The Indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:**
 - (a) Indictment Number: 2014-GS-21-1453. Trafficking Cocaine 28g-100g 1st Offense.
5. **The Date upon which sentence was imposed and the terms of the sentence:**
 - (a) Petitioner was sentenced to 18 years on October 19, 2015.
6. **Check whether a finding of guilty was made:**
 - (a) After a plea of guilty x
 - (b) After a plea of not guilty
 - (c) After a plea of nolo contendere
7. **Did you appeal from the judgment of conviction or the imposition of sentence?**
 - (a) No.
8. **If you answered "yes" to (7), list:**
 - (a) Name of each Court to which you appealed: N/A

- (b) The result in each such Court to which you appealed: N/A
- (c) The date of each result: N/A
- (d) If known, citations of any written opinion or orders entered pursuant to such results: N/A

9. If you answered “no” to (7), state your reasons for not so appealing: Petitioner is not aware of any error of law committed by the presiding plea judge and the issues raised herein are properly raised in an Application for Post-Conviction Relief.

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

- (a) Petitioner’s right to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution was violated by Petitioner’s plea counsel when he failed to obtain a copy of the GPS warrant documents.
- (b) Petitioner’s right to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution was violated by Petitioner’s plea counsel when he failed to file a motion to suppress the evidence seized by law enforcement as a result of the GPS warrant.
- (c) Petitioner’s federal and state constitutional rights were violated when the State of South Carolina failed to disclose the GPS warrant documents to Petitioner prior to the entry of his guilty plea in violation of Brady v. Maryland and its progeny. As a result, Petitioner’s guilty plea cannot be knowing and voluntary.

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

- (a) On July 28, 2014, the Fifteenth Circuit Solicitor's Office submitted an Application for Ex Parte Order Authorizing Installation and Use of Mobile Electronic Tracking Device ("Application") which was supported by an Affidavit in Support of Application for Order Authorizing Installation and Use of a GPS Tracking Device ("Affidavit"). The Affidavit was executed by Special Agent Trevor C. Howlett of SLED and The Honorable Larry B. Hyman, Resident Circuit Court Judge of the Fifteenth Judicial Circuit. Likewise, on July 28, 2014, Judge Hyman issued Order Authorizing the Installation and Use of a GPS Tracking Device ("Order"). The Application, Affidavit and Order were all filed under seal. Judge Hyman ordered that "the Affidavit in Support of, Application, and this Order be placed UNDER SEAL until further Order of this Court."

Under oath, Petitioner's former counsel (Jacob Parrott) previously testified that he had not seen the warrant at the time of Petitioner's guilty plea. Likewise, Petitioner avers that he did not see the Application, Affidavit and/or Order prior to pleading guilty. Petitioner avers that he first saw the Application, Affidavit and Order when the same was provided to him during litigation in a federal action. Petitioner avers that the Application, Affidavit and Order relating to the GPS tracker were never filed with any court.

- (b) See subparagraph (a) above.
- (c) See subparagraph (a) above.

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

- (a) **Any petition in State Court under South Carolina Law: Yes.**
- (b) **Any petition in State or Federal Court for habeas corpus or post-convictions relief: Yes.**

(c) Any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) Any other petitions, motions or applications in this or any other Court? No.

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

(a) The specific nature thereof:

i. Application for Post-Conviction Relief.

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

i. Horry County Court of Common Pleas

(c) The disposition thereof:

i. Dismissed.

(d) The date of each such disposition:

i. Order of Dismissal filed May 27, 2020.

(e) If known, the citations of any written opinions or ordered entered pursuant to each such disposition:

i. 2016-CP-26-2171.

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? Yes.

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

(a) Which grounds have been presented:

i. Failure to Move to Suppress in Horry County cases.

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

i. Post-Conviction Relief.

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) Petitioner's Application for Post-Conviction Relief is the first proceeding in which he may allege ineffective assistance of counsel.

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

- (a) Your arraignment and plea? Yes.
- (b) Your trial, if any? N/A
- (c) Your Sentencing? Yes.
- (d) Your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.

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

- (a) The name and address of each attorney who represented you:
 - i. Jacob Parrott, 4701 Oleander Dr., Myrtle Beach, SC 29577
- (b) The proceedings at which each such attorney represented you:
 - i. Plea and Sentencing.

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

- (a) Vacate conviction and sentence and for a new trial to be ordered.

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

- (a) Petitioner is not under any other sentence.

Dated this 28^h day of November, 2022 at Florence, South Carolina.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Bailey', written over a horizontal line.

JOSHUA A. BAILEY
SC Bar No.: 76965
Attorney for the Petitioner

SNOW AND BAILEY LAW FIRM, P.A.
900 West Evans Street (29501)
Post Office Box 555 (29503)
Florence, South Carolina
(P): 843-669-6481
(F): 843-669-4920
(E): jbailey@peedeelawyers.com

State of South Carolina	)	In the Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2016-CP-21-00801
	)	
Darrell Green,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

December 14, 2023
Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

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

Joshua Bailey, Esquire
Attorney for the Applicant

Danielle Dixon, Esquire
Attorney for the Respondent/State

Krystal J. Smith
Official Circuit Court Reporter III

I N D E X

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1	<u>APPLICANT'S EXHIBITS</u>			
2				
3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
4	1	Application/GPS/Order/Affidavit		9
5	2	Letter 1/8/2019		32
6	3	Letter 3/18/2016		32
7	4	Letter 3/18/2016		32
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20	<u>COURT REPORTER LEGEND</u>			
21	dashes	--	intentional or purposeful interruption	
22			or change in thought	
23	ellipses	. . .	trailing off	
24	[ph]		phonetically written	
25	[sic]		written as said	

1 DECEMBER 14, 2022

2 (WHEREUPON, the proceedings began at 9:53 a.m.)

3 THE COURT: All right, ma'am.

4 MS. DIXON: May it please the Court. Danielle Dixon,
5 assistant attorney general for the State of South Carolina.

6 This is the case of Darrell Green v. State, Docket
7 Number 2016-CP-21-801. Mr. Green is currently serving a 12-
8 year sentence. He was indicted in Florence County by the
9 Florence County Grand Jury December of 2014 for trafficking
10 in cocaine, 2 to 4 -- 200 to 400 grams. That's Indictment
11 Number 2014-GS-21-01453.

12 These charges arose from a traffic stop, and law
13 enforcement had actually been investigating him using a CI.
14 They had made in Horry County five controlled crack cocaine
15 purchases using that CI and stopped him for speeding in
16 Florence County. And during the course of that stop, that's
17 where these charges arose.

18 He did plead guilty before the Honorable D. Craig Brown
19 on October 19th, 2015. He was represented by Mr. Parrott,
20 who at the time was with Axelrod and Associates. Solicitor
21 Jepertinger represented the State, and this was a negotiated
22 plea to a lesser-included offense of trafficking, 28 to 100
23 grams, of cocaine.

24 At that time, there was an 18-year sentence. There was
25 as part of the negotiation if he helped the State that he

1 could move for a sentence reduction, and his sentence
2 actually was subsequently reduced to 12 years.

3 He did not file a direct appeal. He timely filed this
4 PCR application March 30th, 2016, alleging Fourth Amendment
5 violations related to a GPS tracker being placed on his
6 vehicle. The State filed a return requesting an evidentiary
7 hearing. He has very recently amended his application, and I
8 will let his counsel state for the record the grounds he's
9 going forward on today.

10 THE COURT: All right, sir. Mr. Bailey?

11 MR. BAILEY: Thank you, Your Honor. May it please the
12 Court.

13 Judge, before I announce the grounds for this morning, I
14 do -- in speaking with Mr. Green, I feel it's necessary to
15 put one issue as a housekeeping matter on the record.

16 THE COURT: Yes, sir.

17 MR. BAILEY: When I was out of law school about 15 years
18 ago, Judge, my first employer was Mr. Axelrod. I worked for
19 him for about three -- three-and-a-half years at the beach.
20 It preceded any type of representation of Mr. Green.
21 However, I did disclose that to Mr. Green, and it's my
22 understanding, whether it is an actual conflict or not, Mr.
23 Green is willing to waive any potential conflict to allow me
24 to represent him and to move forward this morning.

25 THE COURT: Okay. Is that right, Mr. Green?

1 THE APPLICANT: Yes, it is, Your Honor.

2 THE COURT: Is anybody making you do this?

3 THE APPLICANT: No, sir.

4 THE COURT: Is that your decision?

5 THE APPLICANT: Yes, sir.

6 THE COURT: Freely and voluntarily made?

7 THE APPLICANT: Yes, sir.

8 THE COURT: Waiving all conflicts or even --

9 THE APPLICANT: He's been an outstanding --

10 THE COURT: -- appearances of conflict?

11 THE APPLICANT: He's been an outstanding lawyer, man.

12 THE COURT: All right.

13 THE APPLICANT: For free. Hey, that's about 20 grand
14 when you do this much work.

15 THE COURT: There we go. Waived knowingly, voluntarily.

16 MR. BAILEY: Thank you, Your Honor.

17 As it relates to our amended application for post-
18 conviction relief, Your Honor, first, Mr. Green is alleging
19 that his constitutional rights were violated when his
20 attorney, Mr. Parrott, failed to obtain the GPS warrant
21 documents that led to the traffic stop which led to the drug
22 charges and, as a result, Mr. Green's conviction here in
23 Florence County.

24 Number two, Your Honor, that based upon that failure,
25 Mr. Green's attorney, Mr. Parrott, did not file any type of

1 motion to suppress the GPS warrant documents that were
2 obtained by the State.

3 And third, Your Honor, is that Mr. Green's
4 constitutional rights were violated when the State did not
5 disclose to him the GPS warrant documents as required by
6 *Brady v. Maryland*. So we've alleged as our third cause of
7 action a *Brady* violation.

8 THE COURT: Yes, sir.

9 MR. BAILEY: As another housekeeping matter, Your Honor,
10 we have pre-marked Plaintiff's Exhibit Number 1, which is the
11 GPS warrant documents. There are three documents combined in
12 the exhibit. One is the application, number two is the ex
13 parte order and, Your Honor, number three is labeled the
14 affidavit. The State has stipulated to admitting that as the
15 Plaintiff's Exhibit Number 1.

16 There's also a stipulation as to the issue of filing.
17 As the Court will see throughout this hearing, those
18 documents have not been filed with any clerk of court in the
19 state, and the State is going to stipulate that SLED's policy
20 is those documents do not get filed with any clerk of court.

21 THE COURT: Okay, sir. I'm ready.

22 MS. DIXON: Oh, Your Honor, I --

23 THE COURT: I'm sorry.

24 MS. DIXON: -- think I there was one more.

25 Were you going to stipulate that y'all weren't

1 challenging the affidavit --

2 MR. BAILEY: Oh.

3 MS. DIXON: -- and the sufficiency of the affidavit?

4 THE COURT: She can't hear you.

5 THE COURT REPORTER: I can't hear you.

6 MS. DIXON: Okay.

7 MR. BAILEY: And --

8 THE APPLICANT: Well, the material. I don't --

9 THE COURT: Wait, wait, wait, wait, wait. I'm sorry.
10 Let your -- let your lawyer talk first.

11 MR. BAILEY: Judge, the further stipulation that Ms.
12 Dixon informed the Court of is the material contained within
13 these or within Exhibit A, what law enforcement used to get
14 the GPS warrant, we are not challenging that. What will be
15 challenged in this hearing is the State's failure to have
16 these documents and particularly the *ex parte* order filed on
17 record with a clerk of court office.

