

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Orangeburg County

Honorable Kristi F. Curtis, Circuit Court Judge

SHELLY FAULLING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000344

APPENDIX

JORDAN WAYBURN
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

ATTORNEY FOR PETITIONER

DANIELLE E DIXON
Assistant Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEYS FOR RESPONDENT

INDEX

ORDER OF CONTINUANCE AND CONSOLIDATION.....	1
ORDER GRANTING BELATED REVIEW PURSUANT OT WHITE V. STATE AND DISMISSING ALL OTHER GROUNDS	4
ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND.....	16
TRIAL TRANSCRIPT DATED DECEMBER 12 AND 14, 2017 (ORANGEBURG CO.)	18
INDICTMENT #2017GS38-0375 (ORANGEBURG CO.)	206
GUILTY PLEA TRANSCRIPT (CALHOUN CO.) DATED JANUARY 11, 2018	208
INDICTMENT #2017GS38-0376 (ORANGEBURG CO.)	248
INDICTMENT #2017GS38-0377 (ORANGEBURG CO.)	250
INDICTMENT #2017GS09-0023 (CALHOUN CO.)	252
INDICTMENT #2017GS09-0024 (CALHOUN CO.)	254
INDICTMENT #2017GS09-0027 (CALHOUN CO.)	256
INDICTMENT #2017GS09-0028 (CALHOUN CO.)	258
LETTER FROM BREEN STEVENS TO MR. FAULLING	260
LETTER FROM BREEN STEVENS TO JUDGE DICKSON	262
<i>PRO SE</i> NOTICE OF APPEAL FILED JANUARY 24, 2018 (ORANGEBURG CO.)	264
APPEAL ORDER OF DISMISSAL FILED MARCH 29. 2018.....	268
APPLICATION FOR POST-CONVICTION RELIEF (ORANGEBURG CO.).....	269
APPLICATION FOR POST-CONVICTION RELIEF (CALHOUN CO.)	275
RETURN, MOTION FOR A MORE DEFINITE STATEMENT (ORANGEBURG CO.)	283
RETURN, MOTION TO DISMISS AND MOTION FOR A MORE DEFINITE STATEMENT (CALHOUN CO.)	300
FIRST AMENDED APPLICATION FOR POST-CONVICTION RELIEF (ORANGEBURG CO.).....	311

FIRST AMENDED APPLICATION FOR POST-CONVICTION RELIEF (CALHOUN CO.).....	318
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 17, 2023.....	325
APPLICANT’S EXHIBIT #1 (ORDER).....	402
MOTION TO ALTER OR AMEND JUDGEMENT	405
STATE’S MEMO IN OPPOSITION TO POST-CONVICTION RELIEF	424

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Shelly T. Faulling, #197178,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Case No. 2018-CP-38-01551

ORDER OF CONTINUANCE
AND CONSOLIDATION WITH
CASE NO. 2018-CP-09-00163CLERK OF COURT
ORANGEBURG SC

2023 FEB -7 PM 12:47

FILED FOR RECORD
W/ NIFA B. CLARK

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant Shelly Faulling on December 18, 2018, challenging a conviction from Orangeburg County. That same day, Applicant filed a separate PCR application challenging his Calhoun County convictions (Case No. 2018-CP-09-00163) on identical grounds. On December 20, 2021, Respondent filed returns to both applications requesting Applicant provide a more definite statement of his allegations. An evidentiary hearing into each matter was scheduled for January 26th, 2023, at the Orangeburg County Courthouse.

Applicant has stated he intends to file an amended PCR application in response to the State's motion for a more definite statement. He avers that his convictions from Calhoun County and his conviction from Orangeburg County are sufficiently factually related that consolidating both PCR actions would serve the interest of judicial economy. Respondent does not oppose the request to consolidate the two cases.

Applicant alleges ineffective assistance of counsel, Deborah Butcher, who represented him at his trial on the Orangeburg County charge. In addition, Applicant and Respondent anticipate that Ashley Cornwell, who prosecuted Applicant in both of the underlying criminal proceedings, will be needed to give testimony at the evidentiary hearing. Both witnesses have informed

Respondent that they have scheduling conflicts the week of January 23rd, 2023. Accordingly, the parties jointly request a continuance until the next term of PCR court for the First Judicial Circuit.

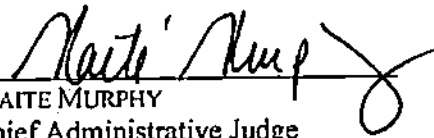
This Court finds that consolidating Case No. 2018-CP-09-00163 with Case No. 2018-CP-38-01551 would serve the interest of judicial economy. Therefore, the Court directs that both matters henceforth proceed under Case No. 2018-CP-38-01551. The Court also finds that Applicant shall have 60 days from the date of this order in which to submit an amended application clearly setting forth the specific allegations on which he plans to seek relief at the evidentiary hearing. The Court finds that this matter should be continued until the next regularly scheduled term of court for PCR matters in the First Judicial Circuit.

[Conclusion and Signature on Following Page]

IT IS THEREFORE ORDERED:

1. That Case No. 2018-CP-09-00163 be consolidated with Case No. 2018-CP-38-01551 and henceforth proceed as Case No. 2018-CP-38-01551;
2. That Applicant shall, within 60 days of the date of this order, file an amended application setting forth specific allegations for relief;
3. That this post-conviction relief matter shall be continued and rescheduled for the next regularly scheduled term of court for post-conviction relief for the First Judicial Circuit; and
4. That the Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 20 day of Jan, 2023.

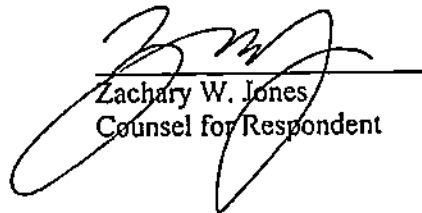

 MAITE MURPHY
 Chief Administrative Judge
 First Judicial Circuit

 South Carolina

I SO MOVE:


 David B. Tarr
 Counsel for Applicant

I SO MOVE:


 Zachary W. Jones
 Counsel for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Shelly T. Faulling, SCDC #197178,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2018-CP-38-01551

**ORDER GRANTING BELATED
REVIEW PURSUANT TO
WHITE V. STATE AND
DISMISSING ALL OTHER GROUNDS**

This matter is before the Court by way of two applications for post-conviction relief (PCR) filed by Shelly T. Faulling (Applicant) on December 10, 2018. Applicant filed an application in Orangeburg County (2018-CP-38-1551) challenging convictions following a jury trial of two counts of manufacturing /distribution of methamphetamine, third or subsequent. He also filed an application in Calhoun County (2018-CP-09-00163) challenging a guilty plea conviction of manufacturing/distribution of methamphetamine, third or subsequent. By Order dated February 7, 2023, the Calhoun County Action was consolidated into the Orangeburg County action with the consent of both parties.

On May 17, 2023, an evidentiary hearing convened before the Honorable Kristi Curtis. Applicant was present and represented by David Tarr, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the close of the hearing, counsel for Applicant—in lieu of argument—asked this Court to order the parties to submit competing orders. This Court denied that request. Thereafter, counsel for Applicant requested to brief the issue of whether Applicant was denied due process when the Detention Center did not forcibly transport him to trial after he refused transport. This Court provided Applicant additional time to brief this issue and Respondent time to respond. After receiving submissions from the parties and following a thorough review of the transcript and testimony and evidence presented at the hearing, this Court

finds Applicant is entitled to a belated direct appeal of his trial pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). This Court further finds Applicant did not meet his burden of proof on the remaining allegations and denies and dismisses those with prejudice.

PROCEDURAL HISTORY

Orangeburg County Trial

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate thirty-year sentence. In December 2017, the Orangeburg County Grand Jury indicted Applicant for possession with intent to distribute (PWID) methamphetamine, third or subsequent offense (2017-GS-38-0375). On December 12, 2017, a jury trial convened before the Honorable Edgar W. Dickson. Deborah J. Butcher, Esquire, represented Applicant. Assistant Solicitor Ashley Cornwell prosecuted the case. Applicant was not present and was tried in his absence.

At the conclusion of trial, the jury found Applicant guilty as indicted. Following the verdict, Judge Dickson sealed the sentence. On December 14, 2017, Applicant appeared before Judge Dickson and was sentenced to thirty years.

Applicant filed a *pro se* notice of appeal. By order filed March 29, 2018, the South Carolina Court of Appeals dismissed the appeal, finding Applicant failed to timely serve and file a notice of appeal. The remittitur was sent April 16, 2018.

Calhoun County Guilty Plea

On January 11, 2018, Applicant appeared *pro se* before the Honorable Edgar Dickson and pled guilty to Orangeburg County charges of PWID methamphetamine, third offense; and failure to stop for a blue light (2017-GS-38-376, -377). That same day, Applicant waived venue and pled guilty to Calhoun County charges of PWID methamphetamine, third offense; failure to stop for a blue light; driving under a suspended license; and driving without registration (2017-GS-9-23, -

24, -27, 28). Applicant pled pursuant to a negotiation that all charges would run concurrent with his December 2017 conviction and he would not receive additional time. (Plea 4). The plea court accepted the negotiation and sentenced Applicant to thirty years for each PWID methamphetamine charge; three years for each failure to stop charge; and time-served for the remaining charges. These sentences were all concurrent to the sentence Applicant received in his December 2017 trial. Applicant did not appeal his guilty plea.

CURRENT APPLICATIONS

On December 10, 2018, Applicant filed PCR applications in both Orangeburg County and Calhoun County raising the following, identical claims:

- (a) Attorney conflict of interest: Attorney refused to quit before trial, I tried to have her removed during pretrial but it was unsuccessful. She quit immediately after guilty verdict which left me with hostile representation before and no representation after. During which time the prosecutor deemed me pro se even though I didn't fully understand the Faretta Warning.
- (b) Attorney failed to disqualify jurors during voir dire: Voir dire is picking a jury, anyone who knows you personally, has a grudge, or is your friend, etc. is supposed to be automatically disqualified by the Judge.
- (c) Attorney forced me to go pro se: I have no intention of proceeding without a lawyer. I repeatedly asked for nonconflicting counsel and was ignored, which resulted in me being forced into pro se and tried in my absence illegally.

The State filed a return and a motion for a more definite statement.

On May 8, 2023, Applicant filed an amended application in his Orangeburg County Action alleging:

- (a) Trial proceeded in Mr. Faulling's absence: Mr. Faulling was in custody at the Orangeburg County Detention Center when his trial was held at the Orangeburg County Courthouse. He was not transported to Court by the Jailers. Therefore, he was denied his fundamental right to be present at his trial.

(b) Ineffective assistance of counsel due to Ms. Butcher's failure to object to trial proceeding in Mr. Faulling's absence: Trial counsel Butcher moved for a continuance due to the fact the jail did not transport Mr. Faulling to court, but she did not object to the trial proceeding in his absence or to the judge failing to grant her continuance request.

(c) Mr. Faulling did not knowingly and voluntarily waive his right to appeal: Mr. Faulling's trial counsel Deborah Butcher moved to be relieved as his counsel and was relieved after sentencing, but prior to filing a notice of intent to appeal. The Notice of Appeal was not timely filed and therefore Mr. Faulling's appeal was dismissed.

That same day, Applicant filed an amended application in his Calhoun County Action alleging:

(a) Guilty Plea was made after Faretta warnings tainted by legal advice given by an attorney with an actual conflict of interest. Attorney giving advice was assistant solicitor who was actively prosecuting Mr. Faulling at the time advice was given. Mr. Faulling pled guilty pro se, due to the fact that his appointed counsel was relieved prior to his guilty plea. The Solicitor Ashley Cornwell gave Mr. Faulling legal advice prior to and during his guilty plea, while laboring under an actual conflict of interest as she was the prosecutor in the case.

By order dated February 7, 2023, the Calhoun County PCR action was consolidated into the Orangeburg County PCR action. At the hearing, Applicant proceeded only on the allegations of his amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony.¹ After a careful review, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of

¹ This Court will reference PCR testimony where relevant below.

facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Orangeburg Trial in Absentia

a. Due process

At the PCR hearing, Applicant's primary allegation centered on his argument that he was denied due process when the Detention Center did not forcibly transport him to his trial.² This Court finds Applicant did not establish a due process violation.

Procedural due process requires "adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review." State v. Dukes, 404 S.C. 553, 558, 745 S.E.2d 137, 140 (Ct. App. 2013).

Following jury selection, trial counsel moved for a continuance based on Applicant's absence. Both the solicitor and trial counsel acknowledged that Applicant had been notified that trial was set for the December 11th term of court in front of Judge Dickson on November 20, 2017. According to trial counsel, she had repeatedly informed Applicant of his trial date. In fact, she met with him the day before trial and informed him again. In addition, the State arranged for Applicant to be transported from the Detention Center. Despite this, Applicant refused to be transported. During the motion, trial counsel reminded Judge Dickson about Applicant's prior motion to relieve counsel and the deteriorating relationship between her and Applicant. After hearing arguments, Judge Dickson found Applicant had adequate notice of his trial and the consequences of failing to attend. Consequently, he denied trial counsel's motion for a continuance, and the trial proceeded in Applicant's absence over counsel's objections.

² The State had arranged for him to be transported, but Applicant refused to be transported.

Here, Applicant had both notice of the trial date and an opportunity to be transported and heard. At the PCR hearing—consistent with the trial transcript—both the solicitor and trial counsel testified the State arranged for transport but Applicant refused to be transported. Both also testified that Applicant was advised on the record at a prior hearing of his trial date and that trial would proceed in his absence if he did not attend. This Court finds credible counsel and the solicitor's foregoing testimony that Applicant had notice and the opportunity to be transported but refused transport. Based on the foregoing, Applicant had both adequate notice and an opportunity to be heard. Further, counsel was present at trial to confront adverse witnesses and introduce any evidence that may have been admissible and favorable to Applicant. Finally, Applicant was afforded a jury trial, and the State maintained the burden of proof. Thus, Applicant was not denied due process.

This Court rejects Applicant's argument that he was denied his right to be at his trial, which constituted a structural error. Had Applicant been *denied* his right to be present, he would have been deprived of due process. However, the facts here do not support a finding that Applicant was denied his right to be present at his trial. Both counsel and the solicitor credibly testified that Applicant was advised on the record of his trial date and that the trial would occur *in his absence* if he chose not to attend. The State arranged for transportation, but Applicant—after being advised of his trial date and that trial would proceed in his absence—refused it.

It strains credibility to suggest a criminal defendant can (1) refuse transport arranged by the State and then (2) obtain a new trial at a later date if the Detention Center does not forcibly transport him. In short, due process requires notice and the opportunity to be heard. Applicant was provided both. Permitting him to refuse transport and then obtain a new trial years later would serve as an incentive for other criminal defendants to likewise refuse transport to their trial—and

subsequently seek to obtain a new trial at a later date if they are not forcibly transported. Based on the foregoing, Applicant has not established a due process violation, and this claim is denied.

b. Ineffective assistance of counsel

Applicant next contends counsel was ineffective for not objecting to the trial proceeding in Applicant's absence. He further avers that although counsel moved for a continuance after Applicant was not transported, she did not object to the trial proceeding in his absence or to the judge failing to grant her continuance request. This allegation lacks merit.

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. In evaluating allegations of ineffective assistance of counsel, courts apply the two-pronged test in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment, and an applicant must overcome this presumption to receive relief. Id. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Prior to trial, counsel moved for a continuance on the basis Applicant was not present. The trial court denied the request. (Tr. 27-33). Thus, this Court finds counsel properly preserved for appeal the issue of whether the trial court erred in denying the motion to continue, and counsel did not need to further object. Counsel thus was not deficient, nor was Applicant prejudiced.

To the extent counsel needed to object to trial proceeding in Applicant's absence to preserve it for appeal, this Court finds Applicant cannot show prejudice from counsel's failure to object to the trial proceeding in his absence. Specifically, it is not reasonably likely a further objection to the Court's ruling would have changed the trial court's decision to proceed in Applicant's absence—especially when the trial court considered both whether Applicant had notice of the trial date and whether Applicant had been informed that trial could proceed in his absence. Based on the transcript, Applicant was informed of both (1) his trial date and (2) that trial would proceed in his absence if he did not attend. (Tr. 27-33). Likewise, according to the transcript, the State arranged to have him transported to Court, but Applicant refused. (Tr. 27-33). Based on this, it is not reasonably likely the appellate court would have reversed the trial court's denial of a motion for a continuance had this issue been properly preserved and raised on direct appeal. See Ravenell, 387 S.C. at 455, 692 S.E.2d at 557 (“The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion.”); id. (“Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth.”); id. (“It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence.”); id. at 455, 692 S.E.2d at 557-58 (“A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence.”); id. at 456, 692 S.E.2d at 558 (“The judge must make findings of fact on the record that the defendant

(1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend.”).

Further, trial counsel and the solicitor testified at the PCR hearing that Applicant had previously appeared before Judge Dickson, and Judge Dickson informed him of his trial date and that trial would proceed in his absence if he did not attend. This Court finds the foregoing testimony credible. Ultimately, Applicant had notice of his trial date that it would proceed in his absence if he did not attend. The State arranged transport, but Applicant refused to be transported. Thus, regardless of whether counsel adequately preserved this issue, Applicant cannot show prejudice because it is not reasonably likely a further objection would have (1) changed the court’s denial of the motion to continue or (2) caused the appellate court to reverse this issue.

c. Belated Appeal

Applicant contends he did not knowingly and voluntarily waive his right to appeal his trial. This Court agrees.³

“Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967).” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (internal citation omitted). Where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme

³ Respondent conceded this issue.

Court, upon an appeal of the PCR decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39-40 (1974).

Here, counsel was relieved at the conclusion of this trial in absentia. After sentencing, Applicant attempted unsuccessfully to file a notice of appeal, but it was dismissed as untimely. This Court finds the evidence does not show Applicant knowingly and voluntarily waived his right to a direct appeal. Thus, Applicant is entitled to a belated appeal pursuant to White.

Calhoun County Guilty Plea

a. Conflict of Interest

Applicant contends he pled guilty after receiving Faretta warnings that were “tainted by legal advice given by an attorney with an actual conflict of interest.” Specifically, he avers assistant solicitor that was actively prosecuting him provided legal advice. He further contends he pled guilty due to the fact that his appointed counsel was relieved prior to his guilty plea. This Court further finds Applicant did not prove this ground.

Initially, Applicant has not established a conflict of interest. At the plea hearing, Applicant acknowledged the solicitor did not represent him. (Plea 9). Applicant was also repeatedly advised of his right to counsel—which he repeatedly waived. (Plea 9-14). In short, Applicant pled guilty with the full understanding he was not represented by the solicitor and he had the right to appointed counsel. Because Applicant himself relayed to the plea court that he understood the solicitor was not his attorney, this Court finds Applicant did not prove the solicitor was engaged in a conflict of interest or that a conflict of interest rendered his plea involuntary.

b. Faretta warning

After the close of evidence, Applicant moved to amend his application to allege he did not understand the Faretta warnings. This motion was granted over Respondent’s objection. This Court

construes this as an allegation that Applicant's plea was rendered involuntary because he did not understand the Faretta warnings. This Court further finds Applicant did not prove this ground.

At the plea hearing, the plea court advised Applicant of the dangers of proceeding pro se, and Applicant indicated he understood. (Pl. 10-14). In fact, the plea court had Applicant read and sign a document acknowledging he had all questions answered regarding self-representation and did not want an attorney. (Pl. 13-14). Further, a review of the plea transcript shows Applicant was actively engaged in the plea process and asked several questions of the plea court. For example, Applicant asked for clarification on the CDR code on his sentencing sheet to ensure it would be a non-violent offense. (Pl. 23-24). Applicant also requested credit for time served and made a motion to reduce the sentence he received at trial. (Pl. 26-27, 31-34). Finally, Applicant sought guidance on retrieving his boss's gun from law enforcement and a vehicle purchased by his mother. (Pl. 36-37). Nothing in the plea transcript suggests Applicant lacked the ability to understand the process or what was going on. Applicant has not met his burden of proof in this regard, and this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant is entitled to a belated appeal of his Orangeburg County trial pursuant to White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39-40 (1974). This Court further finds Applicant has not established any other constitutional violations that would require this Court to grant relief. Thus, Applicant's remaining allegations are denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek

appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant shall be remanded to and remain in the custody of the State;
2. Applicant is granted the right to seek a belated appeal of his Orangeburg County trial in accordance with White v. State. Counsel for Applicant is directed to file the appropriate notice of appeal within thirty days of receipt of written notice of the entry of this order, and
3. Applicant's remaining allegations are denied and dismissed with prejudice.

AND IT IS SO ORDERED THIS 3rd day of February, ²⁰²⁵~~2024~~.

Kristi Curtis

KRISTI CURTIS
Presiding Judge
First Judicial Circuit

Spartanburg

, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT
 Civil Action Number 2018-CP-38-01551

Shelly Faulling,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

**Order Denying Applicant's Motion
 to Alter or Amend**

CLERK OF COURT
 ORANGEBURG, SC

This matter is before the Court upon Applicant's timely Motion to Alter or Amend this Court's Order granting belated review pursuant to White v. State and dismissing all other grounds. The Motion asks this Court to alter, amend, or reconsider its order dismissing the application for post-conviction relief.

The purpose of Rule 59(c), SCRPC, to alter or amend the judgment is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. See *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A party may wish to file such a motion when he believes the court misunderstood, failed to fully consider, or failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Elam*, 361 S.C. at 24, 602 S.E.2d at 779.

After reviewing the applicable law and considering the arguments raised in the Motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and the issues raised in the Motion do not change the Court's reasoning or conclusions. As such, Plaintiff's Rule 59(e) Motion is respectfully denied.

IT IS SO ORDERED.

February 21, 2025
Sumter, South Carolina.



The Honorable Kristi F. Curtis

1 STATE OF SOUTH CAROLINA }

2 COUNTY OF ORANGEBURG }

COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,)

5 PLAINTIFF,)

6 VS.)

7 SHELLY THOMAS FAULLING,)

8 DEFENDANT.)

TRANSCRIPT

OF

RECORD

2017-GS-38-375

9
10 December 12th and 14th, 2017
11 Orangeburg, South Carolina

12 B E F O R E :

13 THE HONORABLE EDGAR W. DICKSON, Judge.

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

15 ASHLEY CORNWELL
16 ASSISTANT SOLICITOR
17 Attorney for the State

18 DEBORAH J. BUTCHER
19 ESQ.
Attorney for the Defendant

20
21 HILDA JORDAN
22 Circuit Court Reporter

23
24 Prepared by Pamela E. Green, Circuit Court Reporter

I N D E X O F W I T N E S S E S

<u>WITNESSES</u>	<u>PAGE</u>
Jury selection	6
Motions	27
Opening by the Court	50
Opening by Sol. Cornwell	56
Opening by Ms. Butcher	59
SHAY DASH	
Direct examination by Sol. Cornwell	62
Cross-examination by Ms. Butcher	65
Redirect examination by Sol. Cornwell	66
Recross examination by Ms. Butcher	68
ROB BOYNE	
Direct examination by Sol. Cornwell	69
Cross-examination by Ms. Butcher	83
Redirect examination by Sol. Cornwell	88
MARTIN JOURNEY	
Direct examination by Sol. Cornwell	91
Cross-examination by Ms. Butcher	99
Redirect examination by Sol. Cornwell	101
DAVID MARTIN	
Direct examination by Sol. Cornwell	115
Cross-examination by Ms. Butcher	124

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	ROB BOYNE	
4	Direct examination by Sol. Cornwell	130
5		
6	Motions	138
7	Closing by Solicitor Cornwell	143
8	Closing by Ms. Butcher	148
9	Charge by the Court	152
10	Verdict	168
11	Motions	172
12	Sentencing	187
13	Certificate	188
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
<u>State's Exhibits</u>			
S-1	Video	63	65
S-2	Photograph	73	74
S-3	Photograph	73	74
S-4	Photograph	73	74
S-5	Chrome Case	74	78
S-6	Baggies	74	82
S-7	Drugs	96	121
S-8	Drug Report	122	123

1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-1	Note with Foreman's Name	109	
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

(WHEREUPON, the following takes place within the presence of the entire jury panel.)

THE COURT: We got everybody?

THE BAILIFF: Yes, Your Honor.

THE COURT: All right.

All right. Ms. Cornwell, are you ready to call the State's case?

SOLICITOR CORNWELL: We are, Your Honor.

THE COURT: All right.

SOLICITOR CORNWELL: The State would call Docket Number 2017-GS-38-0375, the State of South Carolina versus Shelly Thomas Faulling. Indictment for manufacture, distribution, possession with intent to distribute methamphetamine.

THE COURT: All right. And, Ms. Cornwell, would you mind introducing yourself to the jury?

SOLICITOR CORNWELL: No, Your Honor.

THE COURT: And, and tell them who you work for, and the other attorneys in your office, and introduce Tammy as well.

SOLICITOR CORNWELL: Yes, Your Honor.

THE COURT: Okay.

SOLICITOR CORNWELL: Good morning, ladies and gentlemen. My name's Ashley Cornwell. I am an assistant

1 solicitor for the First Circuit, which includes Orangeburg
2 County. The elected solicitor for the First Circuit is
3 David Pascoe. The First Circuit encompasses Orangeburg
4 County, Dorchester County, and Calhoun County.

5 Seated at the table with me is my victim's advocate.
6 Her name is Cammie Craven. Other attorneys in my office are
7 Deputy Solicitor Tommy Scott, Assistant Solicitor Phil
8 Giese, Assistant Solicitor Ted Lupton, and Assistant
9 Solicitor Catherine Myers.

10 Our staff members include Jennifer Jakes, Tiese Britt,
11 Jasmine Wallace, Wanda Carroway, Angel Martin Eddelson,
12 Barbara Robinson, thank you, Bethany Ellis, Marian Edgeman.
13 We also have in our juvenile department, our juvenile
14 prosecutor is Taylor Owens, and working with her are Darlene
15 Fowler, Del -- I'm sorry, Darlene Simmons, Delphine Fowler,
16 and Mrs. Carolyn Onflict. It's a name game they play with
17 me every time I'm up here.

18 THE COURT: Thank you, Ms. Cornwell.

19 SOLICITOR CORNWELL: Thank you, Your Honor.

20 THE COURT: Okay. Any member of the jury panel related
21 by blood or marriage or close personal friend of any person
22 that works in the Solicitor's Office, if so, please stand at
23 this time.

24 (WHEREUPON, jurors respond at this time.)

25 THE COURT: All right. Your, your name please, sir?

1 THE JUROR: I'm (indiscernible) Cheseboro.

2 THE COURT: All right. Hold on, Mr., Mr. Cheseboro.

3 THE JUROR: Barbara Robinson. Yeah, sorry.

4 THE COURT: Hold -- I'm, I'm sorry. Let me -- now, I
5 need to ask you some questions.

6 THE JUROR: Okay.

7 THE COURT: Okay. And, and you said you're
8 Mr. Cheseboro, right?

9 THE JUROR: Yes, sir, Your Honor.

10 THE COURT: And, Mr. Cheseboro, you know someone that
11 works in the solicitor's office?

12 THE JUROR: Yes, sir. Yes, Your Honor.

13 THE COURT: Would that -- who is that person?

14 THE JUROR: Barbara Robinson.

15 THE COURT: Okay. The fact that you know Ms. Robinson
16 who works in that office, would that affect your ability to
17 listen to the evidence in this case and render a fair and
18 impartial verdict?

19 THE JUROR: No, sir.

20 THE COURT: Okay. If you'd stay with us then please,
21 sir. Thank you.

22 Your name again please, ma'am?

23 THE JUROR: Stephanie Brown. Juror Number 21.

24 THE COURT: And Stephanie Brown.

25 Ms. Brown, you know someone that works in the

1 Solicitor's Office?

2 THE JUROR: I do.

3 THE COURT: Who?

4 THE JUROR: Angie Martin Eddelson.

5 THE COURT: Okay. All right. The fact that you know
6 someone that works in the Solicitor's Office, would that
7 affect your ability to listen to evidence in this case and
8 render a fair and impartial verdict?

9 THE JUROR: No.

10 THE COURT: Okay. If you'd stay with us please, ma'am.
11 Your name please, ma'am?

12 THE JUROR: Senora Brown.

13 THE COURT: And let's see. Senora.
14 Did you say Brown?

15 THE JUROR: Brown.

16 THE COURT: What's your juror number?

17 THE JUROR: 18.

18 THE COURT: Okay. And, Ms. Brown, who do you know in
19 the Solicitor's Office?

20 THE JUROR: Barbara Robinson.

21 THE COURT: The fact that you know Ms. Robinson, would
22 that affect your ability to listen to the evidence in this
23 case and render a fair and impartial---

24 THE JUROR: No, sir.

25 THE COURT: ---verdict?

1 THE JUROR: No, sir.

2 THE COURT: Okay. You need to stay with us then too
3 please, ma'am.

4 All right. No one else is standing.

5 All right. The Defendant in this case is represented
6 by Ms. Butcher.

7 Ms. Butcher, would you mind introducing yourself to the
8 jury?

9 MS. BUTCHER: Thank you, Your Honor.

10 My name's Deborah Butcher. I work, along with my
11 husband, Robert Butcher, who's also an attorney. We have
12 Foster Care Abuse Law Firm and long a -- and also Camden Law
13 Firm. We do a lot of civil rights, and we also do criminal
14 defense, and we have offices in Camden and Manning.

15 THE COURT: Okay. Thank you, ma'am.

16 Is any member of the jury panel related by blood or
17 marriage or a close personal friend of Ms. Butcher or her
18 husband, if so, please stand at this time.

19 (WHEREUPON, there was no response at this time.)

20 THE COURT: All right. No one is standing.

21 Is any member of the jury panel related by blood or
22 marriage or a close personal friend of the Defendant, Shelly
23 Thomas Faulling, if so, please stand at this time.

24 (WHEREUPON, there was no response.)

25 THE COURT: No one is standing.

1 There are a number of people who may be called as
2 witnesses in this case. I'm not -- I've got a list. Not
3 all of them will be called. But I, I need to go through the
4 list.

5 Lieutenant Marty Journey may be called as a witness in
6 this case.

7 Is any member of the jury panel related by blood or
8 marriage or a close personal friend of Lieutenant Marty
9 Journey, if so, please stand at this time.

10 (WHEREUPON, there was no response.)

11 THE COURT: No one is standing.

12 Investigator Rob -- is it Boyne?

13 SOLICITOR CORNWELL: Boyne, Your Honor.

14 THE COURT: Boyne, May be called as a witness in this
15 case.

16 Any member of the jury panel related by blood or
17 marriage or close personal friend of Investigator Rob Boyne,
18 if so, please stand at this time.

19 (WHEREUPON, there was no response.)

20 THE COURT: No one is standing.

21 David Martin may be called as a witness in this case.

22 Any member of the jury panel related by blood or
23 marriage or a close personal friend of David Martin, if so,
24 please stand at this time.

25 (WHEREUPON, there was no response.)

1 THE COURT: No one is standing.

2 Shay Dash may be called as a witness.

3 Any member of the jury panel related by blood or
4 marriage or a close personal friend of Shay Dash, if so,
5 please stand at this time.

6 (WHEREUPON, a juror responds at this time.)

7 THE COURT: Yes, ma'am, your name?

8 THE JUROR: Shacoria Dash. Shacoria Dash.

9 THE COURT: All right. And your juror number?

10 THE CLERK: 45, Your Honor..

11 THE JUROR: 45.

12 THE COURT: 35?

13 THE JUROR: 45.

14 THE COURT: Oh, 45.

15 Okay. Is, is Shay Dash a, a relative?

16 THE JUROR: Yes, sir.

17 THE COURT: Okay. How -- what -- what's the relation?

18 THE JUROR: Sister.

19 THE COURT: Huh?

20 THE JUROR: Sister..

21 THE COURT: Your sister?

22 THE JUROR: Uh-huh. (Affirmative).

23 THE COURT: Okay. All right. Ms. Dash, the fact that
24 your sister could testify in this case, would that affect
25 your ability to listen to the evidence in this case and

1 render a fair and impartial verdict?

2 THE JUROR: No, Your Honor.

3 THE COURT: It would not.

4 Okay. All right. If you'd stay with us then please,
5 ma'am.

6 All right. Toni Blume may also be called as a witness
7 in this case.

8 Any member of the jury panel related by blood or
9 marriage or a close personal friend of Toni Blume?

10 That's T-O-N-I and Blume is B-L-U-M-E.

11 (No response.)

12 THE COURT: All right. No one is staning.

13 And Jonathan Tartaglia?

14 Did I do that right?

15 SOLICITOR CORNWELL: Yes, Your Honor.

16 THE COURT: Okay. Jonathan Tartaglia may be called as
17 a witness in this case.

18 Any member of the jury panel related by blood or
19 marriage or a close personal friend of Jonathan Tartaglia,
20 if so, please stand at this time.

21 (WHEREUPON, there was no response.)

22 THE COURT: All right. No one is standing.

23 Ladies and gentlemen, this involves an incident that
24 occurred in Orangeburg County on, on or about January 7th,
25 2017, and, as you heard from Ms. Cornwell, he is charged

1 with possession with -- Mr. Faulling is charged with
2 possession with intent to distribute methamphetamine.

3 Any -- does any member of the jury panel have any
4 knowledge or heard anything at all about this case, if so,
5 please stand at this time.

6 (WHEREUPON, one juror responds.)

7 THE COURT: Yes. Yes, ma'am.

8 Hold, hold on.

9 Your name again?

10 THE JUROR: Amanda Ryder, Juror Number 144.

11 THE COURT: Okay. And now, Ms. Ryder, it's very
12 important that you just answer my questions.

13 Okay. And, Ms. Ryder, what I probably want you -- you
14 said Juror Number 144?

15 THE JUROR: Uh-huh. (Affirmative).

16 THE COURT: Do you mind coming down here and let me
17 talk to you down here?

18 (WHEREUPON, the following takes place out of the
19 hearing of the remaining jurors.)

20 THE COURT: Ms. Ryder, how do you -- what -- how do you
21 know anything about this?

22 THE JUROR: He is a, he is a friend of my late husband,
23 which we went to school together, and I just heard that he
24 was busted. That's really all I heard.

25 THE COURT: Okay. So, he is a friend of your ex?

1 THE JUROR: Of my late husband.

2 THE COURT: Of your late husband?

3 THE JUROR: Uh-huh. (Affirmative).

4 THE COURT: Okay. Okay. The fact that he was a friend
5 of your late husband, would that affect your ability to
6 listen to this evidence and render a fair and impartial
7 verdict?

8 THE JUROR: No, it would not.

9 THE COURT: It wouldn't bother you at all?

10 THE JUROR: Hu huh. (Negative).

11 (WHEREUPON, the following takes place within the
12 hearing of the entire jury panel.)

13 THE COURT: Okay. All right.

14 All right. Juror Number 144, Ms. Ryder, is gonna stay
15 with us.

16 Okay. All right. Anyone else?

17 (WHEREUPON, there was no response.)

18 THE COURT: All right. No one else.

19 Okay. Thank you.

20 All right. Is any member of the jury panel affiliated
21 with any organization that advocates, advocates for stricter
22 enforcement of laws, if so, please stand at this time.

23 (WHEREUPON, there was no response.)

24 THE COURT: No one is -- oh, wait a minute.

25 THE JUROR: Do you mean a law enforcement---

1 THE COURT: Hold up. I'm sorry.

2 Ms. Brown?

3 THE JUROR: Yeah.

4 THE COURT: All right.

5 THE JUROR: Yes, sir.

6 THE COURT: Ms., Ms. Brown, are, are you -- you're a
7 member of an organization that, that is an advocate for
8 stricter enforcement of laws?

9 THE JUROR: I am not. My husband is.

10 THE COURT: Okay. All right. And what's the name of
11 the organization?

12 THE JUROR: He's a DNR officer, Department of Natural
13 Resources.

14 THE COURT: Uh-huh. (Affirmative).

15 Okay. Oh, so, it's, it's a -- it's an organization
16 through DNR?

17 Is that a yes?

18 THE JUROR: Well, he's a, he's a law -- he's a
19 Department of Natural Resources officer.

20 THE COURT: Okay.

21 THE JUROR: So, he's a game warden.

22 THE COURT: Yes, ma'am.

23 The fact that he -- your husband is a game warden,
24 would that affect your ability to listen to evidence and, in
25 this case, render a fair and impartial verdict?

1 THE JUROR: No.

2 THE COURT: Okay. If you'd stay with us then please,

3 ma'am. Thank you, ma'am.

4 No one else is staning.

5 Okay. Is any member of the jury panel affiliated with

6 any organization that is against alcohol or drugs such as

7 Mothers Against Drunk Driving?

8 That would be MADD.

9 If so, please stand if you're a member of MADD, SADD,

10 or other organizations like that, if so, please stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: All right. No one is standing.

13 And is any member of the jury panel affiliated with any

14 organization that supports law enforcement, and, Ms. Brown,

15 you don't need to stand up again unless you just want to.

16 Okay. Or, or if your answer changed.

17 Okay. All right.

18 (WHEREUPON, there was no response.)

19 THE COURT: But is any member of the jury panel

20 affiliated with any organization that supports law

21 enforcement, if stand -- if so, stand at this time.

22 (WHEREUPON, there was no response.)

23 THE COURT: All right. No one is standing.

24 Does any member of the jury panel have a relative or

25 loved one who has been the victim of a drug related crime,

1 if so, please stand at this time.

2 (WHEREUPON, there was no response.)

3 THE COURT: No one is standing.

4 Does any member of the jury panel have a relative or
5 love one who has substance abuse issues, if so, please stand
6 at this time.

7 (WHEREUPON, jurors respond.)

8 THE COURT: Yes, sir, your name again?

9 THE JUROR: Brian Robinson.

10 THE COURT: And, Mr. Robinson, you're Juror Number 149?

11 THE JUROR: Yes, sir.

12 THE COURT: And, Mr. Robinson, you have -- is it a
13 relative or a loved on---

14 THE JUROR: My mother.

15 THE COURT: Pardon?

16 THE JUROR: My mother.

17 THE COURT: Okay. The fact that she has substance
18 abuse issues, would that affect your ability to listen to
19 the evidence in this case---

20 THE JUROR: No.

21 THE COURT: ---and render a fair and impartial verdict?

22 THE JUROR: It would.

23 THE COURT: It would?

24 THE JUROR: It would.

25 THE COURT: Okay. All right. Mr. Robinson, I am going

1 to excuse you.

2 Juror Number 149 is excused.

3 Okay. Yes, ma'am, your name?

4 THE JUROR: Robin Burgess Mack.

5 THE COURT: And your number is?

6 THE CLERK: 28.

7 THE JUROR: 28.

8 THE COURT: 28?

9 THE JUROR: Yes, sir.

10 THE COURT: And, Ms. Burgess-Mack, is it a family
11 member?

12 THE JUROR: Yes.

13 THE COURT: Do you mind telling me which family member?

14 THE JUROR: A cousin.

15 THE COURT: A cousin.

16 The fact that you have a cousin who is -- has substance
17 abuse issues, would that affect your ability to listen to
18 evidence in this case, render a fair and impartial verdict?

19 THE JUROR: Not sure.

20 THE COURT: I need for you -- I need for you to be
21 sure.

22 You think it could affect your judgment?

23 THE JUROR: Yes, sir, probably.

24 THE COURT: Okay.

25 All right. Juror Number 28 is excused.

1 Thank you, ma'am.

2 THE JUROR: I'm sorry.

3 THE COURT: Ms. Brown. No, Ms. Brown. You're next.

4 I'm glad we can have these conversations.

5 THE JUROR: I know.

6 THE COURT: Okay. All right. Ms. Brown, you have a
7 family member or a loved one that has substance abuse
8 issues?

9 THE JUROR: Previous. Brother.

10 THE COURT: Your, your, your brother?

11 THE JUROR: Uh-huh. (Affirmative).

12 THE COURT: Okay. The fact that your brother
13 previously had substance abuse issues, would that affect
14 your ability to listen to evidence in this case and render a
15 fair and impartial verdict?

16 THE JUROR: I don't think so.

17 THE COURT: Okay. If you'd stay with us then. Thank
18 you, ma'am.

19 Anyone else?

20 (WHEREUPON, there was no response.)

21 THE COURT: 'No one else is standing.

22 Okay. All right. Hold on one second, ladies and
23 gentlemen. Let me -- we're about through.

24 Is any member of the jury panel aware of any bias or
25 prejudice they would have toward either the State or the

1 Defendant in this case, if so, please stand at this time.

2 (WHEREUPON, there was no response.)

3 THE COURT: No one is standing.

4 Has any member of the jury panel formed or expressed an
5 opinion about any issue or matter involved in this case?

6 I know you don't know a whole lot, but just trying to
7 find out.

8 (WHEREUPON, there was no response.)

9 THE COURT: Okay. No one is standing.

10 All right. The State have any other questions they
11 would like for me to ask?

12 SOLICITOR CORNWELL: No, Your Honor.

13 THE COURT: Does the defense have any other questions
14 they'd like for me to ask?

15 MS. BUTCHER: No, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, the good
17 news is you are all qualified to serve on this jury. The
18 bad news is only 12 of you are gonna get picked.

19 Okay. Now, if y'all would kind of bear with me for a
20 second.

21 Did it work?

22 THE CLERK: Yes, sir.

23 THE COURT: All right. The good news is---

24 THE CLERK: We need a few minutes.

25 THE COURT: Okay. You need -- you take---

1 THE CLERK: Yes, a few minutes.

2 THE COURT: All right.

3 SOLICITOR CORNWELL: If it's faster, we can do the draw
4 that we intended on doing.

5 THE COURT: No, I think they're gonna be able to print
6 it in just a second. That's what -- we're gonna try it.

7 SOLICITOR CORNWELL: Okay.

8 THE COURT: Okay. If it doesn't work, we'll, we'll
9 go -- we'll, we'll pick somebody. Get them to pick it out.
10 You know, I get Mr. Stevens back there to close his eyes and
11 come up.

12 SOLICITOR CORNWELL: I did tell Ms. Clark that we
13 needed to bring a voodoo princess cause anytime I have one
14 the system breaks down on me.

15 THE COURT: Okay.

16 SOLICITOR CORNWELL: So---

17 THE COURT: All right. Now, ladies and gentlemen,
18 while, while they are getting ready, and what, what they're
19 doing is they're, they're randomizing your names. In other
20 words, you're not gonna be in the same order -- it's not
21 gonna be in alphabetical order. The computer is, is mixing
22 up your names again, and what happens -- it, it used to be
23 little sheets of paper were put in a basket, and somebody
24 would come in and they'd pull the name out of the basket one
25 at a time.

1 This way the computer, when they redo your names,
2 they'll give me the list. Then we'll call you. You will
3 come up front to where the podium is, turn, face the
4 attorneys, and they will tell you whether you got chosen to
5 be on the jury or whether they, they want to excuse you.

6 Okay. It's just gonna take a minute, and it's kind of
7 like a game show at this point. It's kind of exciting.

8 (Pause.)

9 MS. BUTCHER: May we approach, Your Honor?

10 THE COURT: Oh, sure.

11 (Whereupon, a bench conference was held out of the
12 hearing of the jury at this time.)

13 THE COURT: You know what the attorneys were telling me
14 then?

15 They didn't want to embarrass me in front of everybody
16 else. They want me to have 13 lucky jurors. One of y'all's
17 gonna be the alternate.

18 Okay. Just in case something happens over lunch or
19 something like that and we'll see.

20 (Pause.)

21 THE COURT: Okay.

22 SOLICITOR CORNWELL: Your Honor, the State doesn't
23 object to just pulling numbers.

24 THE COURT: Well, we -- I, I understand and we're,
25 we're -- we've got to work on that too. So --.

1 SOLICITOR CORNWELL: Okay.

2 THE COURT: Ladies and gentlemen, I'll -- we are
3 trying -- we're trying -- we're going at this both manually
4 and with a computer. I'm coming over there and helping
5 because of all of my knowledge of computers. Right.

6 Okay. I'm gonna give y'all -- I'm gonna let y'all
7 stretch your legs, and if y'all will be back in here at 20
8 minutes till. I think we're gonna be ready to go.

9 Okay. So -- but if y'all need to stretch your legs, go
10 to the restroom, now's the time to do it.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: Okay. All right. All right. Ladies and
13 gentlemen, we are ready to pick a jury and one alternate.
14 The strikes are five and ten.

15 And, Madam Clerk -- now, again, when, when your name is
16 called, again, I need for you to come up front.

17 Ladies, if you've got pocketbooks or coats, you need to
18 bring them up with you because, if you get picked for the
19 jury, you'll be directed to go sit in the box, you know,
20 when you come forward.

21 Madam Clerk, you ready to call the roll -- I mean ready
22 to call the---

23 THE CLERK: Yes, sir.

24 THE COURT: Okay. All right.

25 (WHEREUPON, a jury panel was selected and seated at

1 this time.)

2 THE COURT: All right. Now we're gonna pick an
3 alternate.

4 THE CLERK: Yes, Your Honor.

5 THE COURT: Okay.

6 (WHEREUPON, an alternate juror was selected at this
7 time.)

8 THE COURT: Any issues from the State regarding jury
9 selection?

10 SOLICITOR CORNWELL: None.

11 THE COURT: None?

12 SOLICITOR CORNWELL: No, Your Honor.

13 THE COURT: Okay. Any issues from defense regarding
14 jury selection?

15 MS. BUTCHER: No, Your Honor.

16 THE COURT: Okay. All right. And this is the only
17 trial for this week, correct?

18 SOLICITOR CORNWELL: Yes, Your Honor.

19 If we can approach for scheduling?

20 THE COURT: Okay.

21 (WHEREUPON, a bench conference was held out of the
22 hearing of the jury at this time.)

23 THE COURT: All right. Ladies and gentlemen,
24 congratulations.

25 Now, let me tell you what -- we're gonna do something a

1 little different today because we're trying to move the case
2 along so we can finish today.

3 What we're gonna do is, in addition to the huge amount
4 of money you get paid to be as jurors, okay, we're gonna buy
5 you lunch today.

6 Okay. Now, what we're gonna do is I've got to take up
7 some matters before we can actually start the trial. So,
8 I'm gonna let y'all go back into the jury room, and, and
9 they'll take your orders while you're back in the jury room.

10 while you're back in the jury room, I'm gonna let y'all
11 pick a foreperson or a forelady or foreman to be the, the
12 foreperson of the jury. That's the person that fills out
13 the verdict form, make sure, when it -- when the case goes
14 to y'all to begin deliberations, that he makes -- he just
15 kind of -- he or she makes sure everybody has their say
16 because your decision as jurors is a unanimous decision.
17 Y'all've all got to agree on that.

18 Okay. The other thing I need to tell you is you don't
19 know a whole lot about this case, and you can not begin
20 talking about this case, even with the little bit of
21 knowledge that you know about it, you can't begin talking
22 about it until you've heard all the testimony in the case,
23 you've heard the closing arguments for the attorneys, I
24 charge y'all on the law, and then I tell you you can begin
25 your deliberations.

1 So, go back there in the jury room, and place your
2 order, pick a foreperson, and then I'll by -- hopefully by
3 then I'll bring y'all back out, and we'll, we'll start doing
4 some opening statements and things like that, and then
5 get -- lunch should come. We'll take a break for lunch.
6 Then we'll go again and continue going forward with the
7 case.

8 Okay. But remember you can't talk about the case yet.

9 Okay. Y'all can talk about Christmas that's coming,
10 the cold weather, whatever else. Not the case yet.

11 Okay. Thank y'all.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Ms. Butcher, you'd indicated
15 that there were some motions you needed to make.

16 MS. BUTCHER: Yes, Your Honor.

17 First, I think I'm obligated to ask for a continuance
18 based on the fact that my client is not here. He has
19 refused to come here, and I am a little bit of a
20 disadvantage because I don't think I can actually disclose
21 some of our conversation or it would be a violation of
22 attorney/client privilege.

23 However, what I do believe I can disclose is that he,
24 and I think this was on the record before when he asked
25 for -- to excuse me as his attorney. He has made

1 allegations against me to ODC. Those have not returned a
2 result yet or anything, Your Honor, and I do have that if
3 the Court would like to see his allegations and my response.
4 I have no problem with that.

5 Your Honor, I have not had the opportunity to discuss
6 and prepare for this trial with him, Your Honor.

7 THE COURT: Because he wouldn't talk to you?

8 MS. BUTCHER: Correct, Your Honor.

9 THE COURT: Okay. All right. And is -- had -- he is
10 aware that this was -- we had a trial scheduled for today.

11 Is that correct?

12 MS. BUTCHER: Yes, Your Honor.

13 THE COURT: Okay.

14 MS. BUTCHER: I, I went to the jail when this came
15 about, and I've been down there several times prior to that.
16 But, yes, and he I think left, left the room in probably
17 less than a minute.

18 THE COURT: Okay. All right. And so this is your
19 motion for a continuance?

20 MS. BUTCHER: Yes, Your Honor. And I, I do believe the
21 attorney/client relationship has deteriorated to a point
22 that, if he were a private client, I would be getting off
23 the case. I don't feel that, because this is a state funded
24 contract, I, I don't think it would be correct of me to
25 request to get off the case, Your Honor.

1 I would request a continuance. They---

2 THE COURT: Did---

3 MS. BUTCHER: ---had---

4 THE COURT: Did he make a motion in front of -- was it
5 in front of me?

6 MS. BUTCHER: It, it was, Your Honor, and that's why I
7 couldn't remember if I brought up the ODC issue at that
8 time. I did speak with his family. They said they were
9 hiring or seeking to hire -- I think his last name was Russo
10 out of Columbia, who I did speak with after that, and this
11 was just yesterday. But, obviously, he's not here.

12 THE COURT: Yes, ma'am, I believe the, the Public
13 Defender's Office is not representing -- they have
14 represented him before.

15 MS. BUTCHER: I'm, I'm a conflict.

16 THE COURT: Yes, ma'am, I, I know you are --

17 MS. BUTCHER: Yes.

18 THE COURT: -- are a conflict.

19 MS. BUTCHER: Uh-huh. (Affirmative).

20 THE COURT: But at one time -- they have re -- they
21 have represented him before---

22 MS. BUTCHER: Correct.

23 THE COURT: ---in other matters?

24 MS. BUTCHER: Yes, Your Honor.

25 THE COURT: And, and so, when he came up, he was sent

1 to you because I believe there was a -- conflicts at the
2 earlier -- the earlier represent -- representation of him.
3 The word that comes in my mind is obstinate as a
4 definitional word for the way he is as a Defendant.

5 So, he was put on notice, Mr. Cornwell, of the trial
6 date for a trial back.

7 Is that correct?

8 SOLICITOR CORNWELL: Yes, Your Honor. He was. He was
9 placed on notice to be here for December the 11th term.
10 That was done on November 20th in front of Your Honor.

11 THE COURT: Okay.

12 SOLICITOR CORNWELL: We had also sent a letter to
13 counsel advising of the trial date through email and that
14 was confirmed.

15 THE COURT: All right. He---

16 MS. BUTCHER: And, Your Honor, he was put on notice to
17 be here yesterday for a Court appearance. That's in the
18 order. He was at the jail. He, of course, couldn't show up
19 on his own. He -- the only notice of the trial is from me,
20 which I am telling the Court I, I did tell him---

21 THE COURT: You did tell him about the trial?

22 MS. BUTCHER: ---it would be tried.

23 THE COURT: Okay.

24 MS. BUTCHER: But the State has not---

25 THE COURT: Okay.

1 MS. BUTCHER: ---independently of me.

2 THE COURT: But he has been -- he has been, I'm
3 assuming, the words obstinate applies to you as well to his
4 dealings with you?

5 MS. BUTCHER: I believe that would be applicable.

6 Your Honor, the, the one thing that does concern me is
7 I don't recall if, when he made a motion to relieve me, if
8 it was explained to him he could represent himself or
9 anything of that. He has refused to come over. I don't
10 know how the court would like to handle that to inform him
11 he, he certainly could represent himself. I, I don't know,
12 Your Honor.

13 THE COURT: Yes, ma'am.

14 Ms. Cornwell, anything you wanted to interject?

15 SOLICITOR CORNWELL: Your Honor, I'm just gonna state
16 at this point notice was given. He received notice of his
17 right to be present and to represent himself. He's been
18 given all of those rights before.

19 Based on State v. Ravenel, which is 387 S.C. 449, it
20 states the -- you would make a finding of fact on the record
21 that the Defendant received notice of his right to be
22 present and, and that was done. He has also received notice
23 that he could be tried in his absence should he fail to
24 appear. The State did give that notice to the Defendant
25 through defense counsel, which was sent to them.

1 As far as his -- Ms. Butcher's not having been able to
2 prepare for this case, this case was appointed to Ms.
3 Butcher on March 20th of 2017, which is approximately
4 eight months, to prepare for this case. I understand that
5 her client has been obstinate, but her client is an indigent
6 defendant. He has not hired anybody else.

7 It would set a poor precedence to allow continuances to
8 continue to go on just because he is being obstinate in his
9 representation.

10 He has had ample opportunity to hire independent
11 counsel. I have been contacted by two different attorneys,
12 Mr. Byron Gibson and Mr. Charlie Williams, to indicate that
13 they reached -- he reached out to them, but neither of them
14 are willing to take his case. They also made notice that he
15 needed to be prepared to go to trial because those attorneys
16 were given notice that he was also on, on the trial docket.

17 So, I believe that he's been given ample notice. He
18 knows that he can be tried in his absence, and simply his
19 refusal to come, the State did arrange for transportation to
20 have him brought here so that he could be present for his
21 trial and he refused.

22 Based on those things, I do not think it would be
23 appropriate to continue the case and encourage his poor
24 behavior.

25 THE COURT: All right. And anything else you need to

1 put on the record?

2 MS. BUTCHER: Simply, Your Honor, just to make sure
3 that it's clear on the record, I've had ample opportunity to
4 prepare for trial, which I've done. I have visited him many
5 times. What I'm talking about are those final preparations
6 before---

7 THE COURT: I, I understand.

8 MS. BUTCHER: ---an actual---

9 THE COURT: It, it -- it's -- you would think, as a
10 defense attorney, it would be helpful to have your client
11 there to help you picking the jury since -- and other
12 matters like that. I understand what you mean.

13 MS. BUTCHER: Well, yes, Your Honor.

14 THE COURT: Okay. Okay. All right.

15 All right. I'm, I'm gonna deny your motion --

16 MS. BUTCHER: Thank you.

17 THE COURT: -- to continue. I -- and I, I don't know
18 that, if he was represented by anyone else, that he would be
19 more compliant to that attorney than he is with you.

20 Okay. Any other motions?

21 MS. BUTCHER: Yes, Your Honor.

22 THE COURT: Yes, ma'am.

23 MS. BUTCHER: I would make a motion to quash the
24 indictment itself, Your Honor. The -- my client was just
25 indicted, as I read on to this, on December 6th. This was

1 just handed over to me this morning. So, I did not have a
2 prior opportunity to review it.

3 Your Honor, and the deficiency that I would cite to is
4 that violation on the last line. This offense being a
5 violation of Section 44-53-375 of the South Carolina Code.
6 There's an A. There's a B.

7 Your Honor, I don't believe that's giving sufficient
8 notice as to exactly what they are attempting to try my
9 client, and I guess that might also, just handing this up
10 today, I obviously would of had a chance to show it to him
11 prior to today. Not that he's here, but --.

12 THE COURT: All right. But go ahead, Ms. Cornwell.

13 Anything you want to say -- put on the record?

14 SOLICITOR CORNWELL: And, Your Honor, it's the State's
15 position that the indictment simply serves as a notice
16 document. Ms. Butcher was provided notice on March 20th of
17 2017 when she was appointed that the trial would be for
18 possession with intent to distribute methamphetamine. It's
19 actually a third offense. We did not put the offense number
20 on the indictment for the prejudicial purposes.

