

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

—————
Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge
—————

DARRELL GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001863
—————

APPENDIX
—————

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry) 2015-GS-26-3541

The State,)	
)	
Plaintiff,)	Transcript of Record
)	
vs.)	October 27, 2015
)	
Darrell Green,)	
)	
Defendant.)	

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Thomas Groom Terrell, III, Esquire
Attorney for Plaintiff

Jacob Leon Parrott, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)
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1 (On the record, October 27, 2015.)

2 MR. TERRELL: Your Honor, this was a home detention
3 motion. I believe it's a plea now, Your Honor.

4 THE COURT: Is that right?

5 MR. PARROTT: Yes, sir. Started out as a home detention
6 motion and now into a plea.

7 (Defendant is sworn by the clerk.)

8 MR. TERRELL: Your Honor, this is the State of South
9 Carolina versus Darrell Green. He's charged in true-billed
10 indictment 2015-GS-26-03541, trafficking in cocaine base 28 to
11 a hundred grams third offense. He's before Your Honor to
12 plead guilty to a trafficking in cocaine base 28 to a hundred
13 grams first offense, a lesser included. The State is making a
14 negotiated sentence recommendation of 18 years and \$50,000.

15 THE COURT: All right. And this carries up to --

16 MR. TERRELL: Up to 25 years, Your Honor.

17 THE COURT: Twenty-five years and 50,000?

18 MR. TERRELL: Yes, sir, Your Honor.

19 THE COURT: Okay.

20 MR. PARROTT: All right. Mr. Parrott, you represent
21 Darrell Green on the charge of trafficking in cocaine base 28
22 to a hundred grams first offense?

23 MR. PARROTT: I do, Your Honor.

24 THE COURT: Have you discussed with your client the
25 charge against him, his rights as a Defendant and the

1 consequences of being convicted of this crime?

2 MR. PARROTT: Yes, sir, on many occasions.

3 THE COURT: In your opinion does your client understand
4 the charge against him, his rights as a Defendant and the
5 consequences of being convicted of this crime?

6 MR. PARROTT: I believe that he does.

7 THE COURT: And does he wish to plead guilty or not
8 guilty?

9 MR. PARROTT: He indicates he wishes to plead guilty.

10 THE COURT: Do you agree with his decision to plead
11 guilty to this charge?

12 MR. PARROTT: I do, Your Honor.

13 THE COURT: Based upon the information you have, if this
14 case proceeded to trial, do you feel that the State could
15 prove your client's guilt beyond a reasonable doubt?

16 MR. PARROTT: I do, Your Honor.

17 THE COURT: Has your client received a competency
18 evaluation?

19 MR. PARROTT: He has not, Your Honor.

20 THE COURT: Do you feel that he needs a competency
21 evaluation?

22 MR. PARROTT: I do not.

23 THE COURT: All right. Sir, your name is Darrell Green?

24 MR. GREEN: Yes, sir.

25 THE COURT: All right. Mr. Green, you have been charged

State v. Green

5

1 and indicted by the Grand Jury with trafficking in cocaine
2 base more than 28 grams but less than a hundred grams third
3 offense. Now, this indictment covers all lesser included
4 offenses of which the lesser included offense is trafficking
5 in cocaine base first offense, and according to your attorney
6 you wish to plead guilty to the trafficking in cocaine first
7 offense; is that correct?

8 MR. GREEN: Yes, sir.

9 THE COURT: All right. Before I can accept your guilty
10 plea I've got to go over some questions with you, and the
11 purpose of my questioning is to be sure that you understand
12 the charge against you, that you understand your rights as a
13 Defendant, that you understand the consequences of pleading
14 guilty and I must be sure you're pleading guilty voluntarily.
15 Now, during the past 72 hours have you taken any medication,
16 consumed any alcohol or drugs or been under any influence that
17 would affect your ability to know why you're here?

18 MR. GREEN: No, sir.

19 THE COURT: Do you understand why you're here today?

20 MR. GREEN: Yes, sir.

21 THE COURT: Is there anything about this hearing that you
22 want to ask your lawyer or ask me before we proceed?

23 MR. GREEN: No, sir.

24 THE COURT: All right. If you have any questions or you
25 don't understand what's going on let me know. Okay?

1 MR. GREEN: Yes, sir.

2 THE COURT: All right. Now, even though you've been
3 indicted by the Grand Jury, under the Constitution of the
4 United States you're presumed innocent of this crime and you
5 have the right to have your guilt or innocence determined by a
6 jury trial of your peers. The State bears the burden of
7 proving your guilt beyond a reasonable doubt. You do not have
8 to prove your innocence and you cannot be compelled to testify
9 against yourself. You also have the right to confront and
10 cross examine anybody who testifies against you. If you
11 choose you can present a defense to this charge, but when you
12 plead guilty you give up all of those rights. Do you
13 understand that?

14 MR. GREEN: Yes, sir.

15 THE COURT: And do you want to give up those rights and
16 plead guilty to this charge?

17 MR. GREEN: Yes, sir.

18 THE COURT: All right. Now, I understand you've reached
19 a negotiated sentence with the State, which means that if I
20 accept your guilty plea and I accept your negotiated sentence
21 I will sentence you to 18 years in prison and I will fine you
22 \$50,000. Do you understand that?

23 MR. PARROTT: Your Honor, I hate to interrupt --

24 THE COURT: Yeah.

25 MR. PARROTT: -- but one other thing about the negotiated

1 plea we didn't put on the record I think is important, this
 2 would be a concurrent sentence to run -- he pled in Florence a
 3 couple of weeks ago in front of Judge Brown to a similar
 4 charge and he received an 18-year sentence. There was also
 5 some other portions of that plea where the State agreed to if
 6 information he had provided panned out that we'd be able to
 7 come back and ask for a reduction down to 12 years. The deal
 8 that we had here was that this was just going to be a -- the
 9 same, same thing, and it was going to run concurrent.

10 THE COURT: Is that correct?

11 MR. TERRELL: That's correct, Your Honor. I apologize.

12 THE COURT: All right. All right. You understand, Mr.
 13 Green, that under your negotiated sentence if I accept it I
 14 will sentence you to 18 years in prison and fine you \$50,000,
 15 but that sentence will run concurrent with the current
 16 sentence you're now serving. Do you understand that?

17 MR. GREEN: Yes, sir.

18 THE COURT: All right. Do you have any questions about
 19 that sentence or do you need to talk to your lawyer further
 20 about this?

21 MR. GREEN: No, sir.

22 THE COURT: All right. Now, you understand that I am not
 23 obligated to accept this negotiated sentence, but if I do not
 24 accept it you can withdraw your guilty plea, but please keep
 25 in mind that if you withdrew your guilty plea and if you ever

1 went to trial on this charge and was convicted without a
2 negotiated sentence or if you ever pled guilty without a
3 negotiated sentence then you could receive a sentence of 25
4 years and a \$50,000 fine and that could also run consecutive
5 or in addition to whatever sentence you might now be serving.
6 Do you understand that?

7 MR. GREEN: Yes, sir.

8 THE COURT: Do you also understand that this crime
9 carries an enhanced sentence, which means that if you're ever
10 convicted of another drug possession charge then the sentence
11 you could receive for that subsequent conviction will be
12 enhanced from the possible sentence you now face for a first
13 offense and the State'll use this guilty plea against you to
14 show another drug possession conviction on your record. Do
15 you understand that?

16 MR. GREEN: Yes, sir.

17 THE COURT: Knowing your rights as a Defendant, knowing
18 the negotiated sentence that will be imposed if accepted by
19 the Court, knowing the maximum sentence you could receive
20 without a negotiated sentence, and knowing the enhanced
21 sentence you could get for any future drug possession
22 convictions, do you wish to plead guilty or not guilty to
23 trafficking in cocaine base?

24 MR. GREEN: Guilty.

25 THE COURT: Has anybody promised you anything or

State v. Green

9

1 threatened you in any way to get you to plead guilty to this
2 charge?

3 MR. GREEN: No, sir.

4 THE COURT: All right. And I say promised anything, has
5 anybody promised you anything other than this negotiated
6 sentence to get you to plead guilty?

7 MR. GREEN: No, sir.

8 THE COURT: Has anybody threatened you to get you to
9 plead guilty?

10 MR. GREEN: No, sir.

11 THE COURT: Are you pleading guilty voluntarily?

12 MR. GREEN: Yes, sir.

13 THE COURT: Are you satisfied with your lawyer?

14 MR. GREEN: Yes, sir.

15 THE COURT: Are you pleading guilty to this crime because
16 you committed this crime?

17 MR. GREEN: Yes, sir.

18 THE COURT: All right. I need you to listen carefully.
19 The Solicitor's going to give me the facts of your case.
20 Okay?

21 MR. GREEN: Yes, sir.

22 THE COURT: All right, sir.

23 MR. TERRELL: Your Honor, this offense occurred on April
24 29th, 2014, in the Aynor Section of Horry County. Agents with
25 the State Law Enforcement Division, 15th Circuit DEU and Aynor

1 Police Department conducted a controlled CI buy of an amount
2 of crack cocaine. The agreement was for one and a quarter
3 ounce of crack cocaine from this Defendant for the amount of
4 \$4,000. The transaction was audio and video recorded. The
5 drug report on that transaction came back to 34.74 grams of
6 crack cocaine, and in addition to this, Your Honor, the State
7 will be dismissing all other pending charges that this
8 Defendant has in our office.