18 THE COURT: Okay. Is that right, Ms. Dixon?

19 MS. DIXON: So, Your Honor, as we understand it, the
20 sufficiency of the affidavit supporting the warrant in and of
21 itself is not being challenged.

22 THE COURT: That's right.

23 MR. BAILEY: That is correct, Your Honor.

24 THE COURT: That's what I understand. All right.

25 MR. BAILEY: It's just the lack of filing issue.

DARRELL GREEN - DIRECT BY MR. BAILEY

1 (WHEREUPON, Plaintiff's Exhibit Number 1, AKA Exhibit A,
2 GPS warrant documents, was admitted into evidence.)

3 THE COURT: All right, sir. I'm ready.

4 MR. BAILEY: At this time, Your Honor, we'll call Mr.
5 Green to the stand.

6 THE CLERK: Mr. Green, if you'll turn around and place
7 your left hand on the Bible, raise your right hand as much as
8 you can? Do you swear or affirm that the testimony you give
9 will be the truth, the whole truth, and nothing but the
10 truth, so help you God?

11 THE APPLICANT: I do, whether you believe me or not.

12 THE CLERK: I'm sorry. I can't hear you.

13 THE APPLICANT: I said I do, whether you believe me or
14 not.

15 THE CLERK: Thank you, sir. Have a seat.

16 THE COURT: Yes, sir.

17 MR. BAILEY: Thank you, Your Honor.

18 DARRELL GREEN, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BAILEY:

22 Q: Mr. Green, so that the record is clear, will you please
23 state your SCDC ID number, please?

24 A: 249354.

25 Q: Okay. And you are currently incarcerated in the

DARRELL GREEN - DIRECT BY MR. BAILEY

1 Department of Corrections; correct?

2 A: Correct. Turbeville Institution.

3 Q: And you are -- or you have been convicted of

4 trafficking, 28 grams to 100 grams; correct?

5 A: Correct.

6 Q: And you received a sentence of 18 years?

7 A: Correct.

8 Q: After your entry of your guilty plea before the judge

9 back in 2015, have you gone back to have this sentence

10 reduced, sir?

11 A: Yes, I have.

12 Q: And what has it been reduced to?

13 A: Twelve years, Your Honor. I mean, 12 years.

14 Q: Okay. And what is your expected release date from SCDC?

15 A: At this point, it's January 2026.

16 Q: And you understand that the relief you are seeking in

17 this post-conviction action is that you want your conviction

18 vacated, and you will start over as if you were -- never been

19 -- never have been convicted before?

20 A: Correct.

21 Q: And understanding that, you wish to proceed on your

22 application for post-conviction relief, Mr. Green?

23 A: Correct.

24 Q: Now, can you tell the Court who represented you in

25 connection with these Florence County charges or charge?

DARRELL GREEN - DIRECT BY MR. BAILEY

1 A: I hired Axelrod and Associates, and I guess the
2 associate would have been Leon Parrott.

3 Q: Okay. And do you recall how long after you were
4 arrested that you retained the services of Axelrod and
5 Associates?

6 A: I hired Axelrod in October of 2014.

7 Q: And were they the only law firm that provided you
8 representation in your drug case in Florence County?

9 A: Yes, sir.

10 Q: Okay. And did you have any meetings during the
11 representation period with Mr. Axelrod?

12 A: I had two meetings with Mr. Axelrod.

13 Q: Okay. And how about Mr. Parrott? Did you have any
14 meetings with him prior to your guilty plea?

15 A: The second meeting with Mr. Axelrod about a week before
16 court, Mr. Parrott was present.

17 Q: Okay. And was that the first time you met Mr. Parrott?

18 A: Yes, it was, around, I would say, give or take, between
19 October the 1st, October the 7th or 8th of 2015.

20 Q: Okay.

21 A: Uh-huh.

22 Q: And did either Mr. Axelrod or Mr. Parrott sit down with
23 you and review the discoverable material that the State
24 provided them?

25 A: At one point, Mr. Axelrod did early on, like when I

DARRELL GREEN - DIRECT BY MR. BAILEY

1 first hired him. Like the first month of my case, he --
2 like, I got out. When I hired him in October, I got out. He
3 got me a bond, and I got out immediately, like a week after
4 retaining him. And like, a week after that, he called me in
5 his office. He called me to his office and he laid out the
6 files on his desk, and he pretty much told me that the State
7 had all the i's dotted and all their t's crossed, and that he
8 was -- the best thing we could do was just try to find a plea
9 bargain somewhere in between.

10 Q: Okay. And did Mr. Parrott at any time review any
11 discoverable material with you?

12 A: No, sir.

13 Q: The bulk of your case, Mr. Green, involves what we have
14 marked as Exhibit A or Exhibit 1 -- I'm sorry -- which
15 involved the GPS warrant that was obtained by law
16 enforcement. Are you familiar with those documents?

17 A: Yes, I am.

18 Q: Okay. Can you tell the Court how you learned about the
19 existence of those documents?

20 A: Yes. What -- this is --

21 THE APPLICANT: Your Honor, this is -- are you Judge
22 McFaddin?

23 THE COURT: Yes, sir.

24 THE APPLICANT: All right.

25 BY MR. BAILEY?

DARRELL GREEN - DIRECT BY MR. BAILEY

1 A: In 2018, Judge McFaddin ruled for a discovery process in
2 my case, and I had -- at that time, Waller was my attorney in
3 my PCR proceeding, and I was so upset with Waller because we
4 wasn't getting anywhere. I had filed my PCR in 2016, and
5 every time it was time to go to court, it was continuance,
6 continuance, continuance, continuance.

7 So finally, Mr. Waller -- he said he had to start
8 somewhere. He wrote a letter to Mr. Jepertinger, and Mr.
9 Jepertinger responded to him saying that there was -- the
10 tracking device warrant would have been in a state grand
11 investigation, that it was a state grand jury warrant, so on
12 or so forth. So Mr. Waller then petitioned the PCR court for
13 a discovery request, which Mr. McFaddin -- Judge McFaddin
14 granted.

15 THE COURT: All right. Hold on just a minute. Can I
16 talk to y'all outside, please? The lawyers?

17 MR. BAILEY: Yes, Your Honor.

18 (WHEREUPON, the Court and counsel exited the courtroom
19 and there was a pause in the proceedings, after which
20 the proceedings resumed as follows when they returned to
21 the courtroom.)

22 THE COURT: All right, sir, if you want to proceed.

23 MR. BAILEY: Thank you, Your Honor.

24 BY MR. BAILEY:

25 Q: Mr. Green, I believe before we broke my question to you

DARRELL GREEN - DIRECT BY MR. BAILEY

1 was how did you learn about the existence of this Exhibit

2 Number 1 we've got marked, these GPS tracking documents?

3 A: Okay.

4 Q: Can you please explain to the Court how you learned of
5 the existence of those documents?

6 A: All right. After -- to continue on, after -- after the
7 State disregarded the order that Judge McFaddin wrote and
8 six, seven months I'm still waiting and waiting and waiting
9 and I hear no response from the Court, I filed a 1983 civil
10 action in federal court, and the judge in that case -- when I
11 presented my evidence in the preliminary process of the case,
12 the judge seen ground of the trespass, and he seen grounds
13 for the -- I got past summary judgment.

14 So once I got past the summary judgment, he granted me
15 the discovery process. And during the discovery process, on
16 the 31st day, waiting for their response to my request, on
17 the 31st day they sent me a copy of that nonsense that y'all
18 call documents.

19 Q: All right. And so let me make sure we have a clear
20 record on this. Do you remember when you filed your 1983
21 action in federal court?

22 A: Yes, it was August -- between August or September of
23 2018.

24 Q: And so you learning of these GPS tracking device
25 documents --

DARRELL GREEN - DIRECT BY MR. BAILEY

1 A: That's the first time that I seen them. The first time
2 that I learned that there was a tracking device placed on my
3 car was when Axelrod sent me my discovery in prison, and I
4 was reading my discovery in prison and I noticed that the --
5 the trooper in his statement, he stated that he came to my
6 house on the 6th and he placed a tracking device on my car,
7 and then he stated that it went out on the 6th, and he came
8 back on the 7th and he put it back on there again. So that's
9 when I went looking for the order and the discovery and found
10 out that it was not there.

11 Q: Okay. And so to make sure we're clear, you learned of
12 the GPS tracker after the entry of your guilty plea in
13 Florence County?

14 A: Yes, I did.

15 Q: Prior to your guilty plea in Florence County, did either
16 Mr. Axelrod or Mr. Parrot provide you with a copy of those
17 documents?

18 A: No, sir. I never got provided with a copy of those
19 documents from anybody but the attorney from in the civil --
20 in the civil action.

21 Q: Sure. And did they file any motions on your behalf
22 before your guilty plea to obtain a copy of those documents?

23 A: No. No, sir.

24 Q: Now, let's make sure the factual basis for your plea is
25 understood. Were you stopped as a result of the GPS tracking

DARRELL GREEN - DIRECT BY MR. BAILEY

1 device?

2 A: Yes, sir.

3 Q: And when you were stopped, is that when they found the
4 cocaine?

5 A: Yes, sir.

6 Q: So the charge that you were convicted of in Florence
7 County was directly related to that GPS tracking device?

8 A: Yes, sir.

9 Q: Okay.

10 Q: And, Mr. Green, throughout your PCR process, you filing
11 the 1983 action, have you ever seen a copy of these documents
12 having been filed with any clerk of court?

13 A: Not with any clerk of court. No court. Not even a
14 lawyer of mine has ever given me a copy of those documents.

15 Q: Okay. And so you have alleged in your application a
16 *Brady* violation because those documents were never disclosed
17 to your attorney; is that correct?

18 A: Correct. As of eight years until now, it still hasn't
19 been disclosed.

20 Q: Well, we got them in this PCR case; correct? That's
21 what we have marked as --

22 A: Okay.

23 Q: -- Exhibit Number 1?

24 A: Yes, sir.

25 Q: Okay.

DARRELL GREEN - DIRECT BY MR. BAILEY

1 MR BAILEY: And -- and, Your Honor --

2 Q: Well, I guess, Mr. Green, do you have an eye condition

3 that --

4 A: Yes, sir.

5 Q: -- you don't --

6 A: I can't -- I can't see to -- I can't see to read. I

7 lost my eyesight in 2019.

8 Q: Okay. But you understand that those are the documents

9 --

10 A: Yes.

11 Q: -- we marked as Exhibit 1?

12 A: Yes.

13 Q: So you've asked the Court to grant you relief on a *Brady*

14 violation for the State's failure to disclose the GPS

15 documents before your guilty plea?

16 A: Yes, sir.

17 Q: You've also asked the Court to grant you relief based

18 upon Mr. Axelrod and Mr. Parrott from seeking any type of

19 relief from the Court to obtain these documents before your

20 guilty plea; correct?

21 A: Correct. And to further put it, Mr. -- Mr. Parrott

22 himself, you know, he's been a criminal -- a criminal before

23 I -- before Axelrod hired him and after he hired him.

24 There's no way he could have made a sound and just decision

25 in my life if he's not making a sound and just decision in

DARRELL GREEN - DIRECT BY MR. BAILEY

1 his own life.

2 MS. DIXON: I'm going to object to relevance.

3 THE COURT: Sustained.

4 THE APPLICANT: It's --

5 THE COURT: Sustained. Sustained.

6 MR. BAILEY: And we're going to move forward, Mr. Green.

7 BY MR. BAILEY:

8 Q: And the third cause of action, Mr. Green, is that you
9 would have wanted a motion to suppress the GPS warrant
10 tracking device documents filed on your behalf; correct?