21 In regards to the violation being Section 44-53-375 of
22 the statute, that is the statute number that it is. Yes,
23 there are A, B, and C. But also, within the indictment, it
24 specifically states that it is possession with intent to
25 distribute a quantity of methamphetamine under that statute.

1 Therefore, the notice requirement is there. The elements
2 are there.

3 Based on the discovery that was sent to Ms. Butcher on
4 March -- I'm sorry. It was sent to her on April 17th of
5 2017. It gave her plenty of notice.

6 Furthermore, it's the State's position that any
7 objections to the indictment are to be made prior to a jury
8 being selected. The jury has already been selected in this
9 case. Therefore, we do not think that this is a proper
10 motion to be made at a proper time, and we would ask that
11 you deny this motion.

12 THE COURT: Okay.

13 MS. BUTCHER: And, of course, Your Honor, Section
14 17-19-90 is prior to a jury being sworn. Not selected, Your
15 Honor. This is proper -- at the proper time---

16 THE COURT: Uh-huh. (Affirmative).

17 MS. BUTCHER: ---to make the objection, Your Honor.

18 THE COURT: All right. Well, Ms., Ms. Butcher, the
19 court believes that the indictment puts him on notice that
20 he has been charged with manufacturing and distribution of
21 methamphetamine here in Orangeburg for an event that
22 occurred on January 7th, 2017, and gave you the -- gave him
23 and you the offenses -- the offense -- the statutory basis
24 for a violation. And so I'm gonna deny your motion to quash
25 the indictment.

1 MS. BUTCHER: Thank you, Your Honor.

2 SOLICITOR CORNWELL: And, Your Honor, just for---

3 THE COURT: And just---

4 SOLICITOR CORNWELL: ---further clarification on the
5 record, on the front it does give the B Subsection.

6 THE COURT: Okay. All right. And just -- and, and,
7 and just for protection of the record, Ms. Butcher, I'm
8 gonna note your objection to both my denying the continuance
9 and the -- your motion to quash the indictment. I notice --
10 noting your objection to my rulings on the record to
11 preserve that.

12 okay?

13 MS. BUTCHER: Thank you, Your Honor.

14 THE COURT: What else you got?

15 MS. BUTCHER: Your Honor, the other issue is the video
16 itself. This video was provided to me. I let Ms. Cornwell
17 know that there were sections of it that were skipping. She
18 told me that, in her -- versus -- this is always very
19 difficult to open law enforcement's videos. That her copy
20 did not skip.

21 When I viewed that this morning, she was attempting to
22 show me exactly what she was wanted to put into evidence,
23 and I haven't even seen all of that, Your Honor. I've
24 showed her where the video was skipping time, and then Ms.
25 Cornwell said she had to be in here, and I didn't --

1 wasn't -- I did not have the opportunity to see the rest of
2 it even with the skips in it.

3 What happens with this video, they're two time
4 clickers.

5 THE COURT: Two time?

6 MS. BUTCHER: Clickers.

7 THE COURT: Okay.

8 MS. BUTCHER: One is showing the time with the seconds
9 at the top of the screen, and then you have one with the
10 video running at the bottom. When you watch the one at
11 the -- with the time at the top of the screen, it will
12 pause.

13 Now, if this is -- if there's nothing going on in the
14 video, you don't know that it's frozen.

15 Okay. And as she -- but what happens is, on some of
16 them, you can tell the people freeze. Then suddenly in a
17 minute, sometimes seconds, sometimes a minute, whatever, and
18 they're moving and, you know, differently.

19 Under the Rule of Completeness, Your Honor, I believe
20 we're entitled to see the complete video, and this is a case
21 where the video is the only thing that shows anything, Your
22 Honor. It's, it's -- they're no actual witnesses to exactly
23 what happened. There was one, but he -- that person states
24 they can't identify, with -- without going into case---

25 THE COURT: Uh-huh. (Affirmative).

1 MS. BUTCHER: ---but, you know, what my client actually
2 did or was in possession of or anything, Your Honor.

3 So, one, Your Honor, it -- I think the -- for it to
4 come in as evidence, the entire video needs to come in
5 because in, in that time that there's no accounting for,
6 someone else could of placed the drugs there or, you know,
7 we don't know.

8 THE COURT: Okay.

9 SOLICITOR CORNWELL: Your Honor?

10 THE COURT: Well, I, I hadn't seen the video.

11 SOLICITOR CORNWELL: And that's a hundred percent -- I
12 agree with that.

13 THE COURT: How long, how long is the video?

14 SOLICITOR CORNWELL: The only -- the video that was
15 requested is surveillance video from the gas station.

16 THE COURT: Uh-huh. (Affirmative).

17 SOLICITOR CORNWELL: So, it shows about an hour of
18 footage that is completely unrelated to this, and there are
19 plenty of case law that states that, for the Rule of
20 Completeness, we have to show the incident. So, how the---

21 THE COURT: Ms. Corn---

22 SOLICITOR CORNWELL: It's 18 minutes.

23 THE COURT: Okay. That's all I wanted to know.

24 SOLICITOR CORNWELL: It's 18 minutes. It does not
25 skip. It does not pause. It does not freeze.

1 There is a program that has to be played, and the
2 program, the time on the bottom, doesn't necessarily
3 coincide with what the convenience store video says. But
4 you can see where the video is continuously running.

5 Under Rule 901(b)(1), you're gonna have testimony of a
6 witness with knowledge that the testimony and the video that
7 they have seen is exactly what it appears to be. And under
8 Rule 1001, under photographs which includes videotapes, it's
9 going to say that the authentication purposes is simply that
10 a witness only has to state that they have viewed it, that
11 it is a true and accurate representation of exactly what
12 they saw that night, and what did -- they have testified to
13 and we will have witnesses to say that.

14 The witness that Ms. Butcher's referring to, while she
15 doesn't know who the Defendant is by person, she can
16 absolutely state exactly what she saw him do when she saw
17 him discard the drugs behind the newspaper stand, and also
18 discard the baggies in the trashcan.

19 She's going to testify as to that. She's going to
20 testify that she's had an opportunity to view the entire 18
21 minutes of the video, that it is a true and accurate
22 deduction of exactly what she remembers happening that day.
23 You're also gonna have law enforcement officers that are
24 going to be able to testify that they've reviewed the
25 surveillance video, and that it is a true and accurate copy

1 of the video that they reviewed in making their charge.

2 Therefore, for authentication purposes, the State will
3 have met its burden under Rule 901 and Rule 1001. There's
4 no prejudice to the Defendant, and any issues that the
5 defense has to raise with the video can be raised on
6 cross-examination.

7 MS. BUTCHER: And, Your Honor, I have no doubt that
8 what will be presented it will be a true and accurate
9 statement that -- but for the fact that it will be skipping
10 parts of the occurrence, Your Honor, and I'm certainly not
11 asking for all the videos to come in or anything prior to my
12 client being there.

13 THE COURT: But you're saying the whole 18 minutes
14 should come in?

15 MS. BUTCHER: The entire 18 minutes---

16 THE COURT: Okay.

17 MS. BUTCHER: ---Your Honor---

18 SOLICITOR CORNWELL: We agree.

19 MS. BUTCHER: ---with that. But what they have, and I
20 haven't had a chance to see it, I know only the part before
21 Ms. Cornwell---

22 THE COURT: Well---

23 MS. BUTCHER: ---said she had to come in here---

24 SOLICITOR CORNWELL: And, again, Your Honor---

25 MS. BUTCHER: ---and it was skipping.

1 THE COURT: Well, hold on.

2 SOLICITOR CORNWELL: That was provided---

3 THE COURT: Hold on.

4 SOLICITOR CORNWELL: ---to her on---

5 THE COURT: Ms. Cornwell, just hold on one second.

6 SOLICITOR CORNWELL: That---

7 THE COURT: Let her, let her finish.

8 MS. BUTCHER: So, the only thing -- so, when she
9 assured me hers didn't skip, and I sat down to watch it to
10 see exactly what part she wanted to put into evidence, you
11 could see it skipping. I haven't had a chance to see if the
12 rest of it skips---

13 THE COURT: Well, we, we -- we've got to break for
14 lunch. I'm gonna let---

15 MS. BUTCHER: That's---

16 THE COURT: ---you show it to her before we bring the
17 jury back in.

18 Okay?

19 SOLICITOR CORNWELL: And, Your Honor, just for
20 clarification of the record, she has had this video since
21 April 17th of 2017. So, there's been no prejudice to her
22 or her client in not viewing the video until today.

23 THE COURT: I understand, Ms. Cornwell. But I'm, I'm
24 gonna let y'all -- you've got it.

25 This is suppose to work on this machine, right?

1 SOLICITOR CORNWELL: Yes, Your Honor.

2 MS. BUTCHER: Yeah.

3 THE COURT: Okay. All right.

4 MS. BUTCHER: And, Your Honor, I have viewed the video,
5 but---

6 THE COURT: All right.

7 MS. BUTCHER: ---I wanted to see what she's wanting to
8 put in.

9 THE COURT: Okay.

10 MS. BUTCHER: And she assured me she had it where
11 didn't skip.

12 THE COURT: I'm gonna let her put it in.

13 MS. BUTCHER: So --.

14 THE COURT: I'd like to make sure it works also---

15 MS. BUTCHER: Yeah.

16 THE COURT: ---before we, we do it.

17 Is, is Mr. Turner our video expert?

18 SOLICITOR CORNWELL: No, Your Honor. I am.

19 THE COURT: Oh, thank God.

20 Okay. So who's, who's -- are you gonna do that?

21 SOLICITOR CORNWELL: Yes, Your Honor.

22 THE COURT: Okay.

23 All right. Is there another motion?

24 MS. BUTCHER: I believe that would just come up through
25 trial.

1 THE COURT: Okay. All right.

2 Okay. As, as far as, you know, putting the video in
3 about that, since they got to authenticate it, you can
4 cross-examine anybody about any issues you need to.

5 Okay. All right.

6 MS. BUTCHER: And, Your Honor---

7 THE COURT: Okay.

8 (WHEREUPON, a bench conference was held at this time.)

9 THE COURT: Okay. We got it?

10 I just want to make sure you can do it. Right now I --
11 I think they've already -- they've ordered lunch, right?

12 THE BAILIFF: We haven't ordered yet. We're taking
13 orders.

14 THE COURT: Oh, okay.

15 Ms. Butcher, don't go too far.

16 MS. BUTCHER: Oh, I'm not, Your Honor.

17 THE COURT: Okay. No.

18 Okay. Let, let me tell you, I'm gonna go hit---

19 MS. BUTCHER: Are we ready?

20 THE COURT: Well --.

21 SOLICITOR CORNWELL: This is the video.

22 THE COURT: Okay.

23 SOLICITOR CORNWELL: It starts at 00 -- it's a 52
24 minute 44 second video.

25 THE COURT: Yes, ma'am.

1 SOLICITOR CORNWELL: We are going to, because we have
2 the full records, we did not want to edit or modify it.

3 THE COURT: Right.

4 SOLICITOR CORNWELL: What we are going to do is take it
5 to where this says 21:50, which is when Mr. Faulling enters
6 the store---

7 THE COURT: Okay.

8 SOLICITOR CORNWELL: ---and it will continue to 39:50,
9 which is when this matter ends. There is 21 minutes and 50
10 seconds before hand that has nothing to do -- there is 20
11 minutes after that has nothing to do with this.

12 THE COURT: Okay.

13 SOLICITOR CORNWELL: This clock does not match this
14 clock. This clock is from the surveillance video from the
15 store itself.

16 THE COURT: Okay.

17 SOLICITOR CORNWELL: When you transfer and download
18 things, the program that is playing this, which is a high
19 definition player, this is showing that this is the
20 continuous play of that video through that program. There
21 is no part in this that stops, skips, or freezes.

22 THE COURT: Okay.

23 All right. Now, let me tell you what we're gonna do.
24 They're -- we're gonna be taking a break at some point for
25 them to eat.

1 Okay. And while we're doing -- what we're gonna do
2 right now is -- are y'all ready to do your openings?

3 SOLICITOR CORNWELL: Yes, Your Honor.

4 THE COURT: Okay. Then we'll go ahead and get ready
5 and do that. And when, when they have lunch, that's when
6 we'll, we'll view the video.

7 Okay. All right.

8 (WHEREUPON, a short recess was taken at this time.)

9 MS. BUTCHER: -- that there is in the incident report,
10 there's a statement saying that my client -- it had been
11 reported that he was driving around a stolen vehicle, that
12 that not come in.

13 THE COURT: Well, I don't think the incident report
14 is -- that's not coming into evidence, is it?

15 MS. BUTCHER: Or when, when they testify. I mean
16 that's what I'm saying. That they not testify that oh, he
17 was, was, you know---

18 THE COURT: Your Honor?

19 MS. BUTCHER: We're looking for him because he was
20 reported to be driving around in a stolen vehicle. I don't
21 think it's relevant at all.

22 Additionally, there's a document that was found in the
23 truck. He's not charged with anything with this truck.
24 That's sort of what I think brought them to talking to him
25 in the first place.

1 There's a document that they say has his name on it in
2 the truck. It's actually for Calhoun charges to be in
3 Court, and I know she doesn't have that coming in. But I
4 think the -- it would be highly prejudicial for that to be
5 mentioned. We're, we're not -- I don't think the truck is
6 relevant, has anything to it, just that they came upon him
7 and was talking to him is sufficient.

8 THE COURT: Ms. Cornwell, what -- I, I---

9 SOLICITOR CORNWELL: Your Honor, the State is gonna
10 have to get into the fact that the reason the day he stopped
11 to speak with him was because they received an -- a tip from
12 a concerned citizen that he was driving a stolen truck that
13 had been spray painted black. That is the only reason that
14 law enforcement stops him to speak with him.

15 We have no intention of getting anything into the
16 actual truck, but you can see in the video the whole
17 conversation that we're having with him is about the truck.
18 It has nothing to do with drugs whatsoever.

19 And so there's got to be a foundation as to why law
20 enforcement was even speaking to him, and how these charges
21 came about. The only thing that's gonna be stated is we
22 received a tip from a concerned citizen. We saw him next to
23 a truck. We stopped and talked to him.

24 They're even gonna say we didn't have any probable
25 cause to detain him and he was free to leave because he --

1 you can see him leave the scene afterwards.

2 Your Honor can do a, an instruction at the end that
3 they're not allowed to consider that, and that's -- he's not
4 facing a charge of that, that's not to be the thing. But
5 the whole basis of even stopping at that gas station and
6 speaking to him is because they see him with this stolen
7 truck.

8 MS. BUTCHER: And, Your Honor, my -- I don't think --
9 I'm not sure that it was even stolen from what I saw with
10 evidence. But I -- but, one, he doesn't have, have a
11 warrant out for stealing a truck. I think it's sufficient
12 for them that they stopped to speak to him about a truck
13 that was in the parking lot.

14 THE COURT: Okay. Well, I, I, I---

15 SOLICITOR CORNWELL: And, Your Honor, he's also not
16 allowed to leave in the truck because the truck does come
17 back stolen with an improper tag. So, that's why he has to
18 call friends to come and get him and you can see that in the
19 video too that he has to wait on people to come get him.
20 So, he---

21 THE COURT: All right then.

22 MS. BUTCHER: My client said he didn't know anything
23 about the truck. He would never try to leave with it.

24 THE COURT: Oh, no, I, I, I understand.

25 MS. BUTCHER: Yes, sir.

1 THE COURT: What I'm gonna do, what I'm gonna do is
2 I'm, I'm gonna let it come in if, if it, after I hear the
3 testimony and things like that, if I feel like I need to
4 explain that they can't consider that as guilt of this
5 charge or anything like that, I will, I will fashion some
6 kind of charge for that.

7 MS. BUTCHER: Uh-huh. (Affirmative).

8 THE COURT: But if, if -- this is the video of him
9 being stopped.

10 Is that, is that another thing that's being shown?

11 MS. BUTCHER: No.

12 SOLICITOR CORNWELL: No, Your Honor. The video is
13 video from the convenience store---

14 THE COURT: The robbery.

15 SOLICITOR CORNWELL: ---that just shows---

16 THE COURT: Okay.

17 SOLICITOR CORNWELL: ---where he discards the drugs---

18 THE COURT: Okay.

19 SOLICITOR CORNWELL: ---while he's talking to law
20 enforcement.

21 THE COURT: Okay.

22 MS. BUTCHER: It doesn't---

23 SOLICITOR CORNWELL: The whole reason that law
24 enforcement -- the testimony of Investigator Boyne is gonna
25 be we received a concerned -- a tip from a concerned citizen

1 regarding a stolen black truck that had been spray painted
2 black that was in possession of Shelly Faulling. As we were
3 patrolling that night, we saw a spray painted black truck
4 and Shelly Faulling sitting next to it. So, we turned
5 around to talk to him about it.

6 THE COURT: Okay.

7 SOLICITOR CORNWELL: As I went in the store to talk to
8 Mr. Faulling, Investigator Journey---

9 THE COURT: Okay---

10 SOLICITOR CORNWELL: ---ran the plates.

11 THE COURT: Okay. All right.

12 SOLICITOR CORNWELL: We didn't have any probable cause
13 to detain him. So, he was allowed to leave..

14 THE COURT: Okay.

15 SOLICITOR CORNWELL: That's their whole testimony about
16 that.

17 THE COURT: Okay. All right. Then I'll, I'll let her
18 go forward with that. I'll note your objection for the
19 record. So that will be preserved, and we'll, we'll, we'll
20 deal with that or you will deal with it later.

21 okay. All right. Y'all ready to go with your
22 openings?

23 SOLICITOR CORNWELL: Yes, Your Honor.

24 THE COURT: Okay.

25 MS. BUTCHER: Yeah.

1 THE COURT: Y'all ready?

2 okay. If you'd bring the jury on in.

3 THE BAILIFF: Yeah.

4 THE COURT: The food hadn't gotten here, right?

5 THE BAILIFF: Right.

6 THE COURT: Okay. Yeah, bring them on in please.

7 THE BAILIFF: Yes, Your Honor.

8 (WHEREUPON, the following takes place within the
9 presence of the jury, and the jury was placed under oath at
10 this time.)

11 THE COURT: Thank you.

12 All right. Congratulations, Mr. Foreman. May we be --
13 may you be just as lucky when we play Michigan, right?

14 THE FOREMAN: Yes, sir.

15 THE COURT: Okay.

16 THE FOREMAN: Yes, sir.

17 THE COURT: All right.

18 THE FOREMAN: Yeah.

19 THE COURT: Ladies and gentlemen, let me just give you
20 an idea of, of what's going on just so you'll know.

21 I'm gonna give you my opening instructions. So you --
22 the attorneys are gonna give you their opening arguments,
23 and we're -- and then we're gonna take -- their opening
24 statements, excuse me, and then we're gonna take a break
25 whenever lunch comes. I think we can get one witness in

1 before lunch gets here.

2 Okay. My instructions are intended to give you an
3 introduction into the trial of the case. They are not a
4 charge on the law. I will instruct you on the law at the
5 end of the case, and right before you retire to consider
6 this -- your verdict. This is merely an explanation of the
7 procedure we will follow during the trial so that you may
8 better understand what's happening.

9 The Defendant is charged by an indictment filed with
10 this Court with the crime of manufacture and distribution of
11 methamphetamine. It's a true billed indictment dated
12 January 6th, 2017. The elements of this crime will be
13 explained to you later.

14 The -- this indictment is simply the charge by which
15 the case is brought into Court. It is not, in any sense,
16 evidence of any of the allegations it contains.

17 The Defendant has pled not guilty to the indictment.
18 The State, therefore, has the burden of proving each
19 element -- each of the elements of the indictment beyond a
20 reasonable doubt. It will be your duty, ladies and
21 gentlemen, to decide whether the State has met that burden.

22 Your duty, your purpose as jurors is to find and
23 determine the facts. You're the sole judge of the facts.
24 If at anytime during the trial I make a comment regarding
25 the facts, you must disregard it. You are to determine the

1 facts from the testimony you hear and any other evidence
2 introduced in Court.

3 It is up to you to determine the inference which you
4 feel may properly be drawn from the evidence. It is
5 especially important that you perform your duty of
6 determining the facts diligently and conscientiously,
7 conscientiously -- it's gonna be one of those days. I can
8 tell. Conscientiously because, ordinarily, there's no way
9 to correct an erroneous determination of the facts by a
10 jury.

11 The law that makes you the judges of the facts makes me
12 the judge of the law. The law, as given by the Court, is
13 the only law you may consider. You must accept and follow
14 it even though you may disagree with it. I can not tell you
15 what the facts are and you can not disagree with me about
16 what the law is or should be.

17 Your job is to take the law as I give it to you, and
18 apply it to the facts as you find it to -- find them from
19 the testimony of the witnesses and any other evidence that
20 is introduced.

21 After doing that, you'll render your verdict, a true
22 verdict, under the solemn oath that you just took as jurors.

23 Until I advise you to begin your deliberations, you
24 must not dis -- discuss this case with anyone including your
25 fellow jurors. You may not discuss it with friends, family

1 members, and anyone else particularly involved with this
2 case.

3 This includes discussions face to face and those by
4 telephone, email, text, blogs, or any other method of
5 communication. You may not use a computer, cell phone, or
6 other electronic device with communication capabilities at
7 anytime while in the courtroom or during your deliberations.
8 During your breaks from meals, you may not use these
9 devices. I -- during your breaks from meals you may use
10 those devices. However, you may not, at anytime, use these
11 devices to get or send information about this case.

12 This includes information about a party, a witness, an
13 attorney, a Court officer, news accounts about the case,
14 research on any topics raised, any topics you may think
15 would be helpful in deciding the case, or any testimony
16 presented by any witness.

17 During the trial, you are not allowed to read, listen
18 to, or watch any news reports about the case. This includes
19 anything that may be in newspapers, on the Internet, radio,
20 or television. You must not consider anything you may have
21 read or heard about the case outside of the courtroom
22 whether before or during the trial.

23 After the case is submitted to you, you must discuss it
24 only in the jury room with your fellow jurors. The
25 attorneys and parties in this case have been advised that

1 they're not to talk with you at all.

2 So, if you see anyone involved in this case, and they
3 do not even say hello, they're not being unfriendly. They
4 are following my instructions.

5 It is important that you keep an open mind and not
6 decide any issue in the case until all of the evidence has
7 been presented, the parties have made their closing
8 arguments, and I have instructed you on the law. It is your
9 solemn responsibility to determine the guilt or innocence of
10 the Defendant, and your verdict must be based solely on the
11 evidence that is presented to you in this trial, and on the
12 law as I instruct you during and at the close of the trial.

13 In just a moment the solicitor will make what's called
14 an opening statement in which the solicitor will explain to
15 you the issues in the case or at least what issues the
16 solicitor believes are in this case. The attorney for the
17 Defendant may also make an opening statement although she's
18 not required to do so.

19 What the attorneys tell you during their opening
20 statements is not evidence. It is only their contention as
21 to what the issues are. The evidence in this case will be
22 presented to you by testimony of sworn witnesses from this
23 witness stand, that's that stand right there where you can
24 see where they're sitting, or by any exhibits that may be
25 introduced into evidence.

1 From time to time during the trial the, the attorneys
2 may have a question of law to discuss with me while you may
3 see them approach the bench or sometimes I might find it
4 necessary to excuse you from the courtroom for a short while
5 so the attorneys and I can discuss a matter of law. You are
6 excused because you are the judges of the facts in this
7 case, and sometimes, when I am discussing matters of law
8 with the attorneys, it may be necessary for me to make some
9 comment about the facts in connection with my ruling on
10 whether or not a particular law applies.

11 In these instances I will excuse you from the courtroom
12 while these discussions take place so that you will not be
13 influenced in any way by anything that I might say or do in
14 connection with these facts.

15 In determining what the true facts are in this case,
16 you must decide whether or not the testimony of the witness
17 is believable. It is my responsibility to rule as a matter
18 of law as to whether certain testimony is admissible or not.
19 But once the testimony is admitted, whether or not you
20 believe it is solely for each of you to determine.

21 In deciding whether to believe a witness, you have the
22 right to consider the interest of any witness, the bias of
23 any witness, the prejudice of any witness, the opportunity
24 for the witness to have seen the matters and things about
25 which the witness may testify, and the way the witness acts

1 on the witness stand. You have a right to consider anything
2 that is in the record that will help you evaluate the
3 testimony of the witnesses.

4 This means that it is your duty to pay close attention
5 to these witnesses, to observe them, to listen to them, and
6 to pay close attention to the attorneys and the Court.
7 Please do not let your thoughts wonder, but give complete
8 attention to the testimony in this case so that, at the end
9 of all the testimony, after the arguments of counsel and my
10 charge on the law, you will be in a position to determine
11 what the true facts are and apply the law to those facts and
12 thus render a true verdict.

13 Mr. Foreman, it will also be your additional duty to
14 preside in the jury room and be the jury spokesperson here
15 in Court. You will have to fill out the verdict form, which
16 I will give to you -- which I will go over with you at the
17 close of the case.

18 Additionally, I need to remind you or tell you that,
19 under the laws of this State, the Defendant may be tried
20 even if the Defendant does not attend the trial. But the
21 fact that the Defendant is not present can not be considered
22 by you against the Defendant in any manner whatsoever.

23 Okay. Now, is the State ready to proceed?

24 SOLICITOR CORNWELL: Yes, Your Honor.

25 THE COURT: Okay. All right. Ms. Cornwell.

1 SOLICITOR CORNWELL: Thank you, Your Honor.

2 May it please the Court?

3 THE COURT: Yes, ma'am.

4 SOLICITOR CORNWELL: Counsel.

5 I was prepared on saying good morning, but I guess it's
6 good afternoon now.

7 When I went to Law School, they told me that the
8 opening statement is kind of my opportunity to grab the
9 attention of the jury, to let them know exactly what was
10 gonna happen to go ahead and get them prepared for what they
11 are going to be trying. And the way that I want to grab the
12 attention was to either give a theme of the case, hell hath
13 no fury like a woman scorned, or, you know, money is the
14 root of all evil. And if there wasn't really a thing, I was
15 to give a dramatic version of the facts to really grab your
16 attention.

17 In preparing for this case, I thought about what I
18 could say, and, to be honest, the best thing I could come up
19 with is it is what it is. What it is is the Defendant in
20 this case, Shelly Faulling, had in his possession a
21 distribution quantity of methamphetamine. It's really that
22 simple, and what you're going to hear throughout the course of
23 this trial is testimony that is going to show you and tell
24 you that the Defendant, Shelly Faulling, did have in his
25 possession methamphetamine and that the amount of

1 methamphetamine and the materials that were found with the
2 methamphetamine showed that he had the intent to distribute
3 that methamphetamine.

4 You're gonna hear from the first witness on the stand
5 who was a upstanding citizen of South Carolina in Orangeburg
6 County who was doing her due diligence, and when she saw
7 something, notified police. Once she notified police, she
8 had done her duty as a citizen, and she moved on.

9 Law enforcement, at that point, has an opportunity to
10 view a surveillance video, and you are also gonna have an
11 opportunity to view that surveillance video where you will
12 get to see that, while law enforcement was talking to the
13 Defendant, and once law enforcement turned their head, you
14 will see the Defendant reach into his front pocket and throw
15 down something, and through the course of testimony, you
16 will hear from law enforcement officers who will tell you
17 that they retrieved what was thrown down, and what they
18 found was a quantity of methamphetamine that equaled the
19 permissible inference that it was a distribution amount of
20 methamphetamine.

21 In addition to finding methamphetamine, they also found
22 the Defendant threw away several little baggies, and what
23 those little baggies are important for is because those are
24 the little baggies that he would put the smaller quantities
25 of the methamphetamine in so that he could distribute those

1 out.

2 And you heard the judge say that the State has the
3 burden of proving this case beyond a reasonable doubt, and
4 we have to prove each and every element of the crime.

5 So, what are the elements of possession with intent to
6 distribute methamphetamine?

7 That kind of tells you right there in the, the heading.
8 I have to prove that the substance was methamphetamine, that
9 the Defendant did possess it, and that he had the intent to
10 distribute it. And through the course of the testimony that
11 you're gonna hear on the stand, and the evidence that you're
12 gonna see before you, I am confident that you are gonna find
13 that the Defendant, Shelly Thomas Faulling, was in
14 possession of methamphetamine, and he had the intent to
15 distribute that methamphetamine. And, based on that, you
16 will find him guilty.

17 Thank you.

18 THE COURT: Thank you, Ms. Cornwell.

19 Ms. Butcher.

20 MS. BUTCHER: Thank you. Very briefly.

21 May it please the Court?

22 THE COURT: Yes, ma'am.

23 MS. BUTCHER: You know, often there's very little a
24 defense attorney, a solicitor may agree upon but I do agree
25 it is what it is.

1 what -- each of you have the duty to look at the
2 evidence and reach your own decision.

3 The things that you need to pay attention to in this
4 situation are, one, that every defendant, when the State
5 accuses one of its citizens of this State, that Defendant
6 has the right to remain silent. They don't even have to be
7 at Court. They have the right not to say a word.

8 The reason is the sole burden of proving what the State
9 accuses its citizens rests with the State. They have to
10 prove every element, exactly what they're charging the
11 Defendant with, beyond a reasonable doubt, and you need to
12 understand what beyond a reasonable doubt means.

13 It's not like in a civil case where there's the
14 burden -- the preponderance of the evidence. When you have
15 preponderance of the evidence, you think of it as a set of
16 scales, and for one side to win, they have to tip those
17 scales ever so slightly. That's not this.

18 This is beyond a reasonable doubt, and the reason is
19 because, when the State accuses a citizen of something, they
20 need to really prove it. So, the burden's very high that
21 the State has to convince you that Mr. Faulling is indeed
22 guilty, and one way I've heard it put in the past is,
23 when -- you, at the end of the case, think well, maybe, or
24 you go home and lay your head on your pillow at night and
25 say oh, you know, if there's any doubt in your mind, you

1 need to find the Defendant innocent.

2 And, again, opening statements, they're not evidence.
3 You will draw your conclusions from what you hear on this
4 stand, and I trust you'll pay attention.

5 Thank you very much.

6 THE COURT: Thank you, Ms. Butcher.

7 Is the State prepared to call its first witness?

8 SOLICITOR CORNWELL: We are, Your Honor.

9 THE COURT: Okay.

10 SOLICITOR CORNWELL: State calls Shay Dash.

11 THE COURT: Mr. Dash.

12 SOLICITOR CORNWELL: Ms. Dash.

13 THE COURT: Oh, Ms. Dash.

14 Okay. Come on down, Ms. Dash.

15 Ms. Dash, do, do you see where the witness stand is
16 right there?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay. If you'd come right over there and
19 put your left-hand on the Bible.

20 (WHEREUPON, the witness complies.)

21 THE COURT: Okay. All right. Raise your right-hand.
22 The Clerk's gonna swear you in.

23 SHAY DASH, being first duly
24 sworn, testified as follows:

25 THE CLERK: Thank you.

Shay Dash - Direct examination
By Solicitor Cornwell

1 THE COURT: Okay. And if you -- yeah, get in your
2 chair.

3 You see the chair right there?

4 Get comfortable please.

5 (WHEREUPON, the witness complies.)

6 THE COURT: Okay. Okay. Now state your full name for
7 the record please.

8 THE WITNESS: Shay Shantell Dash.

9 THE COURT: Okay. And you just -- you were just loud
10 enough. That's good. I got to make sure the jury hears
11 you.

12 okay. All right. Your witness, Ms. Cornwell.

13 SOLICITOR CORNWELL: Thank you.

14 DIRECT EXAMINATION

15 BY SOLICITOR CORNWELL:

16 Q Good afternoon, Ms. Dash.

17 Can you please tell the jury why you're here?

18 A I've been subpoenaed because of what I've seen at the
19 gas station.

20 Q Okay. And is that the Easy Shop Gas Station off of
21 Charleston Highway?

22 A Yes, ma'am.

23 Q And were you there -- was this back on about January
24 7th of this past year?

25 A Yes, ma'am, around about 9:41 that night.

Shay Dash - Direct examination
By Solicitor Cornwell

1 Q Okay. And tell the jury what you remember seeing while
2 you were at a gas station?

3 A While I was at the gas station basically to pick up
4 some cigarettes or whatnot, and I noticed a white male who
5 was outside or whatnot having a little bit of an altercation
6 with other people or whatnot.

7 So, as I was leaving the gas station, I noticed a guy
8 threw something by the newsstand, and something in the
9 trashcan. Officer Guy came inside and was like, you know,
10 trying to talk or whatnot and I just pointed outside like,
11 you know, hey, did you see the guy, you know, just threw
12 something in the trashcan or whatever while your backs was
13 turned, and then he was like no. So, then, as we was
14 walking out the door, you know that's when they obtained and
15 saw the substance that the guy threw in the trashcan.

16 Q Okay.

17 A Then I proceeded on to my house.

18 Q Okay. And then almost a year later got subpoenaed to
19 come to Court, huh?

20 A I don't want to be here.

21 Q I guess it's true that no good deed goes unpunished,
22 right?

23 A Right.

24 (WHEREUPON, a video was marked as State's Exhibit No. 1
25 for identification purposes only at this time.)

Shay Dash - Direct examination
By Solicitor Cornwell

1 Q All right. So, I'm gonna show you what's been marked
2 as State's Exhibit 1.

3 Do you recognize that?

4 Do you know what that is?

5 A That's the video that I watched.

6 Q Okay. And how do you know that's the video you
7 watched?

8 A Cause my name's initialed on it.

9 Q Okay. And did you have a chance to review this video
10 prior to your testimony today?

11 A Yes, ma'am.

12 Q And does this video represent a true and accurate
13 depiction of exactly what you remember happening that night?

14 A Yes, ma'am.

15 Q And does this video show a true and accurate depiction
16 of what you've testified to to this jury today?

17 A Yes, ma'am.

18 Q To your knowledge, has there been any changes,
19 alterations, modifications, or deletions on this video
20 different from what you remember happening that night?

21 A No, ma'am.

22 SOLICITOR CORNWELL: Your Honor, at this time the State
23 would move State's Exhibit 1 into evidence.

24 THE COURT: Any objection?

25 MS. BUTCHER: For what we've spoken to before.

Shay Dash - Direct examination
By Solicitor Cornwell

1 THE COURT: Oh, yes, ma'am, I, I -- I'll note your
2 discussion the other, but it is in evidence without
3 objection. I mean it is in evidence subject to the
4 discussions, discussions we had earlier.

5 MS. BUTCHER: Yes, Your Honor.

6 THE COURT: All right. Thank you.

7 (WHEREUPON, State's Exhibit No. 1 was received into
8 evidence at this time.)

9 Q And, and, Ms. Dash, outside of that video, did you know
10 the person that you informed law enforcement about?

11 A No, ma'am.

12 Q Okay. Have any relationship with him whatsoever?

13 A No, ma'am.

14 Q That'd be all the questions I have. Please answer any
15 questions defense has.

16 THE COURT: Ms. Butcher, she's your witness.

17 CROSS-EXAMINATION

18 BY MS. BUTCHER:

19 Q So, your testimony is that you saw an individual put
20 something in the trashcan when you were leaving?

21 A Yes, ma'am.

22 Q Okay. Where were you actually located?

23 A Outside.

24 Q Okay. And when did you inform law enforcement of this?

25 A Before I was leaving.

Shay Dash - Cross-examination
By Ms. Butcher

1 Q I'm sorry?

2 A Before I was leaving the gas station.

3 Q Okay. Where were you located when you informed law
4 enforcement of this?

5 A I was at the gas station.

6 Q Okay.

7 A The police were in front of the guy. The guy had his
8 back turned. When the police turned around, that's when
9 the guy threw the snuff in the trashcan and behind the
10 newsstand.

11 Q Okay. And you were on the outside of the gas station
12 when you observed---

13 A The doors.

14 Q ---this?

15 A On the outside of the doors --

16 Q Okay.

17 A -- as you enter the gas station.

18 Q Yeah.

19 Okay. That's where you were?

20 You were---

21 A Right by the newsstand and the, the trash dump.

22 Q Okay. Okay. No further questions.

23 THE COURT: Anything on redirect?

24 REDIRECT EXAMINATION

25 BY SOLICITOR CORNWELL:

Shay Dash - Redirect examination
By Solicitor Cornwell

1 Q Just for clarification, you're saying that the person
2 standing outside of the gas station of the doors was the --
3 that was the person that you saw discard something?

4 A The white male, yes, ma'am.

5 Q Okay. And you were standing on the other side of those
6 doors?

7 MS. BUTCHER: Objection, Your Honor. No leading.

8 Q Where were you standing?

9 A I was standing -- well, as I was leaving, we were both
10 on the outside of what we call it. That's when the guy
11 left.

12 Q Okay. And when you saw him throw these things away,
13 were you standing outside of the gas station---

14 MS. BUTCHER: Your Honor, I would object. This has
15 been asked and answered.

16 THE COURT: Well, I'll, I'll let her ask it again.

17 Go ahead.

18 Q When you saw him discard the items, were you standing
19 on the outside of the gas station or inside the gas
20 station's door?

21 A When he threw the stuff, I was inside paying for my
22 cigarettes, and the officers had their back turned around.
23 So, when the guy -- officer came inside, I don't know what
24 he asked the, the people for. I think video or something.
25 The lady said she couldn't give it to him. That's when I

Shay Dash - Redirect examination
By Solicitor Cornwell

1 pointed to them that hey, you guys missed that. The guy
2 threw the stuff in the trashcan. So, I proceeded on with my
3 day and got in my car and left.

4 Q Okay. And do you recall what you were wearing that
5 night?

6 A I had my work uniform on.

7 Q Okay. Thank you, Your Honor.

8 THE COURT: Ms. Butcher, anything on recross?

9 RECROSS EXAMINATION

10 BY MS. BUTCHER:

11 Q Can you describe your work uniform?

12 A I had on my Husqvarna. It's a blue Husqvarna jacket.

13 Q Okay. No further questions.

14 THE COURT: Thank you, ma'am. You may step down.
15 Is she excused?

16 SOLICITOR CORNWELL: Yes, Your Honor. Thank you.

17 THE COURT: Okay. Any objection?

18 MS. BUTCHER: No objection, Your Honor.

19 THE COURT: Okay. All right. Thank you, Ms. Dash.

20 THE WITNESS: Okay.

21 THE COURT: You're excused from your subpoena. Thank
22 you, ma'am.

23 THE WITNESS: All right.

24 THE COURT: Is the State ready to call its next
25 witness?

Rob Boyne - Direct examination
By Solicitor Cornwell

1 SOLICITOR CORNWELL: We are, Your Honor.

2 THE COURT: Okay.

3 SOLICITOR CORNWELL: The State would call Investigator
4 Rob Boyne.

5 THE COURT: All right. Investigator -- yeah, thank
6 you. Raise your right-hand. She'll swear you in---

7 THE CLERK: Do you---

8 THE COURT: ---Investigator Boyne.

9 ROB BOYNE, being first duly
10 sworn, testified as follows:

11 THE CLERK: Thank you.

12 THE COURT REPORTER: Spell your last name for me
13 please, sir.

14 THE WITNESS: It is B-O-Y-N-E.

15 THE COURT REPORTER: Thank you.

16 DIRECT EXAMINATION

17 BY SOLICITOR CORNWELL:

18 Q Investigator Boyne, where are you currently employed?

19 A I am currently employed with the Orangeburg County
20 Sheriff's Office. I'm an investigator in the Narcotic's
21 Division.

22 Q And how long have you worked with law enforcement?

23 A Since 2005.

24 Q Approximately how many drug investigations and arrests
25 have you been a part of over the course of your law

Rob Boyne - Direct examination
By Solicitor Cornwell

1 enforcement career?

2 A Hundreds.

3 Q And before we get into the particular details of this
4 case, can you tell the jury, in general, the types of drug
5 charges that you could make and what you're looking for as a
6 law enforcement officer to determine which charge is
7 appropriate?

8 A Yeah. Absolutely.

9 We look for, as you well know, like with marijuana, a
10 simple possession charge, which will be a possession charge,
11 which can be possession of cocaine, possession of crack,
12 possession of heroin, and then we're looking for possession
13 with intent to distribute, which is being able to show that
14 how the drugs are packaged, and how much, how much of the
15 drug there is. There's more than likely out to be sold,
16 distribution.

17 So, your first charge would be basically your personal
18 use. Your second charge would be possession with intent to
19 distribute, and your third charge that we look at is
20 trafficking, which is bringing in large amounts. Large,
21 large amounts.

22 Q And each of those charges you look at I believe you
23 said the weight?

24 A The weight doesn't have to necessarily be. You don't
25 have to -- like with marijuana, for instance, simple

Rob Boyne - Direct examination
By Solicitor Cornwell

1 possession states 28 grams or less, but you can still charge
2 possession with intent to distribute because of the way it's
3 packaged, and it doesn't have to equal greater than
4 28 grams.

5 In other words, it can be five bags of a gram each, and
6 then maybe a bag with a little bit more in that they're
7 moving from these to, to package for sale. Most people that
8 are just in using drugs, like for instance meth, would have
9 maybe a half gram to a gram at most.

10 Q And in turning your attention to this particular case,
11 where did this incident occur?

12 A It happened here in Orangeburg County on I believe that
13 was Charleston Highway right there at the Horizon Gas
14 Station.

15 Q Okay. And is that also -- is there another name for
16 that gas station as well?

17 A I can't remember off the top of my head.

18 If I could get my notes?

19 This was in January.

20 Q It -- would it -- would the Easy Gas Station --?

21 A Yeah, Easy. Yeah, Easy Gas Station.

22 Q And tell the jury how you became involved in this case?

23 A Myself and Lieutenant Journey, who is my supervisor,
24 were out one night on patrol. We had received a concerned
25 citizen tip in reference to a pickup truck that had been

Rob Boyne - Direct examination
By Solicitor Cornwell

1 spray painted black that was possibly stolen that Mr.
2 Faulling was allegedly driving.

3 Q Okay.

4 A And so we figured we'd get out that night, and while on
5 patrol, see if we could come across that truck.

6 Q And were you able to come across the truck?

7 A Yes, we were.

8 Q And when you came across the truck, were you able --
9 also able to make contact with the Defendant, Shelly
10 Faulling?

11 A Yes, we were.

12 Q And where did you make contact with Mr. Faulling?

13 A As we were pulling into the gas station, Mr. Faulling
14 appeared to be walking away from the truck and walking into
15 the gas station. I initially made contact with Mr. Faulling
16 in the gas station, and lieutenant Journey was running a
17 plate on the truck because it was a -- you could see it was
18 a black spray painted truck as with the tip of -- it was
19 matching that description.

20 Q And when you spoke with Mr. Faulling, did you have a
21 discussion with him regarding the truck?

22 A Yes, I did.

23 Q All right. And, ultimately, were you able to detain
24 Mr. Faulling for anything to do with that truck?

25 A No.

Rob Boyne - Direct examination
By Solicitor Cornwell

1 Q Okay. After you had spoken to him and allowed him to
2 leave, what happened?

3 A After we had spoken with him and allowed him to leave,
4 Ms. Dash brought to my attention that he had placed
5 something near the newsstand, which is, you know, the
6 newspaper machines. It's got the big change thing on top
7 and pull it open like that. That he had placed something
8 there, and that he had thrown something in the garbage.

9 Q Okay. And once she told you that, were you able to
10 look outside and see if you found anything?

11 A Absolutely.

12 Q And what did you find?

13 A On the newspaper stand, there was a pair of glasses,
14 and a chrome like cigarette case, you know, people use to
15 put single cigarettes in. And inside of that was a -- like
16 four -- I believe it was four green bags of what appeared to
17 be methamphetamine, ice, and one larger clear plastic bag
18 that contained a larger amount of what appeared to be
19 methamphetamine, ice, and in the trashcan was a sleeve like
20 a little package, and it has those little jewelry bags in
21 it, you know, like the green ones.

22 (WHEREUPON, three pictures were marked as State's
23 Exhibit Nos. 2 through 4 for identification purposes only at
24 this time.)

25 Q And I'm gonna show you what's been marked previously as

Rob Boyne - Direct examination
By Solicitor Cornwell

1 State's Exhibits 2, 3, and 4.

2 Do you recognize those items?

3 A Yes, I do.

4 Q And what are those?

5 A That is the cigarettes case and then the bag that I was
6 telling you about that contained the smaller bags that
7 matched the bags that the meth was packaged in.

8 Q Okay. And are those true and accurate depictions of
9 the evidence that you photographed that night?

10 A Absolutely.

11 Q And were those photographed at ---?

12 A They were photoed at that Easy Gas Station.

13 SOLICITOR CORNWELL: Your Honor, at this time State
14 would move State's 3, 4, and 5 into evidence, I'm sorry, 2,
15 3, 4, and 5 -- 2, 3, and 4 into evidence at this time.

16 THE COURT: Any objection?

17 MS. BUTCHER: No objection.

18 THE COURT: State's 2, 3, and 4 are in without
19 objection.

20 (WHEREUPON, State's Exhibit Nos. 2 through 4 were
21 received into evidence at this time.)

22 SOLICITOR CORNWELL: May I publish to the jury, Your
23 Honor?

24 THE COURT: Yes.

25 (WHEREUPON, a chrome case was marked as State's Exhibit

Rob Boyne - Direct examination
By Solicitor Cornwell

1 No. 5. Baggies were marked as State's Exhibit No. 6. Both
2 were for identification purposes only at this time.)

3 Q And, Investigator Boyne, I'm also gonna show you what's
4 been previously marked as State's Exhibit 5 and 6.

5 MS. BUTCHER: No objection.

6 THE COURT: This is four and five -- I mean five---

7 SOLICITOR CORNWELL: Five and six, Your Honor.

8 THE COURT: Five and six.

9 SOLICITOR CORNWELL: Actually.

10 THE COURT: And no objection?

11 MS. BUTCHER: No, no objection, Your Honor.

12 THE COURT: Okay.

13 SOLICITOR CORNWELL: I haven't moved them in yet, but
14 I'm working --.

15 THE COURT: Okay.

16 Q So, in looking at State's Exhibit 5, actually 5 and 6,
17 those labels on the front, can you tell the jury kind of
18 what those are and how you know what's inside those bags?

19 A Let me grab my glasses real quick.

20 Yeah, these are, these are the labels that are put on
21 it. These are -- this bag of -- appears to have a -- the
22 case in it. It's got the case number, the dates, recovered
23 by the -- what investigator recovered it.

24 Q And do those labels match the name and case number for
25 this case?

Rob Boyne - Direct examination
By Solicitor Cornwell

1 A Absolutely.

2 Q And if you'd like to open those and verify that that is
3 what's in them, and those are sealed, correct?

4 A Yes, they're -- that's, that's --.

5 MS. BUTCHER: Your Honor, may we approach?

6 THE COURT: Sure.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 A This is the case that the items were in that night, the
10 alleged methamphetamine---

11 Q Okay.

12 A ---or what tested positive for methamphetamine.

13 MS. BUTCHER: Your Honor, I would object, object to
14 anything outside of his knowledge.

15 THE COURT: Okay. I---

16 MS. BUTCHER: Well, it---

17 THE COURT: I don't know -- is that the -- the --
18 which, which is -- this is Item 5?

19 SOLICITOR CORNWELL: Yes, Your Honor.

20 THE COURT: That's the chrome case that you were
21 talking about?

22 SOLICITOR CORNWELL: That's the chrome case that we
23 were gonna---

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. And that's -- and just so I will

Rob Boyne - Direct examination
By Solicitor Cornwell

1 understand, this is the chrome case that you said you found
2 on top of the newspaper?

3 THE WITNESS: Yes, sir.

4 THE COURT: And that, that is the chrome case that you
5 found?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. All right.

8 SOLICITOR CORNWELL: Thank you, Your Honor.

9 THE COURT: And what -- the, the objection then is --?

10 MS. BUTCHER: That I think he can testify to the fact
11 that it was found. I don't think he can testify is that
12 actually what was in it.

13 THE COURT: Well, I believe he testified earlier that
14 he said that what appeared to be methamphetamine.

15 MS. BUTCHER: It appeared.

16 THE COURT: Yes, ma'am.

17 MS. BUTCHER: Yeah.

18 THE COURT: And that -- and that's what he was saying
19 then.

20 MS. BUTCHER: Okay. Okay.

21 THE COURT: Okay.

22 MS. BUTCHER: I didn't gather that he was saying it
23 appeared to be.

24 THE COURT: Okay. Okay. All right.

25 If you continue?

Rob Boyne - Direct examination
By Solicitor Cornwell

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 SOLICITOR CORNWELL: Your Honor, at this time the State
4 would move State's Exhibit 5 into evidence.

5 THE COURT: Ms. Butcher, you said you had no objection
6 to that?

7 MS. BUTCHER: No objection, Your Honor.

8 THE COURT: Okay. All right. Thank you, ma'am.

9 (WHEREUPON, State's Exhibit No. 5 was received into
10 evidence at this time.)

11 A And this is the, the bag of -- these were the ones that
12 were found in the trashcan, which, which are -- and these
13 are the ones that were I believe testified -- that's one of
14 the -- right there and the other ones. The bag was sealed,
15 the smaller green ones.

16 Q Okay. And are the bags and the sleeves, do they match
17 the ones that are in State's 5?

18 A Yes, ma'am, to the best of my knowledge.

19 Q And once that evidence was discovered, who took that --
20 custody of that evidence?

21 A Lieutenant Journey.

22 Q And once you were able to discover the evidence in this
23 case, what was your next step?

24 A At that point was to get the video back, and, and see
25 that, if we could put it in his hands -- even though we, we

Rob Boyne - Direct examination
By Solicitor Cornwell

1 had been told that he's allegedly set something out, we
2 wanted to verify that because we knew there were video
3 cameras out there. So, we didn't want to go to the
4 magistrate without being 100 percent certain.

5 Q Okay. And were you able to view that video on, on
6 scene at the gas station that night?

7 A No, ma'am, nobody was allowed to get into the video and
8 the manager's -- the, the clerks there stated that they
9 didn't even have access to it, and Lieutenant Journey had to
10 get in touch with the home office in order to get a copy of
11 the videos so we could see it.

12 Q Okay. And was he able to do that?

13 A Yes, ma'am, he was.

14 Q And looking at State's Exhibit 1, do you recognize
15 that?

16 A Yes, ma'am.

17 Q And what is that?

18 A That's the video from the home, home office.

19 Q And is this the true and accurate video surveillance
20 that you watched in determining your charges?

21 A Yes, ma'am.

22 Q After watching the surveillance video, were you able to
23 confirm what you were told?

24 A Yes, ma'am.

25 Q And what was it about this case that caused you to

Rob Boyne - Direct examination
By Solicitor Cornwell

1 charge possession with intent to distribute as opposed to
2 one of the other charges that you had previously discussed?

3 A As we discussed earlier, when you have simple
4 possession and possession charges, then you have the next
5 offense up, which is possession with intent to distribute.
6 In that poss -- in that charge itself, if you can show the
7 way items are packaged, each one of those bags had -- the
8 green bags appeared to have the same amount of
9 methamphetamine in them, and then there was a larger bag.
10 This is -- this larger bag is what it was being taken from
11 to put in the smaller bags to be distributed.

12 Like I said earlier, generally in my years of
13 experience, and I've been doing this a while, that people
14 that have possession just for personal use have a smaller
15 amount on them. I mean that -- that's a large amount.
16 You're only a little over a gram out of trafficking weight
17 now---

18 Q And---

19 A ---that he had.

20 Q So, based on your review of the video, and the evidence
21 presented, you were able to make a charge?

22 A Yes, ma'am.

23 SOLICITOR CORNWELL: Your Honor, I would like to
24 publish this to the jury at this time.

25 THE COURT: Okay. Yes, ma'am, we're in -- lunch isn't

Rob Boyne - Direct examination
By Solicitor Cornwell

1 here?

2 THE BAILIFF: Not yet.

3 THE COURT: Okay. All right. I'm sorry, what?

4 THE BAILIFF: I'm going to pick it up shortly.

5 THE COURT: Okay. Yeah. Okay.

6 All right.

7 SOLICITOR CORNWELL: And---

8 THE COURT: Well, I know you want to do that, but I --
9 we've, we've got to take care of one thing before we can
10 show it to the jury. So, we'll, we'll delay showing it to
11 the -- publishing it to the jury late -- till later --

12 SOLICITOR CORNWELL: Okay.

13 THE COURT: -- later. So, you can go ahead and go
14 continue with your examination.

15 SOLICITOR CORNWELL: Your Honor, if---

16 THE COURT: Okay.

17 SOLICITOR CORNWELL: ---we can just---

18 THE COURT: You want to take a break or --?

19 SOLICITOR CORNWELL: Well, what I can do is allow
20 cross-examination, and then just preserve the right to
21 recall this witness when we're able to---

22 THE COURT: Oh, yeah.

23 SOLICITOR CORNWELL: ---show the video.

24 THE COURT: We'll do that.

25 Okay. All right. Now we'll---

Rob Boyne - Direct examination
By Solicitor Cornwell

1 SOLICITOR CORNWELL: Please answer any questions
2 defense counsel may have.

3 THE COURT: Be -- before you do that, I want to make
4 sure, State's 6, did you move to put that in?

5 SOLICITOR CORNWELL: The baggies?

6 THE COURT: Yes, ma'am, those are the baggies that he
7 identified that I believe was---

8 Q I think these are true and accurate to what -- these
9 are the baggies that you received---

10 A Yes, sir.

11 Q ---that day?

12 A They were.

13 SOLICITOR CORNWELL: Your Honor, at this time the State
14 would move 6 into evidence if we haven't already.

15 THE COURT: I don't think you did.

16 Any, any objection?

17 MS. BUTCHER: No objection.

18 THE COURT: Okay. State's 6 is in without objection.

19 SOLICITOR CORNWELL: Thank you, Your Honor. I
20 appreciate that.

21 (WHEREUPON, State's Exhibit No. 6 was received into
22 evidence at this time.)

23 THE COURT: All right. Now, I'm, I'm gonna let you go
24 forward with cross-examination and allow her to come back
25 after -- when we go through the video.

Rob Boyne - Direct examination
By Solicitor Cornwell

1 okay?

2 MS. BUTCHER: Okay, Your Honor.

3 THE COURT: And, and, and you can -- and you can cross
4 that.

5 MS. BUTCHER: Right.

6 THE COURT: Okay. Yes, ma'am. All right.

7 MS. BUTCHER: Thank you. Thank you, Your Honor.

8 THE COURT: All right. Ms. Butcher.

9 CROSS-EXAMINATION

10 BY MS. BUTCHER:

11 Q Now, Officer Boyne, you didn't see Mr. Faulling put
12 anything yourself in the trashcan or on the paper thing?

13 A No, ma'am, I did not until I viewed that video.

14 Q Okay. And the person who told you that they saw Mr.
15 Faulling set something down, they didn't identify what it
16 was, correct?

17 A No, ma'am, they just said they saw him set -- make two
18 furtive gestures as putting something down in two different
19 locations.

20 Q Okay. And the only view that person had was when they
21 were inside of the gas station that they told you about?

22 A Yes, ma'am, that she told me about, correct.

23 Q Okay. And did you test for fingerprints on any of
24 these items?

25 A No, ma'am, we did not.

Rob Boyne - Cross-examination
By Ms. Butcher

1 Q Why not?

2 A Just didn't. We had video evidence.

3 Q All right. Well, let, let me ask you this.

4 You also, in addition to these things which you have,
5 have come into evidence, you found a pair of glasses.

6 Is that correct?

7 A Yes, ma'am.

8 Q Okay. If I can show you these?

9 THE COURT: Yes.

10 A I believe she has the scissors, ma'am.

11 Q Okay.

12 THE COURT: Can I get a -- is there a number on those
13 yet or --?

14 MS. BUTCHER: Your Honor, I didn't do these.

15 SOLICITOR CORNWELL: You're gonna have to mark it as
16 your own evidence so we can---

17 MS. BUTCHER: Right. But I didn't know if there was a
18 number on it beforehand.

19 SOLICITOR CORNWELL: Okay.

20 MS. BUTCHER: There's, there's a case number.

21 Is that what you're referring to or --?

22 THE COURT: Just -- can, can I see y'all both up here
23 one second?

24 MS. BUTCHER: Yes.

25 (WHEREUPON, a bench conference was held out of the

Rob Boyne - Cross-examination
By Ms. Butcher

1 hearing of the jury at this time.)