9 THE COURT: All right. Mr. Green, you understand what
10 the allegations are against you?

11 MR. GREEN: Yes, sir.

12 THE COURT: Is that what happened in this case?

13 MR. GREEN: Yes, sir.

14 THE COURT: All right. Mr. Parrott, anything in
15 mitigation?

16 MR. PARROTT: Yes, Your Honor. This is Darrell Green.
17 He's 40 years old. He's married. He has four children age
18 20, 9, five and two and he has a grandchild two years old. I
19 think it's worth noting to the Court in support of this
20 negotiated sentence he's assisted law enforcement to a great
21 degree both in Horry and in other parts of the state in trying
22 to make some other buys. In fact, I think that according to
23 SLED Agent Howlett over a kilo and a half of cocaine has been
24 purchased as a direct result of his involvement. He continues
25 to provide information. SLED Agent Howlett has indicated to

1 Judge Brown in Florence that he feels that intel is very good.
2 He's going to be able to use it, and that's why they agreed to
3 let us come back within a year and ask for a reduction in the
4 sentence. So I point that out to you that he is, he's trying
5 to do that. He -- Judge Brown also did give him credit for
6 six months time served. He had spent some time in jail, and I
7 think he also has house arrest, and so that was a part of the
8 sentence of 18 years, give him credit for six months time
9 served.

10 THE COURT: Okay. Do you know how much time served would
11 be now?

12 MR. PARROTT: Well, see --

13 THE COURT: Well, let me ask you this, when, when was he
14 sentenced by Judge Brown?

15 MR. PARROTT: Your Honor, we were in Florence --

16 MR. GREEN: The 19th.

17 MR. PARROTT: Yeah. On the 19th.

18 THE COURT: October 19th?

19 MR. PARROTT: Yes, sir.

20 THE COURT: All right. Anything else?

21 MR. PARROTT: No, sir.

22 THE COURT: All right. Mr. Green, anything you want to
23 say?

24 MR. GREEN: No, sir.

25 THE COURT: All right. Prior record?

1 MR. TERRELL: Yes, sir, Your Honor. Just from the last
2 ten years or so, 2006, malicious injury to personal property,
3 resisting arrest, assaulting law enforcement officer while
4 resisting arrest, failure to stop for a blue light, habitual
5 traffic offender, distribution of cocaine first offense,
6 violation of probation; 2007, possession of schedule I to V
7 first offense and driving under suspension third or
8 subsequent; 2008, failure to stop for a blue light second or
9 subsequent; 2011, distribution of cocaine second offense;
10 2013, assault and battery.

11 THE COURT: All right.

12 MR. PARROTT: One other thing in mitigation, Your Honor,
13 it doesn't -- he's never served any time until now for any
14 drug offense. In fact, he actually completed drug court
15 successfully on one of those charges. So we differ a little
16 bit on the -- his prior record, but for the purposes of this
17 plea I don't think it's worth really going into.

18 THE COURT: All right. All right. Mr. Green, I will
19 accept your guilty plea. I find that it's made knowingly,
20 voluntarily, fully advised of your rights as a Defendant and
21 the nature of the charge against you and the consequences of
22 your guilty plea. I also find that there is a factual basis
23 to support the charges against you. Likewise, I'll accept the
24 negotiated sentence reached between you and the State. The
25 sentence of the Court is that you be confined to the State

State v. Green

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1 Department of Corrections for 18 years and pay a fine of
2 \$50,000. That sentence'll run concurrent with the sentence
3 imposed on October 19th, 2015. You'll be given credit for any
4 time served thus far.

5 MR. TERRELL: Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 (Adjourned.)

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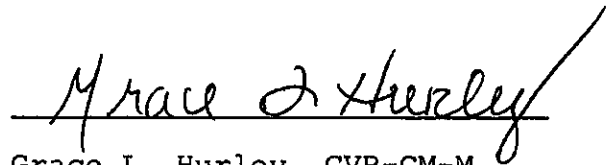
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, 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 versus Darrell Green, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on October 27, 2015.

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


Grace L. Hurley, CVR-CM-M
Official Reporter

May 11, 2016.

Janis

STATE OF SOUTH CAROLINA

County of Horry

In the Court of Common Pleas

2016 16 CP 25 2171

Darrell Green 249354
Full name and prison number (if any) of Applicant.

vs.

South Carolina
Name of Respondent.

**APPLICATION FOR
POST-CONVICTION RELIEF**

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of this 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 J. Reuben Dentention Center / Florence County
Lee Court Correctional Inst.

2. Name and location of Court which imposed sentence Horry County

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2015 GS 260 3541
(b) _____
(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:
(a) 10-27-2015 18 years
(b) _____
(c) _____

MELANIE H. HARRIS
CLERK OF COURT
2016 MAR 30 PM 12:53
HORRY COUNTY

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) was not informed of rights to appeal guilty plea
- (b) _____
- (c) _____

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

- (a) Violation of 4 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) SLED placed GPS on car that did not belong
- (b) to me to monitor my movements without warrant
- (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 advise by counsel that there was no warrant
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? ye
- (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. Alexand & Associates
4701 Oleander Dr. Myrtle Beach S.C 29577
- ii. _____
- iii. _____

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

- i. Bond Hearings
- ii. Plea Agreement
- iii. _____

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

release from incarceration

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

yes

STATE OF SOUTH CAROLINA

County of Horry

VERIFICATION

I, Darrell Green

20 14 2171

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 249354

SWORN to and subscribed before me this 24

day of March 2014

Debra Eastreday (L.S.)
Notary Public

My Commission Expires: 3/3/2024

HORRY COUNTY
2016 MAR 30 PM 12:00
MELANIE H. STONE, CLERK OF COURT

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 249354
Applicant

SWORN or affirmed to and subscribed before me this

24 day of March 2014

Debra Eastreday
Notary Public

My Commission Expires 3/3/2024

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Darrell Green, #249354,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 2016-CP-26-2171

RETURN

2017 FEB 21 PM 3:35
 Horry County
 Clerk of Court

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on March 30, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Horry County. Applicant was indicted at the September 2015 term of the Grand Jury for Horry County for trafficking cocaine base, third offense (2015-GS-26-3541). Jacob Leon Parrott, Esquire represented Applicant. On October 27, 2015, Applicant pleaded guilty before the Honorable Benjamin Culbertson to the lesser included offense of trafficking in cocaine base, first offense, more than 28 grams but less than 100 grams. Pursuant to a negotiated sentence, Judge Culbertson sentenced Applicant to imprisonment for a term of eighteen years. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein by reference are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, the transcript from Applicant's plea. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. "Violation of fourth Amendment"
 - a. "SLED placed GPS on car that did not belong to Applicant to monitor movements without warrant."
2. "Insufficient Representation"

Respondent interprets Applicant's second allegation as a claim of ineffective assistance of counsel. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668; *Cherry v. State*, 300 S.C. 115, 117, (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118. Second, counsel's

deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial.” *Thompson v. State*, 340 S.C. 112, (2000).

Applicant can satisfy neither requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264 (1983).

III.

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

IV.

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

V.

WHEREFORE, having made its Return, Respondent requests that a hearing be held only on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

February 17 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
 DARRELL GREEN, 249354)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2016-CP-26-2171


AFFIDAVIT OF SERVICE BY MAIL

FILED
 HORRY COUNTY
 FEB 21 PM 3:35
 2017

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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 17th day of February, 2017.



 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2016-CP-26-02171

Darrell Green,)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA,)

Defendant.)

Transcript of Record

OCTOBER 10, 2019

B E F O R E:

Honorable William H. Seals, Jr.
Horry County Courthouse
Conway, South Carolina

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

James K. Falk, Esquire
Attorney for Plaintiff

Johnny E. James, Jr., Esquire
Attorney for Defendant

Sallie Beth Todd
Circuit Court Reporter

1 **THE COURT:** Yes, sir.

2 **MR. JAMES:** If it may please the Court?

3 **THE COURT:** Yes, sir.

4 **MR. JAMES:** Your Honor, this is the matter of Darrell
5 Green versus State of Sout Carolina, docket number 2016-CP-26-
6 02171. Mr. Green is present here in the courtroom today and
7 is represented by Mr. Jim Falk, Esquire.

8 Mr. Green was indicted at the September 2015 term of the
9 Horry County Grand Jury for trafficking cocaine base third
10 offense. He was represented on that charge by Jacob L.
11 Parrott, Esquire. On October 27th, 2015 he pled guilty before
12 the Honorable Benjamin H. Culbertson to the lesser included
13 offense of trafficking cocaine base first offense more than 28
14 grams but less than 100 grams. Pursuant to a negotiated
15 sentence, Judge Culbertson sentenced him to imprisonment for a
16 term of 18 years and he did not appeal his guilty plea or his
17 sentence.

18 Your Honor, the state's understanding of the allegations
19 is that he is alleging ineffective assistance of counsel in
20 that counsel did not inform him that SLED, "SLED placed GPS on
21 car that did not belong to applicant to monitor movements
22 without warrant". If there is anything inaccurate in my
23 understanding, I would defer over to Mr. Falk to clarify.
24 With that, the state is ready to proceed.