11 A: If I'd have known about the tracking device, yes, sir.

12 Q: And do you believe that the *ex parte* order authorizing
13 the GPS tracking device is a valid order?

14 A: No, sir.

15 Q: Is that because it has never been filed with a clerk of
16 court's office?

17 A: Well, throughout my years of -- of -- of studying in my
18 case, you know, I understand that during a procedure like
19 this that you don't file the actual order with the Court
20 because it would -- to protect the integrity of the
21 investigation. I do understand that. And I also understand
22 that the order must be left with the judge for up to three
23 years.

24 But what do have to be filed with the Court is the
25 motion to seal that document, and it should be filed with the

DARRELL GREEN - DIRECT BY MR. BAILEY

1 Court. I should be able to go on any court public record
2 site and see the motion to seal that document. And being
3 that it's not there, that makes me feel that the warrant is
4 not valid, Your Honor.

5 THE COURT: Okay.

6 Q: Is there anything else that you would like to inform the
7 Court on as it relates to these allegations this morning, Mr.
8 Green?

9 A: I'm -- I think we pretty much covered the bases.

10 MR. BAILEY: Well, Mr. Green, if you will, please answer
11 any questions that Ms. Dixon has for you or Judge McFaddin
12 has for you.

13 THE APPLICANT: All right.

14 THE COURT: Ms. Dixon.

15 CROSS-EXAMINATION

16 BY MS. DIXON:

17 Q: Mr. Green, how are you today?

18 A: I'm doing well. And you?

19 Q: Good. And I know your lawyer has discussed this with
20 you, but you do understand the only relief that the judge can
21 give you today is basically a new trial. So you go back and
22 your charges come back. You understand that; correct?

23 A: Correct.

24 Q: And what was your original charge here?

25 A: Trafficking cocaine.

DARRELL GREEN - CROSS BY MS. DIXON

1 Q: How much?

2 A: I don't know. However much they got off me.

3 Q: 2- to 400 grams? Does that sound accurate?

4 A: Well, somewhere in there.

5 Q: Somewhere in there? Did anyone ever tell you the

6 maximum sentence for 2- to 400 grams of cocaine?

7 A: Yes, sir. Yes, ma'am.

8 Q: What is that?

9 A: Third offense, probably facing life.

10 Q: Probably facing life for a third offense?

11 A: Uh-huh.

12 Q: So it would have been your third offense?

13 A: Uh-huh.

14 Q: So you were looking at a potential life sentence, and

15 what did you get instead?

16 A: Twelve years.

17 Q: Twelve years?

18 A: Uh-huh.

19 Q: Twelve years. And when is your release date?

20 A: 2026.

21 Q: Okay. So knowing that if you get relief today, you

22 could potentially go back and be facing a conviction that

23 could carry life --

24 A: Yes.

25 Q: -- you still want to proceed?

DARRELL GREEN - CROSS BY MS. DIXON

1 A: Yes, ma'am.

2 Q: Okay. And you understood going into this that it was a
3 negotiated plea; correct?

4 A: Yes, I did.

5 Q: And you knew what your sentence would be; correct?

6 A: Yes, I did.

7 Q: And what was that sentence at the time of the plea?

8 A: Eighteen years.

9 Q: Eighteen years? And you were actually advised of the
10 sentence at the plea hearing; correct?

11 A: Correct.

12 Q: And I think the judge explained to you the
13 constitutional rights you were waiving, and you said you
14 understood; correct?

15 A: If you would look at my transcript, my first initial
16 answer was no.

17 Q: Okay. But then what did you say after that?

18 A: After further talking with my attorney and the solicitor
19 in a closed conference room, we came to the conclusion that
20 -- you know, that it would help me along the way and that my
21 sentence would be reduced, and then I entered the guilty
22 plea.

23 Q: Well, in terms of the constitutional rights, the judge
24 explained them to you; correct?

25 A: Correct.

DARRELL GREEN - CROSS BY MS. DIXON

1 Q: And you did tell him you understood them; correct?

2 A: Yeah. Correct.

3 Q: And did you also -- you also told the judge you didn't

4 need more time to talk to your lawyer; correct?

5 A: That's correct.

6 Q: Okay. Now, you have testified on your direct that you

7 first learned about the GPS monitor when you were reviewing

8 discovery at the detention center?

9 A: No, after my incarceration?

10 Q: After your incarceration?

11 A: At Lee County.

12 Q: Okay. So you're alleging today that at the time you

13 pled guilty, you had no idea of the existence of this plea

14 tracker or this GPS tracker?

15 A: Correct.

16 Q: Okay. Do you recall the solicitor during that guilty

17 plea setting forth the facts?

18 A: Yes.

19 Q: Do you recall her saying during that investigation --

20 I'm sorry. Do you recall him saying during that

21 investigation we applied for and obtained a GPS tracker to

22 install GPS on his vehicle?

23 A: No, that's not there.

24 Q: That's not there? Can I show you the transcript?

25 A: Yes, you can.

DARRELL GREEN - CROSS BY MS. DIXON

1 MS. DIXON: May I approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 MS. DIXON: It's page 10 of the transcript.

4 THE APPLICANT: You've got to read it to me.

5 BY MS. DIXON:

6 Q: If you will just take a look at --

7 A: I can't see. You have to read it to me.

8 Q: Okay. Would you like me to read it to you or someone
9 else to read it to you?

10 A: I'm pretty sure it's fine.

11 THE COURT: Mr. Bailey, would you like to come up while
12 they do that to see what she's reading to him?

13 MR. BAILEY: Judge, I have a copy of --

14 THE COURT: All right.

15 MR. BAILEY: -- the transcript.

16 MS. DIXON: All right.

17 THE COURT: Okay.

18 BY MS. DIXON:

19 Q: What it says is: "We received information from a
20 confidential informant, a SLED confidential informant, that
21 Mr. Green was selling crack cocaine in the Loris to Aynor
22 area of Horry County. We did approximately five controlled
23 crack cocaine buys from Mr. Green. And during that
24 investigation, we applied for and obtained a GPS tracker
25 order to install GPS on his vehicle."

DARRELL GREEN - CROSS BY MS. DIXON

1 A: Okay.

2 Q: So if that's in the transcript, would you agree that
3 that's what the solicitor said during your plea hearing?

4 A: Well, if it's in the transcript, he had to say it. So
5 it should have been in a part of my discovery as well,
6 shouldn't it have been?

7 Q: Well --

8 A: I mean, it's in the transcript. So it should have been
9 part of the discovery; correct?

10 THE COURT: Mr. Green, the question right now, though,
11 is --

12 THE APPLICANT: I answered it.

13 THE COURT: Hold on, hold on. No, sir.
14 Ask it again. And then --

15 BY MS. DIXON:

16 Q: The question is, if this is in the transcript, would you
17 agree that this is what the solicitor said during your plea
18 hearing?

19 A: If it's there, he had to have.

20 Q: And after the solicitor said that, the judge asked you
21 do you agree with that fact -- with those facts? And your
22 response was what?

23 A: What was my response then?

24 Q: Your response in the transcript was, yes.

25 A: Okay.

DARRELL GREEN - CROSS BY MS. DIXON

1 Q: Are you guilty of this charge? What was your response?

2 A: Yes.

3 Q: Yes, sir.

4 A: I'm guilty of trafficking cocaine.

5 Q: How do you plead? Guilty. Guilty or not guilty? What

6 was your answer?

7 A: Guilty.

8 Q: So at the plea hearing, after the solicitor read into

9 the record that there was the existence of this GPS tracker,

10 you then not only agreed with the facts, but told the Court

11 you were guilty.

12 A: Yeah, I wasn't aware. I didn't hear it. I mean, in my

13 head, you're facing 18, 20 years, 25 years, because the day

14 of my trial, I was -- I was intending to go to trial that

15 day. I pled guilty on the day of my trial, and so it was a

16 lot.

17 Q: It was a big day for you, wasn't it?

18 A: Yeah.

19 Q: It was a lot going on.

20 A: Yeah.

21 Q: I get it.

22 A: Yeah.

23 Q: And, you know, it's your life going to prison; correct?

24 A: Yes. Correct.

25 Q: So you would want to pay close attention to that

DARRELL GREEN - CROSS BY MS. DIXON

1 hearing, wouldn't you?

2 A: Yeah. So when I did get the discovery, when I did get a
3 final chance to get my discovery, the tracking device was not
4 there.

5 Q: But at the day of the plea hearing, this very important
6 day in your life --

7 A: I didn't hear it. I didn't hear it. I didn't hear it.

8 Q: You weren't paying attention when the solicitor was
9 talking?

10 A: I did not hear it.

11 Q: Now, you said during your direct that you were stopped
12 as a result of this GPS tracker. Do you recall that?

13 A: Yes, I did say that.

14 Q: Do you also recall that you were speeding?

15 A: He said I was doing 74 in a 70, a 74 in a 70.

16 Q: And what did you do after you got pulled?

17 A: I ran.

18 Q: You ran. And what did you say after the police caught
19 you?

20 A: That I got drugs in the car. I held -- I was -- I was
21 being accountable for my actions. Uh-huh.

22 Q: And in terms of not being able to see a motion to seal
23 in the public index, how would seeing a motion to seal have
24 changed your decision to plead guilty?

25 A: Well, you have to rephrase that question.

DARRELL GREEN - CROSS BY MS. DIXON

1 Q: Okay. You decided to plead guilty; correct?

2 A: Yes, I did.

3 Q: You're alleging today that if you had known about this
4 GPS tracker, you would not have pled guilty; correct? Is
5 that what you're alleging today?

6 A: Correct.

7 Q: Okay. How would seeing in the public index a motion to
8 seal have changed your thought process?

9 A: Well, not the motion to seal, not seeing it. Well, what
10 would have changed my process is the fact of me learning that
11 the State has convicted me on evidence that they did not turn
12 over to --

13 Q: Well, a motion to seal is not a conviction. You
14 understand that; correct?

15 A: I understand that, but what -- what would have changed
16 -- what changed my mind after the fact of learning that there
17 was a tracking device order.

18 Q: Uh-huh.

19 A: After learning that fact, I totally missed it in court.
20 I swear I did. I totally missed it in court. I did say yes.
21 You read it to me. It was there. So I totally missed it in
22 court. But after learning after -- after, you know, 18
23 years, I have nothing but time on my hands, I'm shooting to
24 the law library every day. I get -- I read my transcript. I
25 see where Officer Hollett [ph] said that he placed a tracking

DARRELL GREEN - CROSS BY MS. DIXON

1 device on my car.

2 That's the first time that I was aware of it, to my
3 knowledge. And once I seen that, I went looking for the
4 tracking device warrant. I went looking for it, and that's
5 why I think it's very important. It's very important that --
6 that -- that I enter these exhibits onto the record as well
7 to me, because it's important to me.

8 I have -- I wrote to the clerk of court asking for a
9 copy of the tracking device warrant. They have no record of
10 it. I wrote to Axelrod and Associates for a tracking -- for
11 a copy of the tracking device warrant. They have no record
12 of it. I wrote to the state grand jury asking because, you
13 know, Jepertinger, the solicitor, the same one that you just
14 said, said that he obtained a tracking device warrant. I --
15 he tells my lawyer, oh, we don't have it. It's in the state
16 grand jury. So I writes to the state grand jury.

17 I have those. I have all the answers to each and every
18 one of their responses to that question right here, and I
19 would love to enter this into my exhibit process.

20 Q: Okay.

21 A: If I can find it, if the Court would allow it, because
22 it's very important. This is a very -- another very
23 important day for me, and I don't want to miss nothing and I
24 don't want to make any mistakes. And that's why I think that
25 it's very important that I get these added.