2 Q So, y'all did get glasses off of that and the pictures.

3 Those reflect the -- these are the glasses that were
4 found?

5 A Yes, ma'am.

6 Q Okay.

7 THE COURT: You're referring to which --?

8 MS. BUTCHER: And I'm referring to State's Exhibit 2.

9 THE COURT: Okay. State's Exhibits. Okay.

10 MS. BUTCHER: Okay.

11 And this is the trashcan over here?

12 Is this correct?

13 A No, I believe it's the trashcan on the other side of
14 the door. The -- I think the trashcan was on this side of
15 the door, and the paper machine is on this side of the door
16 I believe. I'm not sure.

17 Q So, does the video show --?

18 A Yeah, the video will show it, yes, ma'am.

19 Q It shows Mr. Faulling actually putting something in a
20 trashcan?

21 A Yes, ma'am.

22 Q Okay. How many cameras are around that gas station?

23 A Ma'am, I do not know off the top of my head. That was
24 in January. I -- there was multiple gas -- multiple cameras
25 inside this door as well as outside this door, but I'm not

Rob Boyne - Cross-examination
By Ms. Butcher

1 sure how many.

2 Q Okay.

3 A I can't give you an exact answer on that.

4 Q Okay. So, you only pulled from certain videos?

5 A I didn't pull from anything, ma'am. It was pulled by
6 the home office and sent to us.

7 Q I apologize.

8 As part of your investigation, you only -- did you --
9 did you receive all of the videos from all the cameras or
10 what did you, what did you get?

11 A I review what was sent to us. I'm not sure how many
12 cameras that was. I can't, I can't remember off the top of
13 my head.

14 Q Was it more than three?

15 A I believe so.

16 Q More than five?

17 A Not sure. I -- possibly. Not sure. Like I said, I'm
18 not sure.

19 Q So -- okay. So, do you know the angle of the different
20 cameras?

21 Did you look at all of it?

22 A I looked at the cameras there --

23 Q Uh-huh. (Affirmative).

24 A -- and then we got the video and we viewed it. And we
25 saw what he did and that was that. And then we proceeded to

Rob Boyne - Cross-examination
By Ms. Butcher

1 a judge in reference to a warrant.

2 Q Okay. So, did you turn all of the camera angles and
3 everything that you received over to the Solicitor's Office?

4 A At -- I -- we turned over the disk, whatever was on
5 that disk. I can't -- like I said, I don't know how many
6 camera angles it was and how many cameras it was.

7 Q Okay.

8 A I can't honestly answer that.

9 Q Okay.

10 A We were looking for the specific --.

11 Q Okay. But, again, you, yourself, didn't see Mr.
12 Faulling do -- set anything on the newsstand or in a
13 trashcan you yourself, correct?

14 A No, ma'am, when that happened, I was -- my attention
15 was diverted to the girlfriend and the guy that pulled up in
16 the car and turned to face them to see what they were doing
17 because they were there to get him. So, I looked at them
18 and this transpired behind me.

19 Q Okay. And you're just speculating then as to what
20 happened other than what's shown on the video, correct?

21 A Speculating?

22 Q You're -- yes.

23 A No, I know what I saw on the video and---

24 Q Right, and I said---

25 A ---that's all I can do, yes.

Rob Boyne - Cross-examination
By Ms. Butcher

1 Q ---other than what is on the video, correct?

2 A Speculate other than what -- you're gonna have to
3 clarify.

4 Q If it's not on the video, you didn't see it, correct?

5 A If it's not on the video I didn't see it.

6 Q Your knowledge comes only from what you viewed on the
7 video of his actions, correct?

8 A Of that single action, yes.

9 Q Okay. Thank you.

10 A Not of, not of everything else.

11 Q Okay.

12 A The, the conversation with him.

13 Q Thank you.

14 THE COURT: Anything---

15 MS. BUTCHER: No further questions.

16 THE COURT: Okay. Anything on redirect?

17 REDIRECT EXAMINATION

18 BY SOLICITOR CORNWELL:

19 Q Where did you have to request the video from?

20 A Lieutenant Journey did. He, he, he requested it and he
21 had to request it from the home office. I think that's a
22 chain of gas stations I believe, and he got in touch with
23 the home office in order to -- cause I guess that's where
24 they kept the main hard drive or whatever.

25 Q And Ms. Butcher has brought up the various camera

Rob Boyne - Redirect examination
By Solicitor Cornwell

1 angles and everything. So, I'm gonna ask you some
2 questions.

3 A Sure.

4 Q The camera angle that we have regarding the drug
5 transaction, is the drug transaction the only thing you were
6 investigating that night and the only camera angle you would
7 of needed?

8 A At that time, yes, other than the fact of a vehicle
9 pulling into the parking lot.

10 Q Okay. So, you were also investigating the vehicle
11 issues as well?

12 A Absolutely.

13 Q And so some of the camera angles that you got, were
14 they related to something other than the drug charge?

15 A Yes.

16 Q Okay. And those are all on the videos that you turned
17 over to the State?

18 A Yes.

19 Q To your knowledge, does any other camera angle show the
20 front door where you can see this transaction take place?

21 A To my knowledge, I'm not sure. I, I -- maybe the one
22 inside possibly. I'm not sure.

23 Q Okay. But the video that you've seen, the surveillance
24 video that you showed, is the camera angle that best
25 shows---

Rob Boyne - Redirect examination
By Solicitor Cornwell

1 A Yes. Absolutely.

2 Q Thank you.

3 Nothing further, Your Honor.

4 THE COURT: Anything on recross?

5 MS. BUTCHER: No, Your Honor.

6 THE COURT: Okay. All right. Now, I know you're gonna
7 recall him when we show the video.

8 Any other -- you -- so you can step down now --

9 THE WITNESS: Thank you, sir.

10 THE COURT: -- subject to being recalled when we go --
11 when we review the video. You -- State prepared to call
12 its -- lunch is still not---

13 THE BAILIFF: Let me check, Your Honor. I heard a
14 door. So just---

15 THE COURT: Okay. We'll hold on. We want to eat it
16 hot. Y'all just bear with us if you don't mind.

17 (Pause.)

18 THE CLERK: No, Your Honor.

19 THE COURT: Okay. Are you prepared to call another
20 witness?

21 SOLICITOR CORNWELL: I can, Your Honor, yes.

22 State would call Lieutenant Marty Journey.

23 THE COURT: Lieutenant Journey.

24 All right. Thank you, sir. You already know what to
25 do.

Marty Journey - Direct examination
By Solicitor Cornwell

1 Madam Clerk, if you'd swear Lieutenant Journey in.

2 THE CLERK: Okay. Please raise your right-hand.

3 MARTY JOURNEY, being first duly
4 sworn, testified as follows:

5 THE CLERK: Thank you.

6 THE COURT: Lieutenant Journey, if you'd get
7 comfortable in, in that seat, and then state your full name
8 for the record please, sir.

9 THE WITNESS: Martin Palmer Journey.

10 DIRECT EXAMINATION

11 BY SOLICITOR CORNWELL:

12 Q Lieutenant Journey, can you tell the jury where you're
13 currently employed and how long you've worked in law
14 enforcement?

15 A Orangeburg County Sheriff's Office. Approximately 20
16 plus years.

17 Q And, in that time, approximately how many drug
18 investigations and arrests have you been a part of?

19 A It would probably be in the numbers of thousands I was
20 involved in as of arresting people I've dealt with.

21 Q And your current position with the Orangeburg County
22 Sheriff's office is what?

23 A Lieutenant in the Narcotic's Division.

24 Q And how long have you been a lieutenant over the
25 Narcotic's Division?

Marty Journey - Direct examination
By Solicitor Cornwell

1 A Approximately nine years.

2 Q And---

3 THE COURT: Lieutenant Journey, could you speak up just
4 a little louder?

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you, sir.

7 Go ahead.

8 Q And we just went over this with Investigator Boyne.

9 Can you also tell the jury, as a lieutenant, what
10 you're looking for on -- in order to make a distinction
11 between whether or not a charge is a possession charge,
12 whether it is a distribution charge, or whether it is a
13 trafficking charge?

14 A Yes, ma'am. Anything up, up to a gram with marijuana,
15 cocaine, crack cocaine, methamphetamine, heroin, any of the
16 drugs is normally what we, we reference to as being
17 possession or simple possession of. Anything over that we
18 look at PWID, which we call possession with intent to
19 distribute, a person having possession of, and trafficking
20 in some of the drugs is actually 10 grams or more. This
21 particular drug, 10 grams or more would be a trafficking
22 charge.

23 Q Okay. All right. And turning your attention to this
24 case, can you just tell the jury what your involvement in
25 this case was?

Marty Journey - Direct examination
By Solicitor Cornwell

1 A Yes, ma'am. On this particular night, January the
2 7th, 2017, of this year, myself and Investigator Boyne was
3 in my patrol vehicle. We were patrolling in Orangeburg
4 County.

5 We had information about Mr. Thomas Faulling possibly
6 driving a stolen black truck. It was spray painted black.
7 It should be easily recognizable.

8 So, while we were out patrolling I happened to spot the
9 vehicle sitting at the pumps at Easy Shop on Charleston
10 Road. At that point I turned them around, immediately went
11 back to investigate. And, and having dealings with
12 Mr. Tommy Faulling in the past, I recognized him at the pump
13 at the time walking away from the vehicle toward the store
14 when I pulled up.

15 There's no doubt that I know that this individual I was
16 dealing with in the past knows my vehicle, and when he saw
17 the vehicle pull up, he immediately went toward the store.
18 At that point Investigator Boyne went it to retrieve Mr.
19 Faulling to, to discuss the vehicle.

20 At that point I went to the vehicle with the tag and
21 ran the tag through dispatch to verify whether this vehicle
22 was belonging to him or something concerning this vehicle,
23 if it had anything of it -- something illegal going on. At
24 that point the vehicle came back---

25 Q And, and---

1 A ---to another subject.

2 Q Investigator -- I'm sorry, Lieutenant Journey. I'm
3 gonna stop you right there---

4 A Yes, ma'am.

5 Q ---and just kind of go through a little bit of, of what
6 you were testifying to.

7 So, while you were running the plates, what was
8 Investigator Boyne doing?

9 A Investigator Boyne was getting Mr. Faulling from the
10 store to come outside to talk with him. Asked him to step
11 outside.

12 Q Okay. And just to kind of cut to the chase on all of
13 this, at any point during that evening did y'all have enough
14 probable cause to detain Mr. Faulling?

15 A At that point I didn't see where we had probable cause
16 at that point.

17 Q Okay. Was he allowed to leave that night?

18 A Yes, he was.

19 Q Okay. After he left, what happened?

20 A After he left Ms. Dash approached myself and Mr. Boyne
21 and explained to us that Mr. Faulling had placed something
22 down while he had turned his head away from Mr. Faulling.

23 Q And were y'all able to see what was thrown down?

24 A Yes, ma'am.

25 Q And what was that?

Marty Journey - Direct examination
By Solicitor Cornwell

1 A It was the evidence that you've already put in your
2 Court here today. These case -- a pair of glasses and the
3 packets of ice, methamphetamine, that was inside---

4 Q And that's---

5 A ---the bags.

6 Q ---what's been shown in State's Exhibits 2 and 3?

7 A That's correct.

8 Q And then the actual evidence is five and six?

9 A Yes, ma'am.

10 Q And in looking at State's Exhibit 4, is that how the
11 evidence was packaged inside that silver case?

12 A Yes, it was.

13 Q Okay. Who photographed the evidence?

14 A I did.

15 Q Okay. Who collected the evidence?

16 A I did.

17 Q And when you collect that evidence, can you tell the
18 jury what your process is in collecting the evidence and
19 storing the evidence?

20 A I put gloves on and put it inside of a evidence bag
21 that we sealed in the tamper evident bag until we turn it
22 into evidence.

23 Q Okay. And do you put any writing on that bag?

24 A Yes, ma'am, I put the information of the possible
25 Defendant and the information of what the description of the

Marty Journey - Direct examination
By Solicitor Cornwell

1 items looked like apparently.

2 (WHEREUPON, the evidence bag was marked as State's
3 Exhibit No. 7 for identification purposes only at this
4 time.)

5 Q In looking at State's 7, the bag inside there, is that
6 the evidence bag that you speak of?

7 Is that your handwriting?

8 A Yes, it is.

9 Q Okay. And you state that, once you collect that
10 evidence, you fill that out and seal --?

11 A Yes, ma'am, it's, it's sealed with a tamper proof type
12 seal on it that if anybody would open it up you would know
13 it.

14 Q Okay. And once you sealed that evidence, did you ever
15 reopen that package?

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

17 Q Okay. Did you ever tamper with that evidence in any
18 way?

19 A No, ma'am.

20 Q Okay. I just have one more question on this.

21 When you collected the evidence and placed it inside
22 the sealed bag, did you place it inside the sealed bag loose
23 or did you place inside the sealed bag as you found it in
24 these packages?

25 A As I found it, yes, ma'am.

Marty Journey - Direct examination
By Solicitor Cornwell

1 Q Okay. So, within this bag that you've wrote on and
2 sealed, you placed what's in State's Exhibit 4?

3 A That would be correct.

4 Q Okay. Was there anything else placed in that bag other
5 than State's Exhibit 4?

6 A Just the drug evidence.

7 Q So, you did not send the baggies or the case in this
8 sealed baggy?

9 A No, ma'am, those are just put separately in evidence.

10 Q Okay. And where do you, where do you get these bags
11 from?

12 A The company is (indiscernible). We order a large
13 quantity of them, different size bags, concerning the type
14 of evidence to be collected. They all basically look the
15 same. Some are larger. Some are smaller. Those are the
16 smaller ones that we keep and use at all times.

17 Q Okay. And are those types of evidence bags approved in
18 South Carolina?

19 A Ma'am, I don't know if they're approved in South
20 Carolina, but I know a lot of law enforcement agencies use
21 them for evidence.

22 Q After you collected the evidence, where do you submit
23 that evidence for storage?

24 A I take that evidence to (indiscernible). He's
25 custodian of Orangeburg County Sheriff's Office.

Marty Journey - Direct examination
By Solicitor Cornwell

1 Q Okay. And after you did that in this case, what was
2 your next step?

3 A Wait for the results of the analyst.

4 Q Okay. Did you have to request anything from the gas
5 station?

6 A Oh, yes, I did.

7 Q What was that?

8 A On Monday morning -- of course, we were told at the
9 location that they could not go to the video. They would
10 have to have a manager retrieve it. I spoke with a lady at
11 this company following -- the parent company Monday morning,
12 and they said that they would get the video for me, and I'd
13 just go to see the, the manager that morning. And that
14 Monday morning I went there, and they had the DVD prepared
15 for me from the cameras of that night---

16 Q Okay.

17 A ---from that timeframe that we --.

18 Q And do you know why you were not able to get the
19 surveillance video that night from the gas station itself?

20 A My understanding is that they said that the seal inside
21 the room, that they would have to have a manager come to
22 retrieve it.

23 Q And is that to protect the integrity of the video?

24 A That's correct.

25 Q Okay. And when you received the surveillance video,

Marty Journey - Direct examination
By Solicitor Cornwell

1 are you allowed or able or capable of making any changes or
2 alterations or anything to it?

3 A No, ma'am.

4 Q Okay. And were you able to view that video once you
5 received it?

6 A I did.

7 Q And is what is in this video a true and accurate
8 depiction of what you were told and what you recall from
9 that night?

10 A Yes, it was.

11 Q And is this video the true and accurate video of what
12 you viewed in making your charges?

13 A Yes, ma'am.

14 SOLICITOR CORNWELL: Nothing further, Your Honor.
15 Thank you.

16 THE COURT: Anything on cross-examination?

17 MS. BUTCHER: Thank you, Your Honor.

18 THE COURT: Yes, ma'am.

19 CROSS-EXAMINATION

20 BY MS. BUTCHER:

21 Q Okay. Now, you collect the evidence, but you, you
22 don't test it, correct?

23 A No, ma'am.

24 Q Okay. So, you yourself couldn't state what exactly was
25 in the bags when you found them, correct?

Marty Journey - Cross-examination
By Ms. Butcher

1 A I couldn't -- I could not testify to the fact that
2 exactly what I found --.

3 Q Okay.

4 A I could, at that point, only assume what -- it was
5 dealing with him.

6 Q Correct. Correct.

7 Okay. Now, how many cameras are around the store?

8 A Ma'am, I don't know how many cameras are around the
9 store. I would assume they had at least five or more. I
10 can't remember exactly how many it was.

11 My point was, when I was looking at the video, was to
12 pinpoint the actual subject, your client, and where he was
13 with the information we already had, and what he had done
14 that night, and that's what I witnessed on the video and
15 exactly what the other person testified to.

16 Q Okay. So, so, you chose what to pull off the videos to
17 present?

18 A I chose the evidence.

19 Q You, you chose what videos you wanted to present,
20 correct?

21 A The evidence of your client placing the methamphetamine
22 on that box, correct.

23 Q Okay. Now, you didn't personally see him set anything,
24 did you?

25 A I did not personally see him, no, ma'am.

Marty Journey - Redirect examination
By Solicitor Cornwell

1 Q Okay. And -- no further questions.

2 THE COURT: Anything on redirect?

3 REDIRECT EXAMINATION

4 BY SOLICITOR CORNWELL:

5 Q Lieutenant Journey, you were asked about the different
6 cameras and choosing what to present.

7 If there were a camera say pointed at the beer aisle,
8 would you have requested that?

9 A No, ma'am.

10 Q If there were a camera pointed at the back-door of the
11 gas station, would you have requested that?

12 A No, ma'am.

13 Q And why is that?

14 A Because I want to get the cameras that at that time we
15 felt like that night would of been showing exactly what took
16 place there. The other cameras would not have been in
17 consideration at that point.

18 Q Thank you.

19 Nothing further, Your Honor.

20 THE COURT: Anything on recross?

21 MS. BUTCHER: No, Your Honor.

22 THE COURT: Thank you, Lieutenant Journey. You may
23 step down.

24 THE WITNESS: Thank you.

25 THE COURT: Ready to call the next witness?

1 SOLICITOR CORNWELL: Yes, I am, Your Honor.

2 The State would call David Martin.

3 MS. BUTCHER: And, Your Honor, may we approach?

4 THE COURT: Sure.

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: All right. Ladies and gentlemen, I'm gonna
8 let y'all go back into the jury room right now. You've
9 heard some of the witnesses.

10 AS I told you early on, you can not begin talking about
11 the case or any testimony you've heard until I tell you you
12 can begin talking among yourselves with that.

13 while we're taking a break, if the food comes, y'all --
14 would you just let me know, and we'll let y'all finish,
15 finish eating before you come back out here.

16 Okay. All right.

17 THE JUROR: Thank you, Your Honor.

18 THE COURT: Okay. Thank you.

19 THE FOREMAN: Thank you.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right.

23 MS. BUTCHER: Your Honor---

24 THE COURT: Ms.---

25 MS. BUTCHER: ---I'd like to make a motion.

1 THE COURT: Ms. Butcher, yes, ma'am.

2 MS. BUTCHER: Thank you, Your Honor.

3 Your Honor, the State has not turned over, in
4 discovery, the complete chain of custody nor have they put
5 on their witness list everyone that should be in the chain
6 of custody of these drugs, Your Honor. I don't believe they
7 can complete the chain and we would ask to suppress the
8 drug -- the evidence -- the drugs on that basis.

9 THE COURT: Okay.

10 MS. BUTCHER: The testing of it I should say.

11 THE COURT: All right. Ms. Cornwell.

12 SOLICITOR CORNWELL: Your Honor, we weren't requested
13 to provide a chain of custody. We did not request a chain
14 of custody as part of our case in chief.

15 As far as not having a chain of custody, and
16 suppressing the evidence, the case law has stated, and the
17 Supreme Court has ruled, that we don't have to have a
18 perfect chain of showing each and every person that touched
19 the evidence. All we have to present is the person that
20 took the evidence in custody, who sealed the evidence, and
21 then showing the analyst who unsealed the evidence and
22 tested it themselves.

23 On -- all the State has to put forth is evidence that
24 the analyst received the evidence, sealed -- that it had not
25 been tampered with, and that they tested it based on the

1 fact that they received it un-tampered with and sealed.

2 Investigator, I'm sorry, Lieutenant Journey just
3 testified that he is the person that collected that
4 evidence, that he placed that in the evidence collection
5 bag, that he filled out the appropriate information, and
6 that he sealed it. And that, once he sealed it, you would
7 not be able to tamper with it or open it again unless you
8 broke that seal, and, to his knowledge, that was not done.

9 David Martin is the State's next witness who we just
10 called who, if we were allowed to get into his testimony, I
11 believe his testimony will show that, when he received the
12 evidence, it was sealed, un-tampered, and unopened, that he
13 is the one that unsealed it for purposes of testing.

14 Based on that, and the chain of custody, the State
15 should be allowed to introduce the evidence. If defense
16 counsel wants to make arguments regarding the chain, they
17 are allowed to do that in closing and on cross-examination.
18 However, there is nothing prejudicial to the Defendant that
19 would cause this evidence not to come in particularly when
20 it comes to the chain as, again, I believe the Supreme Court
21 has ruled that as long as the State can provide the person
22 who took custody of the evidence, sealed the evidence, and
23 provide the analyst who opened the evidence and tested the
24 evidence, that that is sufficient under the chain.

25 THE COURT: Okay. And, Ms. Butcher, I'm looking at

1 State v. Hatcher, a Supreme Court case, and it looks like
2 the -- they say you -- it is not necessarily -- it is
3 unnecessary that the police count for every hand-to-hand
4 transfer in order to establish chain of custody sufficient
5 if the evidence demonstrates a reasonable assurance the
6 condition of the items remains the same from the time it was
7 obtained, obtained until its introduction at trial.

8 And so I'm assuming -- Lieutenant Journey has stated
9 that he put the, the alleged drugs into a sealed bag. If,
10 if Mr. Martin testified that he unsealed the bag, I think
11 he -- they're gonna have it.

12 MS. BUTCHER: And, Your Honor, I would just say that I
13 think that Mr. Journey testified that it didn't even look
14 like it had been tampered with. It had to be unsealed.
15 And, Your Honor, there's an evidence custodian who had to
16 have signed that out to Mr. Martin.

17 Your Honor, I think that's where the chain breaks and
18 falls apart. Mr. Journey did not testify that he gave it to
19 SLED himself, Your Honor. Someone sent it to SLED, and we
20 don't have that person.

21 THE COURT: All right. I'll, I'll note your objection
22 on the record. To me, it -- I believe they will comply,
23 excuse me, they will comply if Mr. Martin can testify that
24 it was -- the seal was not broken when he received it. So,
25 I'll note your objection so you can have it preserved on the

1 record.

2 MS. BUTCHER: Thank you, Your Honor.

3 THE COURT: But the Court is relying on State v.
4 Hatcher, 392 S.C. 86.

5 okay. All right. So that'll give you the basis.

6 All right. The food's still not here?

7 THE BAILIFF: Not yet, Your Honor.

8 THE COURT: okay. Well, let's, let's press on then.

9 THE BAILIFF: Okay.

10 THE COURT: Are you ready?

11 SOLICITOR CORNWELL: Yes, sir.

12 THE COURT: Mr., Mr. Martin's not gonna be that long,
13 is he?

14 SOLICITOR CORNWELL: No, Your Honor.

15 THE COURT: okay. If you'd bring the jury.

16 Is Defendant ready to proceed?

17 MS. BUTCHER: Oh, yes, Your Honor.

18 THE COURT: okay. If you'll bring the jury on out.

19 MS. BUTCHER: Your Honor, if we could proffer---

20 THE COURT: Oh, yeah. Go ahead.

21 MS. BUTCHER: ---that as opposed---

22 THE COURT: Ma'am?

23 MS. BUTCHER: ---as opposed to bringing the jury in.

24 THE COURT: Okay. I'm, I'm---

25 MS. BUTCHER: If we could proffer---

1 SOLICITOR CORNWELL: She wants to hear his testimony.

2 MS. BUTCHER: ---his testimony to make sure that he---

3 THE COURT: Oh, okay.

4 MS. BUTCHER: ---can testify to the complete chain,

5 Your Honor---

6 THE COURT: Okay.

7 MS. BUTCHER: ---or --.

8 SOLICITOR CORNWELL: I don't know that proffering is
9 necessary because, if he can't complete it, I think your
10 objection will be that the evidence can't come in, and you
11 would deny the evidence coming in.

12 THE COURT: Yeah, I mean if he, if he testifies that
13 the seal was broken, you get to renew your objection and
14 that will, that will -- stuff's here?

15 THE BAILIFF: It's here now.

16 THE COURT: The food's here.

17 Okay.

18 THE BAILIFF: Here now.

19 THE COURT: All right. Well, go tell them the food's
20 coming, and it's gonna be a break, and I'll talk -- let me
21 --.

22 MS. BUTCHER: I'm just looking for no prejudice or
23 anything that can---

24 THE COURT: Yes. Yes, ma'am.

25 MS. BUTCHER: ---be argued.

1 THE COURT: If, if---

2 MS. BUTCHER: That's why I ask for it to be proffered.

3 THE COURT: If she's calling him as a witness, if, if
4 he doesn't open that bag that's sealed, then we got a
5 problem.

6 MS. BUTCHER: I, I---

7 THE COURT: You understand?

8 MS. BUTCHER: I understand.

9 SOLICITOR CORNWELL: I think, at that point, the drug
10 evidence does not come into evidence. So, once I move---

11 THE COURT: Right.

12 SOLICITOR CORNWELL: ---to put it into evidence, I
13 think your objection at that point is---

14 MS. BUTCHER: Yeah.

15 THE COURT: Yeah.

16 SOLICITOR CORNWELL: ---there's an improper chain.

17 MS. BUTCHER: Your Honor, I just---

18 SOLICITOR CORNWELL: So, I don't know---

19 MS. BUTCHER: My client's not here. So --.

20 THE COURT: No, I understand. I understand.
21 Okay.

22 SOLICITOR CORNWELL: I mean since the lunch is here, I
23 mean I guess we could proffer now. I mean it's not gonna
24 keep us from doing anything, but --.

25 THE COURT: Well, I, I don't see there's any real need

1 for it, you know. We're gonna take a, we're gonna take a
2 short break to eat.

3 SOLICITOR CORNWELL: Thank you, Your Honor.

4 THE COURT: Okay. And then -- so, if y'all want to run
5 grab something, now's the time to do it.

6 Okay. All right.

7 MS. BUTCHER: Your Honor, what time do you want us
8 back?

9 THE COURT: I guess 30 minutes ought to be enough I
10 hope.

11 Okay. Thirty minutes.

12 Okay?

13 SOLICITOR CORNWELL: Thank you, Your Honor.

14 THE COURT: Thank you.

15 (WHEREUPON, Court was in recess for the lunch break.)

16 (WHEREUPON, a note with the foreman's name on it was
17 marked as Court's Exhibit No. 1 for identification purposes
18 only at this time.)

19 THE COURT: All right.

20 THE BAILIFF: Yes, Your Honor.

21 THE COURT: The jury's ready?

22 THE BAILIFF: Yes, Your Honor.

23 THE COURT: Okay. State ready?

24 SOLICITOR CORNWELL: Yes, Your Honor. We did have a
25 chance to go over the surveillance video.

1 THE COURT: Okay.

2 SOLICITOR CORNWELL: They're three places where the
3 video does momentarily freeze. One is for three seconds,
4 one is for four seconds, and one is for seven seconds.
5 Those freezes are all prior to any main stuff happening.

6 I think that it's a result of the systems thing. But
7 there's nothing that's taken out or that would be
8 prejudicial, and I believe that Ms. Butcher has agreed that
9 the video, as it is, is acceptable.

10 MS. BUTCHER: I'm, I'm not gonna object to it coming
11 in, Your Honor.

12 THE COURT: Okay.

13 MS. BUTCHER: Your Honor, I do -- would like to revisit
14 my motion concerning the chain of custody. It's been a
15 while since I've read Hatcher, and I reviewed it over the
16 break, and---

17 THE COURT: Good.

18 MS. BUTCHER: ---Your Honor, it states that the chain
19 needs to be established as far as practical. It's credibly
20 practical for the evidence custodian to come in and testify
21 to complete the chain.

22 In Hatcher, the law enforcement officer who took
23 possession of the evidence, put it in a sealed bag, was the
24 same person who transported that evidence to SLED. And he
25 was able to testify that it hadn't been tampered with,

1 hadn't changed. But he was the one who transported it to
2 SLED.

3 Here, we don't have that. We have the A where the
4 officer testified he took the evidence, and we have the Z
5 where I'm sure SLED will say they received evidence from the
6 State. We have nothing in-between, Your Honor, and the
7 chain of custody, though it's been relaxed, I don't think
8 it's been relaxed to that extent, Your Honor, and we, again,
9 would just renew our motion cause I think there's a world of
10 difference between Hatcher and the situation we have now. I
11 believe there they were asked -- able to establish someone
12 testifying that nothing had happened to it in-between, Your
13 Honor. Here, we don't have that.

14 THE COURT: Okay. I'm trying to remember.

15 MS. BUTCHER: Your Honor, I can probably tell you
16 where it is in the --.

17 THE COURT: No, no, I've got the, I've got it pulled
18 up. I have it.

19 MS. BUTCHER: Oh, oh, I'm sorry.

20 THE COURT: No, no.

21 MS. BUTCHER: I just was trying to tell you where is it
22 in the case.

23 THE COURT: No, I was trying to remember. Lieutenant
24 Journey, I believe, testified that he had it sealed and
25 submitted to the -- I guess the evidence locker in the

1 Sheriff's Office.

2 Is that --?

3 MS. BUTCHER: Yes, Your Honor.

4 THE COURT: -- correct?

5 Okay. And I don't -- I agree. I don't know that he
6 testified at all about him taking it to SLED.

7 MS. BUTCHER: I believe he said he didn't.

8 THE COURT: Okay. All right. Okay.

9 SOLICITOR CORNWELL: Your Honor, just for your
10 reference, and for help in this matter, Hatcher is the
11 controlling case from the Supreme Court. It has been cited
12 many times since then upholding that ruling.

13 The most recent case is State v. Trapp. That cite is
14 420 S.C. 217. And that is where the appeal was based on the
15 chain of custody.

16 The testimony was given from the officer who took the
17 evidence into custody, and from the analyst, and that was
18 affirmed and deemed to be sufficient.

19 THE COURT: Okay. It looks like -- I'm, I'm looking at
20 some of the (indiscernible) and like that. It does appear
21 that Trapp would go along with the way the evidence has been
22 presented here. Trapp is 420 S.C. 217. It's a Court of
23 Appeals decision. Judge Williams did it. So, it hadn't had
24 time to go up to the Supremes yet.

25 Okay. It says that I have -- that I can exercise my

1 discretion to see if there's -- to determine the likelihood
2 of any intermeddlers tampering with it, and, if I'm
3 satisfied that it has not been changed, then I can permit
4 its introduction into evidence.

5 So, again, I think I noted your objection to my ruling.
6 I'm gonna again note that I cite State versus Trapp and note
7 your objection to my ruling, and I'm gonna find out what
8 happens when -- I think Mr. Martin is gonna testify, and
9 could make all this moot, you know. But I -- I'll note your
10 objection to my ruling to let him -- to let it come in --

11 MS. BUTCHER: And---

12 THE COURT: -- regardless of the fact that everybody
13 has not been here and to testify about every stage of the
14 chain.

15 okay?

16 MS. BUTCHER: And, and, Your Honor, I just like to say
17 yes, of course, it is within the Judge's discretion. But
18 without that intervening chain, as practical and basic as
19 the evidence custodian, I don't think there's anything to
20 base an opinion of whether it's been tampered with or not.

21 THE COURT: Okay.

22 MS. BUTCHER: Thank you.

23 THE COURT: All right. And the nice, the nice thing
24 about this is, you know, you got a, you got an objection
25 that's been preserved. So -- okay. Your objection --.

1 MS. BUTCHER: Yeah.

2 THE COURT: Okay. All right. State ready to call its
3 next, next witness?

4 SOLICITOR CORNWELL: We are, Your Honor.

5 THE COURT: Okay. All right. Is the lieutenant ready?
6 Anything else, Ms. Butcher, that we got to go over?

7 MS. BUTCHER: I'm, I'm sorry, Your Honor.

8 THE COURT: Anything else we got to go over before I
9 can --?

10 MS. BUTCHER: That -- that's it, Your Honor.

11 THE COURT: Okay. Can you bring the jury back in?

12 THE BAILIFF: Yes, Your Honor.

13 THE COURT: Thank you, ma'am.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. Ladies and gentlemen, I hope
17 you enjoyed your lunch. We're getting ready now to continue
18 with the State's case.

19 Mr. Foreman, are you ready to start?

20 (Pause.)

21 THE COURT: Okay. All right. Are you ready to call
22 your next witness, Ms. Cornwell?

23 SOLICITOR CORNWELL: Yes, Your Honor.

24 State would call David Martin.

25 THE COURT: All right. Mr. Martin.

David Martin - Direct examination
By Solicitor Cornwell

1 Now, Mr. Martin, when you get up there, put your
2 left-hand on the Bible, raise your right-hand, and she's
3 gonna swear you in. I'm sorry.

4 THE CLERK: It's okay.

5 DAVID MARTIN, being first duly
6 sworn, testified as follows:

7 THE CLERK: Thank you.

8 THE COURT: All right. Get comfortable, Mr. Martin,
9 and then, if you'd state your full name for the record
10 please, sir.

11 THE WITNESS: David McGill Martin.

12 THE COURT: All right. He's your witness.

13 SOLICITOR CORNWELL: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY SOLICITOR CORNWELL:

16 Q Mr. Martin, can you tell the jury where you're
17 currently employed and how long you've worked there?

18 A I work with the City of Orangeburg, Department of
19 Public Safety since approximately March of '07.

20 Q Okay. And what do you do with the Department of Public
21 Safety?

22 A I'm the forensic chemist.

23 Q Okay. And can you tell the jury your education,
24 training, and experience that qualifies you as an analyst?

25 A I have degrees in biology and chemistry from the

David Martin - Direct examination
By Solicitor Cornwell

1 University of South Carolina.

2 Q And---

3 A And, and I'm (sic) also completed the SLED training
4 with the South Carolina Law Enforcement Division that
5 certifies that I'm qualified to analyze forensic evidence in
6 determination of dangerous and illegal substances.

7 Q Okay. And that certification, I know you said SLED,
8 can you tell us what SLED stands for?

9 A The South Carolina Law Enforcement Division.

10 Q Okay. And how long have you been certified through
11 SLED to analyze drugs?

12 A Approximately 11 -- well, ten and a half years, 10
13 years.

14 Q And during the course of that time, approximately how
15 many times have you had the opportunity to chemically
16 analyze a substance to determine whether or not it's a
17 narcotic?

18 A Over the entire period, upwards of 10,000.

19 Q All right. Have you ever testified in court as an
20 expert in drug analysis?

21 A Yes.

22 Q Approximately how many times?

23 A Three times.

24 SOLICITOR CORNWELL: And, Your Honor, at this time the
25 State would present Mr. Martin as an expert in the field of

David Martin - Direct examination
By Solicitor Cornwell

1 drug analysis.

2 THE COURT: Any --?

3 MS. BUTCHER: No objection.

4 THE COURT: All right. Ladies and gentlemen, he has
5 been qualified as an expert in drug analysis, which means he
6 can give an opinion and the reasons for his opinion.
7 Additionally, I need to tell you though that, just because
8 he's an expert, it's still up for you to determine if his
9 background and experience, experience will justify his
10 opinion and testimony. It's up to you to decide. He's to
11 be treated like any other witness.

12 Okay. All right. Ms. Cornwell.

13 SOLICITOR CORNWELL: Thank you, Your Honor.

14 Mr. Martin, if you could briefly tell the jury, just in
15 general, how you become involved in a drug case?

16 A When evidence is submitted to our evidence custodian,
17 they're -- I go over and, and collect it. I take custody of
18 it, and for, for purposes of analysis.

19 Q So, you actually go and collect the evidence from the
20 place itself and take custody of it?

21 A Yes.

22 Q And once you take custody of it, what is your general
23 practice of, of what you do with the evidence?

24 A It gets, it gets cataloged, and processed, and analyzed
25 in the order in which I receive it. And after say I go to

David Martin - Direct examination
By Solicitor Cornwell

1 analyze it, then I would open up the, the sealed evidence
2 bag, cataloged, and make notes of what I seen, and then
3 perform analysis on each item that, that I deem necessary
4 to, to analyze.

5 Q And if you were ever to receive a package that was
6 unsealed, would you have to make note of that?

7 A I would.

8 Q Would you be able to test that it if had been unsealed
9 and tampered with?

10 A I, I would be able to test it. However, there, there
11 would be notification to the officer and, and there would
12 be -- the evidence custodian at the City would also make
13 notations whenever she received it.

14 Q And, and going to this specific case, I'm gonna show
15 you what's been marked as State's Exhibit 7.

16 Can you look at that and identify and tell me if you
17 recognize that?

18 A Yes, this is the bag that I sealed the, the evidence
19 after I analyzed it back on June 6th of 2017.

20 Q Okay. And does that have -- do you put a lab number to
21 correspond with the cases as you get them?

22 A Those lab numbers are assigned by the evidence
23 custodian.

24 Q Okay. And is the lab number on this -- on that piece
25 of evidence associated with this case?

David Martin - Direct examination
By Solicitor Cornwell

1 A It is.

2 Q Okay. And when you received that, the bag that's
3 inside, the evidence bag that you stated you unsealed, can
4 you tell us a little bit about that bag?

5 A It's a -- it's a tamper evident bag where, where you
6 can clearly see that the red, the red material would, would
7 show signs of, of tampering if it was tried -- if it tried
8 to be reopened, there would be distortions in the bar code,
9 and also the, the signature and the date, which is why I
10 always opened the sealed bags on the bottom to, to make --
11 maintain the integrity of the seal in case it's ever brought
12 into question.

13 Q Okay. And once somebody seals that bag, are they able
14 to unseal it again without it being shown or obvious on the
15 bag itself?

16 A No.

17 Q Okay. And you indicated that you opened these bags at
18 the bottom?

19 A Correct.

20 Q So, the seal that the person that placed that evidence
21 into place is still in tact?

22 A Yes.

23 Q Okay. And when you opened it, had it been tampered
24 with, opened, or had the seal been misplaced in any way?

25 A No, it had not and I always make an annotation on the

David Martin - Direct examination
By Solicitor Cornwell

1 bag itself that the seal was in tact.

2 Q Okay. And is that done in that case?

3 A It is.

4 Q Okay.

5 A It's difficult to see because of the, the evidence --
6 the Ziploc bag is there. But it's -- you can see the
7 beginnings of it.

8 Q Okay. And when you received those items, you indicated
9 about making notations of how you received the items and
10 what items you received in them?

11 A Correct.

12 Q Okay. And through that, do you recall, and I, I don't
13 know if you have a copy of your report or if it would be
14 helpful, do you recall what type of packaging those drugs
15 were in when you received them?

16 A Clear Ziploc bags and the, the Item 1.1.1 was four
17 individual plastic Ziploc bags, and Item 1.1.2 was a plastic
18 sandwich bag.

19 Q Okay. And you referenced Item 1.1.1 and 1.1.2.

20 Are those numbers that you assigned to the pieces of
21 evidence?

22 A Correct.

23 Q Okay. And in looking at State's Exhibit 4, were those
24 the packages that you received in that evidence bag?

25 A Yes, they appear to be.

David Martin - Direct examination
By Solicitor Cornwell

1 Q And were you able to---

2 A Oh, they're, they're not in here.

3 Q Yes.

4 A I, I had them separated for latent print analysis on
5 request.

6 Q Okay. And this is your --

7 A Lab number.

8 Q -- lab number and indication where you resealed it
9 after testing?

10 A Correct.

11 SOLICITOR CORNWELL: Okay. Your Honor, at this time
12 State would move State's Exhibit 7 into evidence.

13 THE COURT: Any objection?

14 MS. BUTCHER: No objection, Your Honor.

15 THE COURT: Okay. State's 7 is in evidence without
16 objection.

17 (WHEREUPON, State's Exhibit No. 7 was received into
18 evidence at this time.)

19 Q And just to clarify, the individual baggies that you
20 obtained and retained, those would have been --

21 A That---

22 Q Did they appear to be?

23 A They appear to be. But I, I don't, I don't match the
24 color differentiation on, on my notes.

25 Q Okay. And once you separated those items out, what

David Martin - Direct examination
By Solicitor Cornwell

1 type of testing did you perform on those items?

2 A Initially I performed a color test, which is I spotted
3 a small amount of the material into marquise color reagent
4 that produced an orange color. And then from, from that
5 preliminary test, I -- and went on to take another small
6 aliquant of sample of evidence to, to -- and placed in a
7 test tube where I conduct a base, base solution methylene
8 chloride extraction in order to move the material --
9 dissolve the material in the methylene chloride for analysis
10 on the instrument, the gas chromatograph mass spectrometer.

11 Q And after doing all of that, were you able to form an
12 expert opinion as to what each of those items were?

13 A The, the result of the analysis indicated the presence
14 of methamphetamine --

15 Q Okay. And---

16 A -- in both, in both exhibits.

17 Q Okay. And after testing each item, what was the total
18 weight of the methamphetamine that you tested?

19 A Without, without my notes---

20 Q Do you generally generate a report---

21 A Yes.

22 Q ---on this?

23 (WHEREUPON, the drug report was marked as State's
24 Exhibit No. 8 for identification purposes only at this
25 time.)

David Martin - Direct examination
By Solicitor Cornwell

1 Q I'm gonna show you what's been marked as State's
2 Exhibit 8.

3 You can look at that and tell me if you recognize what
4 that is?

5 A Yes, this is the report that I produced.

6 Q Okay. And is that a true and accurate copy of the
7 report that you produced?

8 A Correct.

9 Q Okay.

10 A I always initial, when it's a two page report, I
11 initial on the front page, and I sign my autographed
12 signature on the back page.

13 SOLICITOR CORNWELL: Okay. Your Honor, at this time
14 State would move State's Exhibit 8 into evidence.

15 THE COURT: State's 8, any objection?

16 MS. BUTCHER: None, Your Honor.

17 THE COURT: State's 8 is in without objection.

18 (WHEREUPON, State's Exhibit No. 8 was received into
19 evidence at this time.)

20 Q And in asking about the weights, would it help your
21 recollection---

22 A Yes.

23 Q ---if you say that?

24 A The, the combined weight of the four plastic Ziploc
25 bags was 5.7 grams, and the weight of the material in the

David Martin - Direct examination
By Solicitor Cornwell

1 plastic sandwich bag was 3.6 grams.

2 Q And I'm no mathematician by any means, but the total
3 aggregate weight of everything?

4 A 9 point -- 9.3.

5 Q Okay. And in your report, in addition to the weight,
6 does it identify what the substance is that you were able to
7 identify?

8 A Yes, I determined that the substance was indeed
9 methamphetamine.

10 Q Okay. Thank you, Mr. Martin. Please answer any
11 questions defense counsel may have.

12 THE COURT: Ms. Butcher, he's your witness.

13 MS. BUTCHER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. BUTCHER:

16 Q Now, you were asked to analyze some items for
17 fingerprints?

18 A No, I, I was asked to separate the, the, the bags out
19 for analysis by a different, a different analyst.

20 Q Okay. I thought I heard you say a print analysis was
21 requested.

22 A Right.

23 Q So, it was requested?

24 A Right. But not by me.

25 Q Oh, you just don't---

David Martin - Cross-examination
By Ms. Butcher

- 1 A No. No.
- 2 Q ---analyze the prints?
- 3 A No, the lieutenant -- Lieutenant Journey requested the
4 latent prints analysis on the, the forensic evidence request
5 form.
- 6 Q Okay. Now, so you go to the police department or
7 Sheriff's Department, wherever, and you get the evidence
8 yourself that you're to analyze?
- 9 A Correct. Did it at the City, at the City Department of
10 Public Safety.
- 11 Q Uh-huh. (Affirmative).
- 12 A There's an evidence, evidence locker. My, my facility
13 is on the, the campus of Claflin University.
- 14 Q Okay.
- 15 A It's a secured -- it's a secured building.
- 16 Q Okay. And you re -- who do you retrieve that evidence
17 from?
- 18 A I, I retrieve it from evidence technician named Debbie
19 Byrd.
- 20 Q Okay. And do you have to sign it out?
- 21 A Yes.
- 22 Q Okay. Do you have that with you to show me?
- 23 A I do.
- 24 Q Okay. Could you show me that?
- 25 A It -- may I go back to my seat?

David Martin - Cross-examination
By Ms. Butcher

1 THE BAILIFF: I'll get it.

2 THE WITNESS: Okay. It's behind the pillar and it's
3 right there on the, on the bench. Right there.

4 MS. BUTCHER: Thank you.

5 THE BAILIFF: You welcome.

6 A That's a copy.

7 Q Okay.

8 A The original, the original stays with the evidence
9 custodian until -- and is returned to the, to the officer I
10 believe whenever he comes to collect the evidence back.
11 That was all, that was all the material concerning that
12 matter. The rest is my analysis.

13 Q Okay.

14 A Analytical notes.

15 Q Okay. So -- now, when you received this, you say you
16 cut from the bottom?

17 A Correct.

18 Q Okay. And you have no knowledge of whether the seal up
19 here -- what happened to it prior to you obtaining this,
20 correct?

21 I mean you, you receive it sealed like this, correct?

22 A Correct.

23 Q You don't know who put the seal on it?

24 A Well, it -- Martin Journey signed it.

25 Q Well, his name's on it, but---

David Martin - Cross-examination
By Ms. Butcher

- 1 A But I don't know if he signed it or not.
- 2 Q Okay. And you don't know if any, anybody else resealed
3 it or anything?
- 4 You just know, when you received this, it is sealed up
5 here, correct?
- 6 A That is -- that seal is in tact---
- 7 Q Uh-huh. (Affirmative).
- 8 A ---as, as it -- the day it was sealed.
- 9 Q Uh-huh. (Affirmative).
- 10 A The -- you really can tell if it was opened and closed
11 or even tried to.
- 12 Q Uh-huh. (Affirmative).
- 13 okay. And -- okay. But you, for all you knew, someone
14 could of taken it out, put it in another one, sealed it, and
15 then given it to you?
- 16 A Correct.
- 17 Q Correct?
- 18 A Correct.
- 19 Q Okay. So, all you know is you received that, correct?
20 You tested it?
21 You don't know---
- 22 A Yes.
- 23 Q ---where it came from?
- 24 A No, I do not.
- 25 Q You don't know who they found it or where they found it

David Martin - Cross-examination
By Ms. Butcher

1 or anything like that?

2 A No, I do not.

3 Q Okay. So, let me ask you this.

4 You have no evidence or nothing to present in this
5 Court today about who those drugs belonged to, who had
6 possession of them?

7 A No, that's, that's not in my -- that's not in my scope.

8 Q Okay. Okay. No further questions. Thank you.

9 THE COURT: Anything on redirect?

10 SOLICITOR CORNWELL: No, Your Honor.

11 THE COURT: Yes, sir, you may step down.

12 THE BAILIFF: Ms. Butcher have the note.

13 THE COURT: Do you have---

14 THE BAILIFF: Get your note from the---

15 MS. BUTCHER: Actually I do have them.

16 THE COURT: Yeah. Yeah.

17 MS. BUTCHER: I'm gonna give these back.

18 THE COURT: Yeah, give those back to him, yeah.

19 MS. BUTCHER: I'm sorry.

20 THE COURT: Appreciate it.

21 THE WITNESS: Am I released?

22 MS. BUTCHER: Actually -- can I see these one more
23 time?

24 (Pause.)

25 MS. BUTCHER: Your Honor, I would like to -- could I

1 have a copy of that?

2 THE WITNESS: Sure. You can have that.

3 MS. BUTCHER: Thank you so much. I appreciate it.

4 THE COURT: You got another copy?

5 THE WITNESS: I have the original.

6 THE COURT: Okay.

7 THE WITNESS: But that's the only copy I brought with
8 me.

9 THE COURT: okay. All right. okay.

10 THE WITNESS: All right.

11 THE COURT: Thank you, sir.

12 MS. BUTCHER: Thank you.

13 THE COURT: All right. State ready to call its next
14 witness?

15 SOLICITOR CORNWELL: At this time we would like to
16 recall Investigator Boyne and publish the video to the jury
17 please.

18 THE COURT: Okay. Investigator Boyne, if you'd come
19 back up?

20 Investigator Boyne, I remind you you are still under
21 oath.

22 okay?

23 THE WITNESS: Yes, sir.

24 THE COURT: Okay.

25 (WHEREUPON, the witness returns to the stand.)

Rob Boyne - Direct examination
By Solicitor Cornwell

1 ROB BOYNE, having been previously
2 sworn, testified as follows:

3 THE COURT: All right.

4 SOLICITOR CORNWELL: And, Your Honor, for purposes of
5 the record, we have advanced the video to the point that
6 involves this particular matter. For the record, it's
7 starting at 21:48 of the lower right-hand corner time
8 stamps.

9 THE COURT: Okay.

10 DIRECT EXAMINATION

11 BY SOLICITOR CORNWELL:

12 Q Investigator Boyne, who is that entering the video --
13 the store?

14 A That is Thomas Shelly Faulling.

15 Q And that black truck that goes by, do you recognize
16 that?

17 A Yes, sir. Yes, ma'am, that's myself and the lieutenant
18 is his patrol vehicle.

19 Q And who is that entering the store?

20 A That would be me.

21 Q And can you tell the jury what's going on in this part
22 of the video?

23 A Yes, ma'am, at this point you can see me pointing
24 outside trying to get him to come out here and talk to me
25 about this vehicle.

Rob Boyne - Direct examination
By Solicitor Cornwell

1 Q Okay.

2 A He's not being detained or anything.

3 Q Okay.

4 A We're also explaining to him that we had had a, a, a
5 phone call in reference to that vehicle --

6 Q Okay.

7 A -- and him possibly driving that stolen vehicle.

8 Q Investigator Boyne, at anytime during your conversation
9 with the Defendant, was he ever placed in handcuffs?

10 A No, ma'am.

11 Q Was he ever detained to a point where he was not
12 allowed to leave?

13 A No, ma'am, he had said that he -- that wasn't his truck
14 and he was waiting on a ride. So, we continued to talk.

15 Q And while we're watching this, just to give
16 geographically, can you tell us, on the outside of that
17 door, what is located on the outside of each side of the
18 door?

19 A Yes, ma'am. In looking at the door from our side, so
20 right where I would be standing would be the little paper
21 machine. To the left would be a trashcan. There was
22 multiple trashcans outside. That was the trashcan and paper
23 machine. That is the -- his girlfriend, Miranda Blume, and
24 the Jonathan guy that he stated drove the truck up there
25 that he wasn't with.

Rob Boyne - Direct examination
By Solicitor Cornwell

1 Q Can you identify who's walking into the store now?

2 A Yes, ma'am, that's Ms. Dash that testified earlier this
3 morning.

4 Q Can you tell us what's going on right here?

5 A Yeah, I was trying to speak with the other individual.
6 He's taking that item out of his pocket and just put it
7 down. That was that chrome case that you showed us---

8 MS. BUTCHER: Object.

9 A ---this morning.

10 MS. BUTCHER: Objection. Your Honor, I don't think he
11 --.

12 THE COURT: I can't see it.

13 MS. BUTCHER: For, for him to testify as to what was
14 set down, he didn't see it. The video speaks for itself.

15 THE COURT: Okay. Well, I think the video does, but he
16 testified that that's what they found---

17 MS. BUTCHER: Okay.

18 THE COURT: ---when the --.

19 MS. BUTCHER: But, but he's testifying that's what was
20 put down.

21 THE COURT: Oh, okay. All right. Well, I think the
22 jury can see whatever the video is showing. So --.

23 Q At this point is this where Mr. -- the Defendant is
24 free to leave?

25 A Yeah, that's when Lieutenant Journey, we, we had no

Rob Boyne - Direct examination
By Solicitor Cornwell

1 reason to hold him at that point.

2 Q okay.

3 A So he left.

4 Q And when you walked in right before he left, can you
5 tell the jury what was going on there and why you ran out
6 toward the street?

7 A Cause she just stated something -- that he had put
8 something down there, and we were trying to figure out where
9 she was talking about at that moment. And that's why you
10 see me walk back outside and tell Lieutenant Journey, and
11 then she'll eventually come outside to us and show us
12 exactly where she's talking about. She's explaining to me
13 right there---

14 MS. BUTCHER: Objection.

15 SOLICITOR CORNWELL: Your Honor, he's allowed to
16 explain what's happening in the video---

17 MS. BUTCHER: He's---

18 SOLICITOR CORNWELL: ---since he's testifying---

19 MS. BUTCHER: ---not allowed to say what she says.
20 She's already been on the stand.

21 THE WITNESS: I can't testify to what she told me?

22 THE COURT: Uh-huh. (Affirmative).

23 THE WITNESS: I can not testify to what she states --
24 told me?

25 THE COURT: Yeah, I -- she was just here.

Rob Boyne - Direct examination
By Solicitor Cornwell

1 MS. BUTCHER: Yes, Your Honor. It would be hearsay for
2 him to say what she said, for this gentleman to say what a
3 witness said.

4 Q For purposes of your investigation -- I'm sorry.

5 THE COURT: Go ahead, ma'am.

6 SOLICITOR CORNWELL: I'll reask.

7 Q For purposes of your investigation, were you informed
8 of multiple places of where evidence could be found?

9 A Yes, ma'am, I was.

10 Q And is this what's happening in this video?

11 A Yes, ma'am, that's what it was.

12 Q Thank you.

13 And through that window in the khaki pants and the
14 black, who is that?

15 A The khaki pants, that's Lieutenant Journey.

16 Q Okay. And so the -- is that where she is speaking with
17 y'all?

18 A Yes, ma'am, that's where she's telling us everything,
19 telling us more. I mean she already spoke with me earlier.

20 Q And the reflection through the window that keeps going
21 back and forth, that would be you?

22 A Yes, ma'am, that's me right there in front of her right
23 there.

24 Q And during this time when you come back in the store,
25 are you requesting -- are you making any requests at that

Rob Boyne - Direct examination
By Solicitor Cornwell

- 1 time?
- 2 A Yeah, we were asking about the video, and also with him
- 3 putting stuff out there allegedly, I wanted to make sure
- 4 there wasn't anything else in the direction that he had
- 5 walked into that store. There wasn't anything else there.
- 6 Q Okay.
- 7 A And there wasn't.
- 8 Q And at that point was Ms. Dash free to leave?
- 9 A Yes, ma'am.
- 10 Q Can you tell us what's going on here?
- 11 A He's taking pictures.
- 12 Q Okay. And those would be State's 2, 3, 4?
- 13 A Yes, ma'am.
- 14 Q And here?
- 15 A What, what are we doing?
- 16 Q I jumped the gun a little bit.
- 17 Can you tell what Investigator Journey is getting out
- 18 and has in his hand?
- 19 A An evidence bag. That evidence bag.
- 20 Q And, to your knowledge, the information that's filled
- 21 out on the evidence bag was filled out on scene?
- 22 A To my knowledge, yes, ma'am.
- 23 Q And you in the black truck?
- 24 A Yes, ma'am, that was our patrol vehicle.
- 25 Q Can you tell us what's going on there?