25 **THE COURT:** All right.

1 through it page by page and I came across one of the incident
2 reports where Officer Trevor Hollick (ph) had wrote that he
3 came to my house on the 6th of August and placed a tracking
4 device on my vehicle. And on the 7th -- and it quit working
5 and he came back on the 7th and placed it on there again.

6 Q: So the first time you found out there was a tracking
7 device was once you'd already pled in this case?

8 A: Yes, sir.

9 Q: Have you done anymore investigation as to whether or not
10 there was every a warrant for the tracking device?

11 A: I kept going through the Rule 5 because in the incident
12 it said he had received a court order on July of 2014 for the
13 warrant. So I'm looking through the Rule 5 and I don't see a
14 copy of the warrant.

15 Q: I'm sorry. When you said he had received the order, who
16 is he?

17 A: Trevor Hollick. (ph)

18 Q: Okay.

19 A: The officer. So I kept looking through the Rule 5 and I
20 didn't see a copy of the warrant, so my initial thought was to
21 write Horry County Clerk of Court and ask for a copy of the
22 warrant. And when I wrote Horry County Clerk of Court and
23 asked for a copy of the warrant, they returned my letter and
24 stated that they do not have a copy of that warrant in their
25 files.

1 Q: Okay.

2 A: And then I wrote Florence Clerk of Court because I got
3 sentenced in two different counties, and I asked them for a
4 copy of the warrant and they told me the same. Then I wrote
5 Axelrod and associates and they told me the same and they did
6 not have a copy of the GPS tracking warrant.

7 Q: Okay. Did you later become aware that there was a state
8 grand jury?

9 A: Uh ---

10 Q: Or were you told that? I'm not saying whether there was
11 one, I'm saying were you ---

12 A: When I went to court in Florence -- when I went to a PCR
13 hearing in Florence and I was requesting discovery, the
14 solicitor -- I mean the attorney general in Florence County,
15 Ms. Lindsey McAlister, she kept telling my lawyer that my case
16 was appointed with state grand jury case and as such the
17 warrant was in state grand jury court.

18 **MR. JAMES:** Your Honor, may we approach?

19 **THE COURT:** Yes.

20 **REPORTER'S NOTE:** (Bench conference held.)

21 **MR. JAMES:** To put our conversation on the record, the
22 state objects on the grounds of hearsay.

23 **THE COURT:** All right. Just don't say what somebody else
24 said.

25 **BY MR. FALK:**

1 A: I have a letter from my attorney -- well I have a from my
2 attorney from Florence Clerk of Court where the solicitor and
3 the Florence clerk tells my lawyer that the warrant was a part
4 of the state grand jury ---

5 **MR. JAMES:** Objection, hearsay.

6 **THE COURT:** Sustained. Just don't say what somebody else
7 said.

8 **BY MR. FALK:**

9 Q: May I see the letter?

10 A: Yes. I also have proof of ---

11 **MR. FALK:** Can I mark this?

12 **BY MR. FALK:**

13 Q: I also have proof of Horry County Clerk of Court stating
14 that they did not have a copy of the warrant. And I also got
15 a letter from the state grand jury stating that they didn't
16 have a copy of the warrant.

17 **MR. JAMES:** Hold on, hold on, please. I object.

18 **THE COURT:** Sustained.

19 **MR. JAMES:** Thank you, Your Honor.

20 **MR. FALK:** May I approach the witness?

21 **THE COURT:** You may.

22 **BY MR. FALK:**

23 Q: You've seen that, right?

24 A: Yes, I've seen that.

25 Q: Okay.

1 **MR. FALK:** I'm going to mark this as our applicant's
2 exhibit number one.

3 **MR. JAMES:** Your Honor, the state does not object, well
4 it's not been introduced yet. I apologize.

5 **BY MR. FALK:**

6 Q: Have you seen a copy of this document?

7 A: Yes, I have.

8 Q: And did you see that -- when did you first see a copy of
9 that document?

10 A: October of 2018, Judge McFaddin ordered the state to give
11 me a copy of this document, and the state as of today still
12 has not given it. This is the first time the state has given
13 me a copy of this document. So after they kept refusing to
14 give me a copy of the document I filed a 1983 lawsuit against
15 Trevor Hollick (ph) and the officers that entered my premises.
16 And in the discovery process of the 1983 action, their lawyer,
17 their attorney sent this to me. That was the first time I
18 seen a copy of that.

19 Q: So you have seen it before just now?

20 A: Yes.

21 Q: And you had seen that because it was provided to you as a
22 part of the discovery in a ---

23 A: A lawsuit.

24 Q: --- in a lawsuit that you filed against the officers?

25 A: Yes, sir.

1 Q: Okay. Had you ever seen that -- so then you never saw
2 that document before pleading guilty?

3 A: No, sir.

4 Q: What did you know about the case? Did you know that
5 there was a confidential informant involved in your arrest?

6 A: That's what -- that's about all I knew about the case
7 because ---

8 Q: When did you know that?

9 A: After my arrest, after my arrest.

10 Q: Okay. But before your plea, you knew there was a
11 confidential informant involved?

12 A: Yes.

13 Q: Okay. And in part of the 1983 action they showed you how
14 the GPS device got put on your car; is that right? They were
15 saying based on the authority of that document that you have
16 in your hand; is that correct?

17 A: Yes. Yes, sir.

18 Q: Did you have any -- so there was never an opportunity to
19 challenge the GPS device that was put on your car; is that
20 correct?

21 A: Never.

22 Q: So and that document is signed by Judge Hyman; is that
23 correct?

24 A: I'm not sure. I mean you just told me that five minutes
25 ago that it was Judge Hyman's signature. But I have another

1 document where the signature doesn't look to be the same, so I
2 have some concern about the document.

3 Q: The document says that it's under seal; is that correct?

4 A: Yes. Yes, it says that.

5 Q: But there's no seal on that document?

6 A: No seal on the document. No.

7 Q: Okay. So you still don't know -- so you still have
8 questions about the legality of Trevor, is it Haylick? (ph)

9 A: Trevor Hollick. (ph)

10 Q: Hollick's (ph) placing of the GPS device on your car?

11 A: Yes, sir.

12 Q: And it is clear to you that your arrest is a direct
13 result of the GPS device on your car; is that correct?

14 A: Yes, sir.

15 Q: Okay. And you did not own that car; is that correct?

16 A: No, sir. Not at the time.

17 Q: All right. And have you had a chance to look at the
18 affidavit that was filed, and in part of that document Trooper
19 Hollick (ph) listed what he cited as the probable cause?

20 A: Yes, sir.

21 Q: And do you have any concerns about some of the
22 allegations of the probable cause?

23 A: Yes.

24 Q: Is it true that when you're looking at that there's
25 allegedly two controlled buys? There was at least two

1 controlled buys; is that correct?

2 A: Yes. Yes.

3 Q: And two of those controlled buys had state documented
4 funds; is that correct?

5 A: Yes.

6 Q: But in looking at your other Rule 5 they never recovered
7 any state documented funds in your possession; is that
8 correct?

9 A: That's correct.

10 Q: And the Rule 5 -- and that document also talks about that
11 money was given to the CI and the CI purchased ---

12 A: A quantity of drugs.

13 Q: --- a quantity, but there's no allegation in that
14 affidavit that the CI was ever interviewed after the alleged
15 transaction?

16 A: No, sir.

17 Q: Had you seen that document and that affidavit prior to
18 pleading, what would you have done?

19 A: If I had seen this, first of all I would have questioned
20 the validity of the warrant because there's no seal on it of
21 course. The Judge's signature is unidentifiable and there's
22 no case number to identify what case that it actually belongs
23 to.

24 Q: Okay. And are there other grounds -- so you would, had
25 you seen that you're telling us today that you would not have

1 wanted to plead guilty ---

2 A: No, sir.

3 Q: --- if you knew the GPS device was ---

4 A: Exactly.

5 Q: Okay. And prior to pleading were you ever told that
6 there was a GPS device put on your car?

7 A: No, sir.

8 Q: So you just thought -- and how did you think that you got
9 arrested?

10 A: Off of a traffic stop in Florence and then the drug buys.

11 Q: Okay. What's the status of the Florence case?

12 **MR. JAMES:** Objection, relevance.

13 **MR. JAMES:** Just curiosity.

14 **THE COURT:** Sustained.

15 **BY MR. FALK:**

16 Q: Is there anything else you want to add?

17 A: I think we covered most of the grounds. I think ---

18 Q: Your concern is that there was a GPS device put on your
19 car that directly leads to your arrest. You have questions
20 about whether or not that device was put on lawfully.

21 A: Yes.

22 Q: And you were never given any opportunity to check it, and
23 to your knowledge your lawyer never investigated the
24 lawfulness of the tracking device that was put on your car.

25 A: Exactly.

1 Q: But you did say that in your discovery you saw one of the
2 incident reports that mentions a GPS device?

3 A: Yes, sir. I have that right here.

4 Q: Okay. And that was discovery that you had received from
5 your lawyer; is that correct?

6 A: Yes, sir.

7 **MR. FALK:** Your Honor, we have no further questions.

8 **THE COURT:** All right.