DARRELL GREEN - CROSS BY MS. DIXON

1 Q: But you would agree that based on the transcript, the
2 solicitor did actually say on the record --

3 A: What solicitor?

4 Q: -- in court --

5 THE COURT: Wait, wait, wait, wait, wait. Hold on. Let
6 her finish, sir.

7 THE APPLICANT: I want to know what solicitor said it.

8 THE COURT: Sir, hold on. Wait. Wait, Mr. Green. Let
9 her finish her question and then you can answer it fully.
10 Okay?

11 THE APPLICANT: Okay.

12 THE COURT: All right. Proceed, ma'am.

13 BY MS. DIXON:

14 Q: You would agree that at the time of your guilty plea, a
15 very important day to you, based on the transcript, the
16 solicitor did, in fact, mention the presence of this GPS
17 tracker?

18 A: Which solicitor? I had two solicitors. I had a
19 solicitor in Horry County. I had a solicitor in Florence.
20 Which?

21 Q: We're talking about the Florence County case --

22 A: Okay.

23 Q: -- today. Would you like to review the transcript
24 again?

25 A: I can't -- I can't see it. I can't see. That's why I

DARRELL GREEN - CROSS BY MS. DIXON

1 asked you, and you said that -- and your question again was

2 that Jepertinger said what now?

3 Q: Would you agree that what's in the transcript is what
4 was said on the day of your hearing?

5 A: Yes.

6 Q: And would you agree that after hearing the facts, you
7 told the Court you agreed with them?

8 A: Correct.

9 Q: Why did you do that if you didn't hear what the facts
10 were?

11 A: Because I knew I was guilty of trafficking cocaine.

12 MS. DIXON: No further questions.

13 THE COURT: Mr. Bailey?

14 MR. BAILEY: Your Honor, I have no additional questions
15 for Mr. Green.

16 THE COURT: All right, sir. Thank you, Mr. Green.

17 THE APPLICANT: And can I add these into the exhibits,
18 Your Honor?

19 THE COURT: You need to talk to your lawyer about that.
20 Did you want to talk to him, Mr. Bailey?

21 MR. BAILEY: I'm sorry?

22 THE COURT: Did you want to talk to him about what he
23 wants to do?

24 MR. BAILEY: Court's indulgence --

25 THE COURT: Yes, sir.

1 MR. BAILEY: -- just a moment, Your Honor.

2 Mr. Green, can I see you back here, please?

3 THE APPLICANT: Yes. I'm not going to get relief here.
4 So I know I'm going to need this in further -- in my -- in my
5 future process in court, and I need that to be a part of my
6 exhibits.

7 (WHEREUPON, there was a pause in the proceedings, after
8 which the proceedings resumed as follows.)

9 MR. BAILEY: Your Honor?

10 THE COURT: Yes, sir.

11 MR. BAILEY: There is a letter from the Office of the
12 Clerk from the State Grand Jury of South Carolina, dated
13 January the 8th, 2019. There is a letter dated March 18th,
14 2016, from the Horry County Clerk of Court. Actually,
15 there's two letters from the Horry County Clerk's Office
16 dated March 18th, 2016. I believe that the State will
17 stipulate to having these admitted --

18 THE COURT: Yes, sir.

19 MR. BAILEY: -- into evidence.

20 THE COURT: Okay.

21 MS. DIXON: I don't have any objection.

22 THE COURT: All right.

23 MS. DIXON: I think we've already stipulated these
24 weren't filed with the clerk of court.

25 THE COURT: We did.

1 MS DIXON: So it seems superfluous, but --

2 THE COURT: I think it'll be all right.

3 (WHEREUPON, Plaintiff's Exhibit Number 2, letter dated
4 1/18/2019, and Plaintiff's Exhibit Number 3, letter
5 dated 3/18/2016, and Plaintiff's Exhibit Number 5,
6 letter dated 3/18/2016, were admitted into evidence.)

7 THE COURT: Anybody else, Mr. Bailey?

8 MR. BAILEY: Nothing on behalf of the applicant, Your
9 Honor.

10 THE COURT: Okay. You may step down, Mr. Green.

11 MR. BAILRY: Judge, I don't know if I told you this, but
12 no more witnesses on behalf of the applicant.

13 THE COURT: Okay. And just --

14 MS. DIXON: The State would call Mr. Leon Parrott. All
15 right, but just -- just for the sake of the record, we broke
16 earlier when Mr. Green mentioned that I had signed an order
17 in this case about discovery. I may have. I don't remember
18 that. That's four years ago, at least. And as far as I
19 know, if I had, it was simply an order on a ruling of
20 discovery and nothing about the merits of that case or
21 anything else. Is that right?

22 MR. BAILEY: That is correct, Your Honor.

23 THE COURT: Okay.

24 MS. DIXON: And, Your Honor, for the record, we did
25 check with the clerk, and I believe they've indicated they

1 don't have any kind of signed order from you in their files.

2 MR. RUSS BARLOW: They -- they actually found -- they
3 found the order to unseal the warrant --

4 THE COURT: Okay.

5 MR. RUSS BARLOW: -- that you signed, Your Honor, and I
6 think she just handed it over to you.

7 THE COURT: She did.

8 MS. DIXON: Okay.

9 THE COURT: Okay. That was the extent of my involvement
10 in any of this. Do you agree, Mr. Bailey?

11 MR. BAILEY: Yes, Your Honor.

12 THE COURT: Do you agree, Mr. Green?

13 THE APPLICANT: Yes, sir.

14 THE COURT: All right. Thank you, all.

15 Has he been sworn?

16 THE CLERK: Do you swear or affirm that the testimony
17 you give will be the truth, the whole truth, and nothing but
18 the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you.

21 THE COURT: And in fact, let me go back to this.

22 Apparently, I granted Mr. Green what he wanted that day in
23 this order.

24 All right. Proceed, ma'am.

25 J. LEON PARROTT, being first

J. LEON PARROTT - DIRECT BY MS. DIXON

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. DIXON:

4 Q: Mr. Parrott, how are you today?

5 A: I'm fine, thank you.

6 Q: And I'll just jump right to it. Do you recall how you
7 began representing Mr. Green?

8 A: I was hired by Stuart Axelrod and Associates in August
9 of 2015, and Mr. Green's case was ongoing at that time and I
10 was brought in to help Stuart out with it.

11 Q: Okay. And did you meet with Mr. Green prior to the
12 plea?

13 A: Yes.

14 Q: Okay. And let's see. Do you remember the evidence the
15 State had against Mr. Green?

16 A: I do.

17 Q: And what was the evidence?

18 A: Well, in the -- in the Florence County case, if that's
19 the one you want me to direct my attention to, because there
20 were sort of two cases that were sort of intertwined and
21 overlapped in terms of the way they were being handled, one
22 in Horry County and one here in Florence.

23 In the Florence County case, they had a substantial
24 amount of cocaine that was found in the trunk. It was crack
25 cocaine, I believe, in the trunk of his vehicle. The

J. LEON PARROTT - DIRECT BY MS. DIXON

1 evidence that was the most damning was the videotape of the
2 traffic stop that they executed and Mr. Green's actions after
3 the traffic stop and the statements that he made that were
4 heard on the -- on the dashcam.

5 Q: And did you review this evidence with Mr. Green?

6 A: I did.

7 Q: Okay. And let's see. Is there anything specific Mr.
8 Green asked you to investigate while you were working with
9 his case?

10 A: No, ma'am.

11 Q: Okay. Did he have any defenses that you were aware of?

12 A: He didn't raise any that he wanted me to pursue on his
13 behalf. I mean, you know, my thoughts were that if we had to
14 go to trial, that keeping the video out was going to be our
15 -- our really only shot at him getting out of this.

16 Q: In terms of the GPS monitor, were you aware that the
17 State had used -- I don't know if it was SLED had used a GPS
18 device on his car?

19 A: I was aware of that. It was in the SLED agent's report
20 where he indicated that they had placed a monitor on the
21 vehicle. I think he was correct in indicating that when the
22 first monitor went on, it didn't work, and I think they had
23 to go back and put a second one on.

24 Q: And did you have any strategy for dealing with that had
25 this proceeded to a trial?

J. LEON PARROTT - DIRECT BY MS. DIXON

1 A: We didn't make a motion pretrial. My plan was if we had
2 to go to trial that we would make a motion after the jury was
3 sworn to try to suppress it. In my estimation, that was
4 going to be a long shot.

5 Q: A long shot?

6 A: Yeah.

7 Q: So did you feel like there were any significant issues
8 with the warrant itself, based on your review?

9 A: I'm sorry. I couldn't hear you.

10 Q: Based on your review, did you feel like there were any
11 significant Fourth Amendment issues with the warrant itself?

12 A: I did not.

13 Q: Okay. And moving on, did you engage in plea
14 negotiations with the State?

15 A: We did. Mr. Axelrod and I together on several different
16 occasions had conversations with Mr. Jepertinger. He -- we
17 also came here to Florence. We met with the solicitor, along
18 with Mr. Jepertinger, in trying to get the best plea option
19 we could for Mr. Green. He was facing a substantial amount
20 of time based on the charges here in Florence, as well as the
21 multitude of charges he had in Horry County.

22 Q: And were you able to get, like, kind of a global plea as
23 to all of the charges in both counties?

24 A: We did. We were able to arrange an agreement where he
25 would plead guilty to a negotiated sentence of 18 years here

J. LEON PARROTT - DIRECT BY MS. DIXON

1 in Florence. He would plead to some of the charges in Horry
2 County and get the same sentence there to run concurrently.

3 Q: Okay. And prior to his plea, did y'all explain to him
4 the constitutional rights he was waiving by pleading guilty?

5 A: Yes.

6 Q: And did he understand what a negotiated sentence was?

7 A: I believe he did, yeah.

8 Q: And did he understand he was getting an 18-year
9 sentence?

10 A: Yes, he did.

11 Q: And ultimately, whose decision was it to plead guilty?

12 A: It was -- it was Mr. Green's decision.

13 Q: And do you -- did you ever have any concerns about his
14 ability to understand your conversations?

15 A: I did not.

16 MS. DIXON: No further --

17 A: He's very smart, a very smart man. He understood.

18 MS. DIXON: Nothing further. Thank you.

19 THE COURT: Mr. Bailey?

20 MR. BAILEY: Thank you, Your Honor. May it please the
21 Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. BAILEY:

25 Q: Mr. Parrott, thank you for being here this morning. The

J. LEON PARROTT - CROSS BY MR. BAILEY

1 first thing that I need to ask you some questions about is
2 dealing with your status as an attorney.

3 A: Okay.

4 Q: Mr. Green and I pulled the records from the Supreme
5 Court about these suspensions and, ultimately, your
6 disbarment that you've received. And in looking at -- in one
7 of your definite suspension orders, it states that --

8 MS. DIXON: I'm going to object to relevance. I think
9 to the extent that any of this has to do with his
10 representation of Mr. Green, it could potentially be
11 relevant, but outside of that, I believe it's not relevant to
12 get into all that.

13 THE COURT: Well, Mr. Bailey, what -- how is it
14 relevant?

15 MR. BAILEY: Well -- and, Your Honor, my questions will
16 get to that, but it deals with alcohol abuse during the time
17 period.

18 MS. DIXON: I don't think that's relevant. Unless he
19 keeps going, I don't think that's relevant. Unless he's got
20 specific allegations that Mr. Green made against him that was
21 the result of all this, I don't think it's relevant.

22 THE COURT: Is there going to be some evidence offered
23 about that aside from cross-examination?

24 MR. BAILEY: Well, Your Honor, it goes to the complete
25 issue of representation. I'm going to be asking Mr. Parrott

J. LEON PARROTT - CROSS BY MR. BAILEY

1 about the lack of motions that were filed on Mr. Green's
2 behalf. I need to know if it was in part because of this.