Rob Boyne - Direct examination
By Solicitor Cornwell

1 A He's preparing the bag, the evidence.

2 Q And, to your knowledge, was that bag sealed on scene?

3 A Yes, ma'am.

4 Q And what is he doing right there?

5 A He's sealing the bag I believe.

6 MS. BUTCHER: Objection. Speculation.

7 THE COURT: I didn't hear that. I'm sorry.

8 MS. BUTCHER: He's saying was -- she's asking what he's
9 doing.

10 THE WITNESS: Sealing the bag.

11 MS. BUTCHER: He said well, I think he's -- I believe
12 he's sealing the bag. He's not even -- he's not there to
13 see.

14 THE COURT: Okay. Well, whatever the -- directing the
15 jury to look at the video and determine what the video
16 shows---

17 MS. BUTCHER: Is fine.

18 THE COURT: ---in and of itself---

19 MS. BUTCHER: Yeah.

20 THE COURT: Okay.

21 SOLICITOR CORNWELL: Your Honor, I believe that, at
22 this point, the video ends as far as the collection of
23 evidence and anything pertinent to this matter.

24 THE COURT: And, Ms. Butcher, she's gonna turn it off
25 unless you want her to --.

1 MS. BUTCHER: I have no objection.

2 THE COURT: Okay. All right. You can turn it off
3 please, ma'am.

4 SOLICITOR CORNWELL: Thank you, Your Honor.

5 Nothing further from the State, Your Honor.

6 THE COURT: All right. Do, do you have any questions
7 of this witness while he's back on the stand regarding this
8 video?

9 MS. BUTCHER: I don't, Your Honor.

10 THE COURT: You may step down, step down then.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Appreciate it.

13 The State prepared to call its next witness?

14 SOLICITOR CORNWELL: Your Honor, at this time the State
15 rest.

16 THE COURT: All right. All right. Ladies and
17 gentlemen, you've heard all of the testimony that the State
18 has in this case. We need to take a break so I can go over
19 some matters with the attorneys before we come out and
20 continue with the, with the rest of the trial, with the
21 defendant's case.

22 Again, you've heard some testimony, but, again, you can
23 not begin talking about this until I tell you you can begin
24 your deliberations. So, go on back there. Hopefully I'll
25 get you back out soon and we'll be ready to go.

1 Thank y'all.

2 (WHEREUPON, the following takes place outside the
3 presence of the jury.)

4 THE COURT: Okay. Any -- anything from defense?

5 MS. BUTCHER: Your Honor, I'd just, one, like to renew
6 all my prior motions.

7 THE COURT: All right. I'll note on the record your
8 prior motions and your objections to my decisions on each
9 one of them. So they're all preserved on the, on the
10 record.

11 Okay. All right.

12 MS. BUTCHER: Thank you.

13 THE COURT: And I know your client is not here. Again,
14 I will charge them, just like him not testifying, they can't
15 use that.

16 Do you intend to produce -- present anybody?

17 MS. BUTCHER: No.

18 THE COURT: Present any evidence?

19 MS. BUTCHER: I'm not going to.

20 THE COURT: All right.

21 MS. BUTCHER: I'm done.

22 THE COURT: All right. Are y'all ready to -- I want
23 y'all to look at the verdict form I've prepared.

24 SOLICITOR CORNWELL: Before we do that, Your Honor --

25 THE COURT: Yes.

1 SOLICITOR CORNWELL: -- are there any more motions that
2 the defense would like to make in regards to the State's
3 case?

4 MS. BUTCHER: I believe I've made them.

5 SOLICITOR CORNWELL: Are there any motions for a
6 directed verdict or anything of that nature?

7 MS. BUTCHER: Oh, well, I would make, make a motion for
8 directed verdict. I don't think the State has provided
9 any -- enough evidence to send this to the jury. I think
10 all they've provided is speculation at this point, which
11 would be inadmissible.

12 THE COURT: Okay. All right. You -- I, I believe the
13 evidence is safe to present so far. It's a question of fact
14 for the jury to determine. So, I'm gonna deny your motion
15 for a directed verdict.

16 MS. BUTCHER: Thank you, Your Honor.

17 THE COURT: And I'll preserve your objection to my
18 ruling.

19 okay. All right.

20 SOLICITOR CORNWELL: Thank you, Your Honor.

21 THE COURT: Anything else from the State?

22 SOLICITOR CORNWELL: No, Your Honor.

23 THE COURT: Anything else from the Defendant?

24 MS. BUTCHER: No, Your Honor. But if we could have a
25 few minutes just to get closings together.

1 THE COURT: Oh, that's fine. That's fine and I want to
2 show y'all the verdict form, and quickly go over with y'all
3 what I intend to charge so that y'all can -- y'all will know
4 what to -- what I'm gonna say so you can address it.

5 MS. BUTCHER: Thank you, Your Honor.

6 THE COURT: Okay. All right. I think he's getting
7 everything printed up right now. So --.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: Ms. Butcher, I've got a sample verdict form
10 for you to look at.

11 Okay. Thank you, ma'am.

12 And then we want y'all to look at so y'all can tell me
13 what -- y'all can look at that and tell me whether you want
14 me to leave it, change it, modify it.

15 Okay. I've got one premarked that I'll give to the
16 jury.

17 SOLICITOR CORNWELL: No objection, Your Honor.

18 MS. BUTCHER: I thought he was only charged with number
19 one.

20 SOLICITOR CORNWELL: He is.

21 MS. BUTCHER: Okay. So, we're doing a lesser included,
22 included?

23 THE COURT: Yes, ma'am.

24 MS. BUTCHER: Okay.

25 THE COURT: Because they could find that --.

1 MS. BUTCHER: They could.

2 THE COURT: They could---

3 MS. BUTCHER: I just -- I thought they had to be
4 requested.

5 THE COURT: Huh?

6 MS. BUTCHER: I---

7 THE COURT: No, I think, if I believe there's enough
8 evidence in the record---

9 MS. BUTCHER: That's fine.

10 THE COURT: ---that he would be convicted of that, I
11 can -- I think I can do that.

12 MS. BUTCHER: No.

13 THE COURT: But if you want to note your objection to
14 this, we'll---

15 MS. BUTCHER: No, I'm, I'm good.

16 THE COURT: Okay. All right. All right.

17 (WHEREUPON, a short recess was taken at this time.)

18 THE COURT: Before y'all do---

19 (WHEREUPON, a bench conference was held at this time.)

20 THE COURT: Ms. Butcher, are you gonna rest on the
21 record if you don't mind and then we'll go straight into the
22 argument?

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. Ladies and gentlemen, we're

1 gonna continue with the trial.

2 All right. Ms. Butcher.

3 MS. BUTCHER: Your Honor, the defense rests.

4 THE COURT: All right. And just for the record, I've
5 noted for the record that all of the motions that you made,
6 my decisions are gonna be renewed for the record along with
7 my rulings.

8 Okay. So that will be in there.

9 All right. Ladies and gentlemen, we've heard all the
10 testimony we're gonna hear in this case. Now we're getting
11 ready to hear the closing arguments of counsel. After they
12 have done their closing arguments, I'm gonna explain the law
13 to you.

14 After I explain the law to you, I'm gonna come down,
15 Mr. Foreman, and go over the verdict form with you.

16 Okay. Now, after we've done that, I'm gonna let you go
17 back into the jury room, but you're not gonna be able to
18 start deliberating until I tell you you can begin
19 deliberating because, after I charge you on the law, I have
20 to go over a couple quick things with them on the record.
21 And if everything's okay, they're -- we're gathering
22 evidence together, send you the verdict form back there, and
23 tell you you can begin deliberation at that time. But,
24 until that time, again, you can not talk about the testimony
25 you've heard in this case.

1 Okay. All right. Now, Ms. Cornwell, you ready?

2 SOLICITOR CORNWELL: We are, Your Honor.

3 THE COURT: Okay.

4 SOLICITOR CORNWELL: May it please the Court?

5 THE COURT: Yes, ma'am.

6 SOLICITOR CORNWELL: Counsel.

7 A few hours ago I told you that this case was a matter
8 of it is what it is, and what it is is the Defendant in this
9 case, Shelly Thomas Faulling, had in his possession an
10 amount of methamphetamine which showed he had the intent to
11 distribute it. Nothing has changed since then.

12 You've now heard the testimony from the stand and
13 you've seen the evidence of the video, which shows that the
14 Defendant, Shelly Faulling, did possess methamphetamine and
15 it was a quantity that was in the amount is meant for
16 distribution.

17 You heard at the beginning of this trial it's the
18 State's burden to prove each and every element of the crime.
19 We have to prove that the substance was methamphetamine,
20 that the Defendant had possession of it, and that his intent
21 was to distribute it, and we've done just that.

22 We've shown you that this evidence right here is
23 methamphetamine. This is what was in the baggies. This is
24 what was collected on the scene. This is what was sealed on
25 the scene.

1 You also have the analyst report that you'll get to
2 view that shows that this substance is methamphetamine,
3 that, in the small green baggies, it weighed 5.7 grams. In
4 the white bag was a larger chunk, and you'll be able to see
5 that as well, from which was 3.6 grams for an aggregate
6 total of 9.3 grams of methamphetamine.

7 Possession. You saw on the video, and you'll be able
8 to look at the video again if you'd like, but you saw where
9 he looked around. He pulls from his front left pocket a
10 silver case and puts it down. He puts that silver case down
11 and inside that silver case, as you can see, are little
12 baggies with a larger bag that contains the larger
13 substance. He also tries to get rid of the baggies that he
14 uses when he distributes the methamphetamine.

15 You'll also notice -- and there was some talk about the
16 eyeglasses.

17 And when you look at the video, when he walks in the
18 video store, what's on top of his head?

19 Eyeglasses.

20 All of this belongs to him. All of this can be seen
21 clearly on the video being pulled out of his pocket and
22 discard it. What is inside of it were in the baggies that
23 you will have back in your evidence room. You also have the
24 baggies that he threw away, and these baggies obviously
25 match these baggies.

1 But you're also gonna have the silver case that he
2 throws this down that you can clearly see is small enough to
3 fit in a pocket, and that he had in his front pocket, and
4 you can see, when he looks around to see if anybody is
5 looking, he takes out and puts down at that newsstand. That
6 proves that the methamphetamine was in his possession.

7 And we talk about the distribution part of it, and the
8 judge is gonna explain to you what intent in the law is.
9 I'm not allowed to go in somebody's mind and extract what
10 their intention is. Intention is an abstract thing. It's a
11 thought. It's a process.

12 So, while you got two kinds of evidence, and one is
13 actual evidence, direct evidence, and one is called
14 circumstantial evidence. When it comes to the possession
15 and the methamphetamine, you have actual evidence that he
16 had methamphetamine in his possession.

17 So, how did we prove intent to distribute?

18 Intent to distribute is proven by what we call
19 circumstantial evidence, and what circumstantial evidence is
20 is evidence that you can conclude based on the facts that
21 surround that evidence. The analogy that I like to give
22 jurors is, if you came in here today and it was raining
23 outside, well, you felt the rain. You heard the rain. You
24 smelt the rain. You probably got wet. That's direct
25 evidence. That's actual evidence that it rained.

1 However, if you were to come in this courtroom this
2 morning, and it was not raining, but when you went outside
3 afterwards, you could smell the rain in the air, you could
4 feel the dampness in the air, you could see puddles on the
5 ground, but it wasn't actually raining at that time, you can
6 still come to the conclusion that it rained based on the
7 circumstantial evidence that you've seen to prove it rained.

8 So, when it comes to intent, specifically the intent to
9 distribute, I can't tell you, by direct evidence, what the
10 intention was. However, I can prove to you, by
11 circumstantial evidence, what that intent was. And you're
12 gonna hear the Judge tell you, and you heard Lieutenant
13 Journey and Investigator Boyne explain to you that, in South
14 Carolina, anything that is 1-gram or higher, you are allowed
15 a permissive inference that that is a distribution weight.
16 Personal use weight is generally less than a gram.

17 In this case, you've got a total of 9.3 grams. Nine
18 times what is generally the personal use of meth.

19 You also heard testimony that generally when people are
20 going to use a drug for personal use, they keep it in one
21 bag, one container. They don't put it in individual little
22 baggies, little containers.

23 In this case, you can see where inside his case he had
24 already packaged at least four different bags out of this
25 larger stash that he had. He also had the individual

1 baggies that he was still using to distribute that.

2 The fact that he had 9.3 grams on him, that he had it
3 individually packaged, and that he had a large source from
4 which he was making those individual packages are all
5 circumstantial evidence that prove that he had the intent to
6 distribute these drugs.

7 The substance was methamphetamine. He possessed it.
8 He intended to distribute it. We've shown you, through
9 direct and circumstantial evidence, each and every one of
10 those elements. You've heard the testimony and you've seen
11 the evidence, and you'll be able to see that evidence in the
12 back. We have proven this case beyond a reasonable doubt.

13 What is a reasonable doubt?

14 A reasonable doubt is a doubt that causes a person to
15 hesitate to act. In order for you to find somebody guilty,
16 you must be clearly convinced of their guilt. Reasonable
17 doubt though is not as defense counsel spoke to you in her
18 opening statement. It's not beyond all doubt. It's beyond
19 a reasonable doubt. There is nothing in this world that we
20 can prove beyond all doubt.

21 So, you have to ask yourself, if you did what your duty
22 as a juror was, and what you've sworn to this Court that you
23 did do, meaning you had no knowledge of this case prior to
24 coming in here, and after sitting in that jury box and
25 listening to the testimony and seeing the evidence, you are

1 now convinced that the Defendant possessed methamphetamine
2 with the intent to distribute, then the State has proven its
3 case beyond a reasonable doubt. And, in that case, you
4 should find the Defendant guilty.

5 THE COURT: Thank you, Ms. Cornwell.

6 Ms. Butcher.

7 MS. BUTCHER: Thank you, Your Honor.

8 Ladies and gentlemen, if this is all it takes to
9 convict a citizen of South Carolina, I feel sorry for every
10 citizen.

11 What we have is a case filled with speculation. You
12 have no one that actually saw what Mr. Faulling set down.
13 You have -- when you look at this video, go back and look at
14 the video, you do see him set something down. You also, if
15 you look at the first of the video, he has eyeglasses on the
16 top of his head. At some point in this video his eyeglasses
17 are not there on top of his head.

18 I believe that's what he pulled out because you know --
19 and you look at the video and you look at the picture.
20 They're the same eyeglasses. When you watch this video, I
21 want you to also watch it skips time.

22 There are seconds, four second intervals, seven second
23 intervals, whatever, that are taken -- that are not -- you
24 don't get to see the action. Take note of that. At some
25 point he may of put these glasses in his pocket, but we

1 don't know cause we don't have a complete video of that.
2 So, you take note of that but what you do know is that he
3 doesn't have them on his head and goes to set it down.

4 Now, for him to pull out glasses, that we know he did
5 set down, okay, and these other things out of his pocket,
6 that would be kind of difficult to do. That's a lot to hold
7 in your hand. But we have nobody that actually saw what he
8 set down.

9 And I want you also to observe on the video there's
10 this window that's beside the cashier. And when you look
11 through that window, when you got this camera angle going,
12 you can see the officer looking through the trashcan and
13 everything. Never seen Shelly Faulling over there. He goes
14 like this. You do see that. But you don't see the other
15 where the State's alleging he's throwing things in the
16 trash.

17 Now, one, one thing that really baffled me was why was
18 this the only camera angle you were allowed to see. You
19 heard the officers testify yeah, there were lots of cameras.
20 Yeah. We, we didn't bother to get that though. We, we
21 didn't get that one.

22 Where's the video of the door itself pointing to show
23 from another angle what's going on?

24 We don't have that one.

25 We have speculation is what we have.

1 Also want you to note how that officer was all over
2 Shelly Faulling. He was talking. He was going like this.
3 He's blocking this path even.

4 But they're two officers, and you're telling me they
5 took his -- the eyes off of him and didn't see anything, him
6 doing anything?

7 But where's the testimony that they looked and saw
8 nothing was on top of that paper machine prior to Mr.
9 Faulling being there?

10 Where is the video evidence showing you that no one
11 came up before that either and set something down?

12 One thing people do when they're going to distribute
13 drugs, they'll go to a bathroom stall. They'll leave drugs
14 in the bathroom. Somebody else knows, knows and knows where
15 to get them.

16 For all we know those drugs were there prior to Mr.
17 Faulling walking up, but somebody else had left them there
18 for someone else to come pick up. We don't know.

19 One of the things I hope you took note of, I asked the
20 investigator about fingerprint analysis. We didn't do
21 analysis. Just didn't, just didn't do one.

22 And what did you hear from the gentleman who analyzed
23 the drugs?

24 Well, yeah, they were doing fingerprint analysis and I
25 took it and I gave, you know, to the person whose gonna do

1 the analysis on the fingerprints.

2 where's that?

3 There's fingerprints are actually on that case thing
4 and those baggies. We don't know. The State didn't want
5 you to know that. They didn't want you to see all the
6 camera angles. Didn't want you to see any of the
7 fingerprint analysis.

8 They want you to guess. They want you to take that
9 little bit of time where we saw Mr. Faulling. He did look
10 around and he set something down. He was talking on the
11 phone. I don't know why he turned around and looked all
12 over. His friends were there. He was talking on the phone.
13 Maybe they said is so and so up there. I don't know. I
14 don't know. I, I don't know what was said. We don't know
15 that.

16 But all we know is he set something there. Something
17 is not good enough.

18 We do know he set glass there because we saw them on
19 his head, and we saw they weren't on his head, and then you
20 saw them on the paper machine. That's all we know he set
21 there.

22 The State has the burden of proving to you beyond a
23 reasonable doubt, and, of course, they're things that are,
24 you know, but it's a very high burden. Very high. I don't
25 believe they have met their burden in this case.

1 What bothers me more is what they didn't want you to
2 see, what they didn't want you to be able to use to
3 determine what really happened in this case.

4 We have these two pictures. We have a trashcan right
5 here. Now, at some point I think one of the officers said
6 oh, they meant the trashcan on the other side of the door.

7 Where's the picture?

8 Why don't we have a picture of that trashcan?

9 You know what we don't have?

10 We also don't have anything in that video showing where
11 someone found something in the trashcan on the other side of
12 the door bringing it back to this side. But yet they claim
13 this is everything they found. And when you compare it to
14 the video, it's obvious. Mr. Faulling was no where near the
15 trashcan. You see through that window the officers going
16 through it and going through it.

17 I want you to consider everything you've listened to.
18 Very much the fact that no one could say nothing was on that
19 paper machine prior to Mr. Faulling showing up, and consider
20 the fact very strongly that his eyeglasses were definitely
21 indeed found on there.

22 Thank you very much.

23 THE COURT: Thank you, ma'am.

24 All right. Ladies and gentlemen, it's my duty now to
25 charge you with the law -- on the law of this case.

1 During the trial you and I have specific duties to
2 perform. As the trial judge, it is my responsibility to
3 preside over the trial in the case. You are to consider
4 only the testimony that has been presented from this witness
5 stand and the exhibits that were introduced into the record.
6 I have the duty to charge you the law applicable in this
7 case.

8 As the presiding judge, I am the sole judge of the law,
9 and it is your duty, as jurors, to accept and apply the law
10 as I now state it to you. If you already have any ideas as
11 to what the law is or what the law ought to be, and it does
12 not agree with what I now tell you the law is, you must
13 abandon this idea because you are sworn to accept the law
14 and apply the law exactly as I state it to you.

15 Your duty, ladies and gentlemen, is to determine the
16 facts. In every case the jury is the sole and exclusive
17 judge of the facts. A trial judge can not suggest, state,
18 comment on, or make any statement to a trial jury about the
19 facts in a case.

20 Since you, the jury, are the sole judge of the facts,
21 you are not to infer, from what I have said during the
22 progress of this trial in ruling upon the admissibility of
23 evidence or otherwise or anything that I say now during the
24 course of these instructions to you that I have any opinions
25 about the facts in the case. The law does not allow me to

1 have opinion about these facts. This is a matter solely for
2 you, the jury, to determine.

3 As jurors, it is your duty to determine the effect,
4 value, weight, and truth of the evidence that has been
5 presented during this trial.

6 The indictment that I mentioned earlier at the
7 beginning of this case charges the Defendant with the
8 manufacture and distribute of methamphetamine. I remind you
9 the fact that the Defendant was arrested, charged, and
10 indicted is not evidence in this case, and can not be
11 considered by you as evidence of guilt in this case nor does
12 it create any presumption or inference of guilt.

13 This document is simply the formal written instrument
14 which contains the charges made against the Defendant. It
15 is the formal document by which this case, case is brought
16 into Court.

17 The Defendant has pled not guilty to this indictment,
18 and that plea puts the burden on the State to prove the
19 Defendant guilty. A person charged with committing a
20 criminal offense in South Carolina is never required to
21 prove himself innocent. I charge you that the Defendant, in
22 a criminal trial, no matter how serious the charge may be,
23 is always presumed to be innocent of the crime for which the
24 indictment was issued unless guilt is proven by it -- by
25 evidence satisfying you, the jury, of that guilt beyond a

1 reasonable doubt.

2 This presumption of innocence does not end when you
3 begin your deliberations, but it accompanies the Defendant
4 throughout the trial until you reach a verdict of guilt
5 based on the evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 The presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the Defendant
9 which remains with the Defendant until it has been stripped
10 from the Defendant by evidence satisfying you of the
11 Defendant's guilt beyond a reasonable doubt. The
12 presumption of innocence is not a mere legal theory. It is
13 not just a legal phrase. It is a substantial right to which
14 every Defendant is entitled unless you, the jury, are
15 satisfied from the evidence of the Defendant's guilt beyond
16 a reasonable doubt.

17 I instruct and emphasize to you that the fact that the
18 Defendant did not testify is not a factor to be considered
19 by you in any way in your deliberations and in your
20 consideration on the question of the guilt or innocence of
21 the Defendant. The fact that the Defendant is not present
22 for his trial can not be used against him in any manner
23 whatsoever. It must not be considered by you at all.

24 A defendant has the constitutional right to remain
25 silent, and the assertion of this right must not be

1 considered by you in your deliberations. I repeat, under
2 your oath, you are to draw no conclusion whatsoever from the
3 fact that the Defendant in this case is not present and did
4 not testify. The fact that this Defendant did not testify
5 should not even be discussed in the jury room.

6 The burden of proof, as I have stated to you, is on the
7 State. The Defendant is not required to prove his
8 innocence. The burden of proof remains on the State to
9 prove guilt beyond a reasonable doubt.

10 What is reasonable doubt in the law?

11 A reasonable doubt is the kind of doubt that would
12 cause a reasonable person to hesitate to act. The State has
13 the burden of proving the Defendant guilty beyond a
14 reasonable doubt.

15 Some of you may have served as jurors in civil cases
16 where you were told that it is, that it is only necessary to
17 prove that a fact is more likely true than not true such as
18 by the greater weight or preponderance of the evidence. In
19 criminal cases, the State's proof must be more powerful than
20 that. It must be beyond a reasonable doubt.

21 Proof beyond a reasonable doubt is proof that leaves
22 you firmly convinced of the Defendant's guilt. There are
23 very few things in this world that we know with absolutely
24 certainty, and, in criminal cases, the law does not require
25 proof that overcomes every possible doubt. If, based on

1 your consideration of the evidence, you are firmly convinced
2 that the Defendant is guilty of the crime charged, you must
3 find the Defendant guilty. On the other hand, if you think
4 there's a real possibility that the Defendant is not guilty,
5 you must give the Defendant the benefit of the doubt and
6 find him not guilty.

7 They're two types of evidence which are generally
8 presented during a trial, direct evidence and circumstantial
9 evidence.

10 Direct evidence is the testimony of a person who claims
11 to have actual knowledge of a fact such as an eye witness.
12 It is evidence which immediately establishes the main fact
13 to be proved.

14 Circumstantial evidence is proof of a chain of facts
15 and circumstances indicating the existence of a fact. It is
16 evidence which immediately establishes collateral facts from
17 which the main fact may be inferred. Circumstantial
18 evidence is based on inference and not on personal knowledge
19 or observation.

20 The law makes absolutely no distinction between the
21 weight or value to be given to either direct or
22 circumstantial evidence nor is a greater degree of certainty
23 required of circumstantial evidence than of direct evidence.

24 You should weigh all of evidence in this case. After
25 weighing all of the evidence, if you are not convinced of

1 the guilt of the Defendant beyond a reasonable doubt, you
2 must find the Defendant not guilty.

3 Necessarily, you must determine the credibility of
4 witnesses who have testified. Credibility simply means
5 believability. It is your duty, as jurors, to analyze and
6 evaluate the evidence and determine which evidence convinces
7 you of its truth.

8 In determining the believability of witnesses who have
9 testified, you may believe one witness over several
10 witnesses or several witnesses over one witness. You may
11 believe a part of the testimony of a witness and reject the
12 remaining part of the testimony of that same witness. You
13 may believe the testimony of a witness in its entirety or
14 reject the testimony of a witness in its, in its entirety.

15 You may consider whether any witness has exhibited to
16 you any interest, bias, prejudice, or other motive in this
17 case. You may also consider the appearance and manner of a
18 witness while on the witness stand.

19 Ordinarily the rules of evidence do not permit
20 witnesses to testify to opinions or conclusions. An
21 exception to this rule exists for witnesses we call expert
22 witnesses.

23 A witness, who by education and experience, has become
24 expert in some art, science, or profession may give an
25 opinion as to the subject the witness claims to be expert

1 in, and may also give the reasons for that opinion.

2 You should consider any expert's opinion like any other
3 evidence, excuse me, and give it the weight you think it
4 deserves. If you decide that an expert witnesses opinion is
5 not based on sufficient education or experience, or if you
6 decide that the reasons given in support of the opinions are
7 not sound, or that the opinion is outweighed by other
8 evidence, you may disregard the opinion entirely.

9 An expert witnesses testimony is to be given no greater
10 weight than that of other witnesses simply because the
11 witness is an expert. You do not have to accept an expert's
12 opinion even though it is uncontradicted. The testimony of
13 experts is to aid and assist you as jurors, not to dominate
14 or control you in the decision of questions of fact. Their
15 opinions and deductions from the evidence before you and
16 their judgments and opinions do not preclude yours. You are
17 required to decide disputed questions after comparison and
18 consideration of all the evidence in this case.

19 In order to establish criminal liability, criminal
20 intent is required. For example, the mental state required
21 to be proven by the State for a particular crime might be
22 purpose, intent, knowledge, recklessness, or criminal
23 negligence.

24 Criminal intent must be proven by the State beyond a
25 reasonable doubt. Criminal intent is always a matter that

1 must be determined by the jury from the circumstances
2 surrounding the situation.

3 There's no way to prove intent to a mathematical
4 certainty. There's no way medical science can dissect a
5 person's brain and determine what the person had in mind.

6 So, the law states that criminal intent may be inferred
7 from the circumstances shown to have existed. You must make
8 a determination of whether or not the element requiring
9 intent was present.

10 It is not necessary to establish intent by direct and
11 positive evidence. Intent may be established by inference
12 in the same way as any other fact by taking into
13 consideration the acts of the parties and all the facts and
14 circumstances of the case.

15 Criminal intent is a mental state, a conscious
16 wrongdoing. It is up to you to determine what the Defendant
17 intended to do based on the circumstances shown to have
18 existed.

19 Criminal intent can arise from an action or a failure
20 to act. It may arise from negligence, recklessness, or an
21 indifference to duty or the consequences or to consequences
22 that are considered by the law to be the equivalent of
23 criminal intent.

24 The Defendant is charged with possession with intent to
25 distribute methamphetamine. The State must prove, beyond a

1 reasonable doubt, that the Defendant possessed
2 methamphetamine with the intent to distribute it.

3 To prove possession, the State must prove, beyond a
4 reasonable doubt, that the, that the Defendant had both the
5 power and the intent to control the disposition or use of
6 the methamphetamine.

7 Possession may be either actual or constructive.

8 Actual possession means that the methamphetamine was in
9 the actual physical custody of the Defendant.

10 Constructive possession means the Defendant had
11 dominion and control or the right to exercise dominion or
12 control over either the methamphetamine itself or the
13 property on which the methamphetamine was found.

14 Mere presence at the scene where the drugs were found
15 is not enough to prove possession. The Defendant's
16 knowledge and possession may be inferred when a substance is
17 found on the property under the Defendant's control.
18 However, this inference is simply an evidentiary fact to be
19 taken into consideration by you along with the other
20 evidence in the case, and to be given the weight you decide
21 it should have. Two or more persons may have joint
22 possession of a drug.

23 The State must also prove, beyond a reasonable doubt,
24 that the Defendant intended to distribute the
25 methamphetamine. Distribution means to deliver other than

1 by administering or dispensing a drug. Intent may be shown
2 by acts and conduct of the Defendant and other circumstances
3 from which you may naturally and reasonably infer intent.

4 In determining whether the Defendant had the intent to
5 distribute the methamphetamine, you may consider the
6 circumstances surrounding the Defendant's alleged
7 possession. You may consider the amount of the substance
8 alleged to have been possessed, the manner in which it was
9 allegedly possessed, the place where it was allegedly
10 possessed, and other factors which you consider to be
11 important. You must find that the Defendant did not intend
12 to have the methamphetamine solely for his own use.

13 The South Carolina Code of Laws creates a permissive
14 inference that possession of one or more grams of
15 methamphetamine constitutes possession with intent to
16 distribute. The inference of a violation of the law by
17 possession of one or more grams of methamphetamine may be
18 drawn from proof of the quantity of the drug. The resulting
19 implication only permits rather than requires the jury to
20 infer a violation of the law. This is another piece of
21 evidence for you to consider and evaluate.

22 This inference does not relieve the State from proving,
23 beyond a reasonable doubt, that the Defendant had the intent
24 to distribute. It is simply an evidentiary fact to be taken
25 into consideration by you along with the other evidence in

1 the -- in this case and to be given the weight you decide it
2 should have. You're free to accept or reject the permissive
3 inference depending on your view of the evidence.

4 To deliver means to actually, constructively, or
5 attempt to transfer the drug.

6 Manufacture means to produce, prepare, convert,
7 process, plant, cultivate, grow, or harvest a drug naturally
8 or chemically.

9 Manufacturing includes any packaging or repackaging of
10 the drug or labeling or re-labeling of the drug's container.

11 The Defendant is charged with distribution of
12 methamphetamine. The State must prove, beyond a reasonable
13 doubt, that the Defendant distributed methamphetamine.

14 Distribute, distribute means to deliver or to actually,
15 actually, constructively, or attempt to transfer a drug
16 other than by administering or dispensing.

17 Delivery means to act -- to actually, constructively,
18 or attempt to transfer a drug.

19 A transfer can involve an exchange for money, a barter,
20 or a gift. This does not have to be anything -- there does
21 not have to be anything given in exchange for the drugs for
22 a transfer to constitute distribution.

23 I've declared the law to these -- to you through these
24 instructions to help guide you to a just and lawful verdict.
25 Whether some of these instructions apply will depend upon

1 what you find to be the facts. The fact that I have
2 instructed you on various subjects in this case must not be
3 taken as indicating an opinion of this Court as to what you
4 should find to be the facts or to which party is entitled to
5 your verdict. Your verdict must represent the considered
6 judgment of each juror.

7 In order to return a verdict, it is necessary that each
8 juror agree. Your verdict must be unanimous. All 12 of you
9 must agree on this verdict. Your verdict can not be based
10 on sympathy, passion, prejudice, emotion, or any other
11 consideration not in evidence on this -- in this case.

12 Remember at all times you are not partisans favoring
13 one party over another. You are the judges of the facts and
14 your sole interest is to seek the truth from the evidence
15 that has been presented to you in this case.

16 All right. Mr. Foreman, we've now come to the verdict
17 form. If you will sit right there, I get to get up and walk
18 around, and I am really glad of that.

19 Okay. This is the verdict form. This is what you're
20 gonna have to fill out. Let me give you a little bit of
21 background just so you'll know.

22 This just tells you where we are. This tells you what
23 Court we're in, General Sessions. This is the indictment
24 number. That tells you, you know, just -- it just gives it
25 a number, a number.

1 The State has to -- is -- has filed this action against
2 Mr. Shelly Thomas Faulling who is the Defendant. This is
3 the verdict form. These are the directions. It says please
4 circle the appropriate verdict below and follow the
5 accompanying instructions carefully.

6 Question Number 1. As to the charge of possession with
7 intent to manufacture, distribute methamphetamine, we, the
8 jury, unanimously find the Defendant either guilty or not
9 guilty.

10 Okay. Now, after that, there's some instructions that
11 says, if the answer to question one is guilty, stop and sign
12 the verdict form. If the answer is not guilty, move to
13 Question Number 2. Question Number 2 says as to the charge
14 of simple possession of methamphetamine, we, the jury,
15 unanimously find the Defendant again guilty or not guilty.
16 Those are your choices.

17 Okay. After you've completed this form, you will sign
18 there and date it today. You know, we leave the date blank
19 because, if you don't finish it today, we're gonna finish it
20 tomorrow---

21 THE FOREMAN: Okay.

22 THE COURT: ---or Friday or however long it takes
23 y'all.

24 Okay?

25 THE FOREMAN: Okay.

1 THE COURT: Okay. Now, I'm not giving you this verdict
2 form yet because you remember I told you that, after I
3 charge you with the law -- and that was exciting, wasn't it?

4 Didn't y'all think that was exciting?

5 Yeah, uh-huh, yeah.

6 All right. Now, what happens is I'm gonna let y'all go
7 back in the jury room. I could of misspoken. I could of
8 left something out. But these attorneys have been paying
9 close attention listening to me. And so, if I've said
10 something wrong, I'm gonna have to come back -- I'm gonna
11 have to bring y'all back out here and correct it.

12 Okay. Now, assuming I didn't do anything wrong, which
13 we're all hoping, okay, the evidence has been presented in
14 the record and this verdict form is gonna come back,
15 Mr. Lane's gonna tell you you can begin your deliberations
16 at that time. You can not begin discussing this case until
17 you get this verdict form, and she tells you to start your
18 deliberations.

19 Do you understand?

20 THE FOREMAN: Yes, sir.

21 THE COURT: Okay. All right. I'm gonna let y'all go
22 back in the jury room right now. Hopefully everything will
23 be okay and we'll get, we'll get started on that.

24 okay. Thank y'all.

25 And you know they're gonna keep you separate?

1 THE JUROR: Yes, sir.

2 THE COURT: Okay. All right. Thank you, ma'am.

3 All right.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Any corrections to my charge by the State?

7 SOLICITOR CORNWELL: No, Your Honor.

8 THE COURT: Any corrections to my charge by the
9 Defendant?

10 MS. BUTCHER: No, Your Honor.

11 THE COURT: Okay. If y'all don't mind, if y'all will
12 come down here and make sure we got all the exhibits marked
13 and whatnot, and then we'll get ready to go.

14 (Pause.)

15 THE COURT: Let's put that verdict form right there.

16 (WHEREUPON, the jury began deliberations at 4:33PM and
17 returned with a verdict at 5:00PM.)

18 THE BAILIFF: Your Honor?

19 Your Honor, when you get through, we have a verdict.

20 THE COURT: Oh, we do?

21 THE BAILIFF: Yes, sir.

22 THE COURT: Okay. All right. Ladies and gentlemen,
23 I've been told we've got a verdict in this case. So, if
24 y'all will remind me -- allow everything to get straight,
25 we'll come back and, and do the verdict.

1 Okay. Thank you, ma'am.

2 (WHEREUPON, a short recess was taken at this time.)

3 THE COURT: Okay. Is the State ready?

4 MS. BUTCHER: Yes, Your Honor.

5 THE COURT: Defense ready?

6 MS. BUTCHER: Yes.

7 THE COURT: All right. Would you bring the jury in?

8 THE BAILIFF: Yes, Your Honor.

9 THE COURT: Thank you, ma'am.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: All right. Mr. Foreman, has the jury
13 reached a verdict?

14 THE FOREMAN: We have, Your Honor.

15 THE COURT: Is that verdict a unanimous verdict?

16 THE FOREMAN: It is.

17 THE COURT: Okay. Would you mind giving the verdict
18 form to the bailiff?

19 THE BAILIFF: Your Honor, may I approach?

20 THE COURT: Yes, ma'am.

21 Thank you, ma'am.

22 All right. In the case of State of South Carolina --
23 wait a minute. Yeah.

24 Okay. I'm sorry. I had -- thought of something else I
25 had to do -- say.

1 In the case of the State of South Carolina versus
2 Shelly Thomas Faulling, the Defendant, as to Question Number
3 1, as to the charge of possession with intent to
4 manufacture, distribute methamphetamine, we, the jury,
5 unanimously find the Defendant guilty. Signed by the
6 foreman and dated today.

7 All right. Again, any, any questions from the jury
8 regarding -- from the State?

9 SOLICITOR CORNWELL: No, Your Honor. Thank you.

10 THE COURT: Any questions from the jury from the
11 Defendant?

12 MS. BUTCHER: No, Your Honor.

13 THE COURT: Okay. All right.

14 (WHEREUPON, the jury was dismissed at this time.)

15 THE COURT: All right. Ms. Cornwell, do you want to
16 make any statements regarding sentencing?

17 SOLICITOR CORNWELL: Your Honor, just to give you his
18 prior record.

19 THE COURT: okay.

20 SOLICITOR CORNWELL: Obviously you've heard all the
21 evidence and the testimony. Considered -- there's nothing
22 the State can add to that.

23 The Defendant has prior convictions and we do have
24 copies of certified convictions at least for his prior
25 Orangeburg charges, which is the State's contention makes

1 this a third or subsequent offense, which makes the
2 sentencing guidelines under---

3 THE COURT: 10 to 30 years?

4 SOLICITOR CORNWELL: It's actually 10 to 30 years.

5 THE COURT: Okay.

6 SOLICITOR CORNWELL: I believe there's also a monetary
7 fine up to---

8 THE COURT: \$50,000.

9 SOLICITOR CORNWELL: ---\$50,000.

10 In addition, his convictions, he's got a 1991
11 disorderly conduct.

12 He has a 1992 assault and battery of a high and
13 aggravated nature. Another 1992 distribution of cocaine.

14 He has a 19 -- I'm sorry. '97 he was revoked on his
15 parole.

16 In 2001 he's got an assault and battery of a high and
17 aggravated nature.

18 In 2003 he has a receiving stolen goods.

19 In 2009 he has malicious injury to personal property
20 and driving under the influence.

21 In 2012 he was convicted of distribution of
22 methamphetamine. There were two counts of distribution of
23 methamphetamine that he was convicted of in 2012.

24 In 2013 he was convicted of possession of
25 methamphetamine or cocaine. Again, in 2013, he was

1 convicted of three counts of distribution of
2 methamphetamine, and one count of distribution in proximity
3 of a school.

4 In 2014 he was convicted of discharging a firearm into
5 a dwelling.

6 He also has, I believe, a 2012 proximity charge as
7 well, Your Honor, and that would of been a distribution
8 within proximity of a school.

9 In addition to the convictions that he has, there are
10 still pending charges for which he has not faced. One of
11 those is in Orangeburg County. He has another distribution
12 or possession with intent to distribute methamphetamine and
13 a failure to stop for a blue light. That case directly
14 results from this case.

15 He also has charges pending in Calhoun County, which
16 include possession with intent to distribute
17 methamphetamine, unlawful carrying of a pistol, possession
18 of a firearm by a convicted felon, and a second count of
19 distribution of methamphetamines.

20 Based on his prior record, and the evidence in this
21 case, the State believes that a 30 year maximum sentence is
22 appropriate.

23 THE COURT: All right. And, Ms. Cornwell, just so I
24 can make sure I have this straight in my mind, the -- when
25 you say 2012 distribution of meth, and you've given me

1 copies of some of the orders, certified copies, you're
2 talking about the -- when the warrants were done and not
3 when he was actually sentenced.

4 Is that correct?

5 SOLICITOR CORNWELL: Yes, Your Honor.

6 THE COURT: Okay.

7 SOLICITOR CORNWELL: There are several different
8 incidents which he was arrested for over the course of 2012
9 and 2013.

10 THE COURT: Okay.

11 SOLICITOR CORNWELL: Those are different and separate
12 occurrences. For judicial economy, they were all pled to at
13 one time.

14 THE COURT: Okay.

15 SOLICITOR CORNWELL: However, I believe that the State
16 Law allows that, as long as there's proof of different
17 arrest dates and different separate incidents, that they
18 would count as separate incidents.

19 THE COURT: Okay. All right. Anything else from the
20 State?

21 SOLICITOR CORNWELL: No, Your Honor.

22 THE COURT: Okay. Ms. Butcher, anything from the
23 Defendant?

24 MS. BUTCHER: Yes, Your Honor.

25 Your Honor, I would like to obviously renew all my

1 objections---

2 THE COURT: Yes, ma'am.

3 MS. BUTCHER: ---throughout the -- made throughout this
4 trial, and also ask for judgment notwithstanding the
5 verdict, and I believe all evidence that was submitted was
6 circumstantial, Your Honor, and we would ask for that as
7 well.

8 Your Honor, I believe that Mr. Faulling, I could be
9 wrong, but I believe that the most he has ever -- time he's
10 ever done has actually been five years in a prison.

11 Your Honor, we would ask that you not give him the max
12 on this case. Of course, the charges in Calhoun County and
13 the other ones here are pending, Your Honor, but we would
14 ask you to give a reasonable sentence in this case.

15 THE COURT: Okay. Since he's not here, I believe, and
16 y'all please correct me, but I think I, I complete the
17 sentencing sheet and then put it in a seal.

18 Isn't that correct?

19 SOLICITOR CORNWELL: Yes, Your Honor.

20 THE COURT: Okay.

21 MS. BUTCHER: And I, I, again, Your Honor, he is just
22 in the jail. I -- as we talked about before, I was under
23 the impression he should be brought over for that just---

24 THE COURT: Well, I don't -- I'll, I'll do my best.
25 But I think he, he is refused to come before. But I --

1 we'll -- I'll look in how we can get him over here and
2 announce that. What I will do is let me look over -- let me
3 consider this, and I will fill out the sentencing sheet, and
4 then, whenever we get him here, I'll be -- I'll tell him
5 what the sentence is. Tell everybody.

6 Okay. All right.

7 MS. BUTCHER: Thank you, Your Honor.

8 THE COURT: Thank y'all.

9 SOLICITOR CORNWELL: And we have placed on a transport
10 list to be transported tomorrow if he decides to join us.

11 THE COURT: Okay. If he wants to find out.

12 SOLICITOR CORNWELL: Yes, Your Honor.

13 THE COURT: It's kind of like Christmas.

14 SOLICITOR CORNWELL: Almost.

15 THE COURT: All right. We'll delay it.

16 Okay. All right.

17 SOLICITOR CORNWELL: Thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 MS. BUTCHER: And, Your Honor, if I may, did you --.

20 SOLICITOR CORNWELL: I'm sorry.

21 MS. BUTCHER: There are other things that I was putting
22 off because of this not knowing how long this would last.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. BUTCHER: Is it possible, if he decides to join us,
25 someone will call me and I can come over---

1 THE COURT: Sure.

2 MS. BUTCHER: ---so I could not come over here and sit
3 for hours and stuff.

4 SOLICITOR CORNWELL: Oh, no, no.

5 MS. BUTCHER: Other Courts---

6 THE COURT: We, we, we will -- we will get him here
7 before we call you.

8 MS. BUTCHER: Thank you, Your Honor.

9 THE COURT: We will, we will make it inconvenient for
10 him and not for you.

11 MS. BUTCHER: Thank you, Your Honor.

12 THE COURT: Okay. All right.

13 SOLICITOR CORNWELL: And, Your Honor, I apologize. I
14 don't have this written down.

15 Did you actually rule on the renewed motions and the
16 JNOV?

17 THE COURT: Well, I -- as far as the renewal of all
18 motions, everything's the same way. The same rulings that I
19 made earlier. Nothing has -- that has happened in the trial
20 to make, make me change my opinion, and I'm denying the
21 JNOV.

22 SOLICITOR CORNWELL: Thank you, Your Honor.

23

24 (WHEREUPON, Court was recess in this case.)

25

December 14th, 2017

THE COURT: What's next?

SOLICITOR CORNWELL: The State calls Shelly Faulling.

THE COURT: Okay.

SOLICITOR CORNWELL: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

SOLICITOR CORNWELL: Before you is Mr. Shelly Faulling. He is standing with his appointed counsel, Ms. Deborah Butcher, and this is the case that Your Honor will recall we tried one of his charges on Tuesday, and the jury found him guilty I believe. He was tried in his absence, and Your Honor issued a sentence and suspended or sealed that sentence until we could have Mr. Faulling appear so he could hear his sentence.

Additionally, Your Honor, Mr. Faulling is facing several other charges throughout Orangeburg and Calhoun Counties. The State has made him a plea offer to run everything concurrent with whatever Your Honor sealed the sentence with.

I do know that Ms. Butcher has some issues she was gonna put on the record prior to the unsealing of the sentence.

1 Also to put on the record, Your Honor, we did receive a
2 letter from Mr. Faulling that I believe was sent to you.
3 But given the sealing of the sentence, you gave that letter
4 to me, and I've provided a copy of it to Ms. Butcher.

5 THE COURT: Okay. And, and, Mr. Faulling, the reason I
6 did that is you -- I can't have -- you can't have any
7 contact with me.

8 THE DEFENDANT: I understand, sir.

9 THE COURT: It's (indiscernible).

10 THE DEFENDANT: Okay. I just wanted you to know -- I
11 just wanted everybody to understand. I just --.

12 SOLICITOR CORNWELL: And would---

13 THE DEFENDANT: I wanted to issue this here too, Your
14 Honor. I filed this here to Commission of Lawyer's
15 Conduct---

16 THE COURT: Okay.

17 THE DEFENDANT: ---and to the South Carolina Bar
18 Association.

19 THE COURT: Okay.

20 THE DEFENDANT: I was, I was seeking legal
21 representation from another person.

22 THE COURT: All right. And you filed a complaint?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Can I get that?

25 I've, I've got that, yeah.

1 THE DEFENDANT: Thank you.

2 THE COURT: Thank you, sir.

3 THE DEFENDANT: Yes, sir, I lodged several---

4 (Pause.)

5 THE COURT: Okay. This just, this just indicates to me
6 that, back in September, you can---

7 THE DEFENDANT: Y'all been in correspondents with
8 Mr. Campbell on several occasions. Me, my family also.

9 THE COURT: Okay.

10 THE DEFENDANT: All right. I wrote South Carolina Bar
11 Association. I was not pleased, was not happy in any way
12 anything she's done in my case. I haven't received my Rule
13 5 motion of discovery. I haven't -- she -- none of my
14 witnesses was contacted. No subpoenas was issued. My, my
15 private investigator, Mr. McDaniel, was banned from the jail
16 per orders of my attorney.

17 THE COURT: You had, you had a private investigator?

18 THE DEFENDANT: Yes, sir, he was a friend of the
19 family.

20 THE COURT: Okay.

21 THE DEFENDANT: Yes, sir, he was in the matter of when
22 I signed my proffer and the other agreements, and I wasn't
23 at liberty to discuss anything with anybody once I signed my
24 proffer.

25 THE COURT: Okay. All right.

1 All right. Any -- anything else?

2 MS. BUTCHER: Thank you. Thank you, Your Honor.

3 And, just for the record, I have no knowledge of any
4 private investigator.

5 Your Honor, Mr. Faulling is facing several other
6 charges, and it's sort of the same situation as prior to
7 going into the trial we had earlier this week. I don't
8 think there is any meaningful review of the discovery, which
9 I have taken to the jail on several occasions.

10 I would ask to be relieved of any further
11 representation on those additional charges for Mr. Faulling.
12 He has indicated to me that he would wish to represent
13 himself with those in a plea or anything.

14 I do have discovery, which I would be more than happy
15 to hand over to him. I would just -- perhaps he would like
16 the opportunity to review it on his own prior to making a
17 plea. That's, you know, his prerogative.

18 Also, additionally, Your Honor, the other thing I would
19 like to say is I understand yesterday Mr. Faulling was
20 brought over for the unsealing. I was not contacted or
21 aware of that until after 5:00. Evidently there was some
22 type of a hearing on it.

23 Ms. Cornwell told me---

24 THE COURT: There was going to be a hearing on it.

25 MS. BUTCHER: Oh.

1 THE COURT: But we didn't have one.

2 SOLICITOR CORNWELL: We didn't have one.

3 MS. BUTCHER: Ms., Ms. Cornwell's email to me---

4 THE COURT: Right.

5 MS. BUTCHER: ---said that she'd put on the record. So
6 I would assume there was something on the record concerning
7 that that she had forgotten or didn't hit send when she
8 was---

9 THE COURT: Right.

10 MS. BUTCHER: ---telling me.

11 THE COURT: Right.

12 MS. BUTCHER: Had I just, you know, I would of been
13 here had that -- so --.

14 THE COURT: Yeah, I, I understand and there, there
15 was -- the nice things about computers is you can---

16 MS. BUTCHER: Uh-huh. (Affirmative).

17 THE COURT: ---contact people with them. The bad thing
18 about computers is---

19 MS. BUTCHER: Yeah.

20 THE COURT: ---you have to---

21 MS. BUTCHER: Yeah.

22 THE COURT: ---you have to go through all the steps.
23 But we didn't, we didn't have a hearing on it. She merely
24 informed me that---

25 MS. BUTCHER: Okay.

1 THE COURT: ---she did not hit the send button. So
2 that's when we had sent -- I believe Brian sent you the
3 letter or email or something.

4 MS. BUTCHER: Oh, he actually contacted me by phone.

5 THE COURT: All right.

6 MS. BUTCHER: And I'm not saying that's Ms. Cornwell's
7 fault.

8 THE COURT: Right.

9 MS. BUTCHER: I just wanted to put it on the record
10 because my---

11 SOLICITOR CORNWELL: Right.

12 MS. BUTCHER: ---understanding was that it -- there was
13 something on the record yesterday, but---

14 SOLICITOR CORNWELL: It was a hundred percent my fault.
15 I didn't hit the send button.

16 MS. BUTCHER: Yeah, and I just---

17 THE COURT: Yeah.

18 MS. BUTCHER: ---wanted to make that clear.

19 THE COURT: Hold one second, Mr. Faulling.

20 Anything else, Ms.---

21 MS. BUTCHER: No, Your Honor.

22 THE COURT: Okay. So, after we finish -- after I
23 finish with this, you want to be relieved as counsel for Mr.
24 Faulling?

25 MS. BUTCHER: Yes, Your Honor.

1 THE COURT: Okay. And, Mr. Faulling, she's asking,
2 after I, after I read the sentence, she's asking to be
3 relieved as your counsel.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any objection?

6 THE DEFENDANT: No, sir, I sure don't, Your Honor. I
7 sure don't.

8 THE COURT: All right. Okay.

9 All right. And is there something else you want to
10 tell me?

11 THE DEFENDANT: Yes, sir, I was requesting, if you
12 don't mind, if there's any way possible that the Court could
13 we wait till after the first of the year for sentencing so
14 that I can review my paperwork, look at anything. I'm not
15 arguing with not. I'm not arguing with the outcome.

16 I just don't know what in the world happened. I was
17 getting bailed out at the time. Next thing I know I got a
18 jury trial going on in my absence.

19 THE COURT: Okay. Well, now, you were made aware that
20 it was going to trial?

21 THE DEFENDANT: I was up front getting bailed out. I
22 was -- she told me one day that we was going -- one day last
23 week and then she said Monday. Next thing I know I'm up
24 front getting bailed out, and they said that was gonna --
25 that I had to come over here for the GPS monitoring.

1 I'm waiting for that there and they said if you -- I
2 mean hell, Mr. Faulling, you already been found guilty.

3 THE COURT: All right.

4 THE DEFENDANT: I mean I don't know what transpired,
5 what happened, and I wasn't even informed by the jail. I
6 was informed by a houseman that cleans up in the jail that I
7 was found guilty. No staff informed me or anyone. I'm
8 not -- please, it's not against you.

9 It's not against you, Your Honor.

10 THE COURT: Uh-huh. (Affirmative).

11 THE DEFENDANT: I'm sitting in my room thinking I'm
12 going home. I done called my kids. But the bench warrant
13 didn't get lifted off me -- when you asked -- had the bench
14 warrant lift off, until 3:07 Friday afternoon. Last Friday.

15 THE COURT: Okay.

16 THE DEFENDANT: They said you---

17 THE COURT: Do you have a bench warrant?

18 THE DEFENDANT: Yeah, I had a---

19 SOLICITOR CORNWELL: He originally had a bench warrant
20 in Calhoun County and I believe---

21 THE DEFENDANT: Yes, sir, that you had lifted.

22 SOLICITOR CORNWELL: ---Connor had that matter.

23 MS. BUTCHER: That was heard right before you went on
24 vacation---

25 THE COURT: Oh, okay.

1 MS. BUTCHER: ---Your Honor, and I think --.

2 THE DEFENDANT: She never filed the paperwork, the
3 legal paperwork. The Clerk of Court in Calhoun County and
4 my sister had to get together, contact her, and tell her
5 what paperwork to file to get you to sign off on for me
6 to -- cause I asked you to let me get out and seek legal
7 representation, other legal representation.

8 THE COURT: Well, here---

9 THE DEFENDANT: I'm---

10 THE COURT: You know, I, I don't mind -- I can unseal
11 the sentence whenever, you know, but my, my concern is I
12 don't want Ms. Butcher to have to keep coming back.

13 THE DEFENDANT: She ain't got to come back, Your Honor.
14 Please. I will, I will take whatever -- just can you wait
15 until after the first of the year?

16 SOLICITOR CORNWELL: And here's my---

17 THE DEFENDANT: I will take whatever punishment comes
18 before me.

19 SOLICITOR CORNWELL: If we could go ahead and do the
20 unveiling of the sentencing because Ms. Butcher was the
21 trial attorney for the trial, and I am going to hold your
22 other charges. I will still allow you to plead in
23 concurrence with this, but you---

24 THE DEFENDANT: Thank you.

25 SOLICITOR CORNWELL: And I will bring them back. That

1 will give you a chance to review your discovery and make any
2 decisions if you want to continue to represent yourself or
3 hire somebody else. I will allow that plea offer to stay
4 open on the other charges until the end of the term of the
5 January 8th term, and I will bring you back.

6 THE DEFENDANT: Thank you, ma'am. I appreciate that
7 and, Your Honor, I appreciate that. I'm not trying to tie
8 up your time.

9 SOLICITOR CORNWELL: It's fine. If we just---

10 THE DEFENDANT: I'm not trying to be a butt hole to
11 nobody.

12 SOLICITOR CORNWELL: ---publish the sentence now, and
13 then we'll bring him back in January.

14 MS. BUTCHER: And, Your Honor, just on the record, I am
15 giving him the discovery for the pending charges that I have
16 received. There may be -- sometimes they're things that,
17 until I meet with my client, I don't realize are missing.
18 So, he can contact the Solicitor's Office on his own for
19 what he feels may not be there. I believe Ms. Cornwell's
20 turned everything over to me. Also we get together
21 beforehand just to finalize and make sure.

22 THE DEFENDANT: Can I ask one more question please?

23 THE COURT: Sure.

24 THE DEFENDANT: Is this Calhoun County and the
25 probation also?

1 SOLICITOR CORNWELL: I don't have your probation
2 issues. I will---

3 MS. BUTCHER: Yeah.

4 SOLICITOR CORNWELL: If you -- there's anything else
5 that's not in there that you want to review, if you will
6 write me a letter and send it to me, I will give you
7 everything I have.

8 THE COURT: Okay. My mother has power of attorney. I
9 signed power of attorney over to mother and my sister.

10 Is there any pay -- way that all my paperwork can be
11 given to them and you -- they can bring it to me and we
12 discuss it?