9 **CROSS EXAMINATION OF MR. GREEN BY MR. JAMES:**

10 Q: Mr. Green, you pled guilty in this case, correct?

11 A: Correct.

12 Q: And do you recall the guilty plea proceeding?

13 A: Yes.

14 Q: And at that proceeding the Court went over a number of
15 your constitutional rights, correct?

16 A: Correct.

17 Q: And they told you you had a right to a trial, correct?

18 A: Correct.

19 Q: And you had the right to the presumption of innocence,
20 correct?

21 A: Correct.

22 Q: And that the state had the burden of proving your guilty
23 beyond a reasonable doubt?

24 A: Correct.

25 Q: And that you didn't have to prove your innocence?

1 A: Correct.

2 Q: And you understood all of those rights?

3 A: Yes, I did.

4 Q: ~~More importantly, the Court told you you had a right to~~
5 confront and cross examine the witnesses who would testify
6 against you, correct?

7 A: Yes.

8 Q: And that you could present a defense, correct?

9 A: Correct.

10 Q: And said that by pleading guilty you would waive all of
11 those rights, correct?

12 A: Yes, sir.

13 Q: And you went ahead and waived those rights?

14 A: Without knowing that Brady material was not disclosed.

15 Q: What does the word sealed mean to you?

16 A: Sealed?

17 Q: Yes.

18 A: It means that -- hold on, I've got the definition if
19 you'll give me a minute.

20 Q: Go right ahead.

21 A: Give me just a second. I wrote the definition down just
22 for this purpose. Bear with me, my eyes is kind of bad.
23 Seal, an imprint made upon an instrument by a device such as
24 an engraved metallic plate or upon wax affixed to the
25 instrument -- to the instrument. The seal symbolizes

1 authority or authenticity modern law. It does not commonly
2 require that instruments be under seal but evidently this one
3 was required under seal. So to break that down it would be an
4 imprint made upon an instrument.

5 Q: So your problem with this document is that it says under
6 seal but there is nothing to show that there was a stamp on
7 it.

8 A: Exactly.

9 Q: All right. You don't think that under seal just means
10 that people can't talk about it unless the Court tells them
11 they can?

12 A: No. That would be -- that would be -- what would they
13 call it?

14 Q: Are you thinking of a gag order?

15 A: Gag order. Yeah, that's totally different. An ex parte
16 order means only one side of the party has -- ex parte order
17 means only one side of the party only from the one side ---

18 Q: I hate to cut you off, Mr. Green, but for the sake of
19 Madam Court Reporter if you could try to make sure you speak
20 into the microphone.

21 A: Okay.

22 Q: When you lean over and talk into your notes it's very
23 difficult to hear you.

24 A: Okay. I understand. It's kind of hard for me to see
25 them so I have to hold them up.

1 Q: I understand, sir. You've reviewed that document,
2 correct?

3 A: Yes, I have.

4 Q: ~~And you acknowledge that there are multiple CI buys~~
5 before they went to get the GPS monitor for that car, correct?

6 A: Well see that's the question with the document being
7 valid. I noticed that every CI buy ---

8 Q: Well if you want to explain you can, but answer my
9 question first and then explain. It's a yes or no question.
10 You acknowledge that ---

11 A: But I can't acknowledge that the document is what it is
12 so I can't answer that question with a yes or a no because the
13 document also says it was signed in March and March was
14 scratched off. So if I go with the March part of it, then no
15 because the informant buys started in April. So what should I
16 go with? March or ---

17 Q: Well you understand that in the review of your discovery
18 that there were confidential informant buys, correct?

19 A: Yes.

20 Q: And that the document reports that there are confidential
21 informant buys, correct?

22 A: Correct. But this document has two different dates on
23 it, it has March on it and then it has March scratched out and
24 then it's got July on it. So ---

25 Q: And you are referring to page 8 of 9 of the affidavit.

1 A: I guess that would be correct.

2 **MR. JAMES:** If I may approach the witness?

3 **BY MR. JAMES:**

4 Q: This part right here.

5 A: I can't see.

6 Q: Oh, I apologize.

7 A: Yeah, correct.

8 Q: And that states 28 July 2014 and it's scratched through
9 March there, correct?

10 A: Correct.

11 Q: Do you acknowledge that all of the other dates on this
12 collection of materials is July 28, 2014?

13 A: Yes.

14 Q: Why did you plead guilty?

15 A: Relevance. What's the relevance to the question? We're
16 here discussing the tracking device. I mean there's not ---

17 Q: Mr. Green, your attorney may object to questions.

18 Witness may not object to questions. I asked why did you
19 plead guilty?

20 A: What is the relevance to the question though, that's what
21 I ---

22 **MR. FALK:** I will assist. I will object to relevance.

23 **THE COURT:** And what is the relevance?

24 **MR. JAMES:** I'm trying to see if there was -- what

25 grounds it was that he pled guilty on. In many cases in a PCR

1 if there is some other reason for which a guilty plea occurred
2 then the relevance of some other information to that guilty
3 plea may not exist. That was a funky way of saying it; I
4 understand.

5 **BY MR. JAMES:**

6 A: The reason for my PCR here today is because Brady
7 material was not disclosed to me. And if that Brady material
8 had been disclosed to me it may have changed my guilty plea.

9 Q: Mr. Green, I'm trying to ascertain if your guilty plea
10 was knowing and voluntary at the time, notwithstanding the
11 information ---

12 A: It -- it --

13 Q: Don't talk over me, sir.

14 A: But it couldn't have been voluntary if you withhold Brady
15 material.

16 Q: Answer my question.

17 A: State versus Gibson, it could not have been ---

18 Q: I'm not asking for argument, sir. I'm asking you why you
19 plead guilty.

20 A: And I'm telling you why.

21 **THE COURT:** Hold on. Everybody hold on. This is a PCR
22 not a murder trial.

23 **MR. GREEN:** Exactly.

24 **THE COURT:** You just relax. Hold on one second. You
25 relax.

1 **MR. JAMES:** Yes, Your Honor.

2 **THE COURT:** get yourself a cup of water if you want it.

3 And we're going to start over and we're going to do it the
4 right way. You're going to ask a very calm question, and
5 you're going to give a very calm answer.

6 **BY MR. JAMES:**

7 Q: Mr. Green, why did you plead guilty?

8 A: Under the advisement of my attorney ---

9 **THE COURT:** Mr. Green, you can answer it and then you can
10 explain.

11 **BY MR. JAMES:**

12 A: Under the advisement of my attorney.

13 Q: Okay. That was easy enough. Do you recall about how
14 many times you met with your attorney prior to your guilty
15 plea?

16 A: Once.

17 Q: And when you say once are you referring only to Mr.
18 Parrott or are you referring to all members of Axelrod and
19 Associates.

20 A: I met with Axelrod and Associates right after my bond
21 hearing, after I got out of jail I went for the initial -- the
22 payment, to set up the payment thing. And then they called me
23 back like two weeks before trial was to begin in Florence
24 County to show me the video of the traffic stop.

25 Q: And wasn't it about that time that you met with Mr.

1 Parrott the one time that you recall?

2 A: Yeah. He was in the office that day. But far as me and
3 him having a conversation about my case we never had one prior
4 to my guilty plea in Florence County.

5 Q: When you did plead guilty, was it your understanding that
6 this was a part of the deal that would resolve all of your
7 charges?

8 A: Yes, sir.

9 Q: Both here and in Florence County?

10 A: Yes, sir, which it didn't work out that way.

11 Q: And you indicated that your attorneys never went over
12 your discovery with you?

13 A: No, sir.

14 Q: It was not clear to me during your direct examination,
15 you indicated that you knew that Rule 5 discovery was
16 provided. Was it provided to you or you knew it was provided
17 to your attorneys?

18 A: Provided to my attorney. At my initial review they
19 pulled it out and he said that -- Axelrod quoted that the
20 solicitor had all of his T's crossed and his I's dotted. And
21 I told him specifically at that time, go over the warrants and
22 make sure all of the warrants are correct. And when I --
23 because in the case they provided the search warrant for my
24 mother's residence. They did not search my mother's
25 residence. They searched the barn across the road from my

1 mother's residence, but they had the search warrant for my
2 mother's house. They didn't have a search warrant for the
3 barn that they searched. And at that time it was a concern to
4 me, you know what I'm saying, and ---

5 Q: But you already some warrant concerns at that time?

6 A: At that time, yes.

7 Q: And you had already raised them to your counsel?

8 A: Yes.

9 Q: And he said he didn't see anything?

10 A: Yeah, he didn't see anything. But when I told him that,
11 he called the solicitor, tried to get in contact with the
12 solicitor that day when I was still in the office. The
13 solicitor didn't answer, and they never got back in touch with
14 me about any of the issues.

15 Q: When did you learn of the state's plea offer in this
16 case?

17 A: It was one Tuesday or Wednesday I came home from work and
18 I checked the mailbox and I had a subpoena to be in court that
19 Friday. And I got upset because I felt like I should have
20 heard from my lawyer before I heard from the solicitor's
21 office about a subpoena for Court. So I went down to my
22 lawyers office and he explained to me that they was offering
23 18 years and that he was not going to take that plea, he
24 didn't feel like I should have gotten that plea. So the
25 reason that he didn't inform me about it is because he wasn't

1 going to accept the plea.

2 Q: So your attorney at that time alerted you to the plea?

3 A: Yes.

4 Q: And at that time he thought it was a bad offer?

5 A: Yes. UP until, up until the day of court it was a bad
6 offer. The time that I told you that I met with them the
7 second time, he was like well we're going to go to Florence,
8 me, him, and Axelrod and their other assistant was going to go
9 over there and speak with Mr. Clemmons on the issue of the
10 plea because he was like at my age at the time he felt like
11 you know I would die in prison and that 18 years was too much.
12 So he went down there and spoke with them and then the day of
13 court Parrott informed me that they tried and Ed Clemmons just
14 wasn't going to go over his assistant solicitor's head with
15 the plea agreement.

16 Q: Mr. Green, this is slightly tangential, but you touched
17 on your age just now. How old are you?

18 A: I'm 43 now.

19 Q: Now when you first learned of the plea offer, did you
20 agree with your attorney that you didn't want the 18 years?

21 A: Yes. Yes. It's even in my transcript in Florence County
22 where I told the Judge I wasn't satisfied with it. He stated
23 at that time that he was either -- I was either going to go
24 with the plea because he had to go with the plea, or we was
25 going upstairs and start my trial.

1 Q: So it was on the transcript of your Florence plea?

2 A: Yes.

3 **MR. JAMES:** I beg a moment of the Court's indulgence.

4 **BY MR. JAMES:**

5 Q: And ultimately you decided to accept the plea offer of 18
6 years?

7 A: Yes. I accepted the plea of 18 years at that -- yes.

8 Q: As you indicated, on the advice of counsel?

9 A: Yes.

10 **MR. JAMES:** No further questions for this witness.

11 **THE COURT:** All right.

12 **REDIRECT EXAMINATION OF MR. GREEN BY MR. FALK:**

13 Q: Mr. James asked you a question about the plea was
14 supposed to wrap up Florence and Horry County at the same
15 time.

16 A: Yeah.

17 Q: And your response was it didn't work out that way. What
18 did you mean by that?

19 A: I mean it wrapped up everything, but my sentences are
20 starting at separate times. They're starting like each Judge
21 ordered me credit for time served, but for some reason or
22 other SCDC has failed to give me credit on one sentence.

23 Q: What the disparity? How many days?

24 A: Six months.

25 Q: Now your lawyer -- the advice of your lawyer was that he

1 had dotted all of the I's and crossed all of the T's; is that
2 right? That the solicitor had dotted all of the I's and
3 crossed all of the T's.

4 A: Yes.

5 Q: He specifically raised any concerns you had with the
6 warrant; is that correct?

7 A: Yes.

8 Q: And your concerns with the warrant, our exhibit number
9 one, you have some concerns about whether or not it's
10 procedurally valid; but you also have concerns that you were
11 never shown that; is that correct?

12 A: Yes, sir.

13 Q: So I mean your concerns are that -- is it accurate to say
14 that you were concerned that you plead guilty without full
15 knowledge of the facts against you?

16 A: Exactly.

17 Q: And it's -- is it your testimony that you would have
18 wanted to challenge the CI in this case?

19 A: Yes.

20 Q: And you would have wanted to challenge the probable cause
21 for the search?

22 A: Yes.

23 Q: I mean for the placing of the GPS? And you didn't know
24 that you were waiving that right when you were pleading
25 because you never knew that ---

1 A: That the warrant existed.

2 Q: --- the warrant existed.

3 **MR. FALK:** I have no further questions.

4 **THE COURT:** All right.

5 **MR. JAMES:** Nothing further from the state.

6 **THE COURT:** All right. You may step down. Thank you.
7 Call your next witness.

8 **MR. FALK:** No further witnesses.

9 **THE COURT:** All right. I recognize the state.

10 **MR. JAMES:** The state calls Jacob Parrott.

11 **THE COURT:** Mr. Falk, I believe he brought some of the
12 evidence with him to the table? Would you remind returning
13 that?

14 **MR. FALK:** Yes, sir.

15 **JACOB LEON PARROTT, HAVING BEEN**
16 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

17 **THE CLERK:** Please have a seat and state your name for
18 the Court, please.

19 **MR. PARROTT:** My name is Jacob Leon Parrot. I go by
20 Leon.

21 **DIRECT EXAMINATION OF MR. PARROTT BY MR. JAMES:**

22 Q: Good morning, Mr. Parrott.

23 A: Good morning.

24 Q: You represented Mr. Darrell Green on these charges,
25 correct?

1 A: I did. I was an employee of Axelrod and Associates, and
2 I represented him along with Stuart Axelrod.

3 Q: And at that time how much legal experience did you have?

4 A: Well I was admitted to the bar in 1984. I was a law
5 clerk for Judge Kinon for just about a year. I came to work
6 here as an assistant solicitor in the Horry County Solicitor's
7 Office, and then later in Georgetown. I worked there from
8 1985 to 1991. Subsequent to that I was engaged in private
9 practice in Georgetown until 1996. I primarily practiced in
10 the area of criminal defense. After that I went to work for
11 Townsend (ph) Lawyers in Washington, D.C. working for their
12 legal regulatory division. I worked there for about 17 years.
13 And then I stood for the Virginia Bar for some unknown reason,
14 I passed the bar there and opened up a private practice in
15 northern Virginia. I practiced there until I returned back to
16 South Carolina in 2015.

17 Q: So part of your experience, a substantial part, was in
18 criminal adjudication and part was in other fields of law,
19 correct?

20 A: That's correct.

21 Q: Do you recall about how many times you met with Mr.
22 Green?

23 A: Well if you include the times that we met in court, I
24 would say more than five. Certainly more than two times in
25 the office there. Mr. Green had already retained Axelrod and

1 Associates when I came to work there in late August of 2015.

2 Q: And when you are counting the number of meetings with him
3 are you recalling only your own personal meetings?

4 A: That's right.

5 Q: Okay. Were there additional meetings between Mr. Green
6 and the staff of Axelrod and Associates of which you aware?

7 A: Yes. According to the information in the file there were
8 others.

9 Q: Did you or your colleagues file motions pursuant to Rule
10 5 and Brady in this case?

11 A: Yes.

12 Q: And did you receive materials responsive to those
13 motions?

14 A: Yes.

15 Q: And did you review those materials?

16 A: I did, yes.

17 Q: And did you review those materials with your client?

18 A: I did talk with Mr. Green about those materials on
19 several occasions. I know that according to the file that he
20 was provided with copies of everything that we had obtained
21 from the solicitor's office.

22 Q: And were those copies provided to him prior to his plea?

23 A: Yes.

24 Q: Do you recall generally the facts of the state's case
25 against your client?

1 A: As -- in Horry County and in Florence County, yes.

2 Q: Could you review those facts with us for a moment?

3 A: Sure. There were -- in regards to the Horry County
4 charges, he was charged with four counts of distribution of
5 crack cocaine. Those were confidential informant buys that
6 occurred on April 21st, April 29th, May 20th, and August 12th.
7 Those were the allegations there.

8 Subsequent to that he was charged with some items
9 recovered from a search warrant on August 14th with possession
10 with the intent to distribute various amounts of crack
11 cocaine, powder cocaine, and marijuana. Those items were
12 found both in a rear and a front barn located on his property,
13 as well as inside the home that he occupied. There were also
14 several weapons and other drug paraphernalia that were
15 confiscated pursuant to the return on the search warrant. So
16 I guess in general it was a set of controlled buys that lead
17 to a search warrant.

18 Q: Do you recall which of those crimes occurred here in
19 Horry County?

20 A: All of those occurred here in Horry County.

21 Q: Oh, okay. And then there were other matters that
22 occurred and were raised in Florence County?

23 A: Yes. That was a separate case.

24 Q: Were you aware of the use of any GPS monitoring device to
25 track your client?

1 A: Yes. That was indicated in Trevor Hollick's (ph), the
2 special agent or SLED agent that was involved in this
3 investigation, in his report.

4 Q: Based upon your review of the evidence, did you perceive
5 any reason to doubt the validity of the use of the GPS
6 tracking device?

7 A: I did not.

8 Q: In the timeline of events occurring around your client,
9 did all of the crimes for which he was charged occur before or
10 after the GPS tracking device?

11 A: All of the controlled buys occurred before. I think he
12 secured the warrant sometime in late July or early August. I
13 think there was an aborted attempt, maybe one of the monitors
14 didn't work and they had to replace another one, and that was
15 the one they subsequently used to make the stop or track him
16 to Florence County.

17 Q: Was the search warrant resulting in the PWID crack and
18 powder and marijuana also prior to the GPS monitoring or was
19 that subsequent to the GPS monitoring?

20 A: I believe that was before. I'm not 100 percent sure of
21 that.

22 Q: Okay.

23 A: They may have actually occurred in conjunction with one
24 another because the -- I think the stop in Florence was August
25 14th and the search warrant was executed on the same day.

1 **MR. JAMES:** I beg a moment of the Court's indulgence.

2 **BY MR. JAMES:**

3 Q: You indicated your belief that the search warrant was
4 executed in August of 2014?

5 A: Yeah. To the best of my recollection. I think that's
6 what my notes indicate. My handwritten notes indicate the
7 search warrant was on August 14th, 2014. It was executed at
8 11:15a.m.

9 **MR. JAMES:** Your Honor, may I approach the court
10 reporter?

11 **THE COURT:** Yes.

12 **BY MR. JAMES:**

13 Q: I am showing you a document that has been identified as
14 plaintiff's exhibit number one. Do you recognize the
15 document?

16 A: Yes, I do.

17 Q: Do you recognize the document from your prior experience
18 with the document or do you recognize the document because we
19 discussed it earlier today?

20 A: We discussed it earlier today.

21 Q: Okay. Had you seen that document prior to today?

22 A: No.

23 Q: Okay. Would you acknowledge that the dates on this
24 document are for late July 2014?

25 A: Yes, I would.

1 Q: All right. So that would be before the search warrant in
2 indicated in your notes?

3 A: Right.

4 Q: Okay.

5 **MR. JAMES:** Your Honor, this item was identified as
6 plaintiff's exhibit number one but never formally moved into
7 evidence. May the state respectfully request that the Court
8 take notice of the document as moved in as an exhibit as
9 plaintiff's number one?

10 **THE COURT:** Is it in evidence?

11 **MR. FALK:** We request to move that into evidence.

12 **THE COURT:** Any objection?

13 **MR. JAMES:** No objection, Your Honor.

14 **THE COURT:** All right. It's in evidence.

15 **(PLAINTIFF'S EXHIBIT ONE IS**
16 **ADMITTED INTO EVIDENCE.)**

17 **MR. JAMES:** That was primarily to save the court reporter
18 a sticker.

19 **BY MR. JAMES:**

20 Q: So you were aware there was a GPS tracking device?

21 A: Yes.

22 Q: And you alerted your client to the fact that there was a
23 GPS tracking device?

24 A: I believe we talked about it on a couple of different
25 occasions. I know that when we reviewed the video tape from

1 Florence County we did that in my office there at Axelrod and
2 Associates and I know we had some discussion about the GPS
3 then.

4 Q: What was Mr. Green's inclination as to how to resolve
5 these charges over the course of your representation of him?

6 A: I would -- he wanted to resolve them. He was not happy,
7 nor were we frankly, with the solicitor's offer in Florence
8 County. That was the case we disposed of first. The plea was
9 a part of a dual county plea where he would get the same
10 sentence here and it would run concurrently. You know I felt
11 like from my personal experience that the 18 was too much. We
12 went to, on two different occasions, well more than that. I
13 spoke to Mr. Jepertinger, who is the prosecutor in Florence,
14 on several occasions as did Mr. Axelrod. We went down there
15 and we met with the solicitor ---

16 Q: I had to interrupt you, but before we go down that road
17 there were some issues brought up in the questioning of Mr.
18 Green that I want to go over.

19 A: All right. Sure.

20 Q: Very briefly. The 18 year offer, you received it.

21 A: Yes.

22 Q: Did you communicate it to your client?

23 A: Yes.

24 Q: Did you communicate it orally or in writing?

25 A: I don't remember. I would imagine both. I'm sure we had

1 a conversation about it.

2 Q: Did you ever tell your client that you had already
3 decided to decline the offer?

4 A: No. No.

5 Q: All right. Going back to the story where you had met
6 with Mr. Jepertinger.

7 A: Well I think your question was how was -- I'm not exactly
8 sure how you phrased it now, but basically how did he feel
9 about it.

10 Q: I phrased it in a complicated way. Ultimately what I was
11 getting at was did your client want to plead guilty or did he
12 want to proceed to trial?

13 A: He was unsure really until we go there to the courtroom
14 on his date of trial in Florence County. He most certainly
15 was not happy with the offer. But on the other hand, I think
16 he understood the gravity of the situation, the potential
17 exposure he was facing, and the likelihood that he would be
18 convicted.

19 Q: You indicated you thought the 18 years was ---

20 A: That's just my personal opinion, you know as a former
21 prosecutor and as a defense attorney. You know was it way out
22 of bounds, no. Did I think it could have been a little less,
23 yeah. But you know it was the offer that we got, and we
24 chiseled away at it and tried to get a better offer and we did
25 not. So you know it came down to Darrell having to decide

1 whether he wanted to take the plea or go to trial.

2 Q: Did you advise your client that he should or should not
3 take the 18 year offer?

4 A: Well I think what I told him was that based on my
5 experience was that they were going to hook for life without
6 parole. So that was a decision he wanted to make was whether
7 he wanted to you know roll those dice or take the deal that
8 they offered him, whether he thought it was a great deal or
9 not.

10 Q: Had he been served any notice of intent to seek life
11 without parole?

12 A: I don't remember. I know that that was discussed with
13 the folks in Florence. I don't remember, I can't recall about
14 a notice to be honest with you.

15 Q: And certainly he was facing a substantial number of
16 charges?

17 A: More charges and you know a greater amount of maximum
18 exposure than he was going to be pleading to. Yes.

19 Q: And ultimately if he was taken to trail and convicted of
20 all of those various charges, or even just a number of those
21 various charges, he could have faced a sentence that would
22 have almost certainly exceeded his natural life, correct?

23 A: Yes.

24 Q: Were you prepared to take this case to trial?

25 A: Yes.

1 Q: And the first trial that came up was the Florence one,
2 correct?

3 A: That's right.

4 Q: Were you also at that time prepared for going to trial on
5 the Horry charges, or was that something you would have
6 prepared for subsequent to ---

7 A: We would have prepared for that down the road.

8 Q: Okay.

9 A: And sort of taken them one at a time.

10 Q: What sort of defenses were you exploring to raise on
11 behalf of your client at trial?

12 A: Well you know directly I don't recollect. But when I
13 went back and looked at my notes of the things that I had
14 prepared, you know attacking the GPS warrant was one thing we
15 were going to raise. Trying to keep the video tape out of
16 evidence would have been the crux of what we needed to do. It
17 was very damning and not just the video, but the statements
18 made during arrest.

19 Q: And you communicated that those were going to be your
20 lines of defense to your client?

21 A: Yes.

22 Q: Did you need to conduct any sort of independent
23 investigation into the case separate from the discovery that
24 was provided?

25 A: I didn't think so.

1 Q: Prior to entering his guilty pleas you discussed with
2 your client all of his various constitutional rights?

3 A: Yes.

4 Q: His right to have to jury trial?

5 A: Yes.

6 Q: And his right to remain silent?

7 A: Right to confront witness, yes.

8 Q: Ultimately whose decision was it to plead guilty?

9 A: It was Darrell's decision, Mr. Green's.

10 **MR. JAMES:** I beg a moment of the Court's indulgence.

11 **BY MR. JAMES:**

12 Q: One last question, Mr. Parrott, are you under any kind of
13 current interim suspension from the South Carolina Bar?

14 A: Yes.

15 Q: And does that relate to any of the aspects of this case?

16 A: No.

17 Q: I have no further questions.

18 **THE COURT:** Yes, sir.

19 **CROSS EXAMINATION OF MR. PARROTT BY MR. FALK:**

20 Q: When he plead guilty in Florence you were with him?

21 A: I was.

22 Q: Okay. And what was the trial date going to be in
23 Florence?

24 A: What was the trial date?

25 Q: Yeah. I mean how close was his plea to his trial date?

1 Was it one of these things he's either going to plead or ---

2 A: That day.

3 Q: Okay. That day?

4 A: Yes. They were ready to pick a jury. We had been there
5 a couple of times the week before trying to resolve this issue
6 in a little bit better fashion for him.

7 Q: Now my client testified that Mr. Axelrod told him that
8 the solicitor's office had dotted all of the I's and crossed
9 all of the T's. Is that your recollection or is that your
10 impression of the strength of their case?

11 A: Are you asking me if that was my impression of the
12 strength of their case?

13 Q: Yes.

14 A: In Florence County or here?

15 Q: Here.

16 A: Yeah. I'd say I think they had enough cracks at him here
17 on the various warrants, yes. They were you know controlled
18 buys and those cases are what they are, but eventually you can
19 get hooked on them.

20 Q: And he said -- when his car was stopped the tracking
21 device was on his car, is that correct?

22 A: To the best of my knowledge, yeah.

23 Q: Yeah. And I believe your testimony earlier was one of
24 the defenses that you were going to raise is you were going to
25 attack the tracking device; is that correct? The warrants,

1 the tracking device warrants?

2 A: Right.

3 Q: Had you seen the warrants yet at that time?

4 A: I had not seen the warrant. No. I just knew that there
5 was one and I was going to explore it.

6 Q: But the trial in Florence was going to be that day?

7 A: That's right.

8 Q: Would the warrant not have been relevant for the trial in
9 Florence?

10 A: I would assume so, yeah. The other problem in Florence
11 unrelated to the tracking device was that they stopped him for
12 a speeding violation and there was a high odor of marijuana
13 that omitted from the car. He was apparently under the
14 influence of the marijuana. They got him out you know on
15 video tape and then he chose to run and they tackled him in
16 the middle of I-95. Subsequent to that he made some
17 incriminating statements on the video.

18 Q: You said that you had discussed with him the fact that
19 there was a tracking device on his car as part of the review
20 of the Rule 5; is that correct.

21 A: I'm sure. I believe that we had a conversation about it
22 or we discussed it in my office when we watched the video of
23 the events in Florence County.

24 Q: Uh-huh. (Affirmative response.) Well if you were ready
25 to go to trial in Florence County on the day that he plead

1 guilty there, when were you planning on getting a copy of the
2 warrant for the tracking device?

3 A: I was going to raise that in a pretrial motion.

4 Q: But you had filed a discovery request?

5 A: Yes.

6 Q: And did you renew the discovery request?

7 A: I'm sorry.

8 Q: And when were the discovery requests renewed?

9 A: When were they reviewed?

10 Q: Did you ever renew them?

11 A: Oh, renew it.

12 Q: I mean a lot of times you file a request and ---

13 A: Yeah." You know the discovery request in the Florence
14 matter would have been filed before I came to work at Axelrod.

15 Q: Okay. And you never got a copy of that warrant?

16 A: No.

17 **MR. FALK:** Your Honor, I have no further questions.

18 **THE COURT:** All right.

19 Anything further from the state?

20 **MR. JAMES:** To answer your question orally, Your Honor,
21 yes.

22 **THE COURT:** Okay.

23 **REDIRECT EXAMINATION OF MR. PARROTT BY MR. JAMES:**

24 Q: You indicated that you wanted to raise the issue of the
25 GPS warrant in a pretrial motion, correct?

1 A: Right.

2 Q: So you were waiting until trial to bring that up?

3 A: Yes.

4 Q: ~~But you knew it existed?~~

5 A: I did.

6 Q: Did you strategically decide that you wanted to wait
7 until trial to raise that issue?

8 A: Yeah. I wanted to make sure that that issue was
9 preserved for appeal if we went forward with the trial. Based
10 on my view of the facts of the case and the whole situation of
11 the arrest, you know I felt like that that issue was not going
12 to be my strongest defense.

13 Q: So you knew there was this warrant floating out there
14 somewhere?

15 A: Yeah.

16 Q: And you knew you didn't have it?

17 A: I knew I had never seen it before and it wasn't in the
18 file.

19 Q: And you wanted to push that off until trial?

20 A: Yeah.

21 Q: Do you think it would have been beneficial to our client
22 had you proceeded to trial if you had been able to raise that
23 issue during trial if the state had attempted to rely upon the
24 GPS?

25 A: You mean -- yeah. Yeah.

1 Q: It would have made the state look really bad, right?

2 A: Right.

3 Q: Do you think it could have resulted in a mistrial?

4 A: Or maybe suppression of some of the evidence.

5 Q: No further questions.

6 **THE COURT:** All right.

7 Anything further?

8 **MR. FALK:** Just briefly.

9 **RE-CROSS EXAMINATION OF MR. PARROTT BY MR. FALK:**

10 Q: You testified that you said that you were going to raise
11 it pretrial; is that correct? Had you gone to trial, you were
12 going to raise the issue of the tracking device pretrial?

13 A: Right.

14 Q: Was that before or after the jury was picked?

15 A: After the jury was sworn.

16 **MR. FALK:** No further questions.

17 **THE COURT:** All right. You may step down. Thank you.

18 **MR. PARROTT:** Thank you.

19 **THE COURT:** All right. Call your next witness.

20 **MR. JAMES:** There will be nothing further from the state,
21 Your Honor.

22 **MR. FALK:** Your Honor, if I could call my client back to
23 the stand as a rebuttal witness.

24 **THE COURT:** All right. Go ahead.

25 **REBUTTAL OF MR. GREEN BY MR. FALK:**

1 Q: Your Honor testified that he had discussed with you the
2 possible defenses. You were here and you heard him say that;
3 is that correct?

4 A: Yes.

5 Q: And one of the defenses he said he discussed with you was
6 that they were going to attack the tracking device. Is that
7 what you heard him say?

8 A: I heard him say that.

9 Q: Is that correct?

10 A: No, sir.

11 Q: Did he talk to you on that day in Florence that they were
12 going to possibly attack the tracking device?

13 A: No, sir. My first day I found out about the tracking
14 device is when I got my discovery in 2016 at Lee County
15 Correctional Institution.

16 Q: So when you plead guilty in Florence you had no idea that
17 he even had a concern about the tracking device; is that
18 correct?

19 A: No, sir. I plead guilty in Florence because of the
20 damaging evidence from the video tape at the time.

21 Q: And the video tape was a result of the tracking device?

22 A: The arrest was a result of the tracking device.

23 Q: Okay. Okay. No further questions.

24 **THE COURT:** All right.

25 **MR. JAMES:** Nothing further from the state.

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)

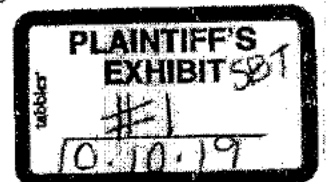
APPLICATION)

UNDER SEAL)

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)

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.

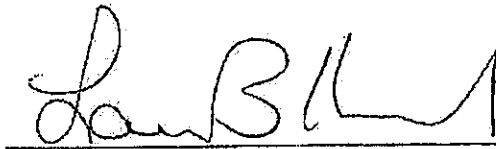
A report containing details of placement of the device, information received from the surveillance and removal of the device will be maintained by the Agent and will be

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 IIC955)
 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, Galivañts 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.

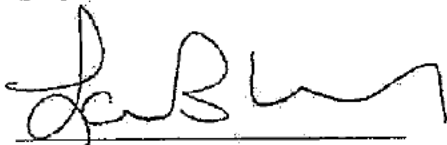
- 21.) It is believed by the affiant that Darrell GREEN is involved in trafficking crack cocaine and that the 2008 Dodge Charger bearing South Carolina registration [REDACTED], VIN [REDACTED], is GREEN's primary mode of transportation and is used to conduct the general business of trafficking crack cocaine
- 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 affiant's 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.

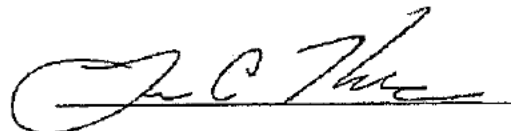
Therefore, it is requested that authorization be granted to for a GPS device be installed on the suspect vehicle pursuant to SC Code 17-30-140 in the Fifteenth Judicial Circuit. The use of information gathered through the use of the GPS device will be used to track the movement of the suspect vehicle 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. 2:00pm



Residing Circuit Court Judge
Fifteenth Judicial Circuit



Special Agent Trevor C. Howlett
South Carolina Law Enforcement Division

10

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY)
 Darrell Green,) Case No.: 2016-CP-26-02171
 S.C.D.C. No. 249354,)
)
 Applicant,)
) **ORDER OF DISMISSAL**
 v.)
)
 State of South Carolina,)
)
 Respondent.)

FILED
 2020 MAY 27 PM 1:38
 REBECCA EVANS
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Darrell Green (“Applicant”) on March 30, 2016. Respondent made its return on or about February 17, 2017. The Court convened an evidentiary hearing into the matter on October 10, 2019, at the Horry County Government & Justice Center in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, Jacob Leon Parrott, Esq. (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, the pleadings, and the exhibit introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the September 2015 term of the Horry County Grand Jury for trafficking cocaine base, third offense (2015-GS-

26-03541). Jacob Leon Parrott, Esq. represented Applicant, and Thomas Groom Terrell, III, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On October 27, 2015, Applicant pled guilty to the lesser-included offense of trafficking in cocaine base, first offense, 28-100 grams. Accepting terms negotiated between Applicant and the State, the Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for a term of eighteen years. Applicant did not appeal his plea or sentence.

Present Application

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

1. "Violation of fourth Amendment"
 - a. "SLED placed GPS on car that did not belong to Applicant to monitor movements without warrant."
2. "Insufficient Representation"

Applicant requests relief as follows:

- "release from incarceration"

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of

counsel as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir.

2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” Id. at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to

depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Move to Suppress Evidence

Applicant alleges Counsel was ineffective in failing to move to suppress evidence which was the fruit of an allegedly improper GPS tracking device attached to the vehicle used by Applicant. Under South Carolina law, “[t]he Attorney General or any solicitor may make application to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device by the South Carolina Law Enforcement Division or any law enforcement entity of a political subdivision of this State.” S.C. Code Ann. § 17-30-140(A). An application for a GPS tracker must include: (1) a statement of the identity of the applicant; (2) a certification by the applicant that probable cause exists to believe that the information likely to be obtained is relevant to an ongoing criminal investigation; (3) a statement of the offense to which the information likely to be obtained relates; and (4) a statement whether it may be necessary to use and monitor the tracking device beyond the jurisdiction of the court from which authorization is sought. S.C. Code Ann. § 17-30-140(B). Upon finding of probable cause, and that the necessary certifications and statements have been made, the court “must enter

an ex parte order authorizing the installation and use of a mobile tracking device.” S.C. Code Ann. §17-30-140(C).

The installation of a GPS device on person’s vehicle, and the use of that device to monitor the vehicle’s movements, constitutes a “search” under the United States Constitution. United States v. Jones, 565 U.S. 400, 404 (2012). However, before a criminal defendant can challenge the propriety of a search or seizure, the defendant seeking to raise such a challenge must establish that his own personal Fourth Amendment rights were violated by that search or seizure in order to be entitled to the benefits of the exclusionary rule. State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987); See also Rakas v. Illinois, 439 U.S. 128, 132 n.1 (1978) (“The proponent of a motion to suppress has the burden of establishing his own Fourth Amendment rights were violated by the challenged search or seizure.”). Rights protected by the Fourth Amendment are personal rights and cannot be vicariously asserted. Alderman v. United States, 394 U.S. 165, 174 (1969).

“The substantial social costs exacted by the exclusionary rule for the vindication of Fourth Amendment rights have long been a source of concern.” United States v. Leon, 468 U.S. 897, 907 (1984). The United States Supreme Court’s cases “have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of governmental rectitude would impede unacceptably the truth-finding functions of judge and jury.” Id. (quoting United States v. Payner, 447 U.S. 727, 734 (1980)). “An objectionable collateral consequence of this interference with the criminal justice system’s truth-finding function is that some guilty defendants may go free or receive reduced sentences as a result of favorable plea bargains. Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants

offense basic concepts of the criminal justice system.” Id. at 907-08 (citing Stone v. Powell, 428 U.S. 465, 490 (1976)); see also State v. Moore, Op. No. 27948 (S.C. Sup. Ct. filed Feb. 19, 2020) (Shearouse Adv. Sh. No. 8 at 31) (quoting Leon and emphasizing the language of “Particularly...” forward). Accordingly, in the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression of evidence resulting from a deficient warrant is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause. Id. at 926; see also Hamrick v. State, 426 S.C. 638, 654, 828 S.E.2d 596, 604 (2019) (quoting Davis v. United States, 564 U.S. 229, 238 (2011)) (The exclusionary rule does not apply when the police act with an objectively reasonable good-faith belief that their conduct is lawful.).

At the evidentiary hearing, Applicant testified he retained Axelrod and Associates, who assigned Counsel to represent him. Applicant testified he was provided his materials disclosed pursuant to Rule 5, SCCrimP, but never reviewed discovery with Counsel. Applicant asked for his discovery after his plea and Counsel’s office sent a copy. Applicant testified that he only then learned of the tracking device. Applicant testified he was unable to find a copy of the warrant authorizing the tracking device in his discovery materials, so he wrote to the Horry County Clerk of Court and the Florence County Clerk of Court seeking a copy of any such warrant—none was provided. Applicant followed up with Axelrod and Associates, who also could not produce such a warrant. Applicant testified he did not see the warrant until after receiving discovery in a 42 U.S.C. § 1983 action in federal court. Applicant explained he knew a confidential informant was involved, and that multiple confidential informant purchases were set forth in the warrant. Applicant asserted that if he had seen the warrant, he would have sought to

challenge it because there was no “seal” on it. Applicant testified he had believed he was arrested for a traffic stop.

On cross-examination, Applicant clarified that by “seal” he meant “an imprint. . .” Applicant testified he first met with Axelrod and Associates right after his bond hearing, but that they did not call him back until two weeks before trial, and that only met Counsel once. Applicant testified his discovery was provided to Counsel, but not to him. Applicant recalled that he told Counsel to closely review the warrants and that Counsel replied he saw no issues. One day, Applicant checked his mailbox and discovered a subpoena. When Applicant visited Counsel regarding the subpoena, he learned there was an offer to plead guilty in exchange for eighteen years. Applicant testified he had intended to reject the offer, and that Counsel agreed with him it was a bad offer, but ultimately Applicant accepted the offer and pled guilty.

On redirect examination, Applicant asserted he pled guilty without full knowledge of the facts of his case.

Counsel testified he represented Applicant through his employment with Axelrod and Associates. Counsel asserted he met with Applicant more than five times, and more than twice in Counsel’s office. Counsel further noted that Applicant met additional times with Axelrod and Associates staff. Counsel testified he received materials responsive to motions pursuant to Rule 5, SCCrimP, and Brady,¹ that he discussed the materials with Applicant, and that he provided copies of the materials to Applicant prior to the plea. Counsel recalled that Applicant faced four counts of distribution as a result of purchases made with a confidential informant, and then additional charges from the execution of a search warrant.

Counsel testified that he was aware of the use of the GPS device. Counsel explained that all of the confidential informant purchases were made before the GPS tracker, but was unable to

¹ Brady v. Maryland, 373 U.S. 83 (1963)

firmly recall whether the search warrant was executed before or after the GPS tracker was installed. Counsel testified he and Applicant spoke about the tracker on a couple of occasions.

Counsel confirmed that Applicant was not happy with the State's offer, and felt that eighteen years was too harsh. Applicant remained unsure regarding the offer until his trial date for charges in Florence County. Counsel opined that eighteen years was not "out of bounds" and that he told Applicant the alternative was that the State was seeking in all practical terms to imprison Applicant for the remainder of his life. Counsel testified he had been prepared for trial, and that the Florence charges would be tried first. Counsel explained he intended to attack the GPS warrant, the recordings, and the statements.

On cross-examination, Counsel made clear that he knew there was a warrant to justify the use of the GPS tracker, but that he had not seen the warrant at the time of Applicant's guilty plea. Counsel recalled that Applicant was pulled over for a traffic violation, fled, was captured by law enforcement, and then made incriminating statements.

On redirect examination, Counsel testified he intended to preserve the GPS tracker issue for appeal, but that he did not believe attacking the validity of the use of the GPS tracker was the strongest defense available to Applicant. On recross examination, Counsel testified he would have raised the issue pre-trial, after the jury was seated.

Applicant testified in reply that he first learned of the GPS tracker after he pled, and that he pled guilty because he believed the video of his arrest was very damaging.

During the evidentiary hearing, the application for and order authorizing the GPS tracker was introduced as Applicant's Exhibit #1, with certain information tending to identify the confidential informant redacted. The materials set forth the statutorily required information, and further explain in some detail precisely why the GPS tracker was necessary to the investigation:

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.

(Applicant's Exhibit #1). The affidavit in support of the application further explained that mobile surveillance had been unable to continuously track Applicant's vehicle from the scene of a controlled buy to the address where Applicant's vehicle was often subsequently found. Id. The Honorable Larry B. Hyman, Jr. authorized the use of the GPS tracker on July 28, 2014. Id.

The Court finds no ineffectiveness on the part of Counsel. First, this Court does not find credible Applicant's testimony that he did not learn of the GPS tracker until after his guilty plea. The Court does find credible Counsel's testimony that he was aware of the tracker and that it was supported by a sealed warrant, and that he and Applicant discussed the matter on multiple occasions. Counsel and Applicant discussed all of the materials turned over through discovery. Counsel was prepared to attempt a challenge to the fruits of the GPS tracker if the case proceeded to trial, but Applicant instead opted to plead guilty. Second, no compelling arguments are presented to this Court to justify the exclusion of evidence resulting from the use of the GPS tracking device. To the contrary, upon review of Applicant's Exhibit #1, the application and affidavit in support of the GPS tracker appear to provide ample basis for its use. Even if Applicant did identify some fatal deficiency in the GPS warrant, he does not assert any falsehood or misrepresentation in its contents, nor is there any argument (or basis on which to argue) that it is wholly devoid of the necessary probable cause. Thus, application of the exclusionary rule would be inappropriate and evidence resulting from its use would be admissible under the exception for law enforcement's objective good faith. Altogether, Applicant has failed to show

any deficiency on the part of Counsel, or that but for the deficiency alleged the outcome of the proceedings would have been different, so his claim for relief is **DENIED**.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 23 day of APRIL, 2020.

[Handwritten Signature]

WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

[Handwritten Signature], South Carolina

[Handwritten Initials]

FILED
2020 MAY 27 PM 1:38
RACHEL H. ELYS
CLERK OF COURT
Horry County, SC

DOCKET NO. 2015-GS-26-03541

Cx

The State of South Carolina

County of Horry

Thomas Groom Terrell, III

14H03699

COURT OF GENERAL SESSIONS

SEPTEMBER, 2015 TERM

FILED
HORRY COUNTY

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MELANIE WOODS-WARD
CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

WITNESSES

Trevor Howlett S C Law Enforcement Division

ARREST WARRANT NUMBER

2014A2610400411

CDR: 0349 44-53-0375(C)(2)(c)

DOA: 8/18/2014

ACTION OF GRAND JURY

TRUE BILL

Jack Smith
Foreperson of Grand Jury
Date: SEP 17 2015

VERDICT

Foreperson of Petit Jury
Date:

THE STATE

vs.

Darrell Green
B/M



ATTORNEY: Stuart M. Axelrod

Indictment for

TRAFFICKING COCAINE BASE
MORE THAN 28 GRAMS, LESS THAN 100 GRAMS

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING COCAINE BASE
MORE THAT 28 GRAMS, LESS THAN 100 GRAMS

CDR: 0349 44-53-375(C)(2)(c)

That Darrell Green did in Horry County on or about April 29, 2014, knowingly sell, deliver, purchase, or bring into this State; or did 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 Base in an amount of more than twenty-eight grams but less than one-hundred grams, same being a controlled substance all within the meaning of Section 44-53-110, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(c)(2), 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.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

FILED
HORRY COUNTY
2015 OCT 27 AM 11:55
MELANIE HUBBARD
CLERK OF COURT
COURT DATE
PLED GUILTY/TRIAL