3 And, Judge, I'm not going into it -- I mean, we're not
4 going to spend hours on this. It's just a handful of
5 questions. I need to get it on the record to ask if it
6 impacted the representation of Mr. Green.

7 THE COURT: All right. Since this is a PCR, I will
8 allow it. On the edge of relevance, shall we say.

9 BY MR. BAILEY:

10 Q: Mr. Parrott, it states in here that you admitted to
11 being a social drinker and went into being an alcoholic in
12 2013; is that correct?

13 A: That's correct.

14 Q: All right. And it further states in here that you moved
15 from Virginia to Myrtle Beach in 2015; is that correct?

16 A: That's right.

17 Q: And before that move, you had received some -- some
18 alcohol treatment in Virginia, I guess?

19 MS. DIXON: I'm going to object. This is all way before
20 his representation of Mr. Green.

21 THE COURT: Yeah. Mr. Bailey, let's bring it a little
22 bit closer to his representation time, if you would, please.

23 BY MR. BAILEY:

24 Q: Do you remember when Mr. Green was arrested?

25 A: I do not. I mean, I -- yeah, I remember. I'd have to

J. LEON PARROTT - CROSS BY MR. BAILEY

1 look at the exact dates of the arrest, but I mean, I don't

2 know that I was employed at that time by Mr. Axelrod.

3 Q: Well -- and what -- when was your first meeting with Mr.
4 Green?

5 A: I'd have to dig through the file and find out. Sometime
6 subsequent to August of 2015.

7 Q: Okay.

8 A: And prior -- and that's when I came to work for Mr.
9 Axelrod.

10 Q: Okay.

11 A: And prior to Mr. Green's plea in October of that same
12 year.

13 Q: Okay. So --

14 MR. BAILEY: Your Honor, if I may?

15 THE COURT: Yes, sir.

16 MR. BAILEY: My questions are at the time period of
17 their firm representing my client.

18 THE COURT: Okay. All right.

19 MR. BAILEY: And all --

20 THE COURT: You know, I have to remind myself, too, that
21 this is -- the issues here are ineffective assistance of
22 counsel. So I think that it would be relevant. Yes, sir.

23 MR. BAILEY: Thank you, Your Honor, and I'll be wrapping
24 it up shortly.

25 THE COURT: Yes, sir.

J. LEON PARROTT - CROSS BY MR. BAILEY

1 BY MR. BAILEY:

2 Q: In this opinion or this order from the Supreme Court,
3 Mr. Parrott, it states that you neglected to participate in
4 AA after you moved to Myrtle Beach?

5 A: That's not -- well, that's true, but I've been an active
6 member of AA since long before that.

7 Q: Oh. Did your alcohol abuse interfere with your work at
8 Axelrod and Associates?

9 A: I was sober when I was working for Mr. Axelrod.

10 Q: All right. And then you became involved with Mr.
11 Green's case while being employed with Axelrod and
12 Associates; correct?

13 A: That's right.

14 Q: And your testimony on direct was that you learned of the
15 GPS tracking documents or the tracking device from the SLED
16 report?

17 A: That's correct.

18 Q: Prior to Mr. Green's plea in Florence County, did you
19 ever obtain a copy of the documents supporting the GPS
20 tracking device?

21 A: I never saw one. No, I don't think there was one in our
22 file.

23 Q: Okay. Did you ever file a motion for it specifically?

24 A: No.

25 Q: Okay. Now, you testified on direct that your strategy

J. LEON PARROTT - CROSS BY MR. BAILEY

1 was to swear the jury if it went to trial?

2 A: Correct.

3 Q: And then file a motion to suppress and attack the GPS
4 warrant?

5 A: Right.

6 Q: What was your strategy going to be if you had never seen
7 the warrant?

8 A: Well, I would have asked for the warrant to be produced
9 at that time.

10 Q: Okay. Do you think -- and how long have you been doing
11 criminal defense work?

12 A: A long time.

13 Q: And -- over 30 years?

14 A: Well, there was a period of time I didn't practice, but
15 I mean, I started my career in 1984 working for a circuit
16 court judge, and I went to work for the Fifteenth Circuit
17 Solicitor's Office, and I was there for just shy of seven
18 years. And then I was in private practice, and I primarily
19 practiced defense -- defense work during that period of time.

20 Q: No question you were experienced in criminal defense
21 representation?

22 A: I have a little bit of experience, yeah.

23 Q: Okay. So when a defendant is charged with a crime, such
24 as Mr. Green, and the GPS tracker device in this case is what
25 led them to him on the day that he was arrested, in your

J. LEON PARROTT - CROSS BY MR. BAILEY

1 opinion, should Mr. Green have access to that information
2 before he pleads guilty?

3 Q: Well, you know, we discussed the GPS tracking device
4 when we watched the video in my office. You know, I -- I
5 just didn't feel like that that was going to be an issue that
6 we were going to win on, and -- but that based on all the
7 other charges he had in Horry County, I felt like our best
8 strategy at that time was to get the best plea deal we could
9 get.

10 Q: And I understand that, but if -- if Mr. Green does not
11 testify at his trial in Florence County, those charges in
12 Horry County are not going to be admissible into evidence;
13 correct?

14 Q: That's right. Yeah.

15 Q: Okay. So you're meeting with Mr. Green in the course of
16 your representation, and your testimony on direct was you
17 didn't think there was a strong Fourth Amendment search
18 issue; correct?

19 A: Yes.

20 Q: But that was the entire basis of his case; correct? If
21 you were to be successful on suppressing the search, all the
22 evidence in the Florence County case would have gone away;
23 correct?

24 A: Not necessarily.

25 Q: What would -- what would have been left standing?

J. LEON PARROTT - CROSS BY MR. BAILEY

1 Because you would agree with me the drugs would be

2 suppressed?

3 A: Well, they pulled him -- they pulled him for speeding.

4 There was an odor of marijuana that emanated from the

5 vehicle, according to what the arresting officer said. They

6 got him back between the cars and they were starting to ask

7 him some questions, and he took off running down I-95 headed

8 north.

9 Q: But --

10 A: They tackled him on the tape, brought him back between

11 the cars. They asked him why he ran. He said because I got

12 a lot of dope in the trunk.

13 Q: But if law enforcement was only present on the day that

14 this all happened because of that GPS warrant --

15 A: I have no way of knowing that, sir, and neither do you.

16 Q: Well, how did they find him?

17 A: He was speeding. They pulled him over for speeding.

18 Q: But doesn't the information in the file support that

19 they tracked him to the location?

20 A: Well, the information in the file supports that, but it

21 doesn't necessarily -- if -- so you're assuming that they

22 wouldn't have stopped him anyway for speeding, even if there

23 hadn't have been a GPS monitor, and the same thing would've

24 have transpired.

25 Q: Doesn't the case material specifically state that

J. LEON PARROTT - CROSS BY MR. BAILEY

1 Florence County was involved because they were assisting
2 another agency in the search for Mr. Green?

3 A: I -- I don't recall specifically, but I think that's
4 probably right.

5 Q: Okay. Which was based upon the GPS tracking device?

6 A: I believe so, yeah.

7 Q: When you were preparing with Mr. Green on his defenses
8 and understanding that you didn't have the actual documents,
9 did you know that they were never filed with any clerk of
10 court office in the state?

11 A: I didn't know that. Huh-uh.

12 Q: Are you aware that there is case law that states that an
13 order is not valid until it is filed?

14 A: I'll have to take your word for that one. I'm not sure.

15 Q: If that is the case, that would have been a defense for
16 Mr. Green; correct?

17 A: Yeah.

18 Q: That could have given you grounds to file your motion to
19 suppress the GPS tracking device; correct?

20 A: I suppose so.

21 Q: But none of those issues were reviewed and covered with
22 Mr. Green?

23 A: I can't hear you, sir.

24 Q: I said none of those issues were covered or reviewed
25 with Mr. Green before his guilty plea?

J. LEON PARROTT - CROSS BY MR. BAILEY

1 A: We talked about the tracking device and the fact that
2 that, you know, probably is what led them to him, but that
3 the speeding part of the charge, you know, is going to be
4 difficult to overcome too.

5 Q: If you were successful on a Fourth Amendment search
6 suppression issue, the video in the case -- in your opinion,
7 would that have been suppressed as well?

8 A: I think it would have. Probably so, yeah.

9 Q: When was the first time you saw the GPS tracking device
10 warrants and documents?

11 A: When I testified at the Horry County hearing a couple of
12 years ago.

13 Q: And I just want to make sure that this is clear. If you
14 didn't have them before Mr. Green pled guilty, Mr. Axelrod
15 wouldn't have had them either; correct?

16 A: I assume so. I don't know, you know.

17 Q: Y'all worked out of the same file, so to speak?

18 A: Right.

19 Q: Okay. In your opinion and based on your experience as a
20 defense attorney, the GPS tracking documents we've submitted
21 here today -- would you consider those to be material to Mr.
22 Green's defense in his case?

23 A: Yes.

24 Q: And had you had those documents, you could have been
25 successful, potentially, on a motion to suppress?

J. LEON PARROTT - CROSS BY MR. BAILEY

1 A: We could have made a motion to suppress.

2 Q: And it could have changed the outcome of the case if you
3 were victorious on your motion to suppress?

4 A: Possibly.

5 Q: And at no point during the representation of Mr. Green
6 did the State provide these documents to you?

7 A: I didn't see them. I mean, you know, there were
8 references to the -- to the actual documents but not the
9 documents themselves.

10 MR. BAILEY: Your Honor, that would be all the questions
11 that I have for Mr. Parrott.

12 THE COURT: Ms. Dixon?

13 MS. DIXON: Just a few quick questions.

14 REDIRECT EXAMINATION

15 BY MS. DIXON:

16 Q: Mr. Green [sic], you testified you were sober while
17 working for Mr. Axelrod; correct?

18 A: I'm sorry?

19 Q: You testified you were sober during the time you worked
20 for Mr. Axelrod; correct?

21 A: That's correct.

22 Q: And were your disciplinary issues in any way related to
23 your representation of Mr. Green?

24 A: No.

25 Q: Okay. And in terms of -- we've made a lot about this

J. LEON PARROTT - REDIRECT BY MS. DIXON

1 warrant, which they've actually not challenged the

2 sufficiency of the affidavit itself, but in terms of that,
3 based on the circumstances surrounding the stop of his
4 vehicle and the way the officers ultimately discovered the
5 drugs, do you think even if we assume that this warrant was
6 somehow defective, which they've already admitted was not
7 defective, do you think the drugs would have actually been
8 suppressed?

9 A: No.

10 Q: And that's based on what?

11 A: Well, I mean, he -- he basically gave them the probable
12 cause to search the vehicle when he said there was drugs in
13 the trunk.

14 Q: And --

15 A: And, you know, his conduct when he ran down the street,
16 you know, ran down 95 trying to get away from them.

17 Q: And in terms of had he chosen to go to trial and you had
18 made this motion to suppress, how likely do you think it
19 would be that it would have been granted?

20 A: I think it would have been unlikely.

21 Q: Unlikely? And you did discuss all this with him prior
22 to his plea?

23 A: We talked about the fact that -- I don't know that we
24 talked specifically about the -- we talked about the fact
25 that his best option was probably going to be to take a plea

J. LEON PARROTT - REDIRECT BY MS. DIXON

1 if -- if we were unsuccessful with keeping evidence out and,
2 you know, they were going to convict him and he was going
3 away for a long time.