13 SOLICITOR CORNWELL: They can come to my office next
14 week and I'll make them a copy of everything.

15 THE DEFENDANT: Thank you, ma'am. Thank you, ma'am. I
16 appreciate your time. Thank you, Your Honor. I appreciate
17 your time.

18 THE COURT: Okay.

19 SOLICITOR CORNWELL: We're, we're gonna unveil the
20 sentence from the trial, and then we're gonna bring you back
21 in January to take care of these.

22 THE DEFENDANT: Thank you. I appreciate y'all. Thank
23 y'all.

24 THE COURT: Okay. All right. Mr. Faulling?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Pursuant to the trial on December 12th,
2 2017, the jury, by unanimous verdict, found you guilty of
3 manufacturing, distribution of methamphetamine. This is a
4 third or subsequent offense for that.

5 Okay. So, the sentence of this Court is you're
6 committed to the State Department of Corrections for a
7 period of 30 years. I'm giving you credit for the time that
8 you've served.

9 All right. Thank you, sir.

10 THE DEFENDANT: So, I'll come back in---

11 MS. BUTCHER: Thank you, Your Honor.

12 THE COURT: Yeah, you'll come back.

13 SOLICITOR CORNWELL: We'll come back in January.

14 THE DEFENDANT: All right. And review -- and redo
15 this?

16 THE COURT: Okay. Thank you, sir.

17 THE DEFENDANT: Okay. Thank you. I appreciate you.

18 MS. BUTCHER: Thank you.

19

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

22

23

24

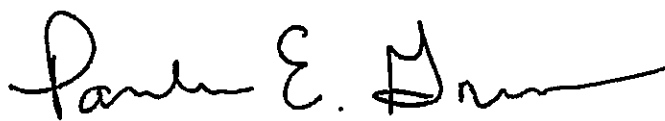
25

C E R T I F I C A T E

I, Pamela E. Green, 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 proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Orangeburg County, South Carolina, on the 12th and 14th days of December, 2017.

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

December 28th, 2020

A handwritten signature in cursive script, appearing to read "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

WITNESSES

Donald Boyne Jr

Orangeburg County Sheriff

2017-00168

ARREST WARRANT NUMBER
2017A3810700044

Arrested: February 2, 2017

ACTION OF GRAND JURY



DEC 06 2017

Foreperson of Grand Jury
Date: December 6, 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS38-0375

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

December 11, 2017 TERM

THE STATE
vs.

Shelly Thomas Faulling

Indictment for

MANUFACTURE, DISTRIBUTION, ETC.
OF METHAMPHETAMINE

SC Code: 44-53-375(B)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
WITNESS D. CLARK
CLERK OF COURT
ORANGEBURG COUNTY
SOUTH CAROLINA
2017-12-11

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

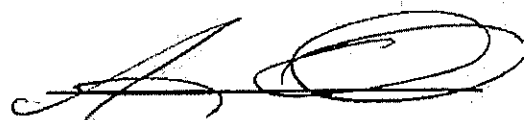
INDICTMENT
2017GS38-0375

At a Court of General Sessions, convened on December 6, 2017 the Grand Jurors of Orangeburg County present upon their oath:

MANUFACTURE, DISTRIBUTION, ETC. OF METHAMPHETAMINE

That in Orangeburg County, South Carolina, on or about January 7, 2017, the Defendant, Shelly Thomas Faulling, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to do the same or possess with intent to distribute, dispense, or deliver a quantity of methamphetamine. This offense being a violation of Section 44-53-375 of the South Carolina Code of Laws, as amended.

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



Ashley Cornwell, Solicitor

STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
COUNTY OF CALHOUN) FIRST JUDICIAL CIRCUIT

2017-GS-09-0024

State of South Carolina,
Plaintiff,
v.
Shelly Thomas Faulling,
Defendant.

January 11, 2018
St. Matthews, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Ashley Cornwell, Esquire
Attorney for the State

Shelly Thomas Faulling, Pro Se
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

State v Shelly Thomas Faulling

1/11/19

2

I N D E X

Motion to reconsider sentence

WITNESS/DESCRIPTIONPAGE NO.

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter 41

State v Shelly Thomas Faulling

1/11/19

3

1 MS. CORNWELL: May it please the Court, Your
2 Honor?

3 THE COURT: Yes, ma'am.

4 MS. CORNWELL: Before you is Shelly Thomas
5 Faulling. He is going forward in his matter pro se. He is
6 charged with two different offenses, one is in Orangeburg
7 County and the other is from Calhoun County.

8 For purposes of the record, while Mr. Faulling is going
9 forward pro se, I did have an opportunity to speak with Mr.
10 Faulling. I explained to Mr. Faulling all of his rights,
11 that he did have the right to have an attorney. If he could
12 not afford one, he could have one appointed to him. I also
13 met with him in the courtroom in the back. While we were
14 meeting -- and we also had in the room witnesses to our
15 meeting, the SCDC officers are Bill Pressley and Adam
16 Felice. They both listened to all of our conversations as
17 well as our court bailiff, Ms. Delaine Jamison. I did
18 explain to him his right for an attorney and that he had the
19 right to trial, that if he had any defenses that he felt
20 like they should be presented. We also went through all the
21 discovery. He indicated to me that his previous attorney
22 did not share with him some of the discovery. So we did go
23 through page by page, on every page of the incident reports,
24 every page of the drug reports. We went through the vehicle
25 tow records, rap sheets, the driving records. Every piece

State v Shelly Thomas Faulling

1/11/19

4

1 of paper that I have in my file we went through together.
2 Explained everything. Any questions that he had, I did
3 answer for him.

4 We agreed that a negotiated sentence -- this is the
5 case that we tried in December. We tried the Defendant in
6 his absence and he was found guilty at trial. Your Honor
7 sentenced him to thirty years. I agreed that as part of the
8 plea since he is going forward pro se, that I would make my
9 sentence a negotiated sentence. That way, if Your Honor
10 does not feel like you can take it, that he can step down
11 and we can get an attorney appointed to him and go forth
12 that way. Part of the negotiations and part of the defense
13 that he has, I am dismissing two gun charges as part of the
14 negotiated sentence. And I have negotiated that the
15 sentence that you impose today run concurrent with the
16 sentence that was imposed on him in December so that he is
17 not exposed to any additional time in this case.

18 I will also tell Your Honor that Mr. Faulling mentioned
19 to me that once Ms. Butcher was relieved as counsel on
20 Thursday after the sentencing, he understood that he had the
21 opportunity to appeal your sentence within ten days.
22 However, because he was going through the process of getting
23 sent to SCDC, processed through SCDC, he has not had an
24 opportunity to file an appeal or reach out to get an
25 attorney to file an appeal on his behalf. He would like for

State v Shelly Thomas Faulling

1/11/19

5

1 you to reconsider his sentence.

2 So I have advised that he can make a motion before Your
3 Honor to reconsider the sentence and I would not object to
4 him making that motion. And then he would like to, I
5 believe, make a request to, after you rule on the motion to
6 reconsider, allow him to get counsel, appellate counsel
7 appointed to appeal his case on his behalf. And that the
8 ten days not start until he actually has counsel for that,
9 because he does not believe that he is going to be able to
10 make that appeal by himself, since he was not present for
11 the trial. I did advise him that his previous attorney did
12 make an objection or a motion for continuance based on his
13 absence and so that was preserved in the record. So going
14 forward, he is pleading to several charges. The other thing
15 that I explained to him, we did go over the Grand Jury
16 waivers and presentments. Mr. Faulling is familiar with the
17 court system. He understood the legal procedure process.
18 He did agree to waive presentment to the grand jury on the
19 two Orangeburg charges. We also explained to him that he
20 had the right to have his Calhoun charges heard in Calhoun
21 County. And he understands that he has that right. And he
22 is going to waive jurisdiction and allow the Calhoun charges
23 to be heard here in Orangeburg. So we did go over all of
24 his rights in that instance as well.

25 So he is pleading guilty today to Orangeburg charges

State v Shelly Thomas Faulling

1/11/19

6

1 2017-GS-38-0376 and 0377. That is failure to stop for a
2 blue light and possession with intent to distribute
3 methamphetamine. And based on his record, it would be a
4 third offense. For Calhoun County he is pleading guilty to
5 indictment 2017-GS-0-0023, 0024, 0027 and 0028. Those
6 indictments were true billed by the Calhoun Grand Jury.
7 Those are for possession with intent to distribute
8 methamphetamine, third offense; failure to stop for a blue
9 light; and, there are two, I believe, DMV offenses of
10 driving under a suspended license and driving without a
11 registration. The State's concurrent sentences, the
12 negotiated sentence on the two DMV charges, those would be
13 time served sentences, and only for the collateral purposes
14 of his DMV license.

15 THE COURT: Okay.

16 MS. CORNWELL: We also went over the enhancement
17 of everything, the fact that his drug charges can be
18 enhanced with a third, subsequent offense. We also
19 explained that failure to stop for a blue light is also an
20 enhancing crime. It elevates up to a third offense.
21 Finally, we went over his record as far as the drug
22 convictions, showing it is a third subsequent offense. We
23 also went over the strikes and the fact that he does have
24 two prior strikes, and that the State could possibly go
25 forward with life without parole the next time he gets a

State v Shelly Thomas Faulling

1/11/19

7

1 drug sentence. We will not be going after life without
2 parole on these charges as to this plea.

3 THE COURT: Okay. All right. All right. Mr.
4 Faulling --

5 MS. CORNWELL: I have one last thing I forgot,
6 Your Honor.

7 THE COURT: Okay.

8 MS. CORNWELL: The one thing that he did have a
9 question of that I did not have an answer that I have got to
10 look up. I mean, I told him that it's not anything the
11 State can negotiate on is whether or not possession with
12 intent to distribute methamphetamine third offense is
13 considered a violent offense. I know that first and second
14 is not considered violent; however, I know that some third
15 offense drug offenses do get enhanced for violent -- he was
16 asking if I could make it non-violent. I told him that
17 that's a legislative statutory thing. That I would not be
18 able to change that, but I would look into it and let him
19 know whether or not it was violent or non-violent. But
20 regardless of what is up here on the sentencing sheet, that
21 is something that SCDC will look at and if it is improper on
22 the sentencing sheet, they will let me know and we will
23 amend it and I will make him aware of that.

24 THE COURT: Okay. And that's on the possession
25 with intent to distribute methamphetamine?

State v Shelly Thomas Faulling

1/11/19

8

1 MS. CORNWELL: Yes, Your Honor.

2 THE COURT: And he's pleading guilty to that from
3 Calhoun County and Orangeburg?

4 MS. CORNWELL: Yes, Your Honor.

5 THE COURT: Okay. And that is also what he was
6 convicted of in December.

7 THE COURT: Okay. All right.

8 (WHEREUPON, Defendant Shelly Thomas
9 Faulling was sworn to tell the truth.)

10 THE COURT: All right. Mr. Faulling, have you
11 understood everything she's told you?

12 DEFENDANT FAULLING: I wish she'd been my lawyer
13 instead of my Solicitor. She was very helpful, Your Honor.

14 THE COURT: Okay. Well, she appreciates.

15 DEFENDANT FAULLING: I cannot argue with anything
16 she said she said. She's been a great help. I'm sorry to
17 come to this here in the courtroom. Everything is going
18 well. I appreciate Your Honor.

19 THE COURT: Okay.

20 DEFENDANT FAULLING: She told -- touched on
21 basically everything we discussed.

22 THE COURT: Okay. All right. Now, I've got to go
23 back over some of that same stuff because we're in court.

24 DEFENDANT FAULLING: Okay.

25 THE COURT: You just need to bear with me. I know

State v Shelly Thomas Faulling

1/11/19

9

1 you've gone over it a couple of times, but I've got to go
2 over another time to you, okay. And some of the stuff that
3 I'm going to repeat, you know, okay?

4 DEFENDANT FAULLING: Yes, sir.

5 THE COURT: I hope you know everything, and I want
6 to sure that you do, okay? Now, I've got, I think six
7 different charges that you're here in front of me to plead
8 guilty?

9 DEFENDANT FAULLING: Yes, sir.

10 THE COURT: Okay. And two of the are out of
11 Orangeburg County and four of them are out of Calhoun
12 County?

13 DEFENDANT FAULLING: Calhoun County.

14 THE COURT: Now, do you understand before I can
15 accept your guilty plea to these charges, I need to make
16 sure you understand your rights as far as having an attorney
17 to represent you?

18 DEFENDANT FAULLING: Yes, sir. I fully
19 understand. Me and Ms. Cornwell discussed it all.

20 THE COURT: I understand. But you understand
21 she's not your attorney.

22 DEFENDANT FAULLING: Yes, sir. I understand.

23 THE COURT: I understand whenever she decides to
24 leave the Solicitor's office she might get you to advertise
25 for her, you know.

State v Shelly Thomas Faulling

1/11/19

10

1 DEFENDANT FAULLING: She wouldn't have no problem
2 with that.

3 THE COURT: Okay. All right. But you understand
4 that you have the right to have an attorney any time you are
5 charged with a criminal trial -- criminal charge?

6 DEFENDANT FAULLING: Yes, sir. I understand.

7 THE COURT: And you understand that if you cannot
8 afford an attorney one could be appointed for you. And that
9 has happened to you?

10 DEFENDANT FAULLING: Yes, sir.

11 THE COURT: Okay. Do you want me to appoint an
12 attorney to represent you on these six charges today?

13 DEFENDANT FAULLING: No, sir, I do not. I just
14 want to go ahead and take care of it now.

15 THE COURT: All right. Now, there are a couple of
16 things that I need to just caution you about before we go
17 forward with you representing yourself on a plea like this,
18 okay? Self-representation can be dangerous and you have the
19 right to have an assistance of a lawyer at all stages of the
20 proceedings. If you cannot afford a lawyer one will be
21 appointed to represented you. And you know that?

22 DEFENDANT FAULLING: Yes, sir.

23 THE COURT: And you don't want an attorney; is
24 that correct?

25 DEFENDANT FAULLING: Yes, sir.

State v Shelly Thomas Faulling

1/11/19

11

1 THE COURT: Criminal defense is a highly
2 specialized and technical area of the law. You are aware of
3 that?

4 DEFENDANT FAULLING: Yes, sir.

5 THE COURT: Okay. All right. There may be
6 certain factual, legal or other defenses to the charges you
7 are facing. And if you choose to proceed without the
8 services of a licensed attorney, you might not be aware of
9 certain defenses; you understand that?

10 DEFENDANT FAULLING: Yes, sir.

11 THE COURT: There may be issues related to the
12 conduct of the trial or a guilty plea that could arise in
13 the future that you may not be aware of. And it would be
14 your attorney's responsibility to be aware of those issues
15 and how to properly address them before the court, and if
16 necessary preserve the issues for appellate review; do you
17 understand that?

18 DEFENDANT FAULLING: Yes, sir.

19 THE COURT: Because you're pleading guilty and,
20 you know, just like you -- as I understand it, you're going
21 to move for me to reconsider my sentence?

22 DEFENDANT FAULLING: Yes, sir.

23 THE COURT: There are certain things that you
24 could possibly appeal regarding these pleas, okay?

25 DEFENDANT FAULLING: I'm -- I'm totally aware of

State v Shelly Thomas Faulling

1/11/19

12

1 everything on these charges. But the only thing I want a
2 reconsideration on is this.

3 THE COURT: Okay. All right. Okay. Well, we'll
4 soon get back to that, I'm just making -- I'm just reviewing
5 this on the record so you can -- so this is, again, just for
6 the record, okay? Just to make sure because Hilda's taking
7 all of this down just so we make sure everybody understands
8 what we're doing and nobody's doing anything that you don't
9 understand, okay?

10 DEFENDANT FAULLING: I understand fully. I'm under
11 no duress.

12 THE COURT: All right. There may be collateral
13 consequences of a conviction and plea that you are not aware
14 of, including but not limited to, you could face increased
15 penalties for subsequent offense, suspension of your
16 driver's license, restriction of the right to possess
17 firearms and/or ammunition or your immigration status may be
18 effected. I guess we don't need to worry about your
19 immigration status.

20 DEFENDANT FAULLING: We don't need to worry about
21 that.

22 THE COURT: But everything else, you understand
23 there are collateral consequences.

24 DEFENDANT FAULLING: Yes, sir. Fully understand.

25 THE COURT: Okay. If you exercise your right to

State v Shelly Thomas Faulling

1/11/19

13

1 proceed without the services of an attorney, you are
2 responsible for complying with all applicable rules of
3 court, including rules evidence, procedural rules and proper
4 behavior before the judge and or a jury. But it's just me.
5 But you understand you're held to the same standards as an
6 attorney?

7 DEFENDANT FAULLING: Yes, sir. I sure do.

8 THE COURT: Okay. All right. You understand that
9 if you waive screening for a court appointed attorney, that
10 you're responsible for hiring a private attorney if you want
11 one. You've already told me you don't want an attorney to
12 do these set of pleas?

13 DEFENDANT FAULLING: No, sir. I do not.

14 THE COURT: Okay. I have got a document that I'm
15 going to get you to sign, okay?

16 DEFENDANT FAULLING: Okay.

17 THE COURT: And it says that meaning you, that you
18 have fully and completely read the document according to
19 self-representation, that you have had any and all of your
20 questions answered to your complete satisfaction, and that
21 you either do or do not want an attorney at this time.
22 Which one?

23 DEFENDANT FAULLING: Do not.

24 THE COURT: Okay. All right. I'm going to pass
25 that over to you and let you look it over. Put your glasses

State v Shelly Thomas Faulling

1/11/19

14

1 on, take your time, and then I need for you to sign that?

2 DEFENDANT FAULLING: Old age setting in, you know
3 how it is.

4 THE COURT: Sir?

5 DEFENDANT FAULLING: Old age setting in. You know
6 how it is.

7 THE COURT: I do know how it is.

8 (Document presented to Defendant
9 Faulling for review)

10 DEFENDANT FAULLING: Today's date?

11 THE COURT: Today's date is the 11th, January
12 11th, 2018. Okay.

13 (Document signed by Defendant
14 Faulling and presented to the Court)

15 THE COURT: All right. Thank you, Mr. Faulling.

16 DEFENDANT FAULLING: Thank you, too, Your Honor.

17 THE COURT: All right. And Mr. Faulling, we're
18 going to go forward. I'm going to allow you to go forward
19 pro se on these six charges, okay?

20 DEFENDANT FAULLING: Yes, sir. Thank you, Your
21 Honor.

22 THE COURT: Again, as we go over each one of them,
23 I will ask you a couple of -- I'll ask you questions about
24 it, if you understand it and like that. After we've done
25 these pleas, I'll listen to your motion to reconsider.

1 And where is Mr. Stevens?

2 MR. STEVENS: Sir, right here.

3 THE COURT: Oh, okay. Mr. Stevens, I need to make
4 sure that what I have to do to get him appointed appellate
5 counsel.

6 MR. STEVENS: Yes, sir.

7 THE COURT: So if you would just assist me with
8 that, because I don't want him, I want that ordered, if I
9 can today, so he will have appellate counsel on this case.

10 MR. STEVENS: Yes, sir.

11 THE COURT: That's what he's going to request.

12 MR. STEVENS: Yes, sir.

13 THE COURT: If you could do that for me, I'd
14 appreciate it.

15 MR. STEVENS: Yes, sir.

16 THE COURT: Okay. Thank you, sir.

17 MS. CORNWELL: If he'll advise and make sure --
18 the State does not mind writing that order and having it
19 signed because I believe the public defender's office was
20 conflicted out of the first one. I'll draft the order for
21 you, Your Honor.

22 THE COURT: Okay. All right.

23 DEFENDANT FAULLING: Thank y'all very much.

24 MS. CORNWELL: I will also need Mr. Stevens
25 advisement to make sure that what I'm writing is proper.

State v Shelly Thomas Faulling

1/11/19

16

1 THE COURT: Yeah. And Mr. Stevens, if you don't
2 mind just looking it over, I know you were with that
3 office. I want to make sure we're on the fast track and not
4 on the slow track.

5 MR. STEVENS: Yes, sir.

6 THE COURT: I know. I know. I know. Mr.
7 Paycheck is there.

8 MR. STEVENS: Yes, sir.

9 THE COURT: I know a lot of the people there so I,
10 you know, I just want to make sure it doesn't get pushed
11 aside because we do have some timing issues here that I hope
12 to take care of at this motion hearing.

13 MR. STEVENS: Yes, sir.

14 THE COURT: Okay. All right.

15 Okay. All right. Ms. Cornwell.

16 MS. CORNWELL: Thank you, Your Honor.

17 THE COURT: Yes, ma'am.

18 MS. CORNWELL: And the last thing on pro se, he
19 did initial the side under attorney for defendant on the
20 sentencing sheets. I wrote in pro se and Mr. Faulling
21 initialed beside that that he did agree that he was pro se.

22 THE COURT: Okay. Yeah. All right.

23 MS. CORNWELL: In regards to the Calhoun County
24 charges, Your Honor, that incident occurred on November 8th
25 of 2016. Officers were patrolling in the Cameron area of

State v Shelly Thomas Faulling

1/11/19

17

1 Calhoun County when they saw the Defendant's vehicle with an
2 expired tag. They attempted to make a traffic stop for the
3 expired tag. They activated blue lights and sirens. At
4 that time, this Defendant accelerated speed and tried to
5 evade law enforcement officers, driving through several
6 streets, disregarding stop signs at speeds up to a hundred
7 miles an hour. Eventually, the Defendant left his vehicle
8 and fled on foot. As he was fleeing officers observed him
9 throw down a pouch. Once he was apprehended within several
10 feet of where he fled from, officers were able to go back
11 and retrieve that pouch. Inside that pouch there were
12 several pink plastic bags with what appeared to be
13 methamphetamine. And they also did a frisk of Mr. Faulling
14 and found in his front pocket another amount of
15 methamphetamine in a plastic bag. When they went to search
16 the vehicle -- they did a vehicle search. Inside the
17 vehicle they found one firearm that was, I guess, broken
18 down and was not an operational firearm. They found a
19 second 9mm firearm that was loaded in the car. During a
20 NCIC check, they also found Defendant had a suspended
21 license and was not supposed to drive a vehicle. And the
22 vehicle that he was driving did not have a proper
23 registration. Based on that, he was charged with
24 methamphetamine, failure to stop for a blue light, two gun
25 charges and the traffic charges.

State v Shelly Thomas Faulling

1/11/19

18

1 The State has agreed through negotiations -- Mr.
2 Faulling indicated to me that the firearms were not his.
3 That the car that he was driving was his bosses. He was
4 unaware that the firearms were inside the vehicle. So based
5 on the defense that he presented to me, we agreed to dismiss
6 those firearm charges as a part of this plea. We did inform
7 him that if he were to go to trial, we would pursue the
8 firearms charge.

9 THE COURT: So those firearm pleas are being
10 dismissed --

11 MS. CORNWELL: They are being dismissed.

12 THE COURT: -- by virtue of his pleading to these
13 charges today?

14 MS. CORNWELL: Yes, Your Honor.

15 THE COURT: Okay. All right. Do you want to go
16 ahead and go over his Orangeburg cases?

17 MS. CORNWELL: Yes, Your Honor.

18 THE COURT: You know, we're trying to do
19 everything at one time if you don't mind.

20 MS. CORNWELL: In regard to the Orangeburg
21 charges, the incident occurred on February 2nd of 2017 here
22 in the Orangeburg area of Orangeburg County. On that date
23 Officer Godwin was patrolling in the Orangeburg County area.
24 He is not a patrol officer. He is with the narcotics unit.
25 And he was aware that there was a felony warrant out for Mr.

State v Shelly Thomas Faulling

1/11/19

19

1 Faulling's arrest. And that felony warrant was based on the
2 incident from January that we tried this past December. He
3 attempted to make a traffic stop on Mr. Faulling for service
4 upon the warrants. Mr. Faulling at that point -- he
5 activated blue lights and siren. Again, Mr. Faulling
6 attempted to evade arrest while driving through several
7 different streets and stop signs at accelerated speed.
8 Ultimately, he attempted to make a turn and got in an
9 accident with Mr. Godwin. He jumped out and fled on foot.
10 Officers were able to apprehend him on a short distance from
11 the incident scene. On this person was a black flashlight.
12 When you open up the flashlight in the battery compartment,
13 there was a plastic bag that appeared to contain
14 methamphetamine. The methamphetamine in both cases was
15 tested. In the Orangeburg case it tested as 2.1 grams of
16 methamphetamine. In the Calhoun case, the methamphetamine
17 in the pouch that he discarded came back at 2.2 grams. And
18 in the pocket was .5 grams.

19 He does have a significant prior record that I can go
20 over at the appropriate time. But based on his prior
21 record, this would be a third or subsequent offense.

22 THE COURT: All right. And Ms. Cornwell, I know
23 he's pleading guilty to some Calhoun County cases, four
24 Calhoun cases and these two Orangeburg cases. If my memory
25 -- and I could be confusing him with someone else. But

State v Shelly Thomas Faulling

1/11/19

20

1 doesn't have charges from other counties.

2 DEFENDANT FAULLING: No, sir.

3 MS. CORNWELL: No, Your Honor.

4 THE COURT: No, this is it?

5 DEFENDANT FAULLING: This is it. No, sir.

6 THE COURT: Okay. I just wanted to make sure.

7 Because I just wanted to make sure that we were doing
8 everything.

9 DEFENDANT FAULLING: I was on probation.

10 MS. CORNWELL: And there was a probation issue and
11 we've determined that we would handle all of that. I
12 couldn't remember if we handled it last time ---

13 DEFENDANT FAULLING: You're right. You're right.

14 PROBATION OFFICER: Your Honor, but he does have
15 seven charges for possession of meth as well as possession
16 with intent to distribute.

17 THE COURT: Uh-huh. (Affirmative response)

18 PROBATION OFFICER: Your Honor, sentenced him back
19 on --

20 MS. CORNWELL: It was 2013. He got a sentence of
21 fifteen years suspended to five years and five years
22 probation.

23 THE COURT: Okay. How many probation cases has he
24 had, does he have?

25 PROBATION OFFICER: Five, Your Honor.

State v Shelly Thomas Faulling

1/11/19

21

1 THE COURT: Five probation cases?

2 PROBATION OFFICER: Yes, sir.

3 THE COURT: Okay. All right. And the longest
4 sentence he had -- I mean, the longest probation he had
5 would be five years on those?

6 PROBATION OFFICER: He had to do five.

7 THE COURT: Okay. All right. All right. So I
8 need -- I'm going to try and take care of those while we're
9 here today.

10 PROBATION OFFICER: Thank you, Your Honor.

11 THE COURT: Okay. And Mr. Faulling, you
12 understand I'm going to try and take care of those probation
13 issues here today?

14 DEFENDANT FAULLING: Thank you, sir. I appreciate
15 it.

16 THE COURT: All right. Okay.

17 Anything else Ms. Cornwell?

18 MS. CORNWELL: Would you like to hear the prior
19 record now or would you like to wait on that?

20 THE COURT: Well, you can go ahead and give me the
21 prior record.

22 MS. CORNWELL: All right. It is May the 1st back
23 in 1990 we had unlawful carrying of a pistol. He also has a
24 1992 assault and battery of a high and aggravated nature and
25 distribution of cocaine. In '93 he got a -- there's an

State v Shelly Thomas Faulling

1/11/19

22

1 assault and battery of a high and aggravated nature from
2 2001, as well as a distribution of cocaine.

3 THE COURT: In 2001, again? Because you said '92.

4 MS. CORNWELL: The distribution of cocaine, I'm
5 sorry. That is a parole revocation on that.

6 THE COURT: Okay.

7 MS. CORNWELL: A probation revocation. I
8 apologize, Your Honor.

9 He's got a 2009 malicious injury to property and in
10 2010 he's got a DUS. 2012, he was convicted of possession
11 with intent to distribute methamphetamine. In 2013 he's got
12 a possession of cocaine base or methamphetamine. 2013,
13 again, he also has distribution of methamphetamine,
14 distribution within proximity of a school. I believe there
15 are two counts of each of those. And that would be the
16 total of five, the 2012 and '13 were all pled at the same
17 time. And that's where the five probation issues come from.

18 THE COURT: Okay.

19 MS. CORNWELL: And then most recently, Your Honor,
20 he was convicted by jury trial in December of 2017 for
21 possession with intent to distribute methamphetamine again.
22 So this is, for purposes of the record, at least a eighth or
23 ninth offense.

24 THE COURT: Okay. All right. Okay.

25 MS. CORNWELL: And, Your Honor, I did consult with

State v Shelly Thomas Faulling

1/11/19

23

1 Mr. Lupton with regard to the statute while we were talking.
2 Third offense is still a non-violent offense for possession
3 with intent to distribute. It only becomes a violent
4 offense when it's manufacturing. I believe the CDR code on
5 that is manufacturing or distribution. So we just need to
6 make sure that it is possession with intent to distribute
7 under non-violent and not manufacturing under the violent.

8 THE COURT: Okay. So each --

9 Which CDR code should be on there. You said to make it
10 non-violent, right?

11 MR. LUMPKIN: I'll look that up, Your Honor.

12 THE COURT: Okay. Because the one we have on
13 here, when you get to there tell me what you got so I can
14 make sure I got it the same.

15 MS. CORNWELL: It should be 0 -- I'm sorry. I'm
16 trafficking.

17 DEFENDANT FAULLING: Can I ask one question?

18 THE COURT: Yes, sir.

19 DEFENDANT FAULLING: The same code -- it says non-
20 violent. It's written non-violent on my sentence sheet on
21 the 30. Can that be --

22 THE COURT: Yes, sir. The CDR code I have right
23 here, this is 3200?

24 MR. LUPTON: That's correct for the non-violent.
25 Yes, Your Honor.

State v Shelly Thomas Faulling

1/11/19

24

1 THE COURT: Okay. Is that the CDR code you have
2 on the sentencing?

3 DEFENDANT FAULLING: Yes, sir, 3200.

4 THE COURT: 3200. Okay. So we all --

5 DEFENDANT FAULLING: Which Is non-violent.

6 THE COURT: 3200. We're okay.

7 MS. CORNWELL: 3200 is marked as non-violent.

8 THE COURT: Okay.

9 DEFENDANT FAULLING: Thank you, Mr. Lupton. Thank
10 you.

11 THE COURT: Okay. All right. Anything else?

12 MS. CORNWELL: No, Your Honor.

13 THE COURT: Okay. All right. Mr. Faulling, I'm
14 going to go through these -- I'm going through the
15 Orangeburg County cases first since that's where we -- the
16 Orangeburg County cases have not been presented to the grand
17 jury, okay? And so on the back of each one of these
18 sentencing sheets and on the sentencing sheet, you have
19 marked where you waived presentment of these indictments to
20 the grand jury. Do you understand that?

21 DEFENDANT FAULLING: Yes, sir. She explained that
22 to me in detail.

23 THE COURT: Sir?

24 DEFENDANT FAULLING: Ms. Cornwell explained that
25 to me in detail. Yes, sir. I understand that.

State v Shelly Thomas Faulling

1/11/19

25

1 THE COURT: And so you don't need any explanation
2 about that?

3 DEFENDANT FAULLING: No, sir. She very, very well
4 explained it.

5 THE COURT: Okay. All right. The two indictments
6 -- these are the Orangeburg indictments. The indictment
7 2017-376 is the indictment for failure to stop for a blue
8 light. No injury or death. First offense. You're facing
9 up to three years in jail. And this is -- again, all these
10 sentences that you're pleading to are negotiated sentences?

11 DEFENDANT FAULLING: Yes, sir.

12 THE COURT: You're facing three years in jail
13 concurrent on that?

14 DEFENDANT FAULLING: Yes, sir.

15 THE COURT: How do you plead to that charge?

16 DEFENDANT FAULLING: Guilty.

17 THE COURT: All right, sir. In indictment 2017-
18 377 is the manufacture and distribution of methamphetamine,
19 third and subsequent offense. And it's also a negotiated
20 thirty years. And on the sheet it says sentenced 12/12/17.
21 Is that supposed to be --

22 MS. CORNWELL: Is that what is written on the
23 sentencing sheet?

24 DEFENDANT FAULLING: No, that's what all --

25 THE COURT: That's what's written on this

State v Shelly Thomas Faulling

1/11/19

26

1 sentencing sheet.

2 MS. CORNWELL: Okay. I may have written down the
3 wrong date on that. I was looking on his sentencing sheet
4 where he was pointing out something.

5 DEFENDANT FAULLING: I was wanting credit for time
6 served.

7 MR. CORNWELL: And so I believe that he was
8 convicted on -- was it 12/21?

9 THE COURT: I know he was in jail before then.

10 MS. CORNWELL: Yes, and he should get credit for
11 time served --

12 DEFENDANT FAULLING: From February the 1st of 2017.

13 MS. CORNWELL: He gets credit from February 1st of
14 2017.

15 THE COURT: Okay. All right.

16 MS. CORNWELL: The sentencing that I'm asking for
17 it to run concurrent with is based on the sentencing that
18 was done in December.

19 THE COURT: Right.

20 MS. CORNWELL: It might not have been December
21 12th, though.

22 THE COURT: Okay. Well, the only thing I need is
23 I need the docket number so I can make sure I put it on all
24 these sheets.

25 DEFENDANT FAULLING: What I was asking the Court

State v Shelly Thomas Faulling

1/11/19

27

1 can you please give me the credit for time served from
2 February the 1st.

3 THE COURT: Yes, sir. That's what she was just
4 saying. I'm going to pull --

5 DEFENDANT FAULLING: I know it was wrote down but
6 they don't have the date on it.

7 THE COURT: Well, I'm going to go ahead and put
8 that date down.

9 DEFENDANT FAULLING: Yes, sir.

10 THE COURT: And that way, they've got to start
11 your counting your service from that date?

12 DEFENDANT FAULLING: Thank you, sir. I appreciate
13 that.

14 THE COURT: Okay. All right. All right, sir.
15 How do you -- I don't know if I asked you but I'm going to
16 ask you again. This is indictment 2017-377. It's
17 manufacture and distribution of methamphetamine, third or
18 subsequent offense. It's a non-violent offense. You're
19 facing up to thirty years on this charge, okay?

20 DEFENDANT FAULLING: Yes, sir.

21 THE COURT: How do you plead to this charge?

22 DEFENDANT FAULLING: I plead guilty, Your Honor.

23 THE COURT: Okay. All right. Now, I have four
24 Calhoun County charges, okay? All of the Calhoun County
25 charges, the indictments have been true billed; do you

State v Shelly Thomas Faulling

1/11/19

28

1 understand that?

2 DEFENDANT FAULLING: True Billed. Yes, sir. They
3 went before the Grand Jury.

4 THE COURT: Okay. But we are here in Orangeburg
5 County. You have the right to have these cases pled or
6 heard or tried in Calhoun County and not in Orangeburg
7 County.

8 DEFENDANT FAULLING: I waive that right.

9 THE COURT: Okay. Well, that was question. Do
10 you waive venue so that I can hear these and dispose of
11 these here?

12 DEFENDANT FAULLING: Yes, sir. I sure do.

13 THE COURT: All right. All right. Mr. Faulling,
14 I'm going to go through each one these. The indictment --
15 and these are all Calhoun County cases. So they're all GS-
16 09, as far as the middle designation. This is 2017-23.
17 This is the failure to stop for a blue light. No injury or
18 death, first offense, that occurred on November 8th, 2016 in
19 Calhoun County. How do you plead to that charge?

20 DEFENDANT FAULLING: Guilty.

21 THE COURT: All right, sir. 2017-24 is the
22 manufacture, distribution of methamphetamine, third or
23 subsequent offense. This has the CDR code of 3200. It is
24 non-violent, carries up to thirty years. How do you plead
25 to this charge, sir?

State v Shelly Thomas Faulling

1/11/19

29

1 DEFENDANT FAULLING: Guilty.

2 THE COURT: All right, sir. The indictment 2017-
3 27 is the operating or permitting operation of a vehicle,
4 which is not registered and licensed. It's up to thirty
5 days. The State has negotiated a time served sentence on
6 that with you, okay?

7 DEFENDANT FAULLING: Guilty.

8 THE COURT: How do you plead to that charge?

9 DEFENDANT FAULLING: Guilty.

10 THE COURT: Okay. Thank you, sir. The final
11 indictment I have out of Calhoun is 2017-28. This is a
12 driving under suspension, first offense. You know, all of
13 these occurred on November 8th of 2016. How do you plead to
14 this charge?

15 DEFENDANT FAULLING: Guilty.

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

17 All right. Mr. Faulling, you understand you've got --
18 you have pled guilty in front of me for these six charges?

19 DEFENDANT FAULLING: Yes, Your Honor.

20 THE COURT: And you already know what the
21 negotiated sentence is in all of them because you had the
22 conversations with --

23 DEFENDANT FAULLING: Ms. Cornwell.

24 THE COURT: -- Ms. Cornwell about that. Okay. Do
25 you want me to accept your guilty plea to these six charges?

State v Shelly Thomas Faulling

1/11/19

30

1 DEFENDANT FAULLING: If it pleases the Court, yes,
2 sir, I sure do.

3 THE COURT: Okay. Mr. Faulling, I find your
4 decision to plead guilty to these six charges is freely,
5 voluntarily, and intelligently made. I find that you have -
6 - you are aware of your rights and you have chosen in a
7 knowledgeable and intelligent fashion to proceed pro se and
8 I've allowed you to proceed pro se. I find there is a
9 factual basis for your conviction to each one of these six
10 charges. And I am going to accept your guilty plea to all
11 six of these charges.

12 DEFENDANT FAULLING: Yes, sir, Your Honor.

13 THE COURT: Okay. All right. Now, if you'll bear
14 with me for a minute, let me fill out these forms, okay?

15 MS. CORNWELL: Your Honor, for purposes of the
16 record, that indictment number was 2017-GS-38-0375. He was
17 found guilty in a jury trial on December 12th, of 2017. I
18 believe you sentenced and sealed the record on 12/12. It
19 was published on 12/13 of 2017.

20 THE COURT: Okay. All right. 2017-GS-38-0375?

21 MS. CORNWELL: Yes, Your Honor.

22 THE COURT: Okay. Thank you, ma'am. All right.

23 (Court at ease)

24 THE COURT: All right. Mr. Faulling, I am going
25 to go along with the negotiated sentences that have been

State v Shelly Thomas Faulling

1/11/19

31.

1 presented to me on these six charges. On the driving under
2 suspension and the operating vehicle, which is not
3 registered and licensed, the sentence of this Court is that
4 these are both time-served sentences.

5 Okay. On the two indictments for failure to stop for a
6 blue light, no injury or death, first offenses, these
7 sentences are you are committed to the State Department of
8 Corrections for a period of three years on each one of
9 those, okay?

10 DEFENDANT FAULLING: Yes, sir.

11 THE COURT: On the two manufacturing, distribution
12 of methamphetamine third or subsequent offenses, you're
13 pleading to two of those. The sentence of this Court in
14 each one of those is that you're committed to the State
15 Department of Corrections for a period of thirty years on
16 each one of them. All of these sentences are concurrent.
17 All of the sentences give you credit for the time you've
18 served since February 1st, 2017. Do you understand that?

19 DEFENDANT FAULLING: Yes, sir.

20 THE COURT: Okay. All right. Now, you wanted to
21 make a motion for me to reconsider my sentence on the trial
22 2017-GS-0375.

23 DEFENDANT FAULLING: Yes, sir.

24 THE COURT: That's possession with intent to
25 distribute methamphetamine, which you were convicted of; is

State v Shelly Thomas Faulling

1/11/19

32

1 that correct?

2 DEFENDANT FAULLING: Yes, sir.

3 THE COURT: And so let me hear from you on that.

4 DEFENDANT FAULLING: I understand that the charged
5 period is ten to thirty years?

6 THE COURT: Yes, sir.

7 DEFENDANT FAULLING: Like I said, I don't know how
8 everything transpired without me being here.

9 THE COURT: Yes, sir.

10 DEFENDANT FAULLING: I'm asking the court to
11 reconsider, please. I'm forty-seven years old. I've got
12 kids. My mama's sixty-seven. I'm probably not never going
13 to make it out having no thirty years. I know she ain't
14 make no thirty years.

15 THE COURT: Yes, sir.

16 DEFENDANT FAULLING: If you reconsider and give me
17 ten, I won't even go along with the appeal. I will accept
18 that sentence. Thank you very much.

19 THE COURT: Okay.

20 DEFENDANT FAULLING: I'll accept that sentence,
21 drop the appeal, go do my time and get home to my family.

22 THE COURT: Okay.

23 DEFENDANT FAULLING: I won't waste no more of the
24 court's time, Ms. Cornwell's time, your time. All I'm
25 asking the court is please reduce it to ten years. I don't

State v Shelly Thomas Faulling

1/11/19

33

1 want anything more from you. I will get out, go about my
2 business and try not to ever be seen back in here in the
3 court of law.

4 THE COURT: All right.

5 DEFENDANT FAULLING: And I will make sure if you
6 go into practice, I will recommend you, believe me.

7 MS. CORNWELL: I'm reasonably sure I'm not going
8 to do that.

9 THE COURT: Yeah. All right.

10 DEFENDANT FAULLING: Your Honor, please, I'm
11 begging you.

12 THE COURT: Yes, sir.

13 DEFENDANT FAULLING: I'm begging this Court. I
14 know y'all don't have nothing that y'all are obligated to
15 give me, but please, Your Honor. I'm begging.

16 THE COURT: Yes, sir.

17 DEFENDANT FAULLING: Your Honor, please. I'm
18 begging.

19 THE COURT: Okay.

20 DEFENDANT FAULLING: I know I made a mistake. I
21 didn't use the best of judgment. My record shows I probably
22 ain't used it in a long time.

23 THE COURT: You mean your best judgment, right?

24 DEFENDANT FAULLING: Yes, sir.

25 THE COURT: Okay. All right.

State v Shelly Thomas Faulling

1/11/19

34

1 DEFENDANT FAULLING: Believe me, when that thirty
2 years got slapped in my face --

3 THE COURT: Uh-huh. (Affirmative response)

4 DEFENDANT FAULLING: -- I seen the light.

5 THE COURT: Okay.

6 DEFENDANT FAULLING: I mean, I don't want to -- I
7 mean, I lost my daddy the last time I was locked up. I
8 don't want to be in when my mama --

9 THE COURT: Okay. All right. And where are you -
10 - where have they put you right now. Where are you?

11 DEFENDANT FAULLING: I'm at Kirkland R&E right
12 now, Your Honor.

13 THE COURT: Okay.

14 MS. CORNWELL: And, Your Honor, I can explain that
15 placement at Kirkland and also give a response --

16 THE COURT: He's just there while he's being
17 evaluated.

18 MS. CORNWELL: Yeah. They hold them in Kirkland
19 until they can confirm sentencing sheets being proper and
20 all that. They have not had an opportunity to do that and
21 that's why he's still at Kirkland. That is not necessarily
22 where he's going to stay.

23 DEFENDANT FAULLING: Y'all been watching the news.
24 Y'all see up that road ain't no fun.

25 THE COURT: Yes, sir.

1 MS. CORNWELL: Just in response to the motion,
2 Your Honor, the State -- we object to the motion he
3 presented but we do feel that the sentence you fashioned was
4 an appropriate sentence based on his prior record as well as
5 the facts of these cases. These charges, including the
6 other charge that he was convicted of, there are three
7 separate incidents that occur over a three-month period.
8 Two of them involved high-speed chases with the community
9 also at risk. Investigator Bowen is here in the courtroom.
10 He was present at trial and testified. He was also present
11 when the sentence was published. Speaking with law
12 enforcement and on behalf of the State, we do feel that the
13 sentence that was fashioned was an appropriate sentence and
14 we would respectfully request that you deny the motion to
15 reconsider and leave the sentence at thirty years.

16 THE COURT: Okay. All right.

17 All right. Mr. Faulling, what I'm going to do in this
18 case, because I'm hearing this motion to reconsider,
19 possibly outside the time that it should have been, okay?

20 DEFENDANT FAULLING: Yes, sir.

21 THE COURT: And the fact that you were not -- you
22 didn't have an attorney to represent you to file an appeal
23 and things like that. So I'm hearing this now to
24 essentially extend your appellate time. That's the reason
25 I'm doing this, okay? Unfortunately, with your record and

State v Shelly Thomas Faulling

1/11/19

36

1 what I heard and what you've pled to today, I do think it's
2 an appropriate sentence, but I do think you're entitled to
3 your appeal. Do you understand?

4 DEFENDANT FAULLING: Yes, sir.

5 THE COURT: And I'm going to make sure that you
6 get your appeal.

7 DEFENDANT FAULLING: Yes, sir.

8 THE COURT: Okay. And then we'll see how that
9 goes. And, you know, you could be back in front of me,
10 okay?

11 DEFENDANT FAULLING: Thank you, sir.

12 THE COURT: All right. Okay. All right. But I'm
13 denying your motion to reconsider. I am appointing
14 appellate defense to represent you on your appeal and I'm
15 making the finding on the record that as far as this Court
16 is concerned, your motion to reconsider was timely and so
17 your appeal will be timely if it's filed as it should be,
18 okay?

19 DEFENDANT FAULLING: Thank you, sir. I've got two
20 more questions that me and Ms. Cornwell discussed.

21 THE COURT: Okay.

22 DEFENDANT FAULLING: My boss man is trying to
23 retrieve his firearms.

24 THE COURT: Uh-huh. (Affirmative response)

25 DEFENDANT FAULLING: Ms. Cornwell informed me that

State v Shelly Thomas Faulling

1/11/19

37

1 he would go to --

2 MS. CORNWELL: Your Honor, he can go to the
3 Calhoun County Sheriff's office. He can show proof of
4 ownership with the firearms registration, the State will not
5 object to the firearms being returned to the owner, the
6 legal owner.

7 THE COURT: Okay.

8 DEFENDANT FAULLING: And the car, the Dodge
9 Strata, that was supposed to have been a gift for my niece.
10 My mama had paid for it.

11 THE COURT: Okay.

12 MS. CORNWELL: And, Your Honor, he's asking if his
13 mother can get the car back. Again, I told him that they
14 can go to the Orangeburg County Sheriff's Office. As long
15 as they can show proof of ownership, the State does not have
16 any objection to the car being released.

17 THE COURT: Okay. All right. It's not in your
18 name, is it?

19 DEFENDANT FAULLING: No, sir. It's not in my
20 name.

21 THE COURT: Okay. All right.

22 DEFENDANT FAULLING: I was doing a little work on
23 it.

24 THE COURT: Okay. All right. Mr. Faulling, what
25 I'll do is I'll follow up with Ms. Cornwell. If you need an

State v Shelly Thomas Faulling

1/11/19

38

1 order from the court to do something, I will provide that so
2 that your mama can get the car.

3 DEFENDANT FAULLING: Thank y'all very much.

4 THE COURT: Okay. All right. Thank you, sir.
5 Good luck to you.

6 MS. CORNWELL: Your Honor, I apologize. Just to
7 protect the record fully, Your Honor did order the State to
8 present discovery evidence on the Calhoun and all the
9 Orangeburg cases to Mr. Faulling's sister who had the power
10 of attorney. We did comply with Your Honor's request on
11 December 19th of 2017. Mr. Faulling's sister, Sherry Fogle,
12 as well as Mr. Faulling's mother, Ms. Sarah Rodgers did come
13 to our office and we provided them with all these discovery
14 that we had in our file on all charges.

15 THE COURT: Okay.

16 MS. CORNWELL: And that was given to them again on
17 12/19 of 17 and Mr. Faulling and I went over those in detail
18 today.

19 THE COURT: Okay. And I believe she said y'all
20 did go through that page by page?

21 DEFENDANT FAULLING: Yes, sir. She was more than
22 helpful.

23 THE COURT: Okay. All right. And Mr. Faulling, I
24 will see that that order gets done so you'll have appellate
25 counsel for your case, okay?

State v Shelly Thomas Faulling

1/11/19

39

1 DEFENDANT FAULLING: Yes, sir.

2 THE COURT: All right. Good luck to you.

3 MS. CORNWELL: Thank you, Your Honor.

4 DEFENDANT FAULLING: I appreciate it --

5 THE COURT: Yes, sir.

6 PROBATION OFFICER: Your Honor, --

7 THE COURT: Oh, with your probation cases?

8 PROBATION OFFICER: Yes, sir.

9 THE COURT: I'm going to terminate all of them and
10 grant civil judgment because there's no reason to keep them
11 open, okay?

12 PROBATION OFFICER: Thank you, Your Honor.

13 DEFENDANT FAULLING: Thank you, Your Honor.

14 THE COURT: So I'll be signing orders terminating
15 all your probation cases. If there are any civil judgments
16 apply, there will be civil judgments on you, okay. I have
17 no objection if you can put him in a room where he can be
18 with his mama for a little while. That would be great.

19 DEFENDANT FAULLING: Thank you, sir.

20 THE COURT: All right. Thank you.

21 (This proceeding was concluded)

22

23

24

25

State v Shelly Thomas Faulling

1/11/19

40

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE GENERAL SESSIONS COURT OF CALHOUN COUNTY, SOUTH CAROLINA, ON THE 11 DAY OF JANUARY, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

April 6, 2019

WITNESSES

Riley Godwin

Orangeburg County Sheriff

2017-773

ARREST WARRANT NUMBER

2017A3810700093

Arrested: February 2, 2017

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: December 6, 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS38-0376

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

December 11, 2017 TERM

THE STATE

vs.

Shelly Thomas Faulling

Indictment for

**FAILURE TO STOP FOR A BLUE LIGHT,
NO INJURY OR DEATH**

SC Code: 56-5-750(B)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2017GS38-0376

At a Court of General Sessions, convened on December 6, 2017 the Grand Jurors of Orangeburg County present upon their oath:

FAILURE TO STOP FOR A BLUE LIGHT, NO INJURY OR DEATH

That in Orangeburg County, South Carolina, on or about February 1, 2017, the Defendant, Shelly Thomas Faulling, while driving a motor vehicle on a road, street, or highway of the State, did unlawfully fail to stop for a law enforcement vehicle after being signaled by a flashing light and/or a siren. This offense in violation of Section 56-5-750, of the South Carolina Code of Laws, as amended.

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



Ashley Cornwell, Solicitor

WITNESSES

Riley Godwin

Orangeburg County Sheriff

2017-773

ARREST WARRANT NUMBER

2017A3810700094

Arrested: February 2, 2017

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: December 6, 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS38-0377

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

December 11, 2017 TERM

THE STATE

vs.

Shelly Thomas Faulling

Indictment for

**MANUFACTURE, DISTRIBUTION, ETC.
OF METHAMPHETAMINE**

SC Code: 44-53-375(B)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.


Defendant

I _____
hereby appear in my own proper person
and plead guilty to the within indictment
or to _____

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2017GS38-0377

At a Court of General Sessions, convened on December 6, 2017 the Grand Jurors of Orangeburg County present upon their oath:

MANUFACTURE, DISTRIBUTION, ETC. OF METHAMPHETAMINE

That in Orangeburg County, South Carolina, on or about February 1, 2017, the Defendant, Shelly Thomas Faulling, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to do the same or possess with intent to distribute, dispense, or deliver a quantity of methamphetamine. This offense being a violation of Section 44-53-375 of the South Carolina Code of Laws, as amended.

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



Ashley Cornwell, Solicitor

WITNESSES

Larry L Vanicek

Calhoun County Sheriff

ARREST WARRANT NUMBER

2016A0910100226

Arrested: November 9, 2016

**ACTION OF GRAND JURY
TRUE BILL**

Foreperson of Grand Jury
Date: January 23, 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS09-0023

**The State of South Carolina
County of CALHOUN**

COURT OF GENERAL SESSIONS

January 23, 2017 TERM

THE STATE

vs.

Shelly Thomas Faulling

Indictment for

Failure to Stop for a Blue Light, No
Injury or Death

SC Code: 56-5-750(B)

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CALHOUN

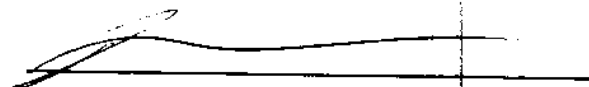
2017GS09-0023

As a Court of General Sessions, convened on January 23, 2017 the Grand Jurors of CALHOUN County present upon their oath:

FAILURE TO STOP FOR A BLUE LIGHT, NO INJURY OR DEATH

That in Calhoun County, South Carolina, on or about November 8, 2016, the Defendant, Shelly Thomas Faulling, while driving a motor vehicle on a road, street, or highway of the State, did unlawfully fail to stop for a law enforcement vehicle after being signaled by a flashing light and/or a siren. This offense in violation of Section 56-5-750, of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to read 'Ted Lupton', is written over a horizontal line.

Ted Lupton, Solicitor

WITNESSES

Larry L Vanicek

Calhoun County Sheriff

ARREST WARRANT NUMBER

2016A0910100227

Arrested: November 9, 2016

ACTION OF GRAND JURY

JAN 23 2017

Foreperson of Grand Jury
Date: January 23, 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS09-0024

The State of South Carolina
County of CALHOUN

COURT OF GENERAL SESSIONS

January 23, 2017 TERM

THE STATE
vs.

Shelly Thomas Faulling

Indictment for

Manufacture, Distribution, etc. of
Methamphetamine, 3rd Offense

SC Code: 44-53-375

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST TRUE COPY
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

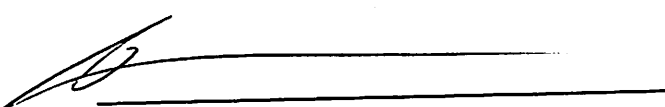
INDICTMENT
2017GS09-0024

As a Court of General Sessions, convened on January 23, 2017 the Grand Jurors of CALHOUN County present upon their oath:

MANUFACTURE, DISTRIBUTION, ETC. OF METHAMPHETAMINE, 3rd OFFENSE

That in Calhoun County, South Carolina, on or about November 8, 2016, the Defendant, Shelly Thomas Faulling, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to do the same or possess with intent to distribute, dispense, or deliver a quantity of methamphetamine. This offense being a violation of Section 44-53-375 of the South Carolina Code of Laws, as amended.

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



Ted Lupton, Solicitor

WITNESSES

Larry L Vanicek

Calhoun County Sheriff

ARREST WARRANT NUMBER

6102P0023014

Arrested: November 8, 2016

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: JAN 23 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS09-0027

**The State of South Carolina
County of CALHOUN**

COURT OF GENERAL SESSIONS

January 23, 2017 TERM

**THE STATE
vs.**

Shelly Thomas Faulling

Indictment for

**Operating or Permitting Operation of
Vehicle Which is not Registered and
Licensed.**

SC Code: 56-3-110

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

INDICTMENT
2017GS09-0027

As a Court of General Sessions, convened on January 23, 2017 the Grand Jurors of CALHOUN County present upon their oath:

**OPERATING OR PERMITTING OPERATION OF VEHICLE WHICH IS NOT
REGISTERED AND LICENSED.**

That in Calhoun County, South Carolina, on or about November 8, 2016, the Defendant, Shelly Thomas Faulling, did knowing and unlawfully operate a motor vehicle or permit a vehicle to be operated on a public highway of this State which was not registered or licensed and as a result violated Section 56-3-110, Code of Laws of South Carolina, 1976, as amended.

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



Ted Lupton, Solicitor

WITNESSES

Larry L Vanicek

Calhoun County Sheriff

ARREST WARRANT NUMBER

6102P0023015

Arrested: November 8, 2016

TRUE BILL
ACTION OF GRAND JURY

JAN 23 2017

Foreperson of Grand Jury
Date: January 23, 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS09-0028

The State of South Carolina
County of CALHOUN

COURT OF GENERAL SESSIONS

January 23, 2017 TERM

THE STATE
vs.