4 MS. DIXON: Nothing further.

5 THE COURT: Mr. Bailey?

6 MR. BAILEY: Nothing further, Your Honor.

7 THE COURT: Thanks, Mr. Parrott.

8 THE WITNESS: Thank you.

9 THE COURT: Ms. Dixon, anybody else?

10 MS. DIXON: Nothing further from the State.

11 THE COURT: Okay. May he be excused? Mr. Parrott?

12 MS. DIXON: He may. Thank you.

13 THE WITNESS: See you later.

14 MS. DIXON: Bye.

15 THE COURT: All right. We've got some more today. I
16 don't want to stop to mull over this, so I will get you a
17 ruling soon.

18 MR. BAILEY: Your Honor, may I --

19 THE COURT: Yes, sir.

20 MR. BAILEY: -- place a couple of --

21 THE COURT: Yes, sir.

22 MR. BAILEY: -- matters on the record just for the
23 Court's consideration on --

24 THE COURT: Yes, sir.

25 MR. BAILEY: -- the ruling?

1 THE COURT: Yes, sir.

2 MR. BAILEY: Judge, part of our basis in this case as it
3 relates to the GPS documents to deal with them being unfiled,
4 to this day these documents have never been filed with a
5 clerk's office. And, Judge, I'll be more than happy -- later
6 this afternoon and evening, I can email copies of these two
7 cases to your office and to the Attorney General's Office.

8 But we would ask the Court to take into consideration
9 the matter of *Upchurch v. Upchurch*, which is 367 S.C. 16, a
10 2006 case. And, Judge, that case -- that dealt with the time
11 frame in which a party has to appeal a case, and the Court in
12 that case specifically addressed that an order is not valid
13 until it is signed and filed, which would then trigger the
14 time frame.

15 Additionally, Your Honor, there is *McComb* -- M-c-C-o-m-b
16 -- v. *Conard* -- C-o-n-a-r-d, 394 S.C. 416, Court of Appeals
17 2011 opinion, which, Judge, the preposition for that case is
18 that until an order is written and entered, the trial judge
19 retains discretion to change his mind and amend his ruling.

20 Both of these cases support our argument that orders
21 must be filed in order for them to be valid and enforceable,
22 and in this case the order was not filed.

23 THE COURT: Okay.

24 MR. BAILEY: Would you like me to email those?

25 THE COURT: Yes, if you don't mind, please.

1 MR. BAILEY: I certainly will.

2 THE COURT: Ms. Dixon?

3 MS. DIXON: Judge, I would ask for just time to review
4 those cases.

5 THE COURT: Sure.

6 MS. DIXON: And if necessary, submit a very, very, very
7 brief --

8 THE COURT: Okay.

9 MS. DIXON: -- response to you.

10 THE COURT: That's fine.

11 MS. DIXON: But I will say -- I will note, you know,
12 they are not challenging the sufficiency of this warrant, but
13 given the circumstances underlying this traffic stop, which
14 was that he was speeding, as soon as the police pulled him
15 over, he got out of the car, took off running. When they
16 tackled him on the interstate, he then said I ran because I
17 had drugs in my car.

18 I would submit to the Court that even if this GPS
19 tracker had not been there, they would have found the drugs
20 anyway due to him being stopped for speeding and responding
21 the way he did. So I would submit that whether or not this
22 warrant was valid, which they have not, again, contested the
23 validity of the affidavit supporting the warrant itself, is
24 kind of really a moot point because it would not have led to
25 the suppression of these drugs.

1 And then the final thing I would say is, at the end of
2 the day, this was a guilty plea. The real central question
3 for the Court is whether he voluntarily pled guilty, and we
4 believe based on the evidence presented today that he
5 knowingly pled guilty. He understood what he was doing. He
6 understood the consequences of this plea, which includes
7 waiving your right to assert certain defenses, which was
8 explained to him on the plea record itself.

9 THE COURT: Yes, ma'am.

10 All right. Thank you very much.

11 Mr. Green, I'll let you know.

12 THE APPLICANT: Can I -- can I speak for a minute,
13 please, sir?

14 THE COURT: I'd rather you talk to your lawyer, please.

15 THE APPLICANT: Your Honor --

16 THE COURT: Mr. -- Mr. Green, hold on.

17 MR. BAILEY: Your Honor, if -- if you're willing to
18 allow Mr. Green to make a statement, he would like to do so.

19 THE COURT: Well --

20 THE APPLICANT: All right. Your Honor, in response to
21 what she said about the guilty plea, yes, I did make a guilty
22 plea, but *Gibson v. the State of South Carolina*, 1999, I
23 would like for --

24 MS. DIXON: Your Honor, I'm going to object at this
25 time.

1 THE COURT: Yeah.

2 MS. DIXON: This is kind of leaning into hybrid
3 representation.

4 THE COURT: It is.

5 MS. DIXON: He has a lawyer, and he's starting to talk
6 about what the law says.

7 THE COURT: It is, and the hearing -- the hearing is
8 over. We're not going to open it back up now.

9 Mr. Green, I know you're eager to talk, sir. I'll get
10 your ruling out soon.

11 THE APPLICANT: Thank you, sir.

12 THE COURT: Have a good day.

13 MR. BAILEY: Thank you.

14 (WHEREUPON, the proceedings ended at 11:00 a.m.)
15

16 --- END REQUESTED TRANSCRIPTS ---
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24
25

State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter III for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 53, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 14th day of December, 2022.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

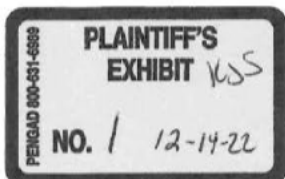
May 5, 2024

IN THE MATTER OF THE APPLICATION	)	
OF THE STATE OF SOUTH CAROLINA	)	
FOR AN ORDER AUTHORIZING THE	)	IN THE CIRCUIT COURT
USE OF AN ELECTRONIC TRACKING AND	)	FOR THE FIFTEENTH
GLOBAL POSITIONING DEVICE ON A	)	JUDICIAL CIRCUIT
2008 Dodge Charger, SC REGISTRATION	)	
[REDACTED]	)	APPLICATION
VIN# [REDACTED]	)	<u>UNDER SEAL</u>

**APPLICATION FOR EX PARTE ORDER AUTHORIZING INSTALLATION
AND USE OF MOBILE ELECTRONIC TRACKING DEVICE**

NOW COMES THE STATE by and through its undersigned representative who would respectfully show unto this Honorable Court the following:

1. The SC Law Enforcement Division (SLED) and the Fifteenth Circuit Drug Enforcement Unit (DEU) are conducting an investigation into a narcotics trafficking organization involving Darrell Green and others both known and unknown to law enforcement. Information obtained through the installation and monitoring of a GPS device on the suspect vehicle is relevant to an ongoing criminal investigation, subject to violations of Title 44, Chapter 53 of the SC Code of Laws, 1976, as amended.
2. Normal surveillance techniques would be insufficient and unlikely to provide any evidentiary value if the suspect(s) named in the corresponding affidavit were aware of surveillance being conducted on them by law enforcement.
3. SLED and/or the DEU are in possession of a GPS device which can be mounted on an automobile (without the driver/owner's knowledge). Furthermore, these devices are placed on the exterior of the Suspect Vehicles without entry into the Suspect Vehicles.
4. This mobile tracking and global positioning device will not invade the driver's privacy, as it simply tracks the public movements of an automobile.
5. That probable cause exists, based on information provided in the attached affidavit of SLED Special Agent Trevor Howlett to believe that the



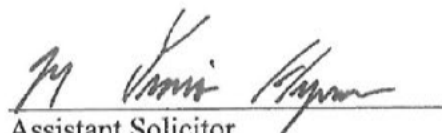
information likely to be obtained from the installation and monitoring of the GPS device is relevant to an ongoing criminal investigation by the SLED and the DEU and is sufficient for the issuance of an Order by the Court to install and use the GPS tracking device.

6. That it will become necessary for law enforcement officers to install, remove, and/or make necessary mechanical adjustments to such GPS devices on the suspect vehicles at any hour of the day or night in a surreptitious manner. In order to do this, it may become necessary for law enforcement to enter private property for the limited purposes of installing, maintaining, repairing, replacing, or removing the GPS device on the suspect vehicles.
7. That it may be necessary to use and monitor the GPS device outside the jurisdiction of the court, yet within the State of South Carolina, as authorized by SC Code 17-30-140 (C).

WHEREFORE, THE STATE PRAYS that pursuant to SC Code 17-30-140, this Court issues its Order Directing the installation, use, and monitoring of mobile tracking and global positioning devices on the suspect vehicles hereafter described as:

- 1) 2008 Dodge Charger, SC REGISTRATION [REDACTED]
VIN# [REDACTED]

Respectfully submitted,


Assistant Solicitor
Fifteenth Circuit Solicitor's Office

July 28th, 2014
Conway, South Carolina

IN THE MATTER OF THE APPLICATION)
 OF THE STATE OF SOUTH CAROLINA)
 FOR AN ORDER AUTHORIZING THE)
 USE OF AN ELECTRONIC TRACKING AND)
 GLOBAL POSITIONING DEVICE ON A)
 2008 Dodge Charger, SC REGISTRATION)
 [REDACTED])
 VIN# [REDACTED])

IN THE CIRCUIT COURT
 FOR THE FIFTEENTH
 JUDICIAL CIRCUIT

EX PARTE ORDER

UNDER SEAL

**ORDER AUTHORIZING THE INSTALLATION AND USE OF A GPS
 TRACKING DEVICE**

This matter appears before me upon affidavit of Special Agent Trevor Howlett of the SC Law Enforcement Division (SLED) and petition of the Fifteenth Circuit Solicitor making a request for a Court Order allowing the use of GPS Tracking Device on a 2008 grey in color Dodge Charger, bearing South Carolina license plate number [REDACTED], registered to Willie Mae King, [REDACTED] Barnhill Road, Galivants Ferry, SC 29544.

The Court, after reviewing the attached application and affidavit, and having SLED Special Agent Trevor C. Howlett, appear before the Court and make under oath the following findings, issue the following order.

- (1) The probable cause exists to believe that Darrell GREEN is involved in the distribution in illegal drugs in Horry County, South Carolina based on information collected from a SLED Confidential Informant (CI) and a subsequent investigation conducted by SLED and the Fifteenth Circuit Drug Enforcement Unit (DEU).
- (2) That the primary mode of transportation for GREEN is a grey in color Dodge Charger bearing SC registration [REDACTED].

- (3) Visual surveillance is impractical, if not impossible, because of counter surveillance measures.
- (4) That the vehicle is rarely left unattended except at GREEN's residence, making it impractical to attach the GPS tracking device on the vehicle anywhere other than GREEN'S residence located at [REDACTED] Highway 66 in the Conway section of Horry County, South Carolina.
- (5) That the GPS tracking device on the vehicle will assist in the investigation of a criminal conspiracy to distribute drugs, specifically crack cocaine, in Horry County and the arrest of Darrell GREEN.
- (6) That the GPS tracking device will not interfere with operation of the vehicle, nor cause damage, and is the least intrusive way to accomplish surveillance.

The Court hereby orders that SLED, its Agents or assigned be allowed to enter the property of [REDACTED] Highway 66, Conway, South Carolina (or any other property accessed to the public within the Fifteenth Judicial Circuit) to install the GPS tracking device on a grey in color Dodge Charger, identified by South Carolina registration [REDACTED].

That this order, along with any information obtained as a result of tracking the vehicle, not be distributed to anyone outside of law enforcement prior to either a proper discovery request, further Court Order, or by law enforcement of further investigation.