Shelly Thomas Faulling

Indictment for

Driving Under Suspension, License not
Suspended for Dui - 1st offense

SC Code: 56-1-460(A)

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2017 JAN 23 PM 0117

STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

INDICTMENT

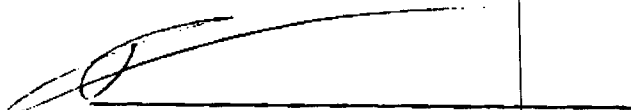
2017GS09-0028

As a Court of General Sessions, convened on January 23, 2017 the Grand Jurors of CALHOUN County present upon their oath:

**DRIVING UNDER SUSPENSION, LICENSE NOT SUSPENDED FOR DUI - 1ST
OFFENSE**

That in Calhoun County, South Carolina, on or about November 8, 2016, the Defendant, Shelly Thomas Faulling, did drive a motor vehicle on a public highway of this State when his license to drive was canceled, suspended, or revoked; this being a first offense. This offense in violation of Section 56-1-460 of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to read 'Ted Lupton', is written over a horizontal line.

Ted Lupton, Solicitor

Office of the Public Defender

First Judicial Circuit

107 W. 6th North Street
Suite 100
Summerville, SC 29483
(843) 821-9800
FAX (843) 871-0523

5200 East Jim Bilton Boulevard
Dorchester County Courthouse
St. George, SC 29477
(843) 832-0154



372 St. Paul Street
Covington Bldg., Rooms 8-9
PO Box 1112
Orangeburg, SC 29116-1112
(803) 531-7080
FAX (803) 531-0977

716 Huff Drive
St. Matthews, SC 29135
(803) 874-2100
FAX (803) 874-2400

January 16, 2018

RECEIVED
JAN 24 2018
SC Court of Appeals

Kirkland Reception and Evaluation Center
Attention: Shelly Faulling, Inmate
SCDC ID#: 00197178
4344 Broad River Road
Columbia, SC 29210

Re: State v. Shelly Thomas Faulling

Charge(s): Distribution, etc. of methamphetamine, 3rd or sub. (2 Counts);
Failure to stop for a blue light, no injury or death - 1st offense
Warrant/Ticket No(s): 2017A3810700044; 2017A3810700093; 2017A3810700094

Dear Mr. Faulling:

This letter is to inform you of the status of my capacity to assist you. As you know, as I walked into the courtroom at the very end of your appearance on Thursday, January 11, 2018 before the Honorable Edgar Dickson, the judge indicated the court would like me to review post-plea/post-trial filings - such as a notice of appeal - that are apparently being drafted for you by the assistant solicitor on your case. It has come to my attention that not only has the Orangeburg County Public Defender's Office been conflicted off of your case due to conflicts of interest, but also you have elected to proceed *pro se*. As a result, both the Deputy Public Defender for Orangeburg County and the Circuit Defender for the First Judicial Circuit have directed me that I may not assist in any manner for the aforementioned reasons. Please also be aware that I have informed the court of the same.

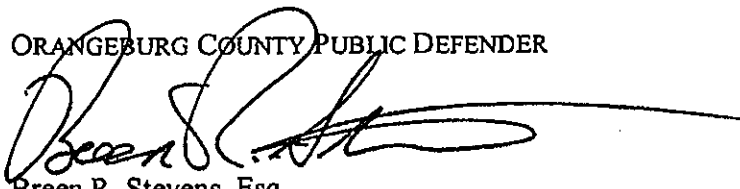
Mr. Faulling, I am very sorry that I cannot assist you. However, I do strongly recommend that you immediately seek legal counsel regarding your post-trial/post-plea filings; whether you wish to serve and file motions for reconsideration, or notices of appeal, it would behoove you to seek the input of a legally trained professional without any conflicts of interest. Accordingly, I have enclosed a list of attorneys in Orangeburg County that may be able to help you.

Additionally, I must inform you that time is of the essence due to very real jurisdictional time frames attached to filing such documents—whatever you choose to file must be served and filed within ten (10) days of sentencing. As such, in the event you choose to file a Notice of Appeal of your convictions and sentences (rather than first moving to reconsider your sentences) yourself, I have also enclosed copies of several Appellate Court Forms posted on the South Carolina Judicial Department website pertaining to filing and service of Notices of Appeal, as well as an affidavit of indigency form used by Appellate Defense.

Mr. Faulling, I am very sorry I cannot assist you with your case. I truly wish you the very best going forward.

Sincerely,

ORANGEBURG COUNTY PUBLIC DEFENDER

A handwritten signature in black ink, appearing to read "Breen R. Stevens", with a long horizontal flourish extending to the right.

Breen R. Stevens, Esq.
Assistant Public Defender

BRS/ldk

Enclosure: Refrence List;

Form 4 (Notice of Appeal);

Form 7 (Proof of Service of a Notice of Appeal);

Form 8 (Letter to Appellate Court Clerk);

Form 9 (Letter to Clerk of Lower Court);

Affidavit of Indigency;

Letter to Judge Dickson

Office of the Public Defender

First Judicial Circuit

107 W. 6th North Street
Suite 100
Summerville, SC 29483
(843) 821-9800
FAX (843) 871-0523

5200 East Jim Bilton Boulevard
Dorchester County Courthouse
St. George, SC 29477
(843) 832-0154



372 St. Paul Street
Covington Bldg., Rooms 8-9
PO Box 1112
Orangeburg, SC 29116-1112
(803) 531-7090
FAX (803) 531-0977

716 Huff Drive
St. Matthews, SC 29135
(803) 874-2160
FAX (803) 874-2400

January 16, 2018

RECEIVED
JAN 24 2018
SC Court of Appeals

The Honorable Edgar W. Dickson
Judge of First Judicial Circuit
P.O. Box 1949
Orangeburg, SC 29116-1949

Re: State v. Shelly Thomas Faulling
Charges: Distribution, etc. of methamphetamine, 3rd or sub. (2 Counts);
Failure to stop for a blue light, no injury or death - 1st offense
Warrant/Ticket No(s): 2017A3810700044; 2017A3810700093; 2017A3810700094

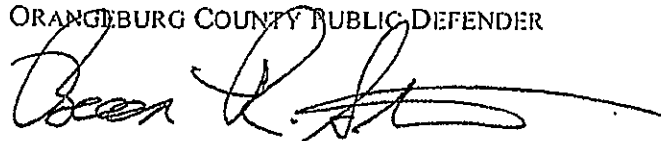
Dear Judge Dickson:

This letter is to inform you of the status of my capacity to assist Mr. Shelly Faulling. As you know, when I walked into the courtroom at the very end of Mr. Faulling's appearance on Thursday, January 11, 2018, you indicated that the court would like me to review post-plea/post-trial filings, such as a notice of appeal, that are being drafted for Mr. Faulling by the assistant solicitor. Although I was not officially appointed to represent Mr. Faulling, it has come to my attention that not only has the Orangeburg County Public Defender's Office been conflicted off of Mr. Faulling's case due to actual conflicts of interest, but also Mr. Faulling elected to proceed *pro se*. As a result, both the Deputy Public Defender for Orangeburg County, and the Circuit Defender for the First Judicial Circuit have specifically directed me that I may not assist Mr. Faulling in any manner for the aforementioned reasons.

Judge Dickson, I am very sorry that I cannot assist Mr. Faulling with his case. If the court still has concerns regarding Mr. Faulling's ability to properly serve and file any post-trial/post-plea motions for reconsideration or notices of appeal, and if Mr. Faulling has not retained private counsel to handle the matter, then I respectfully submit that appointment of an attorney from the conflict list for Orangeburg County may be appropriate for the limited purpose of drafting, serving, and filing any post-trial/post-plea documents. If I can be of any further assistance in any other matter, please do not hesitate to contact my office at your convenience.

Sincerely,

ORANGEBURG COUNTY PUBLIC DEFENDER

A handwritten signature in black ink, appearing to read "Breen R. Stevens", with a long horizontal flourish extending to the right.

Breen R. Stevens, Esq.
Assistant Public Defender

BRS/ldk

cc: Ashley Cornwell, Solicitor

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY

COURT OF GENERAL SESSIONS

RECEIVED

EDWARD DICKSON, CIRCUIT COURT JUDGE JAN 24 2018

SC Court of Appeals

CASE NO. 2017-GS-09-0024, 2017-GS-38-0375, 0377

THE STATE

RESPONDENT,

v.

SHELLY THOMAS FAULLING

APPELLANT.

NOTICE OF APPEAL

Shelly Thomas Faulling Appeals his conviction in this case. The sentence was imposed by the Honorable Edward Dickson on December 12, 2017 and January 11, 2018.

JANUARY 23, 2018

Shelly T. Faulling
Shelly T. Faulling
Kirkland R & E
4344 Broad River Rd.
Columbia, SC. 29210

IN THE STATE OF SOUTH CAROLINA

265

IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY

COURT OF GENERAL SESSIONS

EDWARD DICKSON, CIRCUIT COURT JUDGE

RECEIVED

JAN 24 2018

SC Court of Appeals

CASE NO. 2017-GS-09-0024; 2017-GS-38-0375, 0377

THE STATE

RESPONDENT,

v.

SHELLY THOMAS FAULLING

APPELLANT.

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL
ON ALAN Wilson by depositing a copy of it in the
United States mail, postage prepaid, on JANUARY 23, 2018,
addressed as follows: P.O. Box 11549 Columbia, S.C.
29211

JANUARY 23, 2018

Shelly T. Faulling
Shelly T. Faulling

JANUARY 23, 2018

THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, SC. 29211

RECEIVED

JAN 24 2018

SC Court of Appeals

RE: NOTICE OF APPEAL.

DEAR MS. KITCHINGS:

PLEASE FIND ENCLOSED FOR FILING IS A
NOTICE OF APPEAL IN THE ABOVE CASE. I AM WELL AWARE
THAT THE TEN DAYS FOR FILING HAS ELAPSED, HOWEVER,
THIS IS NOT DUE TO ANY ERROR ON MY BEHALF AS I WAS
ADVISED IN COURT THAT AN APPEAL WOULD BE FILED ON
MY BEHALF. ENCLOSED IS A LETTER INFORMING ME THAT THE
SOLICITORS OFFICE WAS SUPPOSE TO FILE FOR ME.

AS NO ONE HAS FILED ON MY BEHALF, PLEASE
CONSIDER MY CIRCUMSTANCES AND EXCEPT THIS APPEAL
UNDER WHITE V. STATE. ALSO ENCLOSED IS A PROOF OF SERVICE,
FILED ON THE RESPONDENT, A COPY OF THE ORDER OF JUDGEMENT,
AND AN AFFIDAVIT OF INDIGENCY.

*Shelly T. Fautling*Shelly T. Fautling
Kirkland RFE4344 Broad River Rd.
Columbia, SC. 29210

267 Shelly T. Faulling 197178
A-1-53

Mailroom
Kirkland Correctional Institution
4344 Broad River Road
Columbia, S.C. 29210



LEGAL
MAIL
ONLY

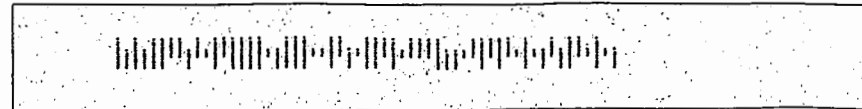
RECEIVED
JAN 23 2018

KIRKLAND PSE
MAIL ROOM

RECEIVED
JAN 24 2018
SC Court of Appeals

The Honorable Jenny ABBott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C.

29211



The South Carolina Court of Appeals

The State, Respondent,

v.

Shelly Thomas Faulling, Appellant.

Appellate Case No. 2018-000111

ORDER

Because Appellant has failed to timely serve and file a notice of appeal from his underlying convictions, this appeal is dismissed. *See* Rule 203(b)(2), SCACR ("After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed."); Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal under Rules 203 and 243* may be extended or shortened by the appellate court, or by any judge or justice thereof." (emphasis added)).


FOR THE COURT

Columbia, South Carolina

cc:

Shelly Thomas Faulling, 0197178

Ashley B. Cornwell, Esquire

John Benjamin Aplin, Esquire

Alan McCrory Wilson, Esquire

Deborah J Butcher, Esquire

FILED

March 29, 2018

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Shelly Thomas Faulling SCDC# 197178)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018-08-30-01551

APPLICATION FOR

POST-CONVICTION RELIEF

FILED FOR RECORD
WINNIE B. CLARK
2018 DEC 10 PM 12:02
CLERK OF COURT
ORANGEBURG, SC**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Broad River Correctional Institution 4460 Broad River Rd Wateree
Unit 162 Columbia SC 29210
2. Name and location of Court which imposed sentence First Judicial Circuit Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017GS38-0375/Manufacture Distribution of methamphetamine 3rd or sub
 - (b) 2017GS38-0377/Manufacture Distribution of methamphetamine 3rd or sub
 - (c) 2017GS09-0024/Manufacture Distribution of methamphetamine 3rd or sub
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12/12/2017-30 Years

- (b) 01/11/2018-30 Years Concurrent
- (c) 01/11/2018-30 Years Concurrent
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty Yes on 2017GS38-0377 and 2017GS09-0024
 - (b) after a plea of not guilty Yes on 2017GS38-0375
 - (c) after a plea of nolo contendere N/A
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. SC Court of Appeals Case#2018-000111
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Rejected for failing to file in a timely matter
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. January 26, 2018
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) Attorney Conflict of Interest
- (b) Attorney failed to disqualify jurors during voir dire
- (c) attorney forced me to go pro se

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

(a) Attorney refused to quit before trial. I tried to have her removed during pre-trial but it was unsuccessful. She quit immediately after guilty verdict which left me with hostile representation before and no representation after. During which time the prosecutor deemed me "pro se" even though I didn't fully understand the Faretta Warning.

(b) Voir dire is picking a jury, anyone who knows you personally, has a grudge, or is your friend, etc is supposed to be automatically disqualified by the Judge.

(c) I had no intention of proceeding without a lawyer. I repeatedly asked for nonconflicting counsel and was ignored which resulted in me being forced into pro se and tried in my absence illegally.

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

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

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

(a) the specific nature thereof:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

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

- i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

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

n/a

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Appeal was dismissed
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? no
 - (b) your trial, if any? yes
 - (c) your sentencing? yes and no (clarified on extra sheet of paper)
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no appeal was denied
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Deborah J Butcher "Esquire" The Camden Law Firm PO Box 486 Manning, SC 29102 (without consent)
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial (without consent)
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
- Sentence to be overturned, vacated, and a retrial or plea negotiation to be given with proper counsel
20. Are you now under sentence from any other court that you have not challenged?
- no

17A. I had lawyer during trial but she quit after sentencing and left me to be forced into pleaing on other 2 charges of manufacturing of methamphetamine 3rd or sub. Plead to charges:

2017GS38-0377 Manufacture Distribution of methamphetamine 3rd or sub

2017GS09-0024 Manufacture Distribution of methamphetamine 3rd or sub

17B. I had a lawyer during trial of charge 2017GS38-0375 Manufacture Distribution of methamphetamine 3rd or sub.

17C. Yes during trial on charge 2017GS38-0375. No, not on charges 2017GS38-0377 and 2017GS09-0024.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

Shelly Thomas Faulling SCDC# 197178

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2018-CP-09-00163

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution 4460 Broad River Rd Wateree
Unit 162 Columbia SC 29210
2. Name and location of Court which imposed sentence First Judicial Circuit Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017GS38-0375/Manufacture Distribution of methamphetamine 3rd or sub
 - (b) 2017GS38-0377/Manufacture Distribution of methamphetamine 3rd or sub
 - ** (c) 2017GS09-0024/Manufacture Distribution of methamphetamine 3rd or sub
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12/12/2017-30 Years

Revised 3/2003

- (b) 01/11/2018-30 Years Concurrent
- (c) 01/11/2018-30 Years Concurrent
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty Yes on 2017GS38-0377 and 2017GS09-0024
 - (b) after a plea of not guilty Yes on 2017GS38-0375
 - (c) after a plea of nolo contendere N/A
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. SC Court of Appeals Case#2018-000111
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Rejected for failing to file in a timely matter
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. January 26, 2018
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) Attorney Conflict of Interest
- (b) Attorney failed to disqualify jurors during voir dire
- (c) attorney forced me to go pro se

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

(a) Attorney refused to quit before trial. I tried to have her removed during pre-trial but it was unsuccessful. She quit immediately after guilty verdict which left me with hostile representation before and no representation after. During which time the prosecutor deemed me "pro se" even though I didn't fully understand the Faretta Warning.

(b) Voir dire is picking a jury, anyone who knows you personally, has a grudge, or is your friend, etc is supposed to be automatically disqualified by the Judge.

(c) I had no intention of proceeding without a lawyer. I repeatedly asked for nonconflicting counsel and was ignored which resulted in me being forced into pro se and tried in my absence illegally.

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

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

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

(a) the specific nature thereof:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

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

- i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

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

n/a

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Appeal was dismissed
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? no
 - (b) your trial, if any? yes
 - (c) your sentencing? yes and no (clarified on extra sheet of paper)
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no appeal was denied
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Deborah J Butcher "Esquire" The Camden Law Firm PO Box 486 Manning, SC 29102 (without consent)
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial (without consent)
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
- Sentence to be overturned, vacated, and a retrial or plea negotiation to be given with proper counsel
20. Are you now under sentence from any other court that you have not challenged?
- no

17A. I had lawyer during trial but she quit after sentencing and left me to be forced into pleaing on other 2 charges of manufacturing of methamphetamine 3rd or sub. Plead to charges:

2017GS38-0377 Manufacture Distribution of methamphetamine 3rd or sub

2017GS09-0024 Manufacture Distribution of methamphetamine 3rd or sub

17B. I had a lawyer during trial of charge 2017GS38-0375 Manufacture Distribution of methamphetamine 3rd or sub.

17C. Yes during trial on charge 2017GS38-0375. No, not on charges 2017GS38-0377 and 2017GS09-0024.

STATE OF SOUTH CAROLINA)

County of CALHOUN;)

VERIFICATION

I, Shelly Thomas Faulling, 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.

Shelly Thomas Faulling

SWORN to and subscribed before me this 10th
day of December, 2018.

Rona J. Dawkins (L.S.)
Notary Public

My Commission Expires: 04/19/2024

CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

2018 DEC 10 P 12:51

FILED

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

I, Shelly Thomas Faulling

, 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 thereof.

Shelly Thomas Faulling
Applicant

SWORN or affirmed to and subscribed before me this
10th day of December, 2018

P. J. [Signature]
Notary Public

My Commission Expires: 09/19/2024

FILED FOR RECORD
WINNIFA B. CLARK

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

Shelly Thomas Faulling, SCDC #197178,)
ORANGEBURG, SC)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2018-CP-38-01551

**RETURN TO THE APPLICATION
FOR POST-CONVICTION RELIEF
AND MOTION FOR A MORE
DEFINITE STATEMENT**
(Counsel Retained)

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Applicant Shelly Thomas Faulling¹ on December 10, 2018, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Orangeburg County Clerk of Court. Applicant was arrested on February 2, 2017 following an investigation into a tip from Shay Dash that she witnessed Applicant throw a substance into a trash can outside of the Easy Shop Gas Station off of Charleston Highway. Upon investigating the tip, law enforcement officers located four small bags of methamphetamine, one large bag of methamphetamine, and a sleeve of small bags. During its December 2017 term, the Orangeburg County Grand Jury indicted Applicant for one count of manufacture, distribution, etc. of methamphetamine, third or subsequent offense (2017-GS-38-0375).

On December 12, 2017, Applicant proceeded to a jury trial before the Honorable Edgar W. Dickson. Deborah J. Butcher, Esquire represented Applicant. Assistant Solicitor Ashley Cornwell of the First Circuit Solicitor's Office, prosecuted the case.

¹ Applicant filed this post-conviction relief application *pro se*. Counsel, David Tarr, Esquire has since been retained.

Following jury selection, trial counsel moved for a continuance based on Applicant's absence. Both the solicitor and trial counsel acknowledged that Applicant had been notified on November 20th that his trial was set for the December 11th term of court in front of Judge Dickson. In addition, both parties acknowledged that Applicant's trial counsel had been sent letters advising her of the trial date. According to trial counsel, she informed Applicant of his trial date. Trial counsel told the court she had met with Applicant the day before and again informed him of his trial date. In addition to being provided adequate notice, the State arranged for Applicant to be transported from Kirkland Correctional Institution. Despite this accommodation, Applicant refused to be transported. Trial counsel also reminded Judge Dickson about Applicant's prior motion to relieve counsel and the deteriorating relationship between her and Applicant.² After hearing arguments from both sides, Judge Dickson held that Applicant had adequate notice of his right to be present and the consequences of his failure to attend. Consequently, he denied trial counsel's motion for a continuance and the trial proceeded forward in his absence over defense counsel's objections.

At the conclusion of trial, the jury found Applicant guilty as indicted. Following the verdict, Judge Dickson sentenced Applicant and sealed the sentence. Subsequently, Applicant was transferred to the court house, and, on December 14, 2017, a sentencing hearing was conducted. During the hearing, Judge Dickson unsealed Applicant's sentence and sentenced Applicant to thirty years for manufacturing and distribution of methamphetamine – third or subsequent offense.

On January 24, 2018, Applicant filed a *pro se* notice of appeal. By order filed March 29, 2018, the South Carolina Court of Appeals dismissed the appeal, finding Applicant failed to timely

² While Judge Dickson did not explicitly deny Applicant's motion to relieve counsel on the record, he stated that "I don't know that, if he was represented by anyone else, that he would be more compliant to that attorney than he is with you." (Trial Tr. 33).

serve and file a notice of appeal from his underlying convictions pursuant to Rule 203(b)(2), SCACR. The case was remitted back to the circuit court on April 16, 2018.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this post-conviction relief action on December 10, 2018.

Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective Assistance of Counsel

- a. “Attorney refused to quit before trial. I tried to have her removed during pre-trial but it was unsuccessful. She quit immediately after guilty verdict which left me hostile representation before and no representation after. During which time the prosecutor deemed me “pro se” even though I didn’t fully understand the *Faretta* warning”;
 - i. “I had lawyer during trial but she quit after sentencing and left me to be forced into pleaing on other 2 charges of manufacturing of methamphetamine 3rd or sub.”;
- b. Trial counsel failed to disqualify jurors during *voir dire* who knew him “personally, ha[d] a grudge, or is [his] friend, etc.”; and
- c. Conflict of interest
 - i. “I had no intention of proceeding without a lawyer. I repeatedly asked for nonconflicting [*sic*] counsel and was ignored which resulted in me being forced into pro se [*sic*] and tried in my absence illegally”.

Applicant requests relief as follows:

“sentence to be overturned, vacated, and a retrial or plea negotiation to be given with proper counsel.”

Attached to this return and incorporated by reference are the Orangeburg County Clerk of Court records regarding the subject convictions; Applicant’s records from the South Carolina Department of Corrections; the trial transcript; the records from Applicant’s appeal; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. Response to Allegation of Ineffective Assistance of Trial Counsel

Applicant asserts counsel was ineffective for failing to be relieved prior to trial, failing to disqualify jurors during *voir dire*, and because a conflict of interest existed. Respondent submits these allegations of ineffective assistance of counsel are without merit.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the rôle necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient

performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ ” *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

“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.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). “Defense lawyers have ‘limited’ time and resources, and so must choose from among ‘countless’ strategic options.” *Dunn*, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective

assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

A. Involuntarily Tried in *Absentia*

Applicant contends trial counsel was deficient in her representation for allowing Applicant to be tried in his absence. The record reflects Applicant had all the required notice regarding his right to be present for trial, the term of court during which his trial was scheduled to be held, and the consequences of his failure to appear. The trial court's ruling to proceed without Applicant is fully supported by the assertions of trial counsel and the solicitor. Respondent argues trial counsel was not deficient in her representation as Applicant validly waived his right to be present for trial by knowingly and voluntarily failing to appear. As a result, Respondent contends this allegation is without merit.

A criminal defendant unquestionably has a constitutional right to be present for trial coupled with a corresponding legal obligation to appear at the time set for the trial. *See Illinois v. Allen*, 397 U.S. 337, 338 (1970) ("One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his

trial.”); *State v. Holloway*, 262 S.C. 552, 556, 206 S.E.2d 822, 824 (1974) (“A person charged with a crime is required to appear at the time set for trial, and he cannot be permitted to absent himself for any reason which he chooses.”); *City of Aiken v. Koontz*, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006) (recognizing a criminal defendant has a constitutional right to be present for trial); *Patterson*, 367 S.C. at 230, 625 S.E.2d at 244 (“The right to be present at trial is not the right to be absent from trial.”). However, in South Carolina, a defendant may voluntarily waive his right to be present for trial by failing to appear and may be tried in his absence if he fails to appear for trial after receiving notice regarding: (1) his right to be present; and (2) the consequences of his failure to attend. *See* Rule 16, SCRCrimP (“Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.”); *State v. Green*, 269 S.C. 657, 662, 239 S.E.2d 485, 487 (1977) (“The right to be present at trial, like many other constitutional rights can be waived if done ‘voluntarily’ and ‘knowingly’.”).

The South Carolina Court of Appeals has ruled that a court may not try a criminal defendant *in absentia* unless it finds that he received notice of the trial and voluntarily chose to be absent. *State v. Wrapp*, 421 S.C. 531, 808 S.E.2d 821 (2017). Accordingly, our courts have considered what constitutes sufficient notice to enable a defendant to make an effective waiver of his right to be present at trial and found that “a bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in his absence should he fail to appear.” *State v. Ravenell*, 692 S.E.2d 554, 558 (S.C. Ct. App. 2010). Likewise, our courts have held that notice of the term of court for which the trial is set constitutes sufficient notice to enable

a criminal defendant to make an effective waiver of his right to be present. *City of Aiken*, 368 S.C. at 456. “The deliberate absence of a defendant who knows that he stands accused in a criminal case and that his trial will begin during a specific period of time indicated nothing less than an intention to obstruct the orderly processes of justice.” *State v. Ravenell*, 387 S.C. 449, 456, 692 S.E.2d 554, 558 (Ct. App. 2010).

Where a defense counsel is faced with the prospect of proceeding with a trial *in absentia*, he or she may be professionally obliged to both move for a continuance *and* object to proceeding *in absentia*. See *Morris v. State*, 371 S.C. 278, 639 S.E.2d 53 (2006) (finding ineffectiveness where counsel failed to move for a continuance when defendant signed a sentencing sheet to plead guilty to a lesser-included offense and then left the courthouse). Despite this obligation, South Carolina trial judges are vested with broad discretion when faced with a decision as to whether to grant or deny a motion for a continuance, and such decisions are ordinarily entitled to and afforded the highest degree of deference. *State v. Yarborough*, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005); see *State v. Squires*, 248 S.C. 239, 244, 149 S.E.2d 601, 603 (1966) (“It is well settled in this jurisdiction, as well as in most others, that the trial court’s refusal of a motion for continuance in a criminal case will not be disturbed in the absence of a clear and conclusive abuse of discretion.”). As a result, reversals of continuance decisions “are about *as rare as the proverbial hens’ teeth*” in our state. *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957) (emphasis added).

Prior to the beginning of trial, trial counsel moved for a continuance based on Applicant’s absence. Recognizing Applicant received all the notice needed for him to be able to knowingly exercise his right to be present for trial, the trial court found Applicant was aware of his right to be present, the term of court during which his trial was scheduled to be held, and the fact his trial

would proceed forward without him if he failed to appear. Those findings supported the court's determination Applicant voluntarily waived his right to be present for trial by failing to appear as required. Despite Applicant's allegations that he was forced to proceed *pro se*, the record does not reflect Applicant ever proceeded *pro se*.

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

B. Failure to Disqualify Jurors During *Voir Dire*

In the instant case, Applicant alleges trial counsel "failed to disqualify jurors during *voir dire*". Applicant further notes in his application "*voir dire* is picking a jury, anyone who knows you personally, has a grudge, or is your friend, etc. is supposed to be automatically disqualified by the Judge". Respondent contends Applicant has failed to allege which juror(s) counsel should have moved to strike, why counsel should have done so, or how Applicant was prejudiced by counsel's failure to move to strike. Therefore, Respondent responds generally and moves for Applicant, through retained counsel, to file an amended application with specific allegations.

"A prospective juror generally is not automatically incompetent or subject to challenge merely because the juror has some relationship to or with a person involved in the case." 50A C.J.S. Juries § 378. Specifically, the fact that a juror has some relationship with an attorney in the case does not automatically require disqualification of the juror. *In re Vora*, 354 S.C. 590, 582

S.E.2d 413 (2003). Our courts have repeatedly held that the mere fact that a prospective juror is a friend or relative of the attorney prosecuting the case does not disqualify the individual as a juror. *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983) (overruled on other grounds by, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991)); *Wilson v. Childs*, 315 S.C. 431, 434 S.E.2d 286 (Ct. App. 1993) (holding there is no absolute rule a juror is disqualified because of the juror's relationship with an attorney in the case).

Regarding jurors' potential relationships with a witness, this Court has held for many years that a relationship with a witness does not require disqualification of a juror. See *State v. Jones*, 298 S.C. 118, 121, 378 S.E.2d 594, 596 (1989) ("The mere fact that a person is a friend or acquaintance of the deceased does not render him incompetent as a juror."); *State v. Wells*, 249 S.C. 249, 259–60, 153 S.E.2d 904, 909–10 (1967) (affirming qualification of a juror who directly employed victim a year or more prior to trial); *State v. Hilton*, 87 S.C. 434, 439, 69 S.E. 1077, 1078 (1910) ("There is no rule of the common law, nor is there a statute disqualifying a juror on account of his relationship to a witness, either by affinity or consanguinity, within any degree.").

Even if counsel was deficient for failing to seek to remove the jurors, Applicant has not demonstrated how he was prejudiced. Applicant has presented no evidence of a connection between the jurors and the First Circuit Solicitor's Office or any potential witness(es) sufficient to undermine confidence in the final verdict of the jury. Further, he has failed to establish any basis for bias or prejudice, especially in light of the jurors' acknowledgement of the ability to be fair and impartial and not to have a bias for or against either party.

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary

hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”). Additionally, as discussed, it is impossible for Respondent to reply specifically to Applicant’s claims without more facts and detail. Therefore, Respondent moves for Applicant, through retained counsel, to file an amended application with specific allegations.

C. Conflict of Interest

Applicant further asserts trial counsel, Deborah J. Butcher, was ineffective because of a conflict of interest. Applicant fails to specifically allege what conflict existed at the time of trial or how Applicant was prejudiced. Therefore, Respondent responds generally and moves for Applicant, through retained counsel, to file an amended application with specific allegations.

“To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney’s performance.” *Thomas v. State*, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998)). An actual conflict of interest occurs where counsel owes a duty to a party whose interests are adverse to the petitioner’s. *Fuller v. State*, 347 S.C. 630, 633-34, 557 S.E.2d 664, 665 (2001). Where a petitioner demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer’s performance, prejudice is presumed. *Gonzales v. State*, 419 S.C. 2, 10, 795 S.E.2d 835, 839 (2017) (citing *Strickland*, 466 U.S. at 692) (emphasis added). However, “[t]he mere possibility of a conflict of interest is insufficient to impugn a criminal conviction.” *Fuller*, 347 S.C. at 634, 557 S.E.2d at 665.

Though Applicant states there was a conflict of interest and that trial counsel was

ineffective because of the conflict, Applicant does not indicate if counsel was representing someone else with conflicting interests, who that person was, why the conflict of interest rendered counsel deficient, or how he was prejudiced as a result of the alleged deficiency.

Therefore, Respondent submits Applicant's allegations lacks merit. For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court"). As discussed above, it is impossible for Respondent to reply specifically to Applicant's claims without more facts and detail. Therefore, Respondent moves for Applicant, through retained counsel, to file an amended application with specific allegations.

IV. Motion for a More Definite Statement

The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). In an application for post-conviction relief, it is incumbent upon the applicant to make a *prima facie* showing entitling them to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Rule 71.1(d), SCRPC, provides PCR counsel "shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."

Here, Applicant has failed to state with any specificity the facts giving rise to his allegations

of ineffective assistance of counsel, as required by Section 17-27-50. Therefore, the State moves pursuant to Rule 12(e), SCRCP, and Rule 71.1(d), SCRCP, to require Applicant, through PCR counsel, to provide a more definite statement of his allegation of ineffective assistance of counsel.

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Accordingly, the State moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss the application for failure to state a claim.

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment. . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)–(b), SCRCP. The State

reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCR.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. Response to Any and All Other Allegations

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

VII. Conclusion

WHEREFORE, the State moves for a more definite statement and the opportunity to respond to the more definite statement if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

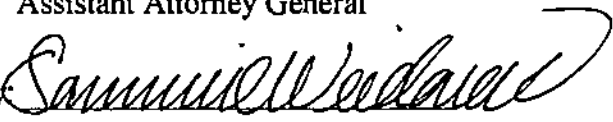
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General

By 
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

December 21, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CALHOUN	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Shelly Thomas Faulling, SCDC #197178,	)	Case No.: 2018-CP-09-00163
	)	
Applicant,	)	RETURN TO THE APPLICATION
v.	)	FOR POST-CONVICTION RELIEF,
	)	MOTION TO DISMISS, AND
State of South Carolina,	)	MOTION FOR A MORE
	)	DEFINITE STATEMENT
Respondent.	)	(Counsel Retained)
_____	)	

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Applicant Shelly Thomas Faulling¹ on December 10, 2018, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Calhoun County Clerk of Court. During its January 2017 term, the Calhoun County Grand Jury indicted Applicant for one count of failure to stop for a blue light, no injury or death – first offense (2017-GS-09-0023); one count of manufacture, distribute, etc. of methamphetamine, third or subsequent offense (2017-GS-09-0024); one count of operating or permitting operation of vehicle which is not registered or licensed (2017-GS-09-0027); and one count of driving under suspension, license not suspended for DUI, first offense (2017-GS-09-0028).² Applicant was also indicted by the Orangeburg County Grand Jury for failure to stop for a blue light, no injury or death, first offense (2017-GS-38-0376) and manufacture, distribute, possess

¹ Applicant filed this post-conviction relief application *pro se*. Counsel, David B. Tarr, has since been retained.

² Applicant waived jurisdiction and plead guilty to the four Calhoun charges in Orangeburg County.

with intent to distribute methamphetamine, third or subsequent offense (2017-GS-38-0377) during their December 2017 term.

On January 11, 2018, Applicant appeared before the Honorable Edgar W. Dickson and pleaded guilty as indicted to all six charges. In exchange for Applicant's plea, the State dropped two charges: unlawful carrying of a pistol (2017-GS-09-00025) and possession of firearm or ammunition by person convicted of violent felony (2017-GS-09-00026).

Prior to hearing Applicant's plea, the circuit court conducted a hearing, pursuant to *Faretta v. California*, 422 U.S. 806 (1975). (Plea Tr. pp. 10-30). The circuit court found Applicant competent to represent himself and Applicant proceeded *pro se* at the plea hearing. Assistant Solicitor Ashley Cornwell, prosecuted the case. Judge Dickson accepted Applicant's guilty plea to all six charges and pursuant to negotiations entered into between Applicant and the State, Judge Dickson sentenced Applicant to concurrent terms of three years' imprisonment for each count of failure to stop for a blue light; thirty years' imprisonment for each count of manufacture, distribution, etc. of methamphetamine charge; time-served for driving under suspension; and time-served for operating vehicle, which is not registered and licensed.

On January 24, 2018, Applicant filed a *pro se* notice of appeal. By order filed March 29, 2018, the South Carolina Court of Appeals dismissed the appeal, finding Applicant failed to timely serve and file a notice of appeal from his underlying convictions pursuant to Rule 203(b)(2), SCACR. The case was remitted back to the circuit court on April 16, 2018.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this post-conviction relief action on December 10, 2018. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective Assistance of Counsel

- a. “Attorney refused to quit before trial. I tried to have her removed during pre-trial but it was unsuccessful. She quit immediately after guilty verdict which left me hostile representation before and no representation after. During which time the prosecutor deemed me “pro se” even though I didn’t fully understand the Fareta warning”;
 - i. “I had lawyer during trial but she quit after sentencing and left me to be forced into pleading on other 2 charges of manufacturing of methamphetamine 3rd or sub.”;
- b. Trial counsel failed to disqualify jurors during *voir dire* who knew him “personally, ha[d] a grudge, or is [his] friend, etc.”; and
- c. Conflict of interest
 - i. “I had no intention of proceeding without a lawyer. I repeatedly asked for nonconflicting [*sic*] counsel and was ignored which resulted in me being forced into pro se [*sic*] and tried in my absence illegally”.

Applicant requests relief as follows:

“sentence to be overturned, vacated, and a retrial or plea negotiation to be given with proper counsel.”

Attached to this return and incorporated by reference are the Calhoun County Clerk of Court records regarding the subject convictions; Applicant’s records from the South Carolina Department of Corrections; the plea transcript; the records from Applicant’s appeal; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. Motion to Dismiss

Applicant’s allegations of ineffective assistance of counsel, including trial counsel’s ineffectiveness for: “failure to quit before trial”, failure to disqualify jurors from *voir dire*, and conflict of interest should be summarily dismissed pursuant to section 17-27-70 of the South Carolina Code because there is no genuine issue of material fact which would necessitate an evidentiary hearing on these claim. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the

applicant is not entitled to relief); *Sutton v. State*, 361 S.C. 644, 647, 606 S.E.2d 779, 780 (2004) (“A PCR action is a civil action generally subject to rules and statutes that apply in civil proceedings”), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing).

Allegations Applicant Did Not Knowingly and Voluntarily Proceed *Pro Se* & Ineffective Assistance of Plea Counsel

Applicant alleges that he received constitutionally ineffective assistance of counsel as a result of being “forced to proceed *pro se*.” However, Applicant knowingly and voluntarily waived his right to representation and appeared *pro se* at the plea hearing. Consequently, the State submits these claims are wholly without merit

Pursuant to both the United States Constitution and the South Carolina Constitution, a criminal defendant brought to trial in South Carolina “must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment.” *Faretta v. California*, 422 U.S. 806, 807 (1975); *see* S.C. Const. art. I, § 14 (“Any person charged with an offense shall enjoy the right . . . to be fully heard in his defense by himself or by his counsel or by both.”). However, “[t]he right to defend is personal.” *Faretta*, 422 U.S. at 834. As a result, a defendant is permitted to waive his right to counsel and represent himself during a trial in a *pro se* capacity. *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014). Thus, even though it ultimately may be detrimental for a defendant to personally conduct his own defense, that defendant’s choice to do so “must be honored out of that respect for the individual which is the lifeblood of the law.” *State v. Thompson*, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003) (citation and internal quotations omitted).

In order to invoke the right to self-representation, a defendant “must take affirmative steps” to advise the trial judge of his desire to proceed in that manner. *Benitez v. United States*, 521 F.3d 625, 632 (6th Cir. 2008); see *United States v. Leggett*, 81 F.3d 220, 224 (D.C. Cir. 1996) (“The law presumes that a defendant has not exercised his right to represent himself nor waived the right to counsel in the absence of an articulate and unmistakable demand by the defendant to proceed *pro se*.”). Therefore, if a defendant actually wishes to proceed *pro se* during trial, the defendant must *clearly and unequivocally* make an assertion of the right to self-representation *prior to trial*. *Mazique*, 419 S.C. at 291, 797 S.E.2d at 734; see *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998) (“The right to proceed *pro se* must be clearly asserted by the defendant prior to trial.”). Significantly, the requirement for a clear and unequivocal assertion of the right to self-representation both “protect[s] against an inadvertent waiver of the right to counsel by a defendant’s occasional musings on the benefits of self-representation” and “prevents a defendant from taking advantage of and manipulating the mutual exclusivity of the rights to counsel and self-representation.” *United States v. Frazier-El*, 204 F.3d 553, 558-559 (4th Cir. 2000) (citations and internal quotations omitted).

If a criminal defendant in South Carolina makes a proper request to exercise his right to self-representation, the trial judge must take steps to ensure the defendant is knowingly, voluntarily, and intelligently waiving his right to counsel, including by advising the defendant of his right to counsel and adequately warning him of the dangers and disadvantages of self-representation. See *Barnes*, 407 S.C. at 35, 753 S.E.2d at 550 (“So long as the defendant makes his request prior to trial, the only proper inquiry is that mandated by *Faretta*.”); see also *Ex parte Jackson*, 381 S.C. 253, 259, 672 S.E.2d 585, 588 (Ct. App. 2009) (“It is the trial court’s responsibility to determine whether there was a knowing and intelligent waiver [of the right to

counsel] by the accused.” (citation omitted)). For a knowing and intelligent waiver to occur, the defendant must be “(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.” *Osbey v. State*, 425 S.C. 615, 619, 825 S.E.2d 48, 50 (2019). Moreover, Applicant is expressly barred from raising ineffective assistance claims about his own conduct. *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975) (“Thus, whatever else may or may not be open to him on appeal, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of effective assistance of counsel.”).

Here, Applicant has failed to demonstrate that he was forced to proceed *pro se*. At the hearing on January 11, 2018, Judge Dickson issued *Faretta* warnings to Applicant pertaining to the dangers of self-representation and Applicant’s right to counsel. Regarding the right to counsel, Judge Dickson informed Applicant of the following:

THE COURT: But you understand that you have the right to have an attorney anytime you are charged with a criminal trial – criminal charges?

DEFENDANT FAULLING: Yes, sir. I understand.

THE COURT: And you understand that if you cannot afford an attorney one could be appointed to you. And that has happened to you?

DEFENDANT FAULLING: Yes, sir.

THE COURT: Okay. Do you want me to appoint an attorney to represent you on these six charges today?

DEFENDANT FAULLING: No, sir, I do not. I just want to go ahead and take care of it now.

(Plea Tr. 10).

Regarding the dangers of self-representation, Judge Dickson informed Applicant of the following:

THE COURT: All right. Now, there are a couple of things that I need to just caution you about before we go forward with you representing yourself on a plea like this okay? Self-representation can be dangerous and you have the right to have an assistance of a lawyer at all stages of the proceedings. If you cannot afford a lawyer one will be appointed to represent you. And you know that?

DEFENDANT FAULLING: Yes, sir.

THE COURT: And you don't want an attorney; is that correct?

DEFENDANT FAULLING: Yes, sir.

THE COURT: Criminal defense is a highly specialized and technical area of the law. You are aware of that?

DEFENDANT FAULLING: Yes. Sir.

THE COURT: Okay. All right. There may be certain factual, legal, or other defenses to the charges you are facing. And if you choose to proceed without the services of a licensed attorney, you might not be aware of certain defenses, you understand that?

DEFENDANT FAULLING: Yes, sir.

(Plea Tr. 10-11).

Judge Dickson continued Applicant's *Faretta* warnings by advising him of the collateral consequences that may arise from the proceedings. (Plea Tr. 11-12). Likewise, Applicant understood that he was assuming the responsibility for making a record for appellate and collateral review. *Id.* At each stage of the *Faretta* warning, Judge Dickson repeatedly asked Applicant if he understood the warnings and if he wanted an attorney. Each time, Applicant was persistent in his decision to proceed *pro se*. To that affect, Applicant signed an acknowledgement indicating that Judge Dickson had issued the *Faretta* warnings and that he understood the advisement. (Plea Tr. 14). Subsequently, Judge Dickson declared Applicant knowingly, voluntarily, and intelligently waived his right to counsel, without any objection from Applicant. (Plea Tr. 30). Accordingly, Respondent asserts Applicant's allegation that he received constitutionally ineffective assistance of counsel as a result of being "forced to proceed *pro se*" is without merit.

Additionally, despite Applicant's allegations of ineffective assistance of trial counsel for failure to disqualify jurors during *voir dire*, failure to object to a trial in *absentia*, and conflict of interest, the record does not reflect that that a jury was ever convened, nor that Applicant was ever

tried in *absentia*. Additionally, Respondent notes no conflict of interest could have existed as Applicant represented himself at his plea.

Therefore, the State moves for summary dismissal of these claims pursuant to section 17-27-70 because there is no genuine issue of material fact which would necessitate an evidentiary hearing and this allegation should be dismissed as a matter of law.

IV. Motion for a More Definite Statement

The Uniform Post-Conviction Procedure Act requires applicants to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). In an application for post-conviction relief, it is incumbent upon the applicant to make a *prima facie* showing entitling them to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Rule 71.1(d), SCRPC, provides PCR counsel “shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”

Here, Applicant has failed to state any cognizable claims as required by Section 17-27-50. Therefore, the State moves pursuant to Rule 12(e), SCRPC, and Rule 71.1(d), SCRPC, to require Applicant, through PCR counsel, to provide a more definite statement of his allegations.

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Accordingly, the State moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss the application for failure to state a claim.

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been retained an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment. . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)–(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. Response to Any and All Other Allegations

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

VII. Conclusion

WHEREFORE, the State moves to dismiss the allegations of ineffective assistance of counsel. Additionally, the State moves for a more definite statement and the opportunity to respond to the more definite statement. Once a more definite statement is provided, the State requests an evidentiary hearing be held on Applicant's cognizable amended allegations.

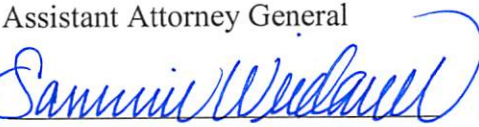
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General

By: 
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

December 21, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

IN THE COURT OF COMMON PLEAS
2018-CP-09-00163

SHELLY THOMAS FAULLING, #197178

Applicant,

vs

STATE OF SOUTH CAROLINA,

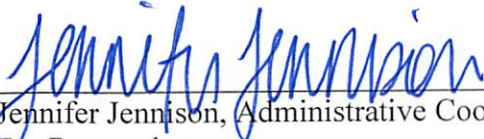
Respondent,

CERTIFICATE OF SERVICE BY MAIL

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 to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

David B. Tarr, Esquire
Law Office of David B. Tarr, LLC
1313 Elmwood Drive, Suite B
Columbia, South Carolina 29201

DATED this 21st day of December, 2021.



Jennifer Jennison, Administrative Coordinator
For Respondent

FILED FOR RECORD
 WINNIE B. CLARK
 FORM 5

STATE OF SOUTH CAROLINA

2023 MAY -9

1:10

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CLERK OF COURT

SHELLY THOMAS FAULLING

197178

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

v.

State of South Carolina

FIRST AMENDED
 APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution 4460 Broad River Rd. Wateree Unit 162 Columbia, SC 29210
2. Name and location of Court which imposed sentence Orangeburg County Courthouse
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-38-375 PWID Methamphetamine 3rd
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) December 14, 2017 30 Years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty x
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed for lack of timely filing
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 29, 2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) Trial proceeded in Mr. Faulling's absence.
- (b) Ineffective Assistance of counsel due to Ms. Butcher's failure to object to trial proceeding in Mr. Faulling's absence.
- (c) Mr. Faulling did not knowingly and intelligently waive his right to appeal

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

(a) Mr. Faulling was in custody at the Orangeburg County Detention Center when his trial was held at the Orangeburg County Courthouse. He was not transported to court by the jailers. Therefore, he was denied his fundamental right to be present at his trial.

(b) Trial counsel Butcher moved for a continuance due to the fact that the jail did not transport Mr. Faulling for court, but she did not object to the trial proceeding in his absence or to the judge failing to grant her continuance request.

(c) Mr. Faulling's trial counsel Deborah Butcher moved to be relieved as his counsel and was relieved after sentencing, but prior to filing a Notice of Intent to Appeal. The Notice of Appeal was not timely filed and therefore Mr. Faulling's appeal was dismissed.

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

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

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____

- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Deborah J. Butcher The Camden Law Firm P.O. Box 486 Manning, SC 29102
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- Conviction overturned
20. Are you now under sentence from any other court that you have not challenged?
- No

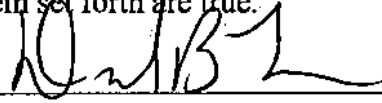
STATE OF SOUTH CAROLINA

)
)
)

VERIFICATION

County of Orangeburg

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



SWORN to and subscribed before me this 08
day of May, 2 023

 (L.S.)
Notary Public

My Commission Expires: 07/15/2030

**APPLICATION TO PROCEED WITHOUT PAYMENT
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 thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2____.

Notary Public

My Commission Expires: _____

FORM 5
FILED

STATE OF SOUTH CAROLINA)

2023 MAY -8 PM 12:37 IN THE COURT OF COMMON PLEAS

COUNTY OF CALHOUN)

Shelly Thomas Faulling SCDC #197178
Full name and prison number (if any) of Applicant

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

Case No. 2018-CP-09-0163

v.)

State of South Carolina)

FIRST AMENDED
APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution 4460 Broad River Rd. Wateree Unit 162 Columbia, SC 29210
2. Name and location of Court which imposed sentence Orangeburg County Courthouse
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-09-0023 Failure to Stop for a Blue Light
 - (b) 2017-GS-09-0024 PWID Methamphetamine 3rd
 - (c) 2017-GS-09-0027 Operating Unregistered Vehicle
 - (d) 2017-GS-09-0028 Driving Under Suspension
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Guilty Plea was made after Faretta warnings tainted by legal advice given by an attorney with an actual conflict of interest. Attorney giving advice was assistant solicitor who was actively prosecuting Mr. Faulling at the time advice was given. United States v. Cronin, 466 U.S. 648 (1984).
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Mr. Faulling pled guilty pro se, due to the fact that his appointed counsel was relieved prior to his guilty plea. The Solicitor Ashley Cornwall gave Mr. Faulling legal advice prior to and during his guilty plea, while laboring under an actual conflict of interest as she was the prosecutor in the case.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____

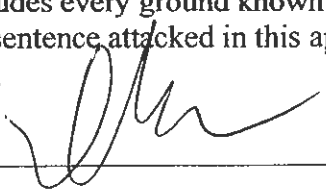
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Appeal was dismissed due to lack of timely filing
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? No
- (b) your trial, if any? N/A
- (c) your sentencing? No
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications _____ with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. N/A
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Convictions overturned
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

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



SWORN to and subscribed before me this 08
day of May, 2023

Beth Heller (L.S.)
Notary Public

My Commission Expires: 07/15/2030

**APPLICATION TO PROCEED WITHOUT PAYMENT
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 thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2____.

Notary Public

My Commission Expires: _____

**SC ATTORNEY GENERAL'S OFFICE
REMBERT C. DENNIS BUILDING
1000 ASSEMBLY STREET, RM 519
COLUMBIA, SOUTH CAROLINA**

HAND DELIVERY

RECEIVED BY:

Jane McCrea

5/8/23
DATE

2:15pm
TIME

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
2 COUNTY OF ORANGEBURG CASE NO.:2018-CP-38-01551
3 ****TRANSCRIPTION OF DIGITAL COURTROOM AUDIO****

4 -----

5 May 17, 2023

6 **BEFORE:** The Honorable Kristi F. Curtis

7 -----

8 SHELLY THOMAS FAULING,

9 Applicant,

10 vs.

11 STATE OF SOUTH CAROLINA,

12 Respondent.

13 -----

14

15 APPEARANCES:

16

17 David Tarr, Esq.
18 Appearing for the Applicant.

19 Danielle Dixon, Esq.
20 Appearing for the State/Respondent.

21

22

23 Recorded by: Video Courtroom

24 Transcriber: Natalie Dahl, RPR
25 SC Official Court Reporter

NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

INDEX

Witness	Page
SHELLY THOMAS FAULING	
Direct Examination by Mr. Tarr	14
Cross Examination by Ms. Dixon	27
SHERI FOGLE	
Direct Examination by Mr. Tarr	31
DEBORAH BUTCHER	
Direct Examination by Mr. Tarr	34
Cross Examination by Ms. Dixon	40
ASHLEY CROMWELL	
Direct Examination by Mr. Tarr	42
Cross Examination by Ms. Dixon	59
Redirect Examination by Mr. Tarr	62

EXHIBITS	MARKED	ADMITTED
Applicant's Exhibit 1	36	36

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality

CALL OF THE CASE

P R O C E E D I N G S

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MS. DIXON: This is Shelly Fauling v. State.
And this is Docket No. 2018-CP-09-163. And, Your Honor, this case is actually two different charges from two different counties that have been consolidated into one case.

The first charges arose in January of 2017 when the Calhoun County Grand Jury indicted Mr. Fauling for failure to stop for a blue light, manufacturing/distributing methamphetamine third or subsequent, operating an unlicensed vehicle, and driving under suspension. Those are Indictment Nos. 2017-GS-9-23, 24, 27 and 28.

In December of 2017, the Orangeburg County Grand Jury indicted him for manufacturing/distribution of methamphetamine. That's Indictment 2017-GS-38-375.

December 12 through 14, 2017, a jury trial convened before the Honorable Edgar Dixon. This was on Orangeburg case on manufacturing methamphetamine. Mr. Fauling was represented by Deborah Butcher, and the case was prosecuted by the then Assistant Solicitor Ashley Cornwell. He was tried in his absence. At the time, he was in the detention center. The State arranged transport,

CALL OF THE CASE

1 and he, apparently, refused to be transported to
2 his trial.

3 He was found guilty as indicted and sentenced
4 to 30 years. And at the end of trial -- he was
5 brought back for sentencing the second day, and at
6 the end of trial, counsel was relieved due to
7 various complaints he had filed against her with
8 ODC.

9 In January of 2018, he then appeared before
10 the Honorable Edgar Dixon in Orangeburg County pro
11 se, and he pled guilty. Mr. Dixon did advise him
12 of the dangers of self-representation prior to that
13 plea. He waived presentment to the Grand Jury of
14 two Orangeburg charges for manufacturing and PWID
15 methamphetamine, and then failure to stop for a
16 blue light, and then he waived venue and pled to
17 the four Calhoun County charges. This was a
18 negotiated sentence of 30 years, total. The State
19 dismissed two gun charges in exchange for the plea.
20 He was sentenced to 30 years for each charge of
21 manufacturing methamphetamine, three years for each
22 charge of failure to stop for a blue light, and
23 then time served for operating an unlicensed
24 vehicle and driving under suspension.

25 He filed a pro se notice of appeal. The

CALL OF THE CASE

1 court of appeals dismissed it as untimely, and that
2 notice of appeal was as to all charges, the trial
3 and the plea. It was dismissed as untimely. The
4 remittitur was sent April 16, 2018. He filed these
5 PCR applications, one in Orangeburg and one in
6 Calhoun, on the same day; that was December 10 of
7 2018. They have since then been consolidated into
8 one action.

9 His claims, Your Honor, involve basically
10 that he should not have been tried in his absence,
11 and an involuntary guilty plea. And then, also --
12 sorry, Your Honor -- that he did not voluntarily
13 waive his right to appeal.

14 And, Your Honor, the State is here ready
15 today to concede that the evidence shows that he
16 did not voluntarily waive his right to a direct
17 appeal of his trial, but beyond that, we dispute
18 that he's entitled to any relief.

19 THE COURT: Okay. Thank you.

20 Mr. Tarr, I intend to question your client
21 about whether he wants to go forward or delay his
22 application, but you all discussed that?

23 MR. TARR: We're definitely going forward.

24 THE COURT: Okay. And you've been over with
25 him the consequences of going forward with the

CALL OF THE CASE

1 application?

2 MR. TARR: Yes, Your Honor.

3 THE COURT: Okay. Let me go ahead and
4 question him on the record, and then we'll hear
5 from you.

6 Mr. Fauling, I'm Judge Curtis. Sir, I want
7 to go over with you the consequences of either
8 going forward today or withdrawing your
9 application, because you've got significant charges
10 that would be back in play if I granted your
11 application for PCR.

12 So in a PCR application, I cannot change your
13 sentence. I can't reduce your sentence. I can't
14 vacate your sentence. If I grant your application,
15 one of two things can happen. Understand, the
16 State has basically conceded that you did not
17 voluntarily give up your right to a direct appeal,
18 so it's possible that we could grant you the right
19 to go forward with your appeal. If I grant your
20 application with regard to the merits of your
21 claims for ineffective assistance of trial counsel,
22 it means that your case goes back as if your trial
23 or guilty plea never took place. So all of the
24 charges that were pending against you, including
25 the gun charges that were dismissed as a result of

CALL OF THE CASE

1 the plea, all of those are now revived, I guess you
2 would say, as if you had never entered the plea.
3 It means that the State is not under any obligation
4 to offer you any plea agreements. If you are
5 convicted of those charges on a retrial or a plea,
6 there is no guarantee that you would get a shorter
7 sentence than what you did receive.

8 So I understand that you got a considerable
9 sentence. I mean, I'm not trying to undermine or
10 make light of a 30-year sentence, but you
11 understand that you -- on retrial or a plea, there
12 is no guarantee that your sentences would run
13 concurrently, and you could end up with a longer
14 sentence than what you did receive, and you are
15 aware of that?

16 MR. FAULING: Yes, ma'am.

17 THE COURT: And you discussed that with Mr.
18 Tarr prior to this morning?

19 MR. FAULING: Yes, ma'am.

20 THE COURT: So is it your decision today to
21 go forward with the application -- and, again, Mr.
22 Tarr you talked with him about the consequences of
23 going forward versus withdrawing?

24 MR. TARR: Yes, Your Honor.

25 THE COURT: Thank you so much. You can have

OPENING STATEMENT BY MR. TARR

1 a seat.

2 Mr. Tarr, I'll turn it over to you, sir.

3 MR. TARR: How would Your Honor wish to
4 proceed? Would you like to hear an opening
5 statement from me to kind of let you know what I
6 feel like this case is about before I call
7 witnesses?

8 THE COURT: That would be fine.

9 MR. TARR: Thank you. And the AG, Ms. Dixon,
10 has hit upon some of the basics, but in a nutshell,
11 Your Honor, Mr. Fauling had two hearings in these
12 cases. One was a trial where he was not present,
13 but was in custody in the county jail. As far as I
14 can tell, Your Honor, I can't find any cases where
15 someone is tried in their absence in a general
16 sessions or other charge when they are in custody,
17 in the county, for which -- the county where they
18 are being tried. In all of the cases, people are
19 on bond.

20 The standard has been set out that in order
21 to try someone in their absence, there needs to be
22 a finding on the record that notice was given, and
23 that they were warned they could be tried in their
24 absence if they didn't show up.

25 Your Honor, in this case -- that applies to

OPENING STATEMENT BY MR. TARR

1 people who are on bond, people who are free to go
2 wherever they want, because they can go wherever
3 they want, and we don't know where they are, and we
4 can't find them. He is in custody. His -- his
5 freedom to move is restrained and controlled by the
6 people at the jail.

7 Now, the State is going to say that he
8 refused transport. Your Honor, the jail is in the
9 business of making people do things that they don't
10 want to do. And in this particular situation, it's
11 our contention that whether he refused or not, that
12 the proper way to move forward in a trial in
13 someone's absence, when they are in custody, is to
14 order that that person be brought before the trial
15 judge and put on the record -- be advised of the
16 dangers of not being there, be advised that he has
17 a right to be there, and get a knowing and
18 intelligent waiver on the record.

19 The only testimony -- not even testimony, but
20 statements at the trial that were made in this
21 regard, one was from his defense attorney,
22 Ms. Butcher, who said he's not coming, doesn't say
23 how she knows that. She wasn't at the jail when
24 they were loading the van up. It's obvious
25 hearsay, not attributed to anyone in particular.

OPENING STATEMENT BY MR. TARR

1 And then the Solicitor, Ms. Cornwell, says,
2 We arranged for transport, and he refused. Again,
3 the solicitor was not at the jail when they were
4 bringing people over. So she got that information
5 from someone else. That person's name is not in
6 the record. That person was not brought over to
7 tell the judge, I tried to get him to come, and he
8 wouldn't come.

9 So, basically, the record is devoid of any
10 real evidence of why Mr. Fauling was not at his
11 trial that he got 30 years for. Mr. Fauling is
12 going to testify that he did not know that he was
13 being tried. He thought he was bonding out that
14 day, and we have corroborating evidence to show
15 that that's the case. They have gotten him out of
16 his cell and took him out front to get let go, and
17 he never got let go. And then one of the inmates
18 comes back (inaudible) and says, Hey, you just got
19 tried in your absence and convicted, and that's how
20 he found out.

21 In any event, whether he refused to go or
22 didn't refuse to go, we believe that there should
23 have been a waiver on the record, a knowing and
24 intelligent waiver on the record, of that very
25 fundamental right.

OPENING STATEMENT BY MR. TARR

1 So that's the first issue, Your Honor, and
2 the biggest issue. There is also the issue that
3 the -- most of these issues do not involve the
4 standard Strickland v. Washington, but Ms. Butcher
5 did not object at trial to going forward without
6 Mr. Fauling being there. She moved for a
7 continuance. That continuance request was denied,
8 and she did not object to the denial or make any
9 other objection in that regard. And, therefore, we
10 -- while we appreciate that the State is
11 stipulating that he should have gotten an appeal,
12 it may not help him, Your Honor. It may be a
13 procedural default because it wasn't preserved,
14 because there is no objection.

15 So we really feel like there's been just a
16 travesty of justice here, and that the only cure
17 would be this Court to grant PCR relief, because if
18 Your Honor gives an appeal, that may or may not
19 help the situation.

20 Also, I'll point out that trial counsel was
21 relieved after the trial, but before sentence; and,
22 therefore, didn't file a notice of intent to
23 appeal, and so my client also went forward on the
24 sentencing unrepresented.

25 And then, finally, Your Honor, a couple weeks

OPENING STATEMENT BY MR. TARR

1 later after this occurred, my client was brought
2 back to the courthouse from the Department of
3 Corrections because of the other charges in
4 Calhoun. At that time, he had no lawyer. He had
5 received no warnings at that time, as far as
6 Farettas warnings. But he did have an extensive
7 meeting with the solicitor and him where the
8 solicitor went over every page of the discovery
9 with him, because he hadn't seen it before, advised
10 him of all of his rights, explained everything to
11 him, answered any questions he had, told him about
12 possible enhancements of his charges. I mean, just
13 everything that a defense lawyer would do in
14 representing a client at a plea.

15 So, basically, you have someone actively
16 prosecuting you, telling you if you don't take this
17 plea, I'm going to give you life without parole, so
18 you need to take this 30, concurrent to the 30 you
19 already got at the trial you weren't present at.

20 So then he goes in front of the judge. And
21 after that, the judge gives Farettas warnings. But
22 it's our contention that that was too late, Your
23 Honor. He's already been tainted by a lawyer who
24 is prosecuting you, almost acting as your lawyer,
25 explaining everything to you, and telling you what

OPENING STATEMENT BY MR. TARR

1 you should do.

2 So, basically, Your Honor, that just -- we
3 feel like both of these convictions -- the trial
4 and the plea -- they are so intertwined. There is
5 so many errors. It's replete with fundamental
6 denial -- denial of fundamental rights, that the
7 only real remedy -- and just remedy -- would be to
8 overturn the convictions and allow him to start
9 over, and do it the right way.

10 THE COURT: Okay.

11 MR. TARR: Thank you.

12 You ready for me to call the first witness?

13 THE COURT: Please.

14 MR. TARR: At this time, we call Shelly
15 Thomas Fauling to the stand.

16 In this courtroom, Your Honor, is it
17 customary to question from over here or at the
18 table?

19 THE COURT: Wherever you are more
20 comfortable. I think we have microphones either
21 place, so you are welcome to come over here.

22 MR. TARR: Thank you.

23 THE CLERK: State your family for the record.

24 THE WITNESS: Shelly Thomas Fauling.

25 (SHELLY THOMAS FAULING, having been duly

SHELLY THOMAS FAULING - DIRECT EXAMINATION

sworn, testified as follows:)

THE COURT: And we do have a chair over here for SCDC, if you want to.

UNIDENTIFIED PERSON: Thank you, Judge.

DIRECT EXAMINATION

BY MR. TARR:

Q Could you state your name for the record, please?

A Shelly Thomas Fauling.

Q I just want to talk to you a little bit today about everything that occurred back in 2017 and 2018.

A Yes, sir.

Q You had the charges in Orangeburg and Calhoun; do you recall that?

A Yes, sir.

Q And at some point after you got those charges, was Deborah Butcher appointed to represent you?

A Yes, sir.

Q Okay. How would you say that your relationship with your attorney was? How would you describe it?

A It wasn't good from the start. We had disagreements from the beginning at the preliminary

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 hearing, and I asked her to relieve herself, and
2 she refused. We just never saw eye-to-eye on
3 anything.

4 Q And it was your intention to possibly hire --
5 she was appointed?

6 A Yes, sir, she was court appointed.

7 Q Okay. And was that because there was a
8 conflict with the public defender's office?

9 A Yes, sir. Each individual -- they sent me
10 several attorneys, and each one claimed the same
11 thing, that it was a conflict of interest, and
12 somehow I ended up with Ms. Butcher.

13 Q Okay. Was it your intention at some point to
14 hire another attorney?

15 A Yes, sir. I was trying to go in front of a
16 judge to get a bond and get me an attorney. Once I
17 was out on bond, I was going to get an attorney
18 because I didn't want Ms. Butcher representing me.

19 Q Was it that you needed a bond or you needed a
20 bench warrant lifted so that you could get out?

21 A Really, truly, I think it was a combination
22 of both. I had to get the bench warrant lifted to
23 get the bond. I'm not sure really how it plays out
24 on that end.

25 Q At some point, did you have a hearing where

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 you got the bench warrant lifted?

2 A Yes, sir. The same day I got the bond.

3 Q Do you recall if it was November 20 of 2017

4 that you had the hearing?

5 A I don't know the exact date, but I know it's

6 the same day that the bench warrant got lifted I

7 got a bond for Judge Dixon.

8 Q So you got a bond?

9 A Yes, sir.

10 Q Okay. And then was there a reason why at

11 that point you didn't immediately bond out?

12 A From what I can understand, Ms. -- Ms.

13 Butcher didn't file the proper paperwork in Calhoun

14 County in order for me to get out. Some kind of

15 stipulation with some kind of paperwork they had

16 down yonder, and the clerk in Calhoun County had to

17 call her and explain to her what she needed to do

18 in order to get the paperwork filed so I could get

19 out.

20 Q Okay. At some point, did that paperwork get

21 filed?

22 A Yes, sir, on -- I think it was on a Friday.

23 Q Would that be the Friday right before the

24 term of court where they tried your case?

25 A Yes, sir. From what I understand, yes, sir.

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 Q Okay. And on the date that they actually
2 tried your case, what did you think was happening
3 that day?

4 A I was informed by the guard -- because they
5 come around and they tell you to "roll it up," and
6 that means to get all of your materials up, all
7 your bedding, linens, your mat and everything.
8 They said, Roll it up, Fauling. Your people is up
9 front bonding you out. I thought I was going home.

10 Q Was there another condition set on that bond
11 that was a requirement for you to get out?

12 A I had obtained a lawyer.

13 Q What about a GPS monitor?

14 A Yes, sir. I guess I was supposed to be on
15 house arrest.

16 Q Were they getting you set up for that that
17 day?

18 A As far as I know, yes, sir. Like I say, only
19 thing I was told when the guard came around that
20 day was to roll it up. It was me and other
21 individuals getting bonded out by the same bail
22 bondsman. They told us both to roll it up. He
23 went home; I stayed.

24 Q So if your trial started on December 12th,
25 that would have been the same day that you are

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 talking about?

2 A I reckon so.

3 Q When did you -- they didn't ever let you out?

4 A No, sir.

5 Q When did you find out that they had a trial
6 in your absence that day?

7 A I kept -- basically, I was aggravating the
8 officers and wanting to know what was going on with
9 my bond, why weren't they releasing me. And an
10 inmate came back from court and walked up to my
11 cell, and he said, Man, they just tried you in your
12 absence, dude. They just gave you 30 years. And I
13 was like, What? No. No. He said, Man, they just
14 picked a jury and everything. He said, Man, I'm
15 sitting in the courtroom, I'm witnessing this, man.
16 He said, Man, you gone. You gone.

17 Q At some point after that, did you go back
18 over to the courthouse?

19 A Yes, sir. They brought me back from SCDC
20 from R&E and took me back -- I don't know the exact
21 date, but....

22 Q I'm talking about for sentencing.

23 A Oh, yes, sir. It was a couple days after the
24 trial or whatever. They brought me for unsealing
25 the sentence. They said they had to unseal the

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 sentence, and the judge was going to read to me my
2 convictions and what went on.

3 Q Did you have an opportunity when the judge
4 was doing that to tell the judge that you thought
5 your were bonding out --

6 A Yes, sir. Yes, sir.

7 Q You told him everything that you just told
8 this Court?

9 A Yes, sir. Yes, sir.

10 Q Exactly --

11 A His understanding was that he thought I had
12 got out on bond and skipped bail, is what he at
13 first was staying. And I told him, No, sir. I
14 said, I'm in the county jail. I never got out.
15 And I explained to him about what they were saying
16 about the paperwork, and he told me -- he's like,
17 Say that again? And I told him again. And he
18 said, Oh, my goodness, we're going to see this case
19 again.

20 Q And, at that point, you got 30 years?

21 A Yes, sir. He read it off, yes, sir.

22 Q Prior to the sentence, did your counsel
23 Deborah Butcher make a motion to be relieved?

24 A As far as I know -- no, I kept asking her to
25 relieve herself, you know. And I said it the day I

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 went over to the courthouse for them to unseal my
2 sentence. I told him they was supposed to let me
3 bond out. I said that was part of the agreement
4 when I got the bond, to bond out to get an
5 attorney.

6 Q I'm talking about after the trial, right
7 before you got sentenced on the record, do you
8 recall that she made a motion for the --

9 A Yes. Yes, sir.

10 Q Okay. And, at that point, did she help you
11 at all or file a notice of appeal on your behalf?

12 A No, sir. She said she was glad to be
13 relieved.

14 Q So did you have anyone assist you with notice
15 of appeal?

16 A The judge asked a lawyer in the courtroom,
17 Breen Stevens, to help me with the appeal. He
18 granted me --

19 Q And he was the chief public defender?

20 A Yes, sir. The judge granted me -- what do
21 they call it? I forgot what they call it. He
22 granted me a motion so that I could -- it would
23 allow me ten more days -- a reconsideration
24 hearing, that's what it was.

25 Q Did Breen Stevens tell the Court he couldn't

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 help you because he had a conflict?

2 **A** Yes, sir, he did. He informed Judge Dixon,
3 and Judge Dixon said, Don't worry about it, file
4 the paperwork. And then when I got back to SCDC
5 after that court hearing, I got a letter from Breen
6 Stevens saying that he couldn't do it, there was a
7 conflict of interest, and I was left on my own.

8 **Q** Okay. At some point -- hold on just a
9 second, please.

10 (A brief pause in the proceedings.)

11 **Q** At some point, did you find out that that
12 appeal was dismissed because it wasn't served
13 properly.

14 **A** No, sir. No, sir. The only thing I knew of
15 was that -- he said he would allow me ten more days
16 for the appeal to go through, and I thought Mr.
17 Breen Stevens was handling it.

18 **Q** Did you ever get a notice from the court
19 saying that we dismissed your appeal because it
20 wasn't timely filed?

21 **A** No, sir.

22 **Q** So you never heard anything about it?

23 **A** No, sir.

24 **Q** You just didn't get an appeal?

25 **A** No, sir.

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 **Q** Okay.

2 **A** And, basically, what I was doing -- I was
3 basically, what you call, jailhouse lawyers, What
4 do I need to do? I was trying to go to the law
5 library, but at R&E they won't let you do that.
6 It's not like you are in SCDC. They won't let you
7 go anywhere to a law library, so I didn't know what
8 the procedure was.

9 **Q** So at some point later, like in January of
10 2018, did you go back to Orangeburg to deal with
11 the Calhoun charges?

12 **A** Yes, sir.

13 **Q** And Ms. Butcher had been relieved, so you did
14 not have a lawyer?

15 **A** No, sir.

16 **Q** Did you end up meeting with the solicitor,
17 Ashley Cornwell --

18 **A** Yes, sir.

19 **Q** -- to talk about that plea?

20 **A** Yes, sir. She took me to the back of the
21 courtroom in Orangeburg County Courthouse, and she
22 went over all of my paperwork and everything,
23 explaining it to me. It was me, her, two guards
24 from R&E correction -- Kirkland Correctional
25 Institution, and a clerk from the courthouse.

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 **Q** But there was no lawyer there?

2 **A** No. No, sir. I had no lawyer.

3 **Q** Okay. And did she -- what did she tell you
4 she was going to do if you didn't take the plea --

5 **A** She told me if I changed the sentence or said
6 anything other than to go along with the plea, she
7 would make sure that I got life and 180 years. She
8 said, I will make sure that you get life on
9 habitual offender. I will enhance the charges.
10 You seen I done did it. I did the last ones.

11 **Q** So did you feel like you had any other choice
12 but to go forward?

13 **A** No, sir.

14 **Q** Did she explain to you -- did she go over the
15 discovery with you?

16 **A** She went over all of the paperwork, read
17 everything, and about every other page she would
18 tell me, But if you challenge me on this, I'll make
19 sure you get life.

20 **Q** Did she explain to you your rights, right to
21 trial, right to have an attorney?

22 **A** No.

23 **Q** Things like that?

24 **A** No. No. She was just reading over each bit
25 of the paperwork, and I asked her about the gun

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 charges and everything, and she said, Well --
2 because one of the guns was supposed to be missing,
3 and she said, I'm going to throw them out, you
4 don't even have to worry about them, but you need
5 to worry about what I'm telling you right now.. If
6 you challenge me on these sentences, she said, I
7 will enhance them, and I'll get you life.

8 Q Okay. Now, you were planning after
9 pleading -- immediately after pleading to make a
10 motion in front of Judge Dixon to reconsider?

11 A Yes, sir.

12 Q And you asked him for ten years?

13 A Yes, sir.

14 Q What did you think was going to happen if he
15 gave you ten years on the trial instead of the 30,
16 because you had just pled to a negotiated 30 years
17 on the other charges?

18 A I thought all of this was combined. That's
19 what I understood that everything would be combined
20 as one.

21 Q So did anyone explain to you that that's not
22 the way it was?

23 A No, sir. Like I say, when they brought all
24 of the Calhoun charges and everything to Orangeburg
25 County, they kept saying this is all one charge,

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 this is just one thing, and that's when I asked for
2 a reconsideration hearing. And, you know, that's
3 when he -- he said I'll grant you a reconsideration
4 hearing, so you'll have ten more days to file your
5 appeal, and if it comes in front of me, then we'll
6 look to see what we can do about this
7 recommendation.

8 Q If you knew they were trying your case in
9 Orangeburg on the trial, would you have been there?

10 A Yes, sir. Yes, sir. I've never missed a
11 court date.

12 Q Did you even want a trial?

13 A No, sir. I never wanted a trial. I would
14 have taken a plea if there was one, you know. But,
15 no, I'm -- I'm not trying to make it sound bad in
16 the court, but I'm never putting my life in the
17 hands of 12 people.

18 MR. TARR: That's all I have.

19 MR. FAULING: Can I say this? As far as this
20 right here, they talking about they came and told
21 me about coming to the courthouse for the trial, I
22 don't know where that come from. They told me I
23 was bonding out. If they were holding a trial in
24 your absence or anything -- if you try to tell them
25 you're not coming, they have officers at the jail

SHELLY THOMAS FAULING - DIRECT EXAMINATION

1 that will restrain you, place you in a van, and
2 they will bring you over and place you in a holding
3 cell and inform you of your rights, because I've
4 done been in jail, and I've seen this done.

5 MR. TARR: Okay. That's all I have, Your
6 Honor.

7 THE COURT: I guess I would like to know how
8 you had a bench warrant against you if you always
9 came to your court appearances?

10 MR. FAULING: That was a probation violation
11 bench warrant.

12 THE COURT: Okay. Thank you, sir.

13 MR. TARR: It's my understanding, Your Honor,
14 that he never bonded out at any point. So I don't
15 think that the bench warrant came because he was
16 out on bond and didn't show up.

17 THE COURT: There was successive charges --

18 MR. TARR: Yes, but I don't think he bonded.

19 MR. FAULING: They issued a bench warrant
20 because I was in the county jail.

21 THE COURT: If he got charged with another
22 set of charges, you had to be out at some point.

23 MR. TARR: (Inaudible).

24 THE COURT: Okay. Ms. Dixon.

25

SHELLY THOMAS FAULING - CROSS EXAMINATION

CROSS EXAMINATION

BY MS. DIXON:

Q How are you doing today?

A Good. How are you?

Q Good. And I just want to make sure -- I know your lawyer has discussed this, and the judge has discussed this, that you do understand the type of relief you could get is only -- if the judge grants relief, these charges all come back; do you understand that?

A Yes, ma'am.

Q And how many manufacturing methamphetamine charges are you currently serving time for?

A Three.

Q Three. And do you know the sentencing ranges for each of those?

A I do not.

Q Ten to 30.

So if the judge were to sentence you to the max on each of those, and do them consecutive, do you know how much time you could be serving?

A No, ma'am. I would have to check with the classification at the jail.

Q 90 years. If you get three 30-year sentences

SHELLY THOMAS FAULING - CROSS EXAMINATION

1 run consecutive, that's a total of 90. So you
2 understand that's a potential risk --

3 A Yes, sir.

4 Q -- that you could face if granted a new
5 trial?

6 A You explained it that way, yes, ma'am.

7 Q And knowing that, you do want to go forward?

8 A Yes, ma'am.

9 Q And tell me this: If you have never missed
10 any court dates, why did you refuse transport?

11 A I did not refuse transport. Like I told
12 them, they told me I was bonding out. I just
13 rolled up my mat and everything and waiting for my
14 sister to bond me out.

15 Q So no one came to you to transport you?

16 A No, ma'am. The only thing they said is, Roll
17 it up, Fauling, you're bonding out.

18 Q That's your story, no one came to you --

19 A No, ma'am, no one came to me.

20 Q And, let's see, going on to the plea hearing
21 itself. Now, you told the judge that you
22 understood you had a right to a lawyer, correct?

23 A Yes, ma'am.

24 Q And the judge told you it was dangerous to
25 represent yourself, correct?

SHELLY THOMAS FAULING - CROSS EXAMINATION

1 **A** Yes, ma'am.

2 **Q** And I believe you told the judge, quote, I'm
3 under no duress?

4 **A** Yes, ma'am.

5 **Q** You did tell the judge that?

6 **A** Yes, ma'am.

7 **Q** And you told the judge that you did not want
8 a lawyer?

9 **A** I did not want Deborah Butcher, no, ma'am, I
10 did not.

11 **Q** And you told the judge you understood Ms.
12 Cornwell did not represent you?

13 **A** Yes, ma'am.

14 **Q** You told her (sic) you understood
15 Ms. Cornwell was not your lawyer?

16 **A** Yes, ma'am.

17 **Q** She was not looking out for your best
18 interest, because she was not your lawyer; you knew
19 that, correct?

20 **A** Well, she was telling me that if I didn't
21 take that plea, she was going to give me life.

22 **Q** But you told the judge you didn't want a
23 lawyer?

24 **A** No, ma'am.

25 **Q** And the judge told --

SHELLY THOMAS FAULING - CROSS EXAMINATION

1 **A** I did not want Deborah Butcher.

2 **Q** And the judge told you you could be screened
3 for a court appointed attorney, and you told him
4 you did not want that?

5 **A** That's when he said he would get Breen
6 Stevens to represent me.

7 **Q** I'm talking for trial. Breen would be for
8 the appeal.

9 Let's see. You told the judge you understood
10 you would be held to the same standards of a
11 lawyer, correct?

12 **A** If you say so.

13 **Q** Okay. That's Page 13 of the plea transcript.

14 And do you recall signing a document in court
15 indicating you were waiving your right to a lawyer?

16 **A** Ma'am, I signed a bunch of documents that
17 day.

18 **Q** Okay. And if the record reflects you did so,
19 would you dispute that?

20 **A** No, ma'am. If my signature is on it, I
21 signed it.

22 **Q** Okay. And then -- let's see. You recall the
23 judge explaining to you the constitutional rights
24 you were waiving?

25 **A** He explained a lot of things.

SHERI FOGLE - DIRECT EXAMINATION

1 Q Okay. And if it's in the plea colloquy, you
2 would not dispute that, correct?

3 A Say that again?

4 Q If it's in the plea transcript, you would not
5 dispute that?

6 A Yes, ma'am, if it's in the transcript.

7 MS. DIXON: Nothing further, Your Honor.

8 THE COURT: Mr. Tarr?

9 MR. TARR: I have no redirect.

10 THE COURT: Thank you, sir. You can step
11 down.

12 (A brief pause in the proceedings.)

13 MR. TARR: At this time, we call Sheri Fogle.

14 THE WITNESS: Sheri Fogle.

15 (SHERI COOK FOGLE, having been duly sworn,
16 testified as follows:)

17 DIRECT EXAMINATION

18 BY MR. TARR:

19 Q Sheri, could you please spell your name?

20 A S-H-E-R-I, C-O-O-K, F-O-G-L-E.

21 Q Sheri, how are you related to Shelly Fauling?

22 A He's my brother.

23 Q Okay. And I just wanted to real quickly with
24 you talk to you about what happened right before
25 they tried him in his absence. Were you trying to

SHERI FOGLE - DIRECT EXAMINATION

1 bond him out?

2 A Yes, sir.

3 Q Do you remember when that was in reference to
4 the actual trial?

5 A I think it started that Friday before, and
6 then the day of the trial. I didn't know about the
7 trial at the time, but he was bonding out, and then
8 I found out that they were actually in a trial for
9 him.

10 Q You had paid a bondsman?

11 A Yes, sir.

12 Q It was your understanding that bondsman was
13 working on getting him out?

14 A Yes, sir.

15 Q And then, at some point, did the -- did you
16 hear from the bondsman again?

17 A I heard from the bondsman that -- he
18 contacted me and let me know that they couldn't go
19 along with the bond, because at the same time they
20 were having a trial for him.

21 Q And what did you do then?

22 A I went to the courthouse.

23 Q And what did you see when you went to the
24 courthouse?

25 A They were having him -- he was not there, but

SHERI FOGLE - DIRECT EXAMINATION

1 they were having his trial.

2 Q Did you talk to Tommy after that?

3 A I talked to him after the trial was over. I
4 left the courthouse, uh-huh.

5 Q Did you want to know why he wasn't there?

6 A Yeah, I did. I mean, I wanted to know why
7 the trial was going on. I paid a bondsman. I
8 figured he was coming home. So I didn't know of
9 anything about a trial on that day, no.

10 Q What did he tell you?

11 MS. DIXON: Object to hearsay, self-serving.
12 I realize he is a party opponent, but....

13 THE COURT: Do you want to respond to that?

14 MR. TARR: He's already testified. I'll
15 withdraw the question. He already testified to
16 that.

17 That's all we have for you, but she may have
18 a question for you.

19 THE WITNESS: Okay.

20 MS. DIXON: I have no questions.

21 THE COURT: Thank you, ma'am.

22 MR. TARR: Your Honor, I would like to call
23 Deborah Butcher.

24 THE CLERK: State your full name for the
25 record.

DEBORAH BUTCHER - DIRECT EXAMINATION

1 THE WITNESS: Deborah Butcher.

2 (DEBORAH BUTCHER, having been duly sworn,
3 testified as follows:)

4 DIRECT EXAMINATION

5 BY MR. TARR:

6 Q How are you today, Ms. Butcher?

7 A Very well, thank you.

8 Q You are here today because in the past you
9 had represented Mr. Fauling?

10 A Yes.

11 Q Okay. And how did you come to be his lawyer
12 at that time?

13 A I was doing 608 appointments back then, as
14 well as my private practice, and he came to me
15 through that.

16 Q Okay. And there was some conflict with Breen
17 Stevens and the public defender's office
18 representing him, so you got the case, basically?

19 A I wouldn't know about the conflict or
20 anything. I was just appointed, and got a letter I
21 was appointed.

22 Q Now, how would you describe your relationship
23 with Mr. Fauling?

24 A He was a difficult client.

25 Q Not the greatest?

DEBORAH BUTCHER - DIRECT EXAMINATION

1 **A** I don't think I would be the greatest if it
2 was those circumstances. Many criminal clients can
3 be difficult.

4 **Q** Okay. I want to talk to you -- he was --
5 during the course of your representation, he was
6 trying to bond out or wanted to bond out, wanted to
7 get in front of a judge to get --

8 **A** Yeah. I don't recall exactly.

9 **Q** Do you recall him asking you to get him in
10 front of a judge to get the bench warrant lifted so
11 that he could get out?

12 **A** I don't recall. If I have a client that
13 there's a possibility of a bond, I would usually
14 take them in front of a judge.

15 **Q** Do you recall actually having the hearing
16 where the bench warrant was lifted?

17 **A** I, honestly, do not recall.

18 **Q** And then -- well, can I hand you up a
19 document that's marked Applicant's Exhibit 1 for
20 identification?

21 **A** Yeah.

22 **Q** And just tell me if this refreshes your
23 recollection. This is an order (inaudible).

24 **A** So, evidently, yes, I must have filed a
25 motion, and his bench warrant was lifted.

DEBORAH BUTCHER - DIRECT EXAMINATION

1 **Q** And it indicates that there was a hearing
2 November 20.

3 And can you tell the Court when it was filed?

4 **A** December 8th.

5 **Q** That would be (inaudible)?

6 **A** Yes.

7 **Q** And the trial in this case was December 12,
8 (inaudible)?

9 **A** I would have to refer to the record on that.

10 **Q** If the record says (inaudible)?

11 **A** Yes, then I would assume so.

12 MR. TARR: We would like to move in
13 Applicant's Exhibit 1.

14 MS. DIXON: No objection.

15 THE COURT: Admitted.

16 (Applicant's Exhibit 1 marked and admitted.)

17 **Q** **(BY MR. TARR)** Now, the trial started on
18 December 12, 2017. Tommy was not there, correct?

19 **A** Correct.

20 **Q** Okay. And you told the Court at some point
21 after jury selection that he refused to come?

22 **A** I'm not sure if I told the Court or the jail
23 told the Court.

24 **Q** Okay. If I told you that there was no --
25 nothing in the record of the jail telling them

DEBORAH BUTCHER - DIRECT EXAMINATION

1 anything, and that you told them that he refused to
2 come, would you agree that --

3 A It's in the record that I said that?

4 Q Yes. Yes.

5 A If I said that, and it's on the record, then
6 I would have been the one -- I would defer to the
7 record.

8 Q But when they were loading up to bring people
9 from the jail to the courthouse, you were not
10 there, correct?

11 A No.

12 Q So can you tell the Court today how you came
13 about that information, that he refused to come?

14 A I don't recall. I would only be assuming
15 that perhaps the solicitor told me that he didn't
16 come or the jail informed me.

17 Q And, again, if you don't remember --

18 A I don't. I apologize.

19 Q That's the right answer. That's the right
20 answer. I'm not trying to get you to say anything
21 you don't remember.

22 And you moved -- did you move for a
23 continuance because he wasn't there?

24 A Yes.

25 Q And the judge -- did the judge deny that?

DEBORAH BUTCHER - DIRECT EXAMINATION

1 **A** Yes.

2 **Q** Did you object to him denying that as far as
3 you can remember?

4 **A** I don't typically object to the judge's
5 rulings. You are talking about -- I mean, I....

6 **Q** Did you make an objection to him denying your
7 motion? Because would you agree there is a
8 distinction between making a motion and making an
9 objection, in terms of appellant review?

10 **A** I would have maybe argued a little farther,
11 but when the judge rules, the judge rules. I would
12 renew an objection at the end of a trial -- or my
13 motion, rather.

14 **Q** Now, you had the trial in his absence, and
15 then they -- did they bring him over later for
16 sentencing, and he actually came to the courthouse?

17 **A** I -- sorry, I do not recall. I defer to the
18 record.

19 **Q** All right. If it says that he was brought
20 over two days later and received 30 years, and you
21 were there, would you dispute that?

22 **A** If it's in the record, I agree with the
23 record.

24 **Q** Do you recall moving to be relieved at that
25 same time?

DEBORAH BUTCHER - DIRECT EXAMINATION

1 **A** I -- I did move to be relieved. I don't know
2 if it was at the end of the trial or end of
3 sentencing.

4 **Q** But, in any event, you did not file a notice
5 of intent to appeal in this case?

6 **A** No, I did not.

7 **Q** Okay. Do you --

8 **A** Not that I recall.

9 **Q** Do you know why you didn't? Like, could you
10 have filed it and made being relieved effective
11 after filing the notice?

12 **A** Not if the judge had already ruled, no. But
13 I don't recall filing one. I'm not saying if I did
14 or didn't, but that would be with the court of
15 appeals.

16 **Q** So, I guess, if you don't remember whether or
17 not you filed one, do you remember the supreme
18 court sending a letter to you saying that they had
19 you down as counsel, and that there was a problem
20 with the notice of appeal that was filed by Mr.
21 Fauling and asking you if you wanted to correct it?
22 Do you recall that?

23 **A** I don't recall that. If you have anything to
24 refresh my memory.

25 **Q** No, I don't have.

DEBORAH BUTCHER - CROSS EXAMINATION

1 **A** Okay.

2 **Q** In terms of the Calhoun charges that he pled
3 to later, those were part of the charges that you
4 got relieved on?

5 **A** Correct.

6 **Q** So you didn't have any involvement with that?

7 **A** No.

8 **Q** Okay. Do you recall whether or not any
9 offers were ever made by the solicitor in this case
10 prior to you -- prior to the trial?

11 **A** Yes, there were.

12 **Q** Do you recall communicating those to Mr.
13 Fauling?

14 **A** Yes. As a matter of fact, I think we went on
15 the record for him to turn those down.

16 **Q** Okay.

17 MR. TARR: That's all I have, Your Honor.

18 THE COURT: Ms. Dixon?

19 **CROSS EXAMINATION**

20 **BY MS. DIXON:**

21 **Q** Ms. Butcher, how are you today?

22 **A** Good.

23 **Q** And can you tell us just real briefly the
24 evidence that the State had against Mr. Fauling for
25 the Orangeburg manufacturing trial?

DEBORAH BUTCHER - CROSS EXAMINATION

1 **A** I know they had a video that showed
2 everything with it. It was the video from the gas
3 station, as I recall.

4 **Q** And did it show him putting things in places
5 where law enforcement later found them?

6 **A** Yes. Yes.

7 **Q** Okay. And then in terms of that trial, you
8 did, in fact, request a continuance based on him
9 not being there?

10 **A** Correct.

11 **Q** And is it your understanding that the State
12 had arranged transportation?

13 **A** My understanding, yes.

14 **Q** And let's see -- to your knowledge, did he
15 know that trial could proceed in his absence?

16 **A** Yes. When I meet with clients I go over all
17 of that from the beginning, the appeal, you know,
18 the ten days and everything.

19 **Q** Got you.

20 And I think you said this on direct, but
21 typically when a judge issues a ruling, you don't
22 object to that ruling on the record?

23 **A** No.

24 MS. DIXON: Okay. Nothing further.

25 THE COURT: Mr. Tarr?

ASHLEY CORNWELL - DIRECT EXAMINATION

1 MR. TARR: No redirect.

2 THE COURT: Thank you, ma'am. You can step
3 down.

4 THE WITNESS: Am I free to leave?

5 MS. DIXON: Yes.

6 THE COURT: Fine with me. Yes, ma'am, that's
7 fine.

8 MR. TARR: You ready for the next witness?

9 THE COURT: I am.

10 MR. TARR: Your Honor, we call Ashley
11 Cornwell.

12 THE CLERK: State your full name for the
13 record.

14 THE WITNESS: Ashley Brooke Cornwell.

15 (ASHLEY CORNWELL, having been duly sworn,
16 testified as follows:)

17 **DIRECT EXAMINATION**

18 **BY MR. TARR:**

19 **Q** How are you doing, Ms. Cornwell?

20 **A** Doing well, thank you.

21 **Q** You were the prosecutor in Mr. Fauling's
22 case?

23 **A** I was.

24 **Q** The solicitor in the Orangeburg and in
25 Calhoun?

ASHLEY CORNWELL - DIRECT EXAMINATION

1 **A** Yes, I believe so.

2 **Q** During that time when you were prosecuting
3 him, did you extend any offers for plea prior to
4 the trial in the case?

5 **A** I did.

6 **Q** Do you recall what they were?

7 **A** To the best of my recollection, I believe he
8 was offered either a cap of 20 or a range of 10 to
9 20. It was double digits, I do know that.

10 **Q** And do you recall a hearing that occurred
11 about three weeks prior to the trial where there
12 was a bench warrant lifted?

13 **A** I do.

14 **Q** And I believe at trial when Mr. Fauling
15 wasn't there, you argued that he had received
16 notice to be there, that you were going to try his
17 case, and he could be tried in his absence if he
18 wasn't there at that November 20th hearing?

19 **A** Yes. So when he filed for bond and lifting
20 of the bench warrant, we made that motion. When
21 the judge granted the motion to lift the bench
22 warrant and set bond, we did place on the record
23 that he was going to be placed on the trial docket
24 for the December 12th term, and should he fail to
25 appear, he would be tried in his absence.

ASHLEY CORNWELL - DIRECT EXAMINATION

1 **Q** And that was done because he might be bonding
2 out?

3 **A** Typically, if I have a trial I place on the
4 docket, I always place that, regardless whether I
5 think they were going to bond out or not.

6 **Q** I mean as far as the warning that you need to
7 be there.

8 **A** I give that warning in every case, again,
9 regardless of whether I think they are going to
10 bond out or not, if they don't have a bond.
11 Because we have had refusals to come over, so we
12 like to make sure that everyone is aware that you
13 can come or not come, but your trial is going to go
14 forward.

15 **Q** But he wasn't brought over there to be
16 warned. He was brought over there because he was
17 making a motion to lift a bench warrant?

18 **A** Yes. And --

19 **Q** I mean, so you weren't just calling him over
20 there to say, hey, I know you are in jail, but
21 we're going to have this trial this week, you need
22 to be there. It was because he was over there to
23 get a bench warrant lifted, right?

24 **A** I believe -- and if my memory serves
25 correctly -- there was several motions that were

ASHLEY CORNWELL - DIRECT EXAMINATION

1 made during that hearing. I think we did also
2 place -- have a Frank's hearing -- no -- where we
3 placed the offer on the record, and he rejected on
4 the record. So I think that that was included in
5 that motion. I think there was a bond motion.
6 There was the bench warrant motion. We were kind
7 of lining everything up. Because, as you said,
8 that was the month before we had placed it on the
9 trial docket, and we knew we were placing it on the
10 trial docket at that time.

11 Q Okay. And at the trial when you were telling
12 Judge Dixon that you had given him notice and given
13 him notice on November 20th, you cited State v.
14 Ravenel as the rule for -- that we gave him notice,
15 and we warned him that he could be tried in his
16 absence, right?

17 A Yes.

18 Q And State v. Ravenel, Ravenel was out on
19 bond, do you recall, or would you agree with that?

20 A I would agree.

21 Q Okay. And when you are in the middle of the
22 trial and Mr. Fauling is not there, at some point
23 after jury selection, there's a reference to you
24 telling the Court that he refused to come. Do you
25 recall that?

ASHLEY CORNWELL - DIRECT EXAMINATION

1 **A** I do.

2 **Q** You weren't at the jail when they were
3 bringing people to come over to court, were you?

4 **A** No. But as the prosecutor handling that case
5 and trying that case, it's my duty to arrange for
6 transport, and so we would have put a transport
7 order in with the jail that he was to have been
8 brought over first thing that morning, which would
9 have been by 9:00 a.m. When we got up there that
10 morning, I was approached by the jail when I asked
11 if he had been brought over yet and was informed
12 that he had not been brought over.

13 **Q** Do you know who told you that?

14 **A** I don't recall which jail person. We had
15 about three -- depending whose shift it was -- that
16 would come over. But, typically, they could come
17 up and tell me any issues that they had with
18 transport, and that was one of the issues.

19 **Q** Would you agree that none of the jail people
20 or anyone with personal knowledge of him refusing
21 to come was on the -- was ever on the record at the
22 trial saying that he refused to come?

23 **A** I don't know that we ever placed it on the
24 record. I do know that there was a conference with
25 Judge Dixon back in chambers where the judge did

ASHLEY CORNWELL - DIRECT EXAMINATION

1 ask the transport person to tell him what was going
2 on and what happened, and that's when -- as an
3 officer of the court -- I believe that jail person
4 did come in and say we tried to bring him over,
5 he's refused to come over.

6 Q How long were you a prosecutor?

7 A Total for ten years.

8 Q And you are a defense lawyer now?

9 A I am.

10 Q And you are aware that if the jail wants
11 someone to do something, they can use force to make
12 them do it?

13 A I will say that they can, absolutely. It is
14 less likely they do that, particularly now with
15 lawsuits and stuff like that. There is a liability
16 with defendants now having -- I mean, he doesn't
17 have to appear at his trial. He does not have to
18 testify. He does not have to do anything like
19 that. So as long as he is given the option to
20 come, if he refuses that option, then the jail, in
21 my experience, is not going to force him to come
22 unless the judge, you know, simply says, look, put
23 him in the spit mask, put him in the restraints,
24 and forcibly make him come, and that was not
25 instructed this time.

ASHLEY CORNWELL - DIRECT EXAMINATION

1 **Q** But if he was out on bond and had a bondsman,
2 that bondsman would be authorized by law to use
3 force to make sure he came to court. If he tried
4 to run, he could go get him, find him, and bring
5 him to court, and he's supposed to, correct?

6 **A** Absolutely. Either that, or he has to pay
7 the estreatment.

8 **Q** Right. And no one worries about suing a
9 bondsman for doing their job?

10 **A** I can't speak to what a bondsman thinks or
11 would or would not do.

12 **Q** But, I mean, just generally speaking, let's
13 say someone is sitting in the cafeteria at the jail
14 and they are done with their lunch and it's time to
15 go back to their cell, something like that, and
16 they are like, I'm not going back; is it your
17 testimony that they can't make them go back and use
18 force to make them do what they want them to do?

19 **A** Oh, no. I think there is situations and
20 circumstances where force is necessary and
21 justifiable. I think that you pick your time and
22 place. And, again, I'm not a jailer, so I can't
23 attest to what they were thinking or not thinking.
24 But, you know, if an inmate is supposed to come to
25 court for something in their case and they refuse,

ASHLEY CORNWELL - DIRECT EXAMINATION

1 I think at that point the jail can inform the Court
2 of the refusal, and the Court can make a decision
3 at that point as to how they would like to proceed.

4 Q When there needs to be a knowing and
5 intelligent waiver of a voluntary -- of a
6 fundamental right, don't you think it is probably a
7 good idea -- if you know where the person is and
8 they are in custody -- to do it on the record?

9 A Again.....

10 Q Generally speaking, would you think that
11 would be the best way to do it?

12 A I believe that having something on the record
13 is always the best way to do something; however,
14 again, if someone is refusing to participate, I
15 think, you know, if they are not going to come to
16 court, if they don't want to come court, refusing
17 to come to court, forcing them to come to court,
18 can open a whole other Pandora's box of issues and
19 problems and potential liabilities.

20 Q What do you think would have happened if
21 Judge Dixon had ordered the jail to bring Mr.
22 Fauling in front of him to tell him to his face
23 that he doesn't want to exercise his right to be
24 there? Do you think they would have said, No,
25 Judge, we're not bringing him?

ASHLEY CORNWELL - DIRECT EXAMINATION

1 **A** That, I don't know.

2 **Q** Have you ever --

3 MS. DIXON: Objection; speculation.

4 MR. TARR: Your Honor, I would just argue
5 that --

6 THE COURT: (Inaudible).

7 **Q** **(BY MR. TARR)** In your experience, have you
8 ever seen a jailer tell a circuit court judge,
9 no?

10 **A** Unfortunately, I have. We actually had an
11 Orangeburg County problem where, you know, bondsmen
12 would try to bring defendants who, you know, had --
13 didn't have bench warrants, but were violating
14 bonds and conditions and trying to bring them to
15 the jail, and the jail refused to take them. The
16 judge, on several occasions, had to bring the
17 jailer over and have conversations with them about
18 what orders they are supposed to follow.

19 So, now, was that the case in this case? No.
20 But you are asking me if I have ever seen a jailer
21 refuse an order; unfortunately, yes, I have.

22 **Q** Okay. Let's move on to when Tommy was
23 brought back over for the Calhoun charges to enter
24 a plea pro se.

25 Do you recall that at some point he had

ASHLEY CORNWELL - DIRECT EXAMINATION

1 communicated to you that he had never seen any of
2 his discovery?

3 A He did communicate that with me, yes.

4 Q And you are aware that his relationship was
5 not good with Ms. Butcher, and they didn't have a
6 lot of conversations -- substantive conversations
7 about his charges?

8 A I was. But I do want to clarify. You keep
9 saying "Calhoun charges," but I believe he had
10 other Orangeburg charges in that as well. He had
11 three different sets of charges. So he had a set
12 from Orangeburg he bonded out on, and then he
13 picked up another set from Orangeburg. And I think
14 the bench warrant was issued because he failed to
15 appear on a set of Calhoun charges. So he tried --
16 we tried him on one set of the Orangeburg charges,
17 and then during that plea hearing, it was a
18 combination of both Orangeburg charges and Calhoun
19 charges.

20 Q All right. Thank you.

21 Now, at the plea hearing -- prior to the
22 hearing, you had a meeting with Mr. Fauling.

23 A I did.

24 Q Where was that located?

25 A There is a room in the back of the Orangeburg

ASHLEY CORNWELL - DIRECT EXAMINATION

1 courtroom, the main courtroom. It has a little
2 glass window, but you can shut the door. It's
3 private. So we went back there and met.

4 Q And I'm just going to read you some things
5 that I took notes on as far as what you told the
6 Court, Judge Dixon, about things that you had
7 talked to Mr. Fauling about. If you can recall --
8 do you recall saying that you explained to Mr.
9 Fauling all of his rights?

10 A I do.

11 Q And that he did have a right to an attorney?

12 A Yes.

13 Q And you explained he had a right to a trial?

14 A Yes.

15 Q And you explained if he had any defenses he
16 felt like should be presented, that he could do
17 that as well at trial?

18 A Yes.

19 Q And you went through every page of discovery
20 with him?

21 A I did.

22 Q And you explained everything, and any
23 questions he had, you did answer for him?

24 A Yes.

25 Q Okay. And that was after you had told him

ASHLEY CORNWELL - DIRECT EXAMINATION

1 that if he didn't plea, that you would seek life
2 without parole as having three strikes?

3 **A** I informed him that he would be eligible for
4 life without parole, that he was already -- he had
5 a strike on his record already. He was convicted
6 of this. So I was giving him all of these
7 sentencing ranges and stuff.

8 I would disagree with his (inaudible) that I
9 was threatening him multiple times. In fact, I
10 made it very clear to him that he had every right
11 to challenge these, but I felt that it was my duty
12 to explain to him the potential sentences.

13 Basically, I went through the whole plea
14 colloquy with him. You know, you understand that
15 you are potentially facing up to this if the judge
16 were to run it -- the same thing Judge Dixon was
17 going to tell him so that he was aware of
18 everything that could happen and would happen. But
19 I did not threaten him that if he didn't take this,
20 he would get life plus 180 years.

21 **Q** So is it your testimony that if he had not
22 taken this, you would not have sought life without
23 parole? I mean, because you told the judge on the
24 record that you were going to seek life without
25 parole.

ASHLEY CORNWELL - DIRECT EXAMINATION

1 **A** I believe he was eligible for life without
2 parole. At that time, we would have had to have
3 served him notice. We did not serve him on
4 anything at that point. But, yes, that would have
5 been a potential sentence for him.

6 **Q** But you weren't trying him at this time?

7 **A** No.

8 **Q** So that's why you wouldn't have served him?

9 **A** No. And, again, I just felt that he needed
10 to be informed on what the potential consequences
11 would be.

12 **Q** I believe you told me that this was very --
13 these charges and this plea were very intertwined
14 with the actual trial, and that the whole reason
15 that you did the plea this way and did the 30
16 concurrent is because he had gotten 30 at trial?

17 **A** Yes. And I'll tell you that I was very
18 concerned for Mr. Fauling with the trial in his
19 absence. Certainly, we went through trial, and I
20 believe Ms. Butcher, you know, preserved
21 objections. She made objections in the trial, and
22 there were issues that, at least, could have been
23 brought up on appeal.

24 Obviously, as the prosecutor, I felt that the
25 judge made proper rulings on those, but they were

ASHLEY CORNWELL - DIRECT EXAMINATION

1 still -- objections were made to the evidence on
2 some of the things that came in, and so when he was
3 found guilty by the jury, Judge Dixon -- as you
4 know, if you are tried in your absence, it is
5 sealed. It's not announced or publicized until the
6 person can be located and brought forth. So we
7 sealed the sentence. A couple days later, he was
8 brought over. At that time, the sentence was
9 published, and Ms. Butcher moved to be relieved as
10 counsel. Obviously, there was a breakdown in the
11 client relationship, so that was granted.

12 I became concerned that evening. I actually
13 called Breen Stevens myself saying, you know, what
14 about his notice of appeal? If she's been
15 relieved, you know, are you all going to appoint
16 someone to appeal that for him? And Breen kind of
17 told me at the time -- and that may have been right
18 after the trial, maybe not even after sentencing at
19 that time -- that that would be taken care of, that
20 either he would get someone appointed to file the
21 appeal for him, or that later on down the road, if
22 an appeal wasn't filed, it would become a PCR
23 issue. Because I wanted to make sure those rights
24 for him were preserved.

25 And when we brought him over for the plea, I

ASHLEY CORNWELL - DIRECT EXAMINATION

1 believe that's when I informed Judge Dixon that we
2 had -- I talked to Mr. Stevens, and Judge Dixon
3 tried to appoint Mr. Stevens at that time saying
4 since you already discussed it with Ms. Cornwell,
5 why don't I appoint you. And that's when they
6 found out there was a conflict, and that could not
7 be done.

8 So I think what Judge Dixon wanted to do is
9 make sure he had counsel appointed and to file a
10 motion to reconsider, because if a motion to
11 reconsider is filed, it would toll the amount of
12 time before an appeal needed to be done. So we
13 really were trying to protect those rights for him.

14 When it came to the plea, it was kind of the
15 same thing where -- I think I did tell him, and we
16 did talk to Judge Dixon -- where I basically said
17 he had been present for the sentencing, and we
18 sentenced him at one time, we would have tried to
19 handle this all at once so it could be, you know,
20 taken as one plea. Obviously, for future reference
21 on convictions and stuff, it would be one
22 conviction.

23 And so when we did the plea, I think we
24 specifically talked to Judge Dixon about, you know,
25 if there is an appeal, if the appeal is granted

ASHLEY CORNWELL - DIRECT EXAMINATION

1 that, you know, this plea would be along with that
2 to where it would be withdrawn and, you know, so
3 that we wouldn't (inaudible) -- I think you've
4 indicated to me even if he got his appeal granted,
5 now he's pled to this, so he's kind of messed up
6 either way. I think we specifically indicated that
7 this was intricately tied to that, so if one thing
8 is granted, we would let him withdraw the plea and
9 start over.

10 Q Is it your opinion that if Judge Curtis was
11 to vacate the trial plea, the trial, and overturn
12 that, that the plea should be overturned as well?

13 A Yes, or at least be opened to have a sentence
14 reconsidered, because the negotiated 30 years was
15 simply so I could explain to Mr. Fauling, look,
16 we're just doing a negotiated 30, which is what you
17 already have, that way you can't get more time than
18 what you've already been given, and that way it
19 can't be run consecutively or anything like that.

20 It was not my intent to hamstring him to
21 where even if his trial got flipped on appeal, that
22 he would still be stuck with this plea. That was
23 never my intent, and that's what we discussed with
24 the Court.

25 Q Did you find it strange at all that he pled

ASHLEY CORNWELL - DIRECT EXAMINATION

1 to a negotiated 30 years, and then immediately
2 asked the judge to reconsider the sentence from the
3 TIA and give him ten years, because if the judge
4 did that, he would still have 30 on the one he just
5 pled to? So it wouldn't have helped him to get
6 ten. Did that seem like possibly a red flag that
7 he didn't understand what was happening?

8 **A** No. And that is kind of what I was
9 referencing just a moment ago. When he filed that
10 motion to reconsider, I believe that that was just
11 not for the trial. It would have also been for the
12 plea as well to tie those together, to extend the
13 time for the notice of appeal to be filed.
14 Because, obviously, the notice of appeal was
15 extended until the motion to reconsider is heard
16 and ruled upon, and that way that would have given
17 him time to get alternative counsel, to get someone
18 appointed, to look over both of those.

19 So that motion to reconsider, I believe it
20 was the intent of the Court, as well as myself and
21 Mr. Fauling, that motion to reconsider was not just
22 for the trial sentence, but for the plea sentence
23 as well to extend that.

24 **Q** You would agree -- I mean, he's actually
25 begging for ten years during that motion for

ASHLEY CORNWELL - CROSS EXAMINATION

1 reconsideration. I think he even used the words,
2 I'm begging, Your Honor. Do you recall that?

3 A Verbatim, no. But I do know that he was
4 asking for the minimum sentence, and I had told him
5 that was never an option. That was never what the
6 plea offer was.

7 Q But he was, in your opinion, attempting to
8 get ten years on everything, even what he just pled
9 to for 30?

10 A Yes.

11 Q Okay.

12 MR. TARR: That's all I have, Your Honor.

13 THE COURT: Okay. Ms. Dixon.

14 CROSS EXAMINATION

15 BY MS. DIXON:

16 Q Just real briefly. So I believe you
17 testified on direct that he had been in court prior
18 to this, and you informed him at that time on the
19 record of his trial date?

20 A Yes.

21 Q And at that time he was informed of the
22 consequences of not appearing, that he could be
23 tried in absence?

24 A Yes.

25 Q And you arranged transport for him?

ASHLEY CORNWELL - CROSS EXAMINATION

1 **A** I did.

2 **Q** And it's your understanding that he refused
3 transport?

4 **A** Twice.

5 **Q** And do you have any reason to doubt the
6 person from the detention center that -- in terms
7 of when that person relayed that he was refusing
8 transport?

9 **A** No.

10 **Q** And you did say that the judge spoke to that
11 person from the detention center?

12 **A** Yes.

13 **Q** And in terms of the plea, did you tell him
14 you were his lawyer?

15 **A** I did not. And I made sure that when we were
16 in that room that there was the SCDC people back
17 there, as well as Ms. Delaney from the clerk's
18 office. I went through everything with him, you
19 know, page by page. I was not threatening in any
20 manner. I was very professional with him.

21 In fact, I believe once we got to the plea in
22 front of the judge, Mr. Fauling made some kind of
23 comment that he wished I was his lawyer because I
24 had done such a good job in explaining everything
25 to him, and I had been so nice to him. It was kind

ASHLEY CORNWELL - CROSS EXAMINATION

1 of -- at that point, I think the judge reiterated,
2 But you do understand that she's not your lawyer?
3 So he was very clear that I was not his lawyer.

4 Q And you did tell him as well you weren't
5 representing him?

6 A Correct. In fact, I went through the entire
7 colloquy of giving him his Miranda rights
8 beforehand, telling him he did not have to speak to
9 me, that he had a right to an attorney. And then I
10 explained all of the rights that Judge Dixon was
11 going to explain to him in the plea colloquy, to go
12 over all of that. And then we started to go
13 through discovery. There was a couple of charges
14 that he disputed the facts on, and I told him if
15 you are in dispute of the facts, I'll take that,
16 and I'll dismiss those charges. So he actually did
17 get some of those charges dismissed in that
18 meeting.

19 Q And then jumping back to the trial real
20 quick. Do you recall wither Ms. Butler (sic) moved
21 for a continuance?

22 A Ms. Butcher --

23 Q Sorry.

24 A -- did move for a continuance based on the
25 fact that he was not present, and that was denied.

ASHLEY CORNWELL - REDIRECT EXAMINATION

1 **Q** And then at the plea, do you recall whether
2 the judge advised him of his Fareta rights -- I'm
3 sorry -- yes, of the dangers of
4 self-representation?

5 **A** Yes.

6 MS. DIXON: Nothing further.

7 THE COURT: Mr. Tarr, anything further?

8 MR. TARR: No.

9 **REDIRECT EXAMINATION**

10 **BY MR. TARR:**

11 **Q** Ms. Cornwell, you would agree that all of the
12 things that you advised Mr. Fauling before that
13 plea were the types of things -- or, really,
14 everything that a defense lawyer would have advised
15 their client in a similar situation?

16 **A** Yes, I do.

17 MR. TARR: That's the only question.

18 THE COURT: Thank you, ma'am.

19 THE WITNESS: May I be excused?

20 THE COURT: Any objection?

21 MR. TARR: No, Your Honor.

22 MS. DIXON: None, Your Honor.

23 THE COURT: Certainly.

24 THE WITNESS: Thank you.

25 MR. TARR: We have no further witnesses.

CLOSING ARGUMENT FROM MS. DIXON

1 THE COURT: Okay. Ms. Dixon?

2 MS. DIXON: The State has no witnesses. I
3 would like to make brief argument.

4 I would submit to this Court that he has not
5 met his burden of proving any kind of entitlement
6 to relief today. According to the State --
7 according to the testimony, he was actually -- the
8 State did arrange transport for him. He refused
9 that transport. He was told on the record prior to
10 that trial date, of the trial date, and of the fact
11 that the trial could proceed in his absence. So we
12 would submit that there was no constitutional
13 issues with the court proceeding with the trial.

14 We would also submit that Ms. Butcher did
15 move for a continuance, so that is a preserved
16 issue. We have conceded that he is entitled to a
17 direct appeal from his trial.

18 And then in terms of the plea itself, we
19 would just submit that it was a knowing and
20 voluntary plea, that the judge went through all of
21 the Constitutional rights, the sentences, the
22 things he was giving up. It was also very clear
23 from the plea colloquy that Ms. Cromwell (sic) was
24 not his lawyer, and that he had the right to a
25 lawyer, and he waived that right multiple times on

CLOSING ARGUMENT BY MR. TARR

1 the record. So we submit that he has not shown any
2 -- any basis for relief from the guilty plea.

3 THE COURT: Mr. Tarr, do you want to be
4 heard, sir?

5 MR. TARR: Yes, Your Honor.

6 And just from the outset, we are asking this
7 Court to give us time to get a transcript of this
8 hearing. And also we would ask Your Honor to allow
9 us to brief these issues for the Court, both sides
10 -- or both sides prepare proposed orders, either
11 way. I just feel like -- especially with the issue
12 of him not being present and being in custody -- it
13 is of such a novel nature. Ruling upon that
14 without having, you know, a lot of argument and
15 legal analysis and being provided with everything
16 that both of us could find, I just think that would
17 be the best way to do it.

18 There's just a number of things that I think
19 need to be fleshed out and that I would like to
20 bring to the Court's attention. And I certainly
21 don't -- I feel like this hearing produced some
22 testimony that's vital that should be considered in
23 any finding of fact by this Court, and I would like
24 to have the accurate transcription of it so that I
25 could cite it to this Court and apply it to the

REPLY CLOSING ARGUMENT BY MS. DIXON

1 other facts and the law in this case to argue our
2 position.

3 I will say that the State says that my client
4 refused to be there. I can tell you the only
5 testimony that's been offered here or at the trial
6 is hearsay. There's not one person who has said
7 anything in either hearing that has their own
8 personal knowledge of this issue. Ms. Cornwell or
9 Ms. Butcher were not at the jail. They were not
10 trying to get Mr. Fauling to go to his trial. They
11 heard from someone else of whom -- we don't know
12 who. Neither one of them can remember who it was
13 that told them that and, yet, we're supposed to
14 rely on the hearsay on hearsay as to the denial of
15 a very fundamental right. I can't think of a right
16 that's more important to a citizen of this country
17 than to be present at a trial where they could lose
18 30 years of their life, and that's what happened
19 here.

20 I don't feel like applying the same standard
21 that we use when people are out on bond to someone
22 who is in custody, who cannot determine for himself
23 where he's going to go, when he's going to go, or
24 how he's going to get somewhere is just wrong.
25 There has to be at least one more prong to that

REPLY CLOSING ARGUMENT BY MS. DIXON

1 rule. At the very least, there has to be a showing
2 on the record with real evidence that's not
3 hearsay, that is reliable and credible so a judge
4 can make a finding that this is a knowing and
5 intelligent waiver of this fundamental right to be
6 present at trial.

7 MS. DIXON: Your Honor, I would just request
8 that you rule base on the record before you and
9 what you have heard today and the argument today.
10 I personally think that you have sufficient
11 information to make a ruling. I don't think it's
12 the standard that jails have to now force people to
13 appear in court when they are providing
14 transportation, and then they are refusing to go.
15 If inmates find out about that, of course now all
16 they'll have to do -- if we are going to grant
17 relief today because he refused to come to court,
18 that just opens up a whole new door. Everyone is
19 going to refuse transport now, and they're not
20 going to have their hearings because -- you know,
21 it just -- I don't think we are in a situation
22 where we want to force jails to force people. I
23 don't know how you force a grown man to do anything
24 other than, you know, tase him, strap him up, and
25 wheel him in if he's refusing to go. You know, the

THE COURT AND ATTORNEYS

1 only way they can do that is through force, and I
2 think that is asking a lot of our detention
3 centers.

4 MR. TARR: Your Honor, how are we going to
5 have a floodgate argument when this is the first
6 time this has ever happened in over a
7 hundred-something years of jurisprudence? There is
8 not one case where someone was tried in their
9 absence when they are in the county jail and, yet,
10 all of the sudden, if you rule for him, it's going
11 to open up the floodgates?

12 THE COURT: I mean, there's no reported case.
13 But here's my question --

14 MR. TARR: I've never heard of it.

15 THE COURT: I don't have any problem allowing
16 you some time to brief. I know, presumably,
17 someone is going to have to produce a transcript
18 from this, regardless, down the road. My concern
19 is this -- and I'm just being honest with you
20 all -- the issue I'm having is we will have a PCR
21 hearing. Before we have a final order, we lose one
22 or more of the attorneys who either leaves the AG's
23 Office -- I mean, this has been kind of a recurring
24 theme -- and then, you know, it's delayed because
25 we have to get a transcript, and then a new

THE COURT AND ATTORNEYS

1 attorney has to come in and evaluate where we
2 stand.

3 I feel pretty good about not waiting on the
4 transcript from this hearing. I've taken notes,
5 and I'm assuming you all have taken notes on
6 everything that has transpired today. I'm fine to
7 give you 30 days to let either side file additional
8 legal briefs, if you would like to do that. I'm
9 concerned about the delay in waiting for a
10 transcript from this hearing before we go to the
11 next step. So --

12 MR. TARR: Your Honor, can we ask the court
13 reporter how long it will take?

14 THE COURT: Sure.

15 DIGITAL MONITOR: It is my understanding it
16 takes six to eight weeks for digital transcripts.

17 THE COURT: Again....

18 MR. TARR: I was questioning most of the
19 time, so I wasn't taking notes of what people said.
20 I just feel like some of the testimony was critical
21 to what my issues are.

22 THE COURT: Ms. Dixon?

23 MR. TARR: But I do understand your problem.
24 Because, I mean, this is the third --

25 THE COURT: He's fine. If he's talking over

THE COURT AND ATTORNEYS

1 me, I'll handle it. I can handle him.

2 Yes, sir.

3 MR. TARR: She is the third Attorney General
4 in the year-and-a-half that I dealt with, so I
5 understand the Court's concern. But I just feel
6 like Mr. Fauling is doing 30 years in prison, and I
7 don't want to be constrained by the fact that there
8 might be another Attorney General that will throw a
9 wrench in the things.

10 I mean, if that's the ruling of the Court,
11 obviously we'll abide by it, but I would like to
12 have the transcript. That's all.

13 MS. DIXON: Your Honor, if you are going to
14 grant time for briefs, I would just ask that we get
15 an additional ten days since it's their burden to
16 bring the argument, and we are responding to it.

17 THE COURT: Okay. So what I'm going to do is
18 I'll give you 30 days, Mr. Tarr, if you want to
19 submit any additional legal briefs. And then the
20 State -- I mean, I'm fine to give you an additional
21 30 days after that. Not knowing what your hearing
22 schedule is going to be, I'll give you 30 days to
23 respond.

24 MS. DIXON: Okay.

25 THE COURT: And then I think we need to be

THE COURT AND ATTORNEYS

1 able to move forward.

2 MR. TARR: And so we're not going to wait on
3 the transcript?

4 THE COURT: No, sir.

5 MR. TARR: Okay. I just had one more
6 request, Your Honor. We would like at this time --
7 and I just -- for Your Honor's -- in case there is
8 any confusion, this was originally two actions. It
9 was an Orangeburg PCR and a Calhoun PCR. So when
10 Mr. Fauling filed the original applications, there
11 were two. So when I filed the amended ones about a
12 week ago, I just went ahead -- even though we've
13 consolidated into one -- just to make it less
14 confusing, I filed two separate amendments to each
15 one.

16 THE COURT: Okay.

17 MR. TARR: We're asking Your Honor for the
18 one with the Calhoun PCR, to add one more ground.
19 Under South Carolina Rule 15 of the South Carolina
20 Rules of Civil Procedure, it says that the Court
21 should grant leave to file additional grounds
22 freely. And I just think because of testimony that
23 was developed at this hearing, I believe it's
24 incumbent upon me to ask that we add the ground
25 that Mr. Fauling did not understand the Faretta

THE COURT AND ATTORNEYS

1 warnings. I feel like that a reading of the plea
2 transcript, as well as some of the testimony here
3 today, it was clear that he did not understand what
4 was happening that day, that he's pleading to a
5 negotiated 30, and then turned around and asking
6 the judge to give him ten on the trial is
7 indicative of that. So we would like to amend that
8 application to add the ground that he did not
9 understand the Faretta warnings.

10 The reason I say that is there's a case on
11 point that says it's not so much the advice that's
12 given by the judge on Faretta, it's the
13 understanding of the defendant and how they
14 received it, and I think I need to add that as a
15 ground.

16 THE COURT: Any objection to that?

17 MS. DIXON: Absolutely, Your Honor. I do
18 object to that. If I would have known that was
19 going to be an allegation, there are different
20 questions I would have asked the witnesses, and of
21 course they both now were released.

22 MR. TARR: Your Honor, it was perfectly
23 appropriate for her on cross, because I asked about
24 his understanding from two different witnesses.

25 MS. DIXON: Your Honor, I need to know what

THE COURT AND ATTORNEYS

1 the issues are when I'm formulating my cross
2 examination. This has never been raised in any
3 form, by e-mail or anything.

4 THE COURT: So tell me what additional
5 questions you think you would have asked? I mean,
6 obviously, we have the trial transcript.

7 MS. DIXON: I would ask the lawyer and also
8 the solicitor if they ever had any concerns
9 regarding his ability to understand their
10 conversations, any concerns regarding his
11 competency.

12 THE COURT: You are not raising his
13 competency as an issue?

14 MR. TARR: No, Your Honor. And I asked Ms.
15 Cornwell exactly about his understanding, and it
16 was directly -- the same thing she stated she would
17 have asked, I asked.

18 MS. DIXON: I also would have asked his
19 lawyer, who had additional time to speak with him,
20 whether she had any concerns regarding his ability
21 to understand things.

22 MR. TARR: Your Honor, I don't object to have
23 him -- then called back and her ask whatever she
24 wants to, if that's a problem. But I just feel
25 like I have to raise this issue. I don't feel like

THE COURT AND ATTORNEYS

1 they are prejudiced in any way.

2 MS. DIXON: I would just say that we did not
3 try that by consent. This is the first I've heard
4 of it, and we are prejudiced by not being able to
5 ask our witnesses questions that go directly to
6 that issue.

7 MR. TARR: And the last thing I'll say is the
8 rule is there for a reason, and it says expressly
9 the Court should grant these motions freely in the
10 interest of justice. And I think in this
11 particular case, justice would be denied if I
12 couldn't be allowed to -- as a result of the
13 testimony from this hearing -- add another claim.

14 MS. DIXON: And we would object, Your Honor.
15 We would say we are entitled to notice. We are the
16 Respondent, and we had no notice that this was
17 going to be an issue.

18 THE COURT: So I guess what I'm trying to
19 discern -- because the issues that you did raise
20 were very closely related to what you're now
21 raising. In other words, what you raised was that
22 -- and I don't have it in front of me -- that,
23 basically, he received legal advice from the
24 solicitor, and proceeded without an attorney, and
25 did not knowingly, I guess, waive his right to

THE COURT AND ATTORNEYS

1 proceed with an attorney? Tell me what the --

2 MR. TARR: I felt like it was -- the Faretta
3 warnings were tainted due to the fact that a lawyer
4 with an actual conflict of interest was giving him
5 advice, and he didn't have the advice of a
6 non-conflicted lawyer prior to the Faretta
7 warnings. So this would be a separate issue. It's
8 still related to Faretta, but it's to his
9 understanding of what was going on and what he was
10 waiving.

11 THE COURT: I'm going to allow the additional
12 ground. I think it's, again, pretty closely
13 related, and I think both sides did a pretty good
14 job of discussing what all questioning happened on
15 the record, so I'm going to allow it.

16 Anything else?

17 MR. TARR: No, Your Honor.

18 THE COURT: Again, I'm going to allow 30 days
19 for Mr. Tarr to submit anything additional in terms
20 of a legal brief, and then the State to have 30
21 days from whenever you receive that to file any
22 other briefs that you would like to file.

23 MS. DIXON: Thank you.

24 MR. TARR: Would you like for those to be in
25 the form of a proposed order, or just a brief on

THE COURT AND ATTORNEYS

1 the legal issues as proclaimed?

2 THE COURT: I am fine for it to be just in
3 the nature of a legal brief. If you want to do a
4 proposed order, that's fine. I don't want to
5 create additional work for people that we don't
6 need to create. I never liked the idea of both
7 sides doing all the work that goes into an order.
8 That's just not something I usually require. If
9 you want to do that, I'm fine with it. If you want
10 to do a more concentrated, if you will, legal
11 brief, that's fine as well. Okay.

12 MR. TARR: Thank you.

13 THE COURT: Thank you all.

14 (Whereupon, the proceedings concluded.)
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THE COURT AND ATTORNEYS

CERTIFICATE OF TRANSCRIBER

Case Name: Shelly Thomas Fauling v. State

Case No.: 2018-CP-38-01551

Date of Hearing: May 17, 2023

* * * * *

I, Natalie Dahl, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; **that said proceedings were transcribed to the best of my ability from the audio recording.**

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

Natalie Dahl, RPR

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
South Carolina

THE COURT AND ATTORNEYS

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Natalie Dahl, RPR

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
South Carolina

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF GENERAL
COUNTY OF CALHOUN SESSIONS OF THE
2017 DEC -8 P 3:06 FIRST JUDICIAL CIRCUIT
Warrants #: 2017GS09-0023, 2017GS09-
STATE OF SOUTH CAROLINA KENNETH HASTY, 2017GS09-0027, 2017GS09-0026,
CLERK OF COURT 2017GS09-0025, 2017GS09-0024
CALHOUN COUNTY
ST. MATTHEWS, SC
v.
Shelly Thomas Faulling,
Defendant.

ORDER

This matter came before me on November 20, 2017 by motion of Deborah J. Butcher, Esquire attorney for Defendant to lift the bench warrant issued on January 23, 2017 for defendant Tommy Faulling. The matter being heard in Orangeburg County, all parties waived venue of Calhoun County. Defendant claims that he was unaware of the Court date of January 23, 2017 whereby he was to be present at the Calhoun County Courthouse. Defendant claims that he only believed that he had to obtain an attorney by that date. The Solicitor did present to the Court a letter dated January 6, 2017, signed by the defendant, which stated that he was to return to Court on January 23, 2017 and that he must have an attorney by this date. The Court was informed that the bails bondman has not moved to be relieved from the bond. Defendant has been incarcerated since January 25, 2017. Defendant's bonds on these charges in Calhoun County are currently set as follows:

Warrant 2016A0910100226 - \$2,000.00
Warrant 2016A0910100227 - \$1,000.00
Warrant 2016A0910100228 - \$1,500.00
Warrant 2016A0910100229 - \$3,000.00



The defendant also has pending charges in Orangeburg County of which he has not been able to make bond. The bonds on the Orangeburg County charges are as follows:

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Kenneth Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

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Warrant 2017A3810700044 - \$35,000.00

Warrant 2017A3810700093 - \$3000.00

Warrant 2017A3810700094 - \$35,000.00

Defendant was also informed on the record that his next scheduled court appearance is December 11, 2017 at 9:30.

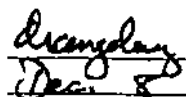
Based upon the evidence presented,

I HEREBY ORDER, ADJUDGE, AND DECREE that the bench warrant issued is hereby lifted in this matter. Additional Bond requirements of 1) No negative contact with law enforcement and 2) Defendant must wear a GPS monitor.

AND, IT IS SO ORDERED!



Edgar W. Dickson
Presiding Judge of the First Circuit

 South Carolina
Dec. 8, 2017

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KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

2/2 

DORCHESTER 9COUNTY CLERK OF COURT
CHERYL GRAHAM, CLERK OF COURT
5200 E. Jim Bilton Blvd.
ST. GEORGE, SC 29477



May 19, 2023

Orangeburg Clerk of Court

Re: Shelly T. Faulling vs. State of South Carolina
PCR Case No: 2018CP3801551

Dear Madam Clerk:

Enclosed please find the Exhibit from the PCR hearing held on May 17, 2023 here in
Dorchester County.

With best regards,

Dorchester County
Clerk of Court's Office

Enclosures

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ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2018-CP-38-01551

SHELLY FAULLING,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

MOTION TO ALTER OR AMEND JUDGEMENT

I. INTRODUCTION

The Applicant, by and through his undersigned counsel, in accordance with Rule 59(c) of the South Carolina Rules of Civil Procedure hereby Moves to Alter or Amend the Judgement of the Court. Applicant accepts the Order of the Court related to the Granting of Belated Review under State v. White, but moves to Alter or Amend the portion of the Order dismissing all other grounds found in the Application for Post-Conviction Relief. An Application for Post Conviction Relief was filed by Applicant Faulling on December 10, 2018 in Calhoun County and another Application for Post Conviction Relief also was filed by Applicant Faulling on December 27, 2018 in Orangeburg County. On January 20, 2023, these applications were consolidated with the consent of the parties by the Honorable Maite Murphy, Chief Administrative Judge of the First Judicial Circuit. These applications were amended on May 8, 2023 by Applicant's attorney David B. Tarr. Subsequently on May 17, 2023 at the PCR Hearing, the application was amended by attorney Tarr with the consent of the Court to include one additional ground. A review of the trial record reveals that Shelly Faulling was convicted in his absence (while incarcerated in the

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Orangeburg County Detention Center) on December 12, 2017 of Possession with Intent to Distribute Methamphetamine, 3rd Offense. This trial was presided over by the Honorable Edgar W. Dickson. On December 14, 2017, Mr. Faulling was transported from the detention center and his sentence was unsealed and he was given thirty years. After his conviction, but before he was sentenced, his court appointed attorney Deborah Butcher moved to be relieved as his counsel and was, in fact, relieved. On January 11, 2018, Mr. Faulling was transported from the Department of Corrections to the Calhoun County Courthouse. He appeared Pro Se before the Honorable Edgar W. Dickson and entered a plea to several remaining pending charges in both Calhoun and Orangeburg Counties after being counseled and advised by solicitor Ashley Cornwell who was actively prosecuting him. He received a sentence of thirty years concurrent. Mr. Faulling attempted to file a Notice of Appeal on these cases, but his attempt was deemed to be improperly and untimely done, and was subsequently dismissed. This Court held an evidentiary hearing on Applicant's Amended Application of Post Conviction Relief on May 17, 2023. Present at the hearing on behalf of the Applicant was his attorney Mr. David B. Tarr and representing the State was Danielle Dixon of the Office of the Attorney General. Mr. Faulling is currently being housed at Broad River Correctional Institution.

II. PROCEDURAL HISTORY/FACTS

This case originated on February 2, 2017, when Applicant was arrested at a gas station off of Charleston Highway after a witness stated she saw him throw something into a trash can. After searching the trash can, investigators found 4 small bags of Methamphetamine, one larger bag of Methamphetamine, and other paraphernalia. Applicant was subsequently indicted for one count of Possession with Intent to Distribute Methamphetamine, third or subsequent offense. On

December 12, 2017 a trial was held before the Honorable Edgar W. Dickson. Deborah Butcher represented Mr. Faulling. Assistant Solicitor Ashley Cornwell of the First Circuit Solicitor's Office prosecuted the case. Mr. Faulling, who was incarcerated in the Orangeburg County Detention Center was not transported to court and, therefore, not present at his trial.

There is no mention in the trial transcript of Applicant not being in the courtroom until after the selection of the jury. This is quite significant because that means that there was no finding at all made on the record as to why he wasn't there until after this "critical stage" of the trial. In any event, after jury selection, Ms. Butcher moved for a continuance due to Mr. Faulling not being present. Tr.Tr. P. 27. The only reason given by Ms. Butcher for Applicant not being present was when she said "He has refused to come here". She does not say how she received this information. It was clear that someone would have had to tell her that because she was not at the jail when they were transporting prisoners that morning and therefore had no personal knowledge. Likewise, Solicitor Cornwell told the Court that the State arranged transport, but that Applicant refused. Tr.Tr. P. 32. There is no other information given as to who told her that. And, like Ms. Butcher, she was not at the jail during transport, and therefore had no personal knowledge of what transpired.

At the PCR evidentiary hearing, Ms. Cornwell said that someone from the jail came to the Judge's chambers to tell the Judge that Applicant refused to come, but that she didn't remember who that person was. Ms. Butcher testified that she didn't remember where she got her information, but that it was probably from the solicitor. No matter where the information came from, nothing was put on the record by anyone with personal knowledge of whether or not Mr. Faulling refused to come. Furthermore, no attempt was made by Judge Dickson to Order the transport of Mr. Faulling to make sure that he knew the trial was starting and that he knowingly

and intelligently waived his right to be there. Once the continuance request was denied, Ms. Butcher did not object to the denial of her request. At the PCR evidentiary hearing, Mr. Faulling testified that he thought he was bonding out the morning of the trial and had been removed from his cell to start that process, but was never released. He testified he never refused to go over to the courthouse. He went on to say that he found out from another inmate later in the day, who had returned from the courthouse, that his trial had been held in his absence and that he was convicted. Applicant testified that he never would have missed his trial if he knew it was occurring. Applicant also submitted evidence of an Order Lifting Bench Warrant that was signed just 4 days before his trial was set to begin. This Order made it possible for him to bond out. Applicant's sister Sherri Fogle testified that she was attempting to bond him out the morning of his trial, not realizing that the trial had started.

On December 14, 2017, Applicant was transported to the Orangeburg County Courthouse to be sentenced. He received thirty years. At that time, Mr. Faulling attempted to tell Judge Dickson the exact same thing he testified to at the PCR Hearing about not knowing he was being tried and never refusing to be transported, but he was rebuffed. Tr. Tr. P. 182. Before the sentence was read, Ms. Butcher moved to be relieved as Applicant's counsel for that case, as well as all his other pending charges in Orangeburg and Calhoun Counties. Therefore, he was sentenced pro se and was left to his own devices to file a Notice of Intent to Appeal. He attempted to do so on January 24, 2018. However, on March 29, 2018, the South Carolina Court of Appeals dismissed the appeal, finding Applicant failed timely serve and file a Notice of Appeal.

On January 11, 2018, Applicant was transported from the Department of Corrections to the Calhoun County Courthouse to dispose of his remaining Orangeburg and Calhoun County

charges. These charges included: (from Calhoun) one count of Failure to Stop for a Blue Light, one count of Possession with Intent to Distribute Methamphetamine, 3rd and above, one count of operating an unregistered vehicle, one count of Driving Under Suspension, and (from Orangeburg) one count of Failure to Stop for a Blue Light and one count of Possession with Intent to Distribute Methamphetamine, 3rd and Above. At that time, Applicant pled guilty to all 6 charges. In exchange for the plea, the state dropped two charges: Unlawful Carrying of a Pistol and Possession of a Firearm by a Convicted Felon.

At the plea, Mr. Faulling had no attorney. However, Ms. Cornwell met with the Applicant in a room in the back of the courtroom. During this meeting, she performed basically every function that a criminal defense lawyer would perform for his or her client, even though she was actively prosecuting him at the time and had an actual conflict of interest. In the plea transcript, Ms. Cornwell tells Judge Dickson “I explained to Mr. Faulling all of his rights”, “that he did have the right to an attorney”, “met with him in the back of the courtroom”, “explained to him his right to a trial”, “if he had any defenses he felt like should be presented”, “went through every page of discovery with him”, “I explained everything. Any questions he had I did answer for him”, “explained to him the grand jury process and that he waived presentment”, got him to waive venue and have all the charges heard in Calhoun, and “went over some of his charges had enhancement provisions”. Plea Tr. Pp. 3-9. All of this advice occurred after Solicitor Cornwell told Applicant that she would be seeking life without parole against him if he didn’t accept the plea. After the extensive advice and counseling given to Applicant from the Solicitor who was actively prosecuting him, only then did Judge Dickson go over Mr. Faulling’s Faretta warnings. However, not only were these warnings tainted by the un-counseled and conflict of interest-ridden interactions with the Solicitor, but it was clear from the transcript of the proceedings that

Mr. Faulling did not understand what was happening, nor did he understand how a lawyer could have helped him understand. At the end of the plea, Applicant was given a negotiated sentence of thirty years concurrent for each of the drug charges, 3 years for each of the Failure to Stop Charges, and time served for the Driving under Suspension and Failure to Register Vehicle. There is no clearer indication that Applicant did not fully understand what was happening than when he pled to a negotiated thirty year sentence and then immediately moved for a reconsideration of the thirty year sentence he received from Judge Dickson after the trial in his absence. He asked Judge Dickson to reconsider and give him 10 years. Even if the Judge had obliged, Applicant had just pled to thirty years, so he would see no benefit. Mr. Faulling testified at the PCR hearing that he thought he would receive 10 years on everything on the reconsideration motion, even on the plea he had just entered.

**III. ALLEGATIONS RAISED AND RELIEF SOUGHT IN POST-CONVICTION
RELIEF APPLICATION**

- A. Mr. Faulling was in custody at the Orangeburg County Detention Center when his trial was held at the Orangeburg County Courthouse. He was not transported to Court by the jailers. Therefore, he was denied his fundamental right to be present at his trial.
- B. Trial Counsel Butcher moved for a Continuance due to the fact that the jail did not transport Mr. Faulling for Court, but she did not object to the trial proceeding in his absence or to the Judge failing to grant her continuance request.
- C. Mr. Faulling's Trial Counsel Deborah Butcher moved to be relieved as counsel after trial, but before sentencing and did not file a Notice of Intent to Appeal. The

Notice of Appeal was not timely filed and served, and therefore Mr. Faulling's appeal was dismissed.

- D. Mr. Faulling pled guilty pro se, due to the fact that his appointed counsel was relieved prior to his guilty plea. The Solicitor Ashley Cornwell gave Mr. Faulling legal advice prior to, and during, his guilty plea, while laboring under an actual conflict of interest as she was the prosecutor in the case.
- E. Mr. Faulling did not understand the Faretta warnings given by Judge Dickson at his uncounseled plea and that is evident from reading the plea transcript.

Mr. Faulling seeks to have all his convictions overturned due to the foregoing issues. As for Ground C and the seeking of a belated appeal, Applicant does not seek to alter or amend this portion of the judgement in this case. However, Applicant feels that this issue should be moot, due to the necessity that the convictions be overturned due to the aforementioned trial errors. Applicant is also concerned that the issues involved in Grounds A and B may not be preserved for appeal because Ms. Butcher did not object to Applicant being tried in his absence. Applicant understands that Attorney General Dixon stated at the PCR hearing on the record that it was the state's position that the issue was preserved. However, in the State's own return to Applicant's original PCR application, the original attorney general assigned to this case Sammie Weidauer cited Morris v. State, 371 S.C. 278 (2006) that states "where a defense counsel is faced with the prospect of proceeding with a trial in absentia, he or she may be professionally obligated to both move for a continuance and object to proceeding in absentia". Due to this discrepancy, Applicant believes that in order to see that justice is done in this case, a belated appeal may not suffice and, therefore, the convictions should be overturned.

IV. LAW/ANALYSIS

A. TRIAL IN ABSENCE

The accused has a constitutional right under the 6th Amendment Confrontation Clause to be present at trial. Illinois v. Allen, 397 U.S. 337 (1970). One of the most basic rights is to be present in the courtroom at every stage of his trial. Allen. In State v. Patterson, 367 S.C. 219 (Ct.App. 2006) the Court said there must be a knowing and intelligent waiver to be tried in his absence. Findings of fact must be made on the record that this waiver has occurred before the trial in absence can occur. State v. Jackson, 288 S.C. 94 (1986). These findings must include that the defendant has 1) received notice of his right to be present and 2) that he was warned that he would be tried in his absence if he failed to attend. Jackson. In State v. Rivers, 294 S.C. 123 (1987) the Court reiterated that the Defendant has a right to be present at every critical stage of prosecution and that voir dire is a critical stage. The Court went on to say that the findings of fact on the record must occur before any critical stage occurs.

All of these cases cited in this Order regarding trial in absence and all cases relied upon by the State at trial to prosecute Applicant in his absence involve instances where the Defendant is out on bond, and thus, not in custody. Not only was Applicant in custody, but he was being housed in the county detention center for the county where his case was tried. The facility is mere minutes from the courthouse. While the trial Court was provided information that the Defendant refused to be transported, the information provided was in the form of hearsay and

unattributed to anyone in particular. The findings of fact were based on this inherently unreliable information. It is also information that was contradicted by the Applicant when he was brought over for sentencing, as well as when he testified at the evidentiary hearing in this PCR.

The State is relying on cases to support its argument that Applicant was tried properly in his absence that are clearly not on point. The rule allowing defendants to be tried in their absence after the proscribed findings of fact was made out of necessity to keep people who were out on bond, and whose whereabouts were unknown, from being able to evade lawful prosecution, and thus, thwart the administration of justice. Alternatively, individuals who are incarcerated, have lost the right to determine where they go, when they go, or how they go somewhere. These individuals have lost their liberty and freedom to move about freely. Therefore, it cannot be that the standard to try them in their absence would be the same as that for people who are out on bond. Just because a defendant knows his or her case may be tried on a certain day and that he or she would be tried in his or her absence if they didn't show for Court, doesn't mean that an individual in jail can just transport themselves over to the Courthouse at the appointed time.

The State has argued that the Applicant refused to be transported and therefore, this fact in and of itself indicates a waiver of his right to be present. Yet, the evidence that was provided to the trial court of this refusal was of a hearsay nature and no one with direct knowledge of whether or not Applicant refused was heard on the record. The State argues that a circuit court judge can't order the detention center to transport a defendant for Court. Applicant rejects that notion. Jails and prisons are vested with authority to make people do things they don't want to do. And, they exercise this authority, with the legal use of force, every day. Applicant believes the Court should find that there is no reason that the trial court could not have ordered the

Applicant to be brought to the courthouse so that a colloquy could occur between the Court and the Applicant to determine if there was a knowing and intelligent waiver of his right to be present. At the very least, the Court could have sent trial counsel to the jail to attempt to get a signed waiver from her client of his right to be present, and then, as an officer of the Court, trial counsel could have put this waiver on the record on behalf of her client.

It is difficult to imagine a right more fundamental than the right to be present at one's own criminal trial. The right to a trial, the right to counsel, and the right to call witnesses, or testify on your own behalf are all very important rights, but the right to be present cannot be minimized. So, what should the Applicant be required to show in order to prevail at PCR alleging a denial of this right? Courts have found that constitutional errors can be divided into two types of errors: mere trial errors (where prejudice usually must be shown) and structural errors (where prejudice is generally presumed and thus, reversible per se). A structural error is one that affects the "framework within which the trial proceeds". Arizona v. Fulminante, 499 U.S. 279 (1991). Is there anything more basic to the framework within which the trial proceeds than the Defendant being present? The applicant thinks not.

Types of errors that have been deemed structural by courts in the past include, but are not limited to: closing the courtroom to the public, right to select your own attorney, polling the jury, and failure to give reasonable doubt instructions. In Wcaver v. Massachusetts, 137 S.Ct. 1899 (2017) the U.S. Supreme Court says an error is structural if: 1) the right at issue is designed to protect an interest other than the defendant's interest in being wrongfully convicted, 2) the effects of the error are simply too hard to measure, 3) the error always results in fundamental unfairness. It strains credulity to argue that a defendant denied the right to be present at his own trial improperly would not be a structural error under this standard. Public confidence in a

judicial system that tries people in their absence while in custody without a valid waiver would erode quite quickly. Furthermore, it could be quite difficult to measure the effects of this error. Finally, denying a jailed defendant the right to be present at his own trial would always be fundamentally unfair. Applicant believes this Court has no choice but to find that the lack of a valid waiver of Applicant's right to be present at his trial was clearly error, and undoubtedly, a structural error at that, and therefore, prejudice should be presumed. Applicant argues this Court should find that a new trial is warranted.

B. FAILURE TO OBJECT TO TRIAL IN ABSENCE

Normally on a claim of ineffective assistance of counsel, a Strickland analysis should be applied. However, due to the foregoing analysis concluding that the error in question is a structural error, only the first prong of Strickland need be shown by Applicant. Under Strickland v. Washington, 466 U.S. 668 (1984), in order for a defendant to prevail on a claim of ineffective assistance of counsel, he must show both that his trial counsel's conduct fell below an objective standard of reasonableness by pointing to specific errors made by trial counsel at his trial or plea *and* also that this deficient performance prejudiced the defense such that the defendant was deprived of his right to a fair trial. Strickland went on to elaborate that the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-118, 386 S.E.2d at 625.

Trial Counsel Butcher moved for a continuance due to her client not being present in the

courtroom. However, she did not object. Nor, did she object to the trial court's denial of her continuance request. The State stated at the PCR hearing that Butcher's motion for a continuance was enough to preserve the error for appellate review. However, as stated before, the State in its return to the original PCR application cited Morris v. State for the proposition that counsel is obligated both to move for a continuance and object to the trial continuing in his or her client's absence. In this case, Ms. Butcher did not do that. Based on the foregoing analysis where this Court concluded that a structural error occurred when the Applicant, who was in custody, was not transported in order to waive his right to be present on the record, it follows that trial Counsel's failure to object to the trial proceeding was error. And, given that this was a structural error, prejudice is presumed. Therefore, again, for these reasons this Court should find that a new trial is warranted.

C. FAILURE TO FILE NOTICE OF INTENT TO APPEAL

Trial Counsel Butcher moved to be relieved after trial, but before sentencing. She therefore did not advise Applicant of his right to appeal, file a notice of appeal, or assist him in any way. Applicant's attempt to file a Notice of Appeal on his own behalf was deemed untimely and improperly served, and therefore, his appeal was dismissed. The State stipulates that the failure to file a Notice of Intent to Appeal was involuntary and that Applicant should receive a belated appeal under White v. State, 263 S.C. 110 (1974). This Court agreed that a belated appeal is warranted. However, Applicant has concerns that, at least with regards to the trial in absence issue, due to the lack of contemporaneous objection by defense counsel Butcher, that this error may not be preserved for appellate review. The State has taken conflicting positions

regarding this issue. While Applicant does not move to Alter or Amend the Judgement as to the Granting of a Belated Appeal, Applicant does believe this issue should be moot because the other grounds of the PCR should have been granted.

D. SOLICITOR CORNWELL CONFLICT OF INTEREST

As to the remaining convictions that occurred at Applicant's pro se negotiated guilty plea for thirty years concurrent, Applicant believes that this plea was not knowingly, voluntarily, or intelligently made. Solicitor Cornwell, who was actively prosecuting Applicant, perhaps thinking she was helping Applicant, took it upon herself to advise and counsel Applicant about every aspect of his guilty plea, both before and during the plea. Cornwell went so far as to go over every page of the discovery, explain everything to him, and advise him of all of his rights. Plea Tr. Pp. 3-4. Applicant stated on the record that he had never had a lawyer as helpful as the Solicitor. Plea TR. P. 8. All of this took place after Solicitor Cornwell advised Applicant that if he didn't take the offer, she would be seeking Life without Parole against him. This court finds that this conduct contributed to a complete breakdown of the adversarial system. This is the type of result that the U.S. Supreme Court suggests is untenable in U.S. v. Cronin, 466 U.S. 648 (1984). While Cronin, deals with the right to effective assistance of counsel, it is instructive here where the Solicitor took on the role of Applicant's counsel, while performing her duties as prosecutor in his case. In Cronin, the Court states that, not only does the accused have the right to counsel, but the accused has the right to reasonably competent counsel. The Court cites Herrin v. New York, 422 U.S. 853 (1975) as saying "The very premise of our adversary system

of criminal justice is that partisan advocacy on both sides of the case will best promote the ultimate objective that the guilty be convicted and the innocent go free". The Court goes on to say in Cronic citing Anders v. California, 386 U.S. 738 (1967) the accused's right to an adversarial process protected by the 6th Amendment requires that counsel act in the role of an advocate. Finally, the Cronic court states "The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing". Cronic at 656.

The State may argue that Applicant knowingly and voluntarily gave up his right to counsel and agreed to proceed pro se. However, this was after and during the time he was receiving advice from Solicitor Cornwell. It appears from the record that Applicant may not have felt like he was giving anything up as it seemed to him that he had an attorney looking out for his interests anyway with Solicitor Cornwell advising him and explaining to him everything he needed to know. Ms. Cornwell, while actively prosecuting Applicant and threatening him with a sentence of life without parole, was acting as his de facto lawyer and performing every duty that a lawyer would have to his or her client. To the Applicant it appeared she was helping him, while she was simultaneously making sure that he went to prison for thirty years. It is one thing for a criminal defendant to waive his right to counsel and proceed without a lawyer after being advised of the potential perils of doing so. It is quite another for the solicitor who is actively prosecuting the case to take on the role of defense counsel thus giving the defendant the illusion of assistance by an attorney. It is interesting to note that Solicitor Cornwell testified at the PCR hearing that she had approached Judge Dickson before the plea and relayed to him her concerns of what they were doing. She stated that she told Judge Dickson, and he agreed, that they were only doing this plea because of the 30 year sentence Applicant already received from

his trial in absence. She was concerned if that sentence was overturned on appeal because of his non-presence at trial, that the plea should be vacated as well because it was inextricably tied to the sentence from that trial.

The caselaw that deals with conflicts of interest of counsel in criminal cases all deal with actual defense lawyers who are either engaged in multiple representation or have some other competing interest that conflicts with their duties owed to their client. However, in this case, these cases are instructive due to the nature of the interaction between Cornwell and applicant and the advice that was given. Applicant was seeking assistance from a lawyer. Solicitor Cornwell is a lawyer and she gave him the assistance and advice in which he sought. This is the essence of an attorney-client relationship. A perfect example of this is the longstanding warning to lawyers that they not inadvertently create an attorney-client relationship by way of responding to questions at cocktail parties, and the like. The line of cases dealing with attorney conflicts of interest generally does not require that prejudice be shown to be entitled to relief as would be necessary in a traditional Strickland analysis. For example, In Holloway v. Arkansas, 435 U.S. 475 (1978) the court created an automatic reversal rule where counsel is forced to represent codefendants over his timely objection, unless the court has determined there is no conflict. Also, in Cuyler v. Sullivan, 446 U.S. 335 (1980) the Supreme Court stated that “a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief”. Cuyler at 349-350.

The state argues that Faretta Warnings were given on the record at the plea. However, at this point, the damage was done. The warnings came after extensive advice and assistance and coercion from the person who was tasked with actively prosecuting him, while that same person was performing the role of the attorney with a friendly and helpful demeanor. Applicant argues

this representation of dual interests unconscionable. Therefore, Applicant feels the Court should find that the convictions at the plea should be overturned and the Applicant should be awarded a new trial.

E. APPLICANT'S UNDERSTANDING OF THE FARETTA WARNINGS

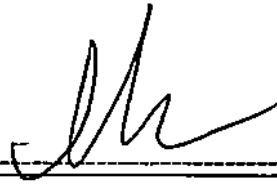
Applicant argues that he clearly did not understand the Faretta Warnings given by the Trial Court. In Wroten v. State, 301 S.C. 293 (1990) the court stated the ultimate test under Faretta is not the trial court's advice, but the defendant's understanding. Applicant argues that this Court should find that Mr. Faulling clearly didn't understand the Faretta Warnings or have a firm grasp of what was occurring when he entered his pro se negotiated 30 plea. This is evident from a reading of the transcript. Applicant entered into a plea for 30 years to a no-parole offense that was to be run concurrent to the thirty years he received at this trial in absence. However, he immediately turned around and moved for Judge Dickson to reconsider the 30 year sentence from the trial and give him ten years. Even if the Judge had done that, Mr. Faulling would still have a 30 year sentence on the plea that he just entered. Therefore, the granting of the motion of reconsideration would not have benefitted him at all. He would still be doing 30 years. Nowhere in the record was Applicant ever advised of this fact. Nor, did Solicitor Cornwell ever explain this to him. Also, neither Solicitor Cornwell nor Judge Dickson ever advised Applicant that in the event his trial sentence was overturned on appeal, that he would still have a 30 year sentence on his plea. By threatening to give applicant life without parole and getting him to enter into a

30 year pro se plea, Solicitor Cornwell was thereby ensuring that the state would get 30 years out of Mr. Faulling whether his trial was overturned or not. This type of breakdown of the adversarial system cannot take place in a South Carolina courtroom. Applicant argues this Court should find that these sentences should be overturned and Applicant be awarded a new trial.

F. CONCLUSION

For all of these reasons, there has been a clear showing that a structural error occurred when Applicant was tried in his absence, while in custody at the Orangeburg County Detention Center. The denial of this fundamental right is reversible per se. Furthermore, we believe this Court should find that counsel was deficient in not objecting to the trial proceeding in Applicant's absence and prejudice should be presumed due to the error being structural, in nature.

As for the convictions that occurred at the un-counseled guilty plea, Applicant argues this Court should find that there was a complete breakdown in the adversarial process and the Solicitor who was actively prosecuting Applicant was laboring under an actual conflict of interest when she decided to advise and counsel the Applicant before and during his plea after convincing him to enter the plea after telling him she would seek life without parole if he didn't go forward. Applicant contends this conduct is egregious, and seeing as how the plea was so inextricably tied to the trial sentence, and how that conviction was secured while denying Applicant his fundamental right to be present, Applicant feels these convictions cannot stand. Therefore, we ask that this Court that due to the foregoing reasons, all of Applicant's convictions should be reversed and a new trial or trials ordered. As for the issue of the belated appeal, Applicant does not move to alter or amend that portion of the Order.

A handwritten signature in black ink, appearing to be 'D. B. Tarr', written over a horizontal line.

David B. Tarr, #8803
Attorney for Applicant

February 10, 2025

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2018-CP-38-01551

SHELLY FAULLING,

Applicant,

vs.

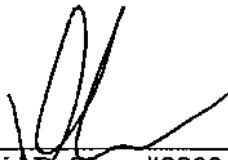
STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE

I, David B. Tarr, being first duly sworn, state that I am the attorney for the Applicant, with offices at 1313 Elmwood Ave., Suite B, Columbia, South Carolina 29201; that on the 10th day of February 2025 caused to be served, by hand delivery, a copy of Motion to Alter or Amend Judgement to the individuals listed below named at these addresses, to wit:

Judge Kristi Curtis	Danielle Dixon
215 N. Harvin St.	P.O. Box 11549
Sumter, SC 29150	Columbia, SC 29211



 David B. Tarr, #8803
 Attorney for the Applicant

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 CLERK OF COURT
 ORANGEBURG, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Shelly T. Faulling, SCDC #197178,	)	Case No.: 2018-CP-38-01551
	)	
Applicant,	)	MEMO IN OPPOSITION TO
v.	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

AB
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ORANGEBURG, SC

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Shelly T. Faulling (Applicant) on December 10, 2018.¹ On May 17, 2023, an evidentiary hearing convened before the Honorable Kristi Curtis. Applicant was present and represented by David Tarr, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the close of the hearing, counsel for Applicant—in lieu of argument—asked this Court to order the parties to submit competing orders. This Court denied that request. Thereafter, counsel for Applicant requested to brief the issue of whether Applicant was denied due process when the Detention Center did not forcibly transport him to trial after he refused transport. This Court provided Applicant additional time to brief this issue and Respondent time to respond. Subsequently, Applicant, through counsel, submitted a proposed order granting PCR. In response, Respondent submits this memo in opposition to granting post-conviction relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate thirty-year sentence. In December 2017, the Orangeburg County Grand Jury indicted Applicant for possession with intent to distribute (PWID) methamphetamine, third or subsequent

¹ A PCR action from different charges, filed December 10, 2018, was consolidated into this action.

offense (2017-GS-38-0375). On December 12, 2017, a jury trial convened before the Honorable Edgar W. Dickson. Deborah J. Butcher, Esquire, represented Applicant. Assistant Solicitor Ashley Cornwell prosecuted the case.

Following jury selection, trial counsel moved for a continuance based on Applicant's absence. Both the solicitor and trial counsel acknowledged that Applicant had been notified that trial was set for the December 11th term of court in front of Judge Dickson on November 20, 2017. In addition, both parties acknowledged that Applicant's counsel had been sent letters advising her of the trial date. According to trial counsel, she had repeatedly informed Applicant of his trial date. In fact, she met with him the day before and informed him again of his trial date. In addition, the State arranged for Applicant to be transported from the Detention Center. Despite this, Applicant refused to be transported. During the motion trial counsel reminded Judge Dickson about Applicant's prior motion to relieve counsel and the deteriorating relationship between her and Applicant. After hearing arguments, Judge Dickson found Applicant had adequate notice of his trial and the consequences of failing to attend. Consequently, he denied the trial counsel's motion for a continuance, and the trial proceeded in Applicant's absence over counsel's objections.

At the conclusion of trial, the jury found Applicant guilty as indicted. Following the verdict, Judge Dickson sealed the sentence. On December 14, 2017, Applicant appeared before Judge Dickson and was sentenced to thirty years.

Applicant filed a *pro se* notice of appeal. By order filed March 29, 2018, the South Carolina Court of Appeals dismissed the appeal, finding Applicant failed to timely serve and file a notice of appeal. The remittitur was sent April 16, 2018.

On January 11, 2018, Applicant appeared *pro se* before the Honorable Edgar Dickson and pled guilty to Orangeburg County charges of PWID methamphetamine, third offense; and failure

to stop for a blue light (2017-GS-38-376, -377). That same day, Applicant waived venue and pled guilty to Calhoun County charges of PWID methamphetamine, third offense; failure to stop for a blue light; driving under a suspended license; and driving without registration (2017-GS-9-23, -24, -27, 28). Applicant pled pursuant to a negotiation that all charges would run concurrent with his December 2017 conviction and he would not receive additional time. (Plea 4). The plea court accepted the negotiation and sentenced Applicant to thirty years for each PWID methamphetamine charge; three years for each failure to stop charge; and time-served for the remaining charges. These sentences were all concurrent to the sentence Applicant received in his December 2017 trial.

Applicant did not appeal his guilty plea. On December 10, 2018, Applicant filed a PCR application in Orangeburg County from his December 2017 trial and his January 2018 plea (2018-GS-38-1551). That same day Applicant filed a PCR application in Calhoun County from his Calhoun County charges (2018-CP-09-00163). By order dated February 7, 2023, the Calhoun County PCR action was consolidated into the Orangeburg County PCR action.

MEMO IN OPPOSITION TO PCR

Respondent incorporates by reference its return and argument presented at the PCR hearing. Respondent submits that based on the trial transcript and the testimony at the PCR hearing, Applicant did not meet his burden of proof. More specifically, Applicant did not prove counsel was deficient; he suffered any prejudice from any alleged deficiency; the solicitor engaged in a conflict of interest at his plea; or he did not understand the Faretta warnings. Thus, this application should be denied.

Applicant was afforded due process

At the PCR hearing, Applicant's primary allegation centered on his argument that he was denied due process when the Detention Center did not forcibly transport him to his trial.

Procedural due process requires “adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review.” State v. Dukes, 404 S.C. 553, 558, 745 S.E.2d 137, 140 (Ct. App. 2013).

Here, Applicant had both notice of the trial date and an opportunity to be transported and heard. At the PCR hearing—consistent with the trial transcript—both the solicitor and trial counsel testified the State arranged for transport but Applicant refused to be transported. Both also testified that Applicant was advised on the record at a prior hearing of his trial date and that trial would proceed in his absence if he did not attend. Based on the foregoing, Applicant had both adequate notice and an opportunity to be heard. Further, counsel was present at trial to confront adverse witnesses and introduce any evidence that may have been admissible and favorable to Applicant. Finally, Applicant was afforded a jury trial, and the State maintained the burden of proof. Thus, Applicant was not denied due process.

In his proposed order granting relief, Applicant asserts, “It strains credulity to argue that a defendant denied the right to be present at his own trial improperly would not be a structural error under this standard.” Likewise, Applicant avers, “Finally, denying a jailed defendant the right to be present at his own trial would always be fundamentally unfair.” Respondent agrees that had Applicant been *denied* his right to be present, he would have been deprived of due process. However, the facts here simply do not support a finding that Applicant was *denied* his right to be present at his trial. Here, both counsel and the solicitor testified that Applicant was advised on the record of his trial date and that the trial would occur *in his absence* if he chose not to attend. The State arranged for transportation, but Applicant—after being advised of his trial date and that trial would proceed in his absence—refused it.

It strains credibility to suggest a criminal defendant can (1) refuse transport arranged by the State and then (2) obtain a new trial at a later date if the Detention Center does not forcibly transport him. In fact, Respondent submits the State could foreseeably face a lawsuit if the Detention Center forced an unwilling defendant to attend trial over his objection and refusal.

In short, due process requires notice and the opportunity to be heard. Applicant was provided both. Permitting him to refuse transport and then obtain a new trial years later would serve as an incentive for other criminal defendants to likewise refuse transport to their trial—and subsequently seek to obtain a new trial at a later date if they are not forcibly transported.

Trial counsel preserved an objection to the trial proceeding in Applicant's absence

Prior to trial, trial counsel moved for a continuance on the basis Applicant was not present. The trial court denied the request. (Tr. 27-33). Thus, the undersigned submits that the issue of whether the trial court erred in denying the motion to continue is preserved for appeal.

In support of his argument that counsel needed to object to the trial court's ruling, Applicant cites Morris v. State, 371 S.C. 278 (2006). Admittedly, Respondent, in its return, cited Morris for the proposition that “where a defense counsel is faced with the prospect of proceeding with a trial in absentia, he or she may be professionally obligated to both move for a continuance and object to proceeding in absentia.” The undersigned acknowledges the discrepancy between her position at the PCR hearing and Respondent's return. Ultimately, the appellate courts will determine whether the objection raised by counsel was sufficient to preserve the issue of whether the trial court erred in denying the continuance request on the basis Applicant did not attend trial. Cf. State v. Ravenell, 387 S.C. 449, 456-57, 692 S.E.2d 554, 558 (Ct. App. 2010) (noting it was arguable Ravenell did not properly preserve an objection to his trial *in absentia* but finding it proper to address the merits when counsel moved for a continuance and the court “made findings on the

record that Ravenell was given notice the trial would proceed without him and he would be tried in absentia should he fail to appear”).

Although the undersigned submits this issue is preserved—and thus better suited for direct appeal—Respondent submits that even if it is not adequately preserved, Applicant cannot show prejudice from counsel’s failure to preserve it. Specifically, it is not reasonably likely a further objection to the Court’s ruling would have changed the trial court’s decision to proceed in Applicant’s absence—especially when the trial court considered both whether Applicant had notice of the trial date and whether Applicant had been informed that trial could proceed in his absence. Based on the transcript, Applicant was informed of both (1) his trial date and (2) that trial would proceed in his absence if he did not attend. (Tr. 27-33). Likewise, according to the transcript, the State arranged to have him transported to Court, but Applicant refused. (Tr. 27-33). Based on this, it is not reasonably likely the appellate court would have reversed the trial court’s denial of a motion for a continuance. See Ravenell, 387 S.C. at 455, 692 S.E.2d at 557 (“The trial court’s denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion.”); id. (“Reversals of refusal of a continuance are about as rare as the proverbial hens’ teeth.”); id. (“It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence.”); id. at 455, 692 S.E.2d at 557-58 (“A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence.”); id. at 456, 692 S.E.2d at 558 (“The judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend.”).

Thus, regardless of whether counsel adequately preserved this issue, Applicant cannot

show prejudice because it is not reasonably likely a further objection would have (1) changed the court's denial of the motion to continue or (2) caused the appellate court to reverse this issue.²

Respondent has conceded Applicant is entitled to a belated appeal

Respondent submits a review of the transcript showed Applicant did not voluntarily waive his right to a direct appeal of his trial. Thus, Respondent concedes Applicant is entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

Applicant has not established a conflict of interest

Applicant contends the solicitor engaged in a conflict of interest at his January 2018 plea hearing. However, Applicant on the record at his plea hearing acknowledged the solicitor did not represent him. (Plea 9). Applicant was also repeatedly advised of his right to counsel—which he repeatedly waived. (Plea 9-14). In short, Applicant pled guilty with the full understanding he was not represented by the solicitor and he had the right to appointed counsel. Because Applicant himself relayed to the plea court that he understood the solicitor was not his attorney, it strains credibility to contend the solicitor was engaged in a conflict of interest.

Applicant did not prove he lacked the ability to understand the Fareta warnings

As is true for all PCR allegations, Applicant bears the burden of proving his claim by a preponderance of evidence. Respondent submits that a review of the plea transcript itself coupled with the testimony presented at the evidentiary hearing shows Applicant did not meet this burden.³

² If counsel did *not* adequately preserve this issue, then this claim would only be able to proceed as a claim of ineffective assistance of counsel. If that is the case, Respondent submits the PCR testimony would be appropriate to consider in addition to the trial transcript. At the evidentiary hearing, the solicitor and trial counsel explained Applicant had previously appeared before Judge Dickson, and Judge Dickson informed him of his trial date and that trial would proceed in his absence if he did not attend. The solicitor referenced this in the trial transcript, wherein she stated Applicant appeared before Judge Dickson on November 20. (Tr. 30).

³ Applicant moved *after* the close of evidence—and after the subpoenaed witnesses had been released—to amend his application to allege he did not understand the *Fareta* warnings. This motion was granted over Respondent's objection. Respondent submits it was denied due process by this late amendment and did not have an opportunity to adequately question its witnesses on this issue.

Notably, a review of the plea transcript shows Applicant was actively engaged in the plea process and asked several questions of the plea court. For example, Applicant asked for clarification on the CDR code on his sentencing sheet to ensure it would be a non-violent offense. (Plea 23-24). Applicant also requested credit for time served and made a motion to reduce the sentence he received at trial. (Plea 26-27, 31-34). Finally, Applicant sought guidance on retrieving his boss's gun from law enforcement and a vehicle purchased by his mother. (Plea 36-37). Nothing in the plea transcript suggests Applicant lacked the ability to understand the process or what was going on. Applicant has not met his burden of proof in this regard, and this claim should be denied.

Conclusion

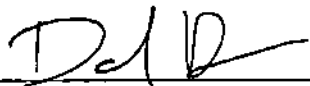
Based on the foregoing, Applicant has not met his burden of proof, and this application should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By: 
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

September 13, 2023