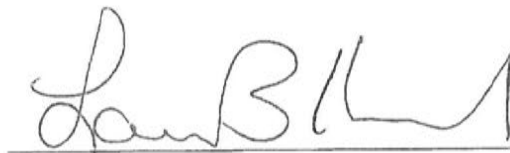
A report containing details of placement of the device, information received from the surveillance and removal of the device will be maintained by the Agent and will be

provided according to any valid request, discovery to any defendant charged as a result of this surveillance.

That the GPS tracking device be installed no longer than 10 days after this Order is signed and shall be monitored for no longer than 30 days after installation and thereafter shall be removed as soon as practical after the expiration of this deadline. The affiant may petition the court with a proper affidavit for an extension up to 30 additional days with given cause shown.

IT IS FURTHER ORDERED that the Affidavit in Support of, Application, and this Order be placed UNDER SEAL until further Order of this Court.

IT IS SO ORDERED.



RESIDING CIRCUIT COURT JUDGE
FIFTEETH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA

JULY 28, 2014 2:00 pm

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)

IN THE CIRCUIT COURT FOR THE

FIFTEENTH JUDICIAL CIRCUIT

RE: CRIMINAL INVESTIGATION)
 2008 Dodge Charger)
 SC REGISTRATION [REDACTED])
 VIN# [REDACTED])

AFFIDAVIT

UNDER SEAL

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER AUTHORIZING
INSTALLATION AND USE OF A GPS TRACKING DEVICE

I, Trevor C. Howlett, first being duly sworn, depose and say as follows:

- 1.) I am a Special Agent with the South Carolina Law Enforcement Division (SLED).

As such, I am a law enforcement officer of the State of South Carolina and am authorized to conduct investigations and enforce laws contained within the South Carolina Code of Laws 1976 as amended.

- 2.) I have been employed as a Special Agent with SLED since February 2013, and have been in law enforcement since September 2000. Since beginning with SLED, I have been assigned to Narcotics Investigations investigating crimes related to the illegal sale, manufacturing, and distribution of controlled substances. Prior to my employment with SLED I have been assigned to full time drug enforcement units since November 2002.

- 3.) I have participated in numerous narcotics trafficking investigations and, as such, I am familiar with the operation of illegal drug trafficking organizations and the methods of distributing illegal drugs.

- 4.) At present, the scope of this investigation encompasses Horry County.
- 5.) I make this affidavit in support of an application for authorization to conduct GPS tracking of a vehicle believed to be used to facilitate drug trafficking in furtherance of offenses involving violations of South Carolina Code of Laws Section 44-53-370 and 44-53-375 (possession with intent to distribute, and distribution of controlled substances, to wit, cocaine) of the trafficking organization involving Darrell GREEN.
- 6.) I make this affidavit based in part on personal knowledge derived from my participation in this investigation and based in part on information provided to me that I believe to be reliable. The sources of my knowledge of information are as follows and are further identified within this affidavit:
 - a.) My experience investigating illegal narcotics trafficking organizations;
 - b.) Oral and written reports about this investigation that I have received from or through other agents and officers;
 - c.) Physical surveillance conducted either by myself or by other agents and officers which has been reported to me;
 - d.) Information from criminal informants deemed to be reliable because their information has been corroborated through surveillance, police reports, or other independent sources of information.
 - e.) Controlled crack cocaine drug buys utilizing a criminal informant deemed to be reliable.

CASE BACKGROUND

- 7.) In April of 2014, Agents of The South Carolina Law Enforcement Division (SLED) and the Fifteenth Circuit Drug Enforcement Unit (DEU) initiated an investigation into a cocaine trafficking organization operating in Horry County, South Carolina spearheaded by Darrell GREEN.
- 8.) During the investigation a SLED confidential informant (CI) provided information that Darrell GREEN was involved in the distribution of crack cocaine in Horry County. The CI admitted to receiving crack cocaine from GREEN and distributing the crack cocaine in Marion County, South Carolina. The CI admitted to receiving crack cocaine from GREEN on at least forty (40) separate occasions.
- 9.) The CI informed agents that the locations he/she met GREEN to purchase crack cocaine would vary and were always determined by GREEN. The CI would contact GREEN via cellular phone when he/she wanted to purchase crack cocaine and provide GREEN with his/her current location. GREEN would then provide the CI with a road name that GREEN wanted the CI to drive on. The CI would then contact GREEN once on the specific road. GREEN would then meet the CI at random places along each particular road and conduct a rapid handoff and drive away making mobile surveillance difficult.
- 10.) On April █, 2014 agents with SLED and the DEU conducted a controlled crack cocaine buy from GREEN utilizing a confidential informant (CI). The CI contacted GREEN via cellular phone and ordered a quantity of crack cocaine. GREEN directed the CI to meet him on a dirt road near █ in █ SC. The CI met GREEN on █ in the █ section of Horry County and

sold the CI approximately one (1) ounce of crack cocaine in exchange for \$1,000.00 in documented state funds.

- 11.) Agents were unable to conduct direct surveillance on [REDACTED], but did observe a grey in color Dodge Charge drive up to where the CI was parked. No other vehicular traffic was on [REDACTED].
- 12.) As the CI left [REDACTED] following the controlled drug buy, surveillance agents were able to observe the vehicle GREEN drove to sell the CI crack cocaine and confirmed it was a grey in color Dodge Charger and observed it to bear SC registration [REDACTED]. A South Carolina Department of Motor Vehicles check revealed the Dodge Charger was registered to Willie Mae King at [REDACTED] Barnhill Road, Galivants Ferry, SC 29575. The CI confirmed to agents that GREEN was driving the Dodge Charge and was the sole occupant.
- 13.) Surveillance agents conducted mobile surveillance of the Dodge Charger following the controlled drug buy and observed it travel to various locations around Conway. Surveillance agents maintained visual surveillance on the Dodge Charger after it left Conway and followed it to a single family home on Highway 66 where it was observed parking behind the residence. The residence was later identified at [REDACTED] Highway 66, which is located in a rural section of Horry County near Conway.
- 14.) On multiple occasions during this investigation agents conducted checks of [REDACTED] Barnhill Road, the registered address for the Dodge Charger bearing SC registration [REDACTED]. The Dodge Charger was never observed parked at [REDACTED] Barnhill Road.
- 15.) Agents also conducted multiple checks of [REDACTED] Highway 66, both day and night, and on more than one occasion observed a grey Dodge Charger parked in the rear of

the residence. The grey Dodge Charger agents observed parked at [REDACTED] Highway 66 appeared to be the same vehicle GREEN drove when he sold the CI a quantity of crack cocaine on April [REDACTED], 2014.

- 16.) On April [REDACTED], 2014 agents with SLED and the DEU conducted a second controlled crack cocaine buy from GREEN utilizing a confidential informant (CI). The CI contacted GREEN via cellular phone and ordered a quantity of crack cocaine. GREEN directed the CI to drive on [REDACTED] near Aynor, SC. The CI traveled [REDACTED] until he/she met GREEN, whom was parked in the grey Dodge Charger on the side of the road. GREEN met with the CI on [REDACTED] in the [REDACTED] section of Horry County and sold the CI approximately one and one quarter (1 ¼) ounce of crack cocaine in exchange for \$1,250.00 in documented state funds. The exchange took place in a matter of seconds and GREEN drove off as surveillance agents approached the buy location. There was no particular address for the buy location. Agents attempted mobile surveillance, but were unable to catch up to GREEN and surveillance was broken.

- 17.) On May [REDACTED], 2014 agents with SLED and the DEU conducted a third controlled crack cocaine buy from GREEN utilizing a confidential informant. The CI contacted GREEN via cellular phone and ordered a quantity of crack cocaine. GREEN again directed the CI to drive on [REDACTED] near [REDACTED], SC. The CI traveled [REDACTED] until he/she passed GREEN whom was again driving the grey Dodge Charger. The CI turned around and followed GREEN on [REDACTED] to the intersection of [REDACTED] in the [REDACTED] section of Horry County. GREEN sold the SC approximately one and one quarter (1 ¼) ounce of crack cocaine in exchange for

\$1,250.00 in documented state funds. Agents utilized both mobile and aerial surveillance to follow GREEN after the controlled crack cocaine buy.

- 18.) Agents were able to determine that GREEN met with the CI in the grey Dodge Charger bearing SC registration [REDACTED]. Surveillance agents conducted mobile surveillance of the Dodge Charger following the controlled drug buy and observed it travel around the [REDACTED] section of Horry County. During the surveillance agents observed GREEN conduct a possible drug transaction at a nearby convenient store and ultimately followed GREEN to [REDACTED] Highway 66, which is located in the Conway section of Horry County. Once at [REDACTED] Highway 66, GREEN parked the Dodge Charge in the rear of the residence.
- 19.) On July 21, 2014 agents with SLED and the DEU conducted mobile surveillance of [REDACTED] Highway 66. During the surveillance agents observed the Dodge Charger parked behind the residence. At some point during the surveillance the Dodge Charger left the area. Approximately two hours later agents observed the Dodge Charger on Highway 66. Agents observed it pass the residence several times never pulling in and also observed it turn down a nearby dirt road where it drove past a surveillance agent. After passing the surveillance agent the Dodge Charger left the area and did not return to [REDACTED] Highway 66 and surveillance was broken.
- 20.) During two controlled crack cocaine buys and multiple surveillances agents were able to track GREEN and a grey Dodge Charger bearing SC registration [REDACTED] to [REDACTED] Highway 66, Conway South Carolina. GREEN always parked the Dodge Charger in the rear of the residence where someone that resided there would park.

Surveillance also showed that GREEN made extensive efforts to not be followed and to not lead law enforcement to [REDACTED] Highway 66.

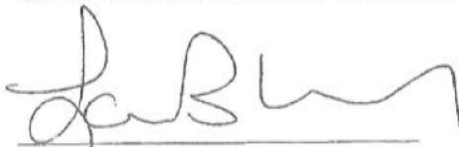
- 21.) It is believed by the affiant that Darrell GREEN is involved in trafficking crack cocaine and that the 2008 Dodge Charger bearing South Carolina registration [REDACTED] VIN# [REDACTED] is GREEN's primary mode of transportation and is used to conduct the general business of trafficking crack cocaine
- 23.) Based on affiant's experience and the experiences of other law enforcement officers which have been conveyed to me, I believe that the utilization of a GPS is an investigative tool that would allow law enforcement to covertly monitor the movements of the suspect vehicle and subsequently gather evidence which would help define and identify other members of this conspiracy.
- 24.) Affiant believes that continued traditional and normal surveillance techniques by law enforcement would be insufficient and unlikely to provide evidentiary value if the above noted suspect(s) were aware of surveillance being conducted on them by law enforcement. Continued efforts by law enforcement to conduct surveillance through normal investigative techniques has a high potential to jeopardize the covert nature of this investigation.
- 25.) SLED and the DEU have a GPS tracking device which can be mounted on an automobile without the driver/owner's knowledge. Furthermore, these devices are placed on the exterior of the suspect vehicle without entry into the suspect vehicle. The GPS will not invade the driver's privacy, as it simply tracks the public movements of the vehicle.
- 26.) Based on affiants knowledge and information conveyed to me by law enforcement

officers familiar with the installation, use, maintenance, and monitoring of the GPS, I know that it may become necessary for law enforcement to install, remove, and/or make necessary mechanical adjustments to the GPS on the suspect vehicle at any hour of the day or night in a surreptitious manner. In order to do this, it may become necessary for law enforcement to enter private property for the limited purpose of installing, maintaining, repairing, replacing or removing the GPS device on the suspect vehicle.

Therefore, it is requested that authorization be granted for a GPS device be installed on the suspect vehicle pursuant to SC Code 17-30-140 in the Fifteenth Judicial Circuit. The use of information gathered through the use of the GPS device will be used to track the movement of the suspect vehicle and identify other co-conspirator's and locations involved with this investigation while the suspect vehicle is within South Carolina. It is further requested that law enforcement agents are allowed to enter onto the property located at [REDACTED] Highway 66, Conway, South Carolina, GREEN's place of residence, or any public property location in which the vehicle is viewed, in order to place a GPS tracking device onto the 2008 Dodge Charger, with South Carolina registration [REDACTED] VIN # [REDACTED]

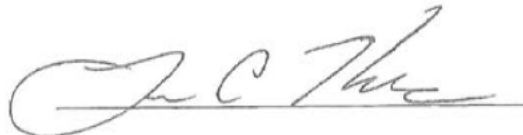
I certify and swear the above to be true and correct to the best of my knowledge.

Sworn to and subscribed before me this 28 day of ^{July} ~~March~~, 2014. 200pm



Residing Circuit Court Judge

Fifteenth Judicial Circuit



Special Agent Trevor C. Howlett

South Carolina Law Enforcement Division

State Grand Jury of South Carolina



JAMES R. PARKS
CLERK OF COURT

Office of the Clerk

1000 Assembly Street
Rembert Dennis Building
Suite 519
Columbia, South Carolina 29201

POST OFFICE BOX 11508
COLUMBIA, SC 29211-1508
TELEPHONE: 803-734-0497
FAX: 803-734-0513

January 8, 2019

Darrell Green, #249354
Lee Correctional Institution
F4B2243
990 Wisacky Hwy
Bishopville SC 29010

We have received your inquiry:

☐ A copy of all enclosed has been forwarded to: ☐ Your Attorney ☐ Public Defender's Office

☐ For matters concerning PCR's, please contact the Office of the Attorney General, PCR Division, P.O. Box 11549, Columbia, S.C. 29211.

☐ SCDC calculates credit for time served. Please contact your classification caseworker at your institution for assistance.

☐ We need more information:

☐ Case Number ☐ Charge ☐ SSN ☐ Court Location ☐ Date of Arrest

☐ This office does not provide Legal Advice or Legal Forms.

☐ Please speak with your attorney regarding your request.

☒ **There is no record of the Indictments you referenced.**

☐ Please find a copy of your sentencing sheets enclosed.





CLERK OF COURT



MELANIE HUGGINS-WARD

CLERK OF COURT

1301 2ND AVENUE

CONWAY, SC 29526

(843) 915-5080 • Fax: (843) 915-6081

March 18, 2016

Darrell Green #249354
F4 2126
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Copies

Dear Mr. Green,

This is in response to your letter regarding the above reference.

This office does not have the evidence that you want copies of, you will need to contact the Solicitor's office.

There is a fee of \$.50 per copy with \$1.00 extra for certification if required for a copy of your indictment. If you are indigent, the facility there may have a form which would show you do not have any funds and if so, please forward this to us.

Sincerely,

Melanie Huggins-Ward

Melanie Huggins-Ward
Horry County Clerk of Court

Judge - 2152



CLERK OF COURT



Committed to Excellence

MELANIE HUGGINS-WARD

CLERK OF COURT

1301 2ND AVENUE

CONWAY, SC 29526

(843) 915-6080 • Fax: (843) 915-6081

March 18, 2016

Darrell Green #249354
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Re: Copies

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if so, please forward this to us.

Sincerely,

Melanie Huggins-Ward

Melanie Huggins-Ward
Horry County Clerk of Court

Judgeade - 2152

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

2024 AUG 26 PM 2:52
IN THE COURT OF COMMON PLEAS
OF THE TWELFTH JUDICIAL CIRCUIT

Darrell Green, #249354,

Case No.: 2016-CP-21-801

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

RECEIVED

SEP 25 2024

S.C. SUPREME COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Darrell Green. (Applicant) on March 30, 2016. On December 14, 2022, an evidentiary hearing convened before the Honorable Gerooge M. McFaddin, Jr. Applicant was present and represented by Joshua Bailey, Esquire. Assistant Attorney General Danielle Dixon represented the State. At the hearing, Applicant testified on his behalf. Respondent called as a witness trial counsel J. Leon Parrott. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a twelve-year sentence. In December 2014, the Florence County Grand Jury indicted Applicant for trafficking cocaine, 200 to 400 grams (2014-GS-21-1453). These charges arose from a traffic stop wherein Applicant attempted to flee the scene on foot.¹ On October 19, 2015, Applicant appeared before the Honorable D. Craig Brown and pled guilty pursuant to a negotiated plea to the lesser-included offense of trafficking 28 to 100 grams of cocaine. J. Leon Parrott, Esquire, represented Applicant, and Solicitor John Charles Jeperfinger represented the State. As part of

¹ Law enforcement had previously been investigating Applicant

CERTIFIED TRUE COPY
Dora Paula O'Hara
CLERK OF COURT C.P. & C.S.
FLORENCE COUNTY, S.C.

the negotiations, Applicant was sentenced to eighteen years' imprisonment but could move for a sentence reduction if he assisted the State with further investigations. Applicant's sentence was subsequently reduced to twelve years. Applicant did not file an appeal.

Current Application

On March 30, 2016, Applicant filed this application alleging:

- a. Violation of 4th Amendment: GPS tracker placed on vehicle without warrant;
- b. Insufficient representation: Officer never wrote citation for infraction.

At the hearing, Applicant proceeded on the following allegations, as articulated by PCR counsel:

1. Ineffective assistance of counsel: Counsel failed to obtain the GPS warrant documents that led to the traffic stop, which led to the drug charges;
2. Ineffective assistance of counsel: counsel did not file a motion to suppress GPS warrant documents;
3. Brady violation: State did not disclose to Applicant the GPS warrant documents.

Prior to the hearing, the parties stipulated that South Carolina Law Enforcement Division (SLED) does not file documents related to GPS tracking as part of its investigations. Applicant likewise stipulated he was not challenging the sufficiency of the affidavits and other information used to obtain the warrant for the GPS tracker.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Florence County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of this PCR action. This

Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness (deficiency) and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland, 466 U.S. at 687-88. "A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial." Dalton v. State, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

"To be knowing and voluntary, a plea must be entered with an awareness of its consequences." Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). "To find a

guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007).

GPS Warrant Documents

All of Applicant’s contentions center on his belief that law enforcement violated his constitutional rights by obtaining a warrant to place a GPS tracker on his vehicle and not disclosing to him the fact that a GPS tracker had been placed on his vehicle. Specifically, he alleges counsel was ineffective for not (1) obtaining the GPS warrant documents or (2) moving to suppress the GPS warrant. Alternately, Applicant alleges a Brady violation based on the State’s failure to disclose the GPS warrant. Applicant, however, stipulates he is not raising any issue with the sufficiency of the documents underlying the GPS warrant, which this Court construes as a stipulation that sufficient probable cause supported the GPS warrant.

This Court finds these arguments lack merit. Initially, as part of this negotiated guilty plea, Applicant waived the right to challenge any issue with the GPS warrant or raise any defense. Further, this court finds counsel’s failure to obtain these warrant documents or move to suppress the warrant was reasonable under prevailing professional norms and not deficient. This court finds credible counsel’s PCR testimony that he was aware law enforcement used a GPS tracking device and would have moved to suppress the GPS information had he proceeded to trial. Ultimately, however, Applicant chose to plead guilty.

This Court further agrees with trial counsel’s assessment that even if the GPS data had been suppressed, the outcome would have been the same. Specifically, the traffic stop was initiated after Applicant was observed speeding and hitting the white line. Law enforcement initiated a valid stop; once the vehicle stopped, Applicant chose to flee on foot and run down the

middle of the interstate. Once detained, Applicant told police he ran because he had drugs in the car. Although the State may have used GPS data to track Applicant, Applicant's violation of traffic laws justified the stop, and his decision to run down the interstate and subsequent statement to police that he had drugs in his car provided probable cause for an arrest. Thus, even if counsel had obtained the warrant and somehow successfully suppressed data from the GPS tracker,² the State *still* could have tried the case based on the aforementioned facts. Counsel negotiated for Applicant a negotiated plea to the lesser-included offense,³ with an agreement from the State that Applicant could move for a sentence reduction if he cooperated. This Court finds counsel's performance here was reasonable under prevailing professional norms and not deficient.

As to Applicant's claim of a Brady violation, it strains credibility to suggest that law enforcement conducting an undercover investigation should file as a public record the warrant utilized to further their undercover investigation. Further, this Court finds credible trial counsel's testimony that he was aware law enforcement used a GPS tracker because it was in the SLED agent's report. At the PCR hearing, Applicant himself testified he first learned about the GPS tracking device from the discovery materials. Based on the foregoing, this Court finds Applicant did not prove a Brady violation.

Finally, this Court finds Applicant pled guilty freely and voluntarily, and there is no reasonable probability he would have proceeded to trial had counsel obtained the GPS warrant documents and successfully suppressed the GPS data. Critically, the remaining facts remained: Applicant was stopped for violating traffic laws, Applicant chose to flee on foot, and once

² Based on Applicant's stipulation that he was not challenging the sufficiency of the documents supporting the GPS warrant, Applicant has not shown a challenge would even be successful, and thus has not met his burden of proving deficiency or prejudice based on counsel's failure to obtain these documents or move to suppress this evidence.

³ Counsel credibly testified the plea was a global plea that included having charges in Horry County run concurrent to the Florence County charges.

detained, Applicant told law enforcement he had drugs in the vehicle. In light of the foregoing, there is no reasonable probability that Applicant would have rejected the well-negotiated plea and proceeded to trial if counsel had obtained and successfully suppressed GPS data.⁴

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 14th day of August, ~~2023~~ ²⁰²⁴.

 GEORGE M. MCFADDIN, JR.
 Presiding Judge
 Twelfth Judicial Circuit

Sumter, South Carolina

⁴ Again, based on Applicant's stipulation that he was not challenging the supporting documents for the GPS warrant, Applicant did not prove any challenge to the warrant itself would even be successful.

CERTIFIED: A TRUE COPY
 Clerk of Court C.P. & G.S.
 FLORENCE COUNTY, S.C.

2024 AUG 26 PM 2:52

FORM 4

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2100801

Darrell Green

2024 AUG 26 PM 2:51

South Carolina State Of

DORIS POULOS O'HARA

PLAINTIFF(S)

CCCC & GS DEFENDANT(S)
FLORENCE COUNTY, SC

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

8/26/2024

Date

For Clerk of Court Office Use Only

This judgment was entered on **August 26th, 2024**, and a copy mailed first class or placed in the appropriate attorney's box on **August 27th, 2024**, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY

Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Joshua A. Bailey PO Box 555 Florence, SC 29503

D. Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

Shane Keith

Florence County Sheriff

John C Jeperfinger

ARREST WARRANT NUMBER

2014A2110200814

ACTION OF GRAND JURY

TRUE BILL

Wendy Sanders
Foreperson of Grand Jury
Date: 11/20/2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-21-01453

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

DECEMBER

TERM

2014

THE STATE

vs.

DARRELL GREEN

Indictment for

TRAFFICKING IN COCAINE

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
TRAFFICKING IN COCAINE

At a Court of General Sessions, convened on NOVEMBER 20, 2014 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- TRAFFICKING IN COCAINE

That DARRELL GREEN did in Florence County on or about August 14, 2014, knowingly, sell, deliver, purchase or bring in to this State, or aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of 200 grams or more, but less than 400 grams, the same being a controlled substance, a within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370(e)(2)(d), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR