

VOLUME III of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY

Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Case No. 2022-CP-10-00798

Gregory K. Green, #299039,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2025-000800

APPENDIX

ASHLEY A. MCMAHAN

McMahan Law, LLC

PO Box 50536

Columbia, SC 29205

(803) 219-1110

ATTORNEY FOR PETITIONER

ALAN WILSON

Attorney General

DANIELLE DIXON

Assistant Attorney General

PO Box 11549

Columbia, S.C. 29211

(803) 734-3737

ATTORNEYS FOR RESPONDENT

INDEX

TRIAL TRANSCRIPT, Nov. 4-7, 2019.....	1
EXHIBITS FROM TRIAL	801
NOTICE OF APPEAL	816
<u>ANDERS</u> BRIEF OF APPELLANT	820
1 st <i>PRO SE</i> <u>ANDERS</u> BRIEF OF APPELLANT	834
2 nd <i>PRO SE</i> <u>ANDERS</u> BRIEF OF APPELLANT.....	840
MOTION TO SUPPLEMENT	872
ORDER ON MOTION TO SUPPLEMENT	874
SUPPLEMENTAL RECORD ON APPEAL.....	875
OPINION	962
REMITTITUR	964
POST-CONVICTION RELIEF APPLICATION	966
RETURN	975
POST-CONVICTION RELIEF TRANSCRIPT, Dec. 17, 2024.....	985
EXHIBIT ENTERED AT PCR HEARING	1094
ORDER OF DISMISSAL.....	1198
CLERK'S RECORDS	1223
SCDC RECORDS.....	1280

1 December 5, where 892 people got indicted in one day.

2 And I had questions in my trial. I had a question
3 there -- and it's in the trial transcript -- concerning 892
4 indictments being processed in one eight-hour session.
5 That's virtually impossible, your Honor. That means at least
6 per minute, two people. And in an hour session, there's no
7 way you can hear two people per minute -- the cases of two
8 people per minute. There's no way.

9 I got all the evidence to that. Every argument that I'm
10 presenting to you, everything I'm saying to you, is within
11 these documents contained that I have to submit to you and
12 the attorney general. I have --

13 And I'm sorry if you can't hear me.

14 THE COURT: I hear you, Mr. Green.

15 So Mr. Murphy, are you comfortable and can you represent
16 Mr. Green fully on all of the other allegations --

17 MR. MURPHY: Yes, I can.

18 THE COURT: -- and then be standby on this Fourth
19 Amendment issue to help sort of guide him through it?

20 MR. MURPHY: I can. And specifically, Judge, I'm
21 looking at -- there was -- he alleged, as Ms. Dixon said,
22 some improper remarks at closing. I can cite the record. We
23 would rest on the record for those.

24 He alleges some improper vouching at closing. We could
25 rest on the record on that.

1 An improper statement about the cooperating witness not
2 getting a deal, that is in the record. We could rest on
3 that.

4 And then there's some -- an allegation that the
5 solicitor contacted defense counsel about the cell phone
6 records prior to trial. I'm not -- I'm happy to explore
7 that.

8 THE APPELLANT: It's in the trial transcript, your
9 Honor.

10 MS. DIXON: Which one is this?

11 THE APPELLANT: It's a question in the trial transcript
12 verifies that information.

13 THE COURT: Yes, sir. Hold on.

14 MR. MURPHY: But I'm happy to elicit testimony about any
15 of that as well. And I can elicit testimony about those
16 Fourth Amendment issues.

17 The only thing I would ask, out of fairness to
18 Mr. Green, is that a lot of this stuff, we could proffer it,
19 give the attorney general a chance to look at it. If she has
20 any issues with anything, then we could raise that again and
21 we could have a Webex hearing. But this is just -- a lot of
22 it's from the civil court, the civil matter and the
23 depositions that were taken.

24 But I'd like to make this, of course, your Honor, a part
25 of the record as well.

1 THE COURT: Yeah, I'll review that and give Ms. Dixon
2 the opportunity to object in writing or, you know, challenge
3 any of that in writing after the hearing.

4 But let's go ahead and proceed since we're all here and
5 this case has a number of witnesses.

6 MS. DIXON: I do want to just make -- I just did notice
7 one thing coming through. There's a transcript in here, a
8 deposition with, like, handwritten notes all over it. I
9 would object to those notes. I think him going through a
10 deposition and characterizing things the way that he thinks
11 they are read is not proper.

12 THE COURT: Do you have a clean copy?

13 THE APPELLANT: I have a clean copy, your Honor.

14 THE COURT: Okay.

15 THE APPELLANT: As a matter of fact, I think, to be
16 honest with you, that deposition is from Detective Sanchez.
17 And the reason why those writings are on it is because when I
18 was copying it, I was doing my legal work. I highlighted the
19 copy and written on it. So the copies that I made contain
20 it. I mean, if the Court wants to disregard any I made on
21 the paperworks, then they could. There's nothing really but
22 cites and quotations from just hearings and --

23 MS. DIXON: May we just, like, get a Sharpie and redact
24 them? I mean, I just don't think it's -- it's fine for him
25 to do it for his own work, but I don't think it's appropriate

1 to put it in as --

2 THE APPELLANT: Well --

3 MS. DIXON: -- an exhibit with --

4 THE COURT: Hold on.

5 MS. DIXON: -- his impressions and thought processes and
6 his characterization of what things are saying.

7 MR. MURPHY: A Sharpie is fine. Or I'm happy to
8 stipulate that any notes are not evidence. However --
9 whatever makes her happy, I'm happy to do it.

10 THE COURT: I don't know how many there are. Would you
11 like to take a Sharpie and do it? I mean, I'm happy to
12 assure you that I will disregard any notes.

13 MS. DIXON: Let's just Sharpie them, if that's okay.

14 THE COURT: Okay.

15 MS. DIXON: Just keep it clean, if you don't mind, your
16 Honor.

17 THE APPELLANT: Your Honor, the documents were already
18 submitted to the record. This document should already be in
19 the record. It's the deposition of Detective Sanchez by my
20 federal attorney.

21 THE COURT: Okay. I think you're on a different topic
22 slightly.

23 Okay. Mr. Murphy -- so Mr. Green, you said you don't
24 really want to proceed pro se. Are you comfortable with
25 Mr. Murphy representing you and helping you --

1 THE APPELLANT: As far as?

2 THE COURT: -- get out the testimony --

3 THE APPELLANT: Yes.

4 THE COURT: -- that you want to --

5 THE APPELLANT: I'm comfortable with that. But I also
6 in my trial -- in this, I have questions for him too or
7 argument why he didn't want to represent me.

8 THE COURT: Okay. That's not important right now.
9 Okay? That's not important in this moment. That might be a
10 conversation to have at another time, another day.

11 THE APPELLANT: Yes, ma'am. So you can disregard those
12 questions for him and attorney Matt Nichols, who is my
13 federal attorney.

14 THE COURT: Okay.

15 THE APPELLANT: You can disregard those sets of
16 questions and the questionnaire contained inside the packet.

17 THE COURT: Well, I haven't even looked at a packet yet.
18 We're going to get to that. So you can have a seat.

19 Mr. Murphy, did you have any other opening statement?

20 MR. MURPHY: Nothing, your Honor.

21 MS. DIXON: One more thing just to keep it clean.

22 I neglected to mention that the State did file a partial
23 motion to dismiss as to the actual innocence claim, your
24 Honor. And that would be under Section 17-27-20(A)(6) of the
25 PCR Act: It "shall not be construed to permit collateral

1 attack on the ground that the evidence was insufficient." So
2 we would move to strike the claim related to actual
3 innocence.

4 There's also -- he's framed them all kind of as
5 constitutional violations and *Brady* and Rule 5, and a lot of
6 that stuff could have been and was raised at trial. So we
7 would submit that, as framed that way, they are improper
8 allegations. I think they could be reframed as an
9 ineffective assistance of counsel-type claim.

10 THE COURT: Mr. Murphy, let me hear from you on that.

11 MR. MURPHY: No, I think the actual innocence, I agree
12 with them.

13 And if I hear Ms. Dixon, she's saying that the remaining
14 claims are somewhat hybrid-ish; they could be framed as one
15 or the other. I would say that the ones that were raised at
16 trial, they were ruled on, so that kind of eliminates any
17 ineffective assistance of counsel. That's more direct
18 appeal-type issues.

19 THE COURT: Okay.

20 THE APPELLANT: For the record, your Honor, I can answer
21 -- if I can say something about the direct appeal?

22 THE COURT: No, sir. It's not necessary right now.

23 THE APPELLANT: Yes, ma'am.

24 THE COURT: Ms. Dixon, do you need another moment?

25 MS. DIXON: Oh, no, your Honor. I'm ready.

1 THE COURT: Okay.

2 MS. DIXON: I apologize.

3 THE COURT: Okay.

4 MS. DIXON: I think this is Mr. Murphy's case.

5 THE COURT: Okay.

6 Mr. Murphy.

7 MR. MURPHY: Thank you, Judge.

8 We would call Mr. Green to the stand.

9 (Witness sworn.)

10 CLERK OF THE COURT: Please have a seat for me.

11 Please state your name for the record, spelling your
12 last name, please.

13 THE WITNESS: Gregory Green, G-R-E-E-N.

14 GREGORY GREEN,

15 called as a witness on his own behalf, being first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MURPHY:

19 Q. All right. Mr. Green, you were charged in Charleston
20 County with murder and some other charge, I believe
21 possession of a weapon during a violent crime. Is that
22 correct?

23 A. Yes, sir.

24 Q. And you've got to speak up for the judge. Okay?

25 A. Yes, sir.

1 Q. All right. And who was representing you for these
2 charges?

3 A. Taylor Stewart and Teresa Norris.

4 Q. Okay. And in the course of representing you, were they
5 court-appointed or were they retained?

6 A. Court-appointed.

7 Q. And were they with the public defender's office?

8 A. Yes, sir.

9 Q. Now, when you were arrested until you went to trial,
10 were you in jail or were you out on bond?

11 A. I was granted a bond by Judge Dennis, I think.

12 Q. Judge Dennis?

13 A. Yeah.

14 Q. All right. So you were released?

15 A. In March of 2018.

16 Q. All right. And were you able to meet with your
17 attorneys to discuss the case?

18 A. Yes.

19 Q. And how many times did you meet with them? Do you
20 recall?

21 A. Several times.

22 Q. And these meetings were in person, right?

23 A. Yes.

24 Q. And did you go to their office?

25 A. Yes.

1 Q. Is there any question that they did not talk to you
2 about your case? Or are you alleging they didn't communicate
3 with you at all?

4 A. No. They communicated with me about the case.

5 Q. All right. And did you go over the discovery in your
6 case?

7 A. Yes, we went over the discovery in my case.

8 Q. And how many times did you go over the discovery in your
9 case?

10 A. Multiple. Multiple times. I think well over 10, 20.

11 Q. All right. And do you remember getting any offers from
12 the State to plead to a lesser offense?

13 A. They wanted me to plead to 20 years manslaughter and the
14 arson and I think that was it.

15 Q. And you ultimately did not accept that deal?

16 A. No, I didn't.

17 Q. Is there --

18 THE COURT: You need to speak up. Speak louder.

19 THE WITNESS: No, I didn't.

20 BY MR. MURPHY:

21 Q. And can you tell the Court why you did not accept that
22 deal.

23 A. I didn't accept the deal because I didn't commit the
24 crime.

25 Q. Okay. And so that left you with your only option to go

1 to trial, correct?

2 A. Yes, sir.

3 Q. And you wanted to go to trial, correct?

4 A. Yes, sir.

5 Q. All right. Now, in your PCR application -- and we've
6 talked about this -- you had an arrest warrant that was made,
7 correct?

8 A. Yes, sir.

9 Q. And you're alleging that that arrest warrant was based
10 on incorrect information?

11 A. Yes, sir.

12 Q. Okay. Now, we have submitted the deposition of
13 Detective Sanchez, which is part of your civil case that's
14 going on right now. Correct?

15 A. Yes, sir.

16 Q. And that deposition addresses the issue of the
17 inconsistencies with the arrest affidavit, does it not?

18 A. Yes.

19 Q. And if you can be as concise as possible about the
20 issues that were wrong or incorrect in that arrest warrant,
21 would you tell the Court that.

22 A. Okay. In the arrest warrant, he stated that cell phone
23 records placed me at the scene of the crime.

24 Q. All right. So hold on.

25 So that was through the pings -- through the telephone

1 pings that the arrest warrant put you at the --

2 A. The cell phone records --

3 Q. -- these pings put you at the -- the cell phone records
4 put you at the scene of the crime?

5 A. Yes, sir.

6 Q. All right. And you're saying that's not true?

7 A. No, sir. And not -- and the warrant -- you can look at
8 the warrant. It states that eyewitnesses --

9 Q. Well, hold on. Let's get to the eyewitness in a second.

10 But the cell phone pings, is it your position that he
11 did not have time to research or obtain those cell phone
12 pings when he drafted the warrant?

13 A. He did not have those cell phone records when he drafted
14 the warrant.

15 Q. All right. And so that's the one issue that you're
16 challenging.

17 Now, next we're talking about the witnesses' statements
18 in the warrant.

19 A. Yes.

20 Q. Okay. Tell the Court about that.

21 A. Okay. In the warrant, he tries to cooperate and say
22 that the eyewitness's statement matches with descriptions and
23 events that happened around the crime, which is not true
24 because the eyewitness, specifically Kendall Rice --

25 Q. Well, let's talk about what does the warrant say about

1 the witnesses?

2 A. The warrant said based on information given by these
3 witnesses places me at the scene of the crime, through a
4 third-party witness and the eyewitness.

5 Q. All right. And specifically, how does that -- those
6 witnesses, how did they place you at the scene of the crime?
7 Did they actually say they saw you there?

8 A. He says that alleged eyewitnesses identified me --

9 Q. Okay.

10 A. -- but through a description.

11 Q. All right. And in your deposition -- when you took the
12 deposition of Sanchez -- or your attorney took the deposition
13 of Sanchez, how does -- does he admit that that was
14 incorrect?

15 A. I couldn't say.

16 Q. All right. Well, let me ask you this. Why do you say
17 that's wrong? Is it -- are you saying it's wrong because you
18 weren't there, or are you saying it's wrong because the
19 witnesses were mistaken?

20 A. It was wrong because I wasn't there. And it's wrong
21 because the witnesses didn't state that. One of the
22 eyewitnesses gave -- one eyewitness gave a description of the
23 person who he saw leaving the scene of the crime which is
24 totally opposite from my description.

25 Q. Okay.

1 A. He did not do that in the warrant application. He
2 specifically stated that I was described.

3 Q. Okay.

4 A. That's false. And --

5 Q. All right. Is there any other issues you allege were
6 false in the warrant?

7 A. The name. If you -- the interviews from Kendall Rice,
8 the name, he's saying he heard -- specifically heard my
9 nickname "Kone."

10 Q. You're saying "Kone"?

11 A. Kone.

12 Q. K-O- --

13 A. K-O-N-E.

14 Q. Okay.

15 A. Heard at the scene of the crime. But during his
16 interrogation, it's like the witness didn't know specifically
17 what he heard. It was "It could have been 'Kon.'" It could
18 have been 'Quan.' It could have been 'Kone.'" And he
19 basically --

20 Q. And what he's saying is the witness did say he heard
21 something like "Kone" or "Corn" --

22 A. "Clone."

23 Q. -- or "Quan."

24 A. Okay. First it went from "Quan," "Kon," to "Tone,"
25 "Kone." I don't know. Just, it was a bunch of phonetic.

1 Q. And that -- because there was some discrepancy about the
2 exact name that was used, he --

3 A. He did not identify a specific name.

4 THE COURT: Mr. Green, I need you to wait for him to
5 finish talking before you start talking. Okay? So wait for
6 him to finish his question before you start talking.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Thank you.

9 BY MR. MURPHY:

10 Q. And so you're challenging -- you believe that warrant
11 was wrong because there was no positive identification of the
12 name that the person was looking for at the site, whether it
13 be "Kon," "Corn," "Kone." Correct?

14 A. Partly.

15 Q. I'm sorry?

16 A. Partly.

17 Q. Partly. All right.

18 And what other issues do you believe were incorrect with
19 that initial arrest warrant?

20 A. Okay. The initial arrest warrant had stated, like, he
21 had forensic evidence at this time, basically saying DNA
22 evidence at this time placing me and these, I think, like --
23 he did have -- he probably had DNA evidence, but there were
24 no results of the DNA evidence. So he could not say the DNA
25 evidence placed me at the scene of the crime.

1 Q. All right. So --

2 A. Or any scene or anywhere related to the crime, should I
3 say.

4 Q. And so the DNA testing would not have been completed by
5 the time --

6 A. It --

7 Q. -- of this warrant?

8 A. It wasn't.

9 Q. Okay.

10 A. DNA -- the first DNA testing results came back when I
11 was on bond in 2018, and they came back inconclusive.

12 Q. Now, let's talk about there was -- if I recall, there
13 was two instances of DNA that came up in trial.

14 A. Yes.

15 Q. One was the cigarette that was found in the bathroom or
16 in the waste basket. Correct?

17 A. Yes.

18 Q. And the second DNA was from Mr. Doucet, the cooperating
19 witness's car. There was some blood that was found in the
20 car. Correct?

21 A. Yes.

22 Q. And let's back up.

23 And so which DNA is being referred to in the warrant?

24 A. Okay. The DNA being referred to in the warrant is any
25 DNA, because he didn't have any DNA results. I don't know

1 which DNA he could have --

2 Q. And --

3 A. -- he's referring to in the warrant --

4 Q. Is --

5 A. -- because he didn't have any of those.

6 Q. Is there anything else in that warrant that you think
7 that was false?

8 A. I have to read the warrant again. I been -- I've got --

9 Q. Well, let's -- it's part of the record.

10 A. It's part of the record.

11 Q. And we also have the deposition and the pleadings in
12 from your civil case --

13 A. Yes.

14 Q. -- that break down the analysis on the warrant?

15 A. Yes, sir, it does.

16 Q. All right. And so you would rely on those?

17 A. Yes, I would rely on those information.

18 Q. All right.

19 Now, the next information we have, you talked about the
20 DNA being admitted at trial. Do you recall you put that in
21 your application?

22 A. Yes. The DNA from the car?

23 Q. Yes.

24 A. I think it was I was excluded as a mixture -- a
25 contributor to that mixture.

1 Q. And that DNA was blood droplets from the victim,
2 correct?

3 A. It was, like, blood transfer DNA mixed with whoever --
4 someone else's DNA.

5 Q. And so there was -- and the trial transcript says there
6 was other folks that it could have been. It wasn't
7 conclusive. Correct?

8 A. Yes.

9 Q. And so that evidence, you believe that was incorrectly
10 admitted?

11 A. I wouldn't say I believe that evidence was incorrectly
12 admitted. I would say that the evidence excluded me from
13 being a mixture of the --

14 Q. But --

15 A. -- contribution.

16 Q. All right. So that would be a question of fact for the
17 jury.

18 A. Okay.

19 Q. And it would be that your attorney did not object to
20 allowing that evidence in -- having that evidence come in.

21 A. Okay.

22 Q. But that evidence didn't conclusively find a mixture of
23 your DNA with the victim's DNA, correct?

24 A. No. Me and the victim are related. And as the State --
25 the State's DNA analysis lady said on the stand, I couldn't

1 be a contributor to that mixture.

2 Q. Okay.

3 And now, the next issue is you alleged a *Brady* violation
4 because there was a lineup issue that came up in trial.

5 Remember that?

6 A. Yes, sir.

7 Q. And in that case, your attorney did not have that
8 information or you never saw the lineup beforehand. Correct?

9 A. This photo lineup was brought up in recross-examination
10 by the attorney -- the prosecutor.

11 Q. All right. And the judge questioned the solicitors
12 about this lineup information, and that's on the record, if I
13 recall, at page 698, lines 1 through 8. And I also have the
14 not disclosing the lineup at 627, lines 3 through 24.

15 But if I recall the testimony, it was that they didn't
16 have the lineups in their file. Do you recall that?

17 A. They didn't. I didn't receive a lineup in my Rule 5
18 *Brady* motion.

19 Q. And Judge Buckner questioned those solicitors and asked
20 them "What's the deal with this lineup? Where is it?"

21 A. Yes.

22 Q. And they didn't have it is what they said, right?

23 A. No. They just said he didn't put it in. He didn't say
24 he didn't have it. He said he showed it to him, so they had
25 to have it. They just didn't put it in my Rule 5.

1 Q. But your position is because it happened and it was
2 clearly presented at some point, your failure to get that, it
3 was grounds for a new trial. Correct?

4 A. It violated my *Brady* rights because I didn't have
5 evidence -- they said I didn't have that exculpatory evidence
6 in my possession.

7 Q. And that would have been an error by your counsel to get
8 that information?

9 A. Yes.

10 Q. Now, you also allege that the solicitor made improper
11 closing remarks on the record, saying "find you guilty"?

12 A. No. The improper -- it was specifically "I think y'all
13 know what to do. It's time to find him guilty."

14 Q. Okay. And that's in the record from page 732, line 25,
15 to 733, line 1.

16 All right. And then you also allege during closing that
17 he made more improper -- the solicitor made more improper
18 vouching for the witnesses?

19 A. Yes, he did.

20 Q. And I have that on the record at 745, line 17, to page
21 746, line 2.

22 In addition to that, the codefendant or the cooperating
23 witness, Mr. Doucet, he signed a proffer agreement, correct?

24 A. Mm-hmm.

25 Q. And he got convicted or he pled guilty, I want to say,

1 to assisting -- er, accessory after the fact?

2 A. I think so.

3 Q. Okay. But anyways, he was -- in your eyes, he was --
4 well, he was cooperating with the State. Right?

5 A. Yes, sir.

6 Q. And I think you alleged that during closing, when the
7 solicitor said that Mr. Doucet did not get a deal, you think
8 that was improper and should have been objected to?

9 A. Yes, because he said specifically to the jury, looking
10 at the jury, "Might I add, I have not given him a deal,"
11 which was false.

12 Q. Okay. And you say it was false because he was
13 cooperating?

14 A. A proffer agreement is an agreement for immunity to
15 testify against someone.

16 Q. And specifically, he made this statement about Doucet
17 not getting a deal on page 746, lines 9 through 11.

18 Now, I want to talk to you about your allegations with
19 the solicitor contacting defense counsel about not using the
20 cell phone records before trial.

21 A. Yes.

22 Q. Tell us what's going on there.

23 A. That's even in the trial records, because the
24 questioning of Detective Sanchez by Taylor Stewart in the
25 trial transcript, he admits that he contacted Richard Waring

1 and Solicitor Waring notified my counsel that cell phone
2 records wouldn't be used at trial.

3 Q. All right. And were the cell phone records used for
4 trial?

5 A. On the day of my trial, some records popped up from two
6 months before my trial.

7 Q. All right. So -- but where I'm having trouble and I
8 want you to explain to the Court is why was that an error
9 that your counsel committed?

10 So in a PCR application, we're limited to errors that
11 your counsel did. What did your counsel do wrong that led to
12 your conviction?

13 A. That's standard grounds for PCR in South Carolina is
14 ineffective assistance of counsel, which I know. But those
15 are not the only claims that you can raise in South Carolina
16 on postconviction relief.

17 Q. All right. And so specifically -- and I'm just trying
18 to understand. When they contacted your defense counsel and
19 said "We're not going to use these phone records," what are
20 you alleging was improper about that?

21 A. I'm alleging that that was an improper act of not
22 allowing my counsel to create a proper defense because he
23 tell my counsel one thing and did another thing, which threw
24 my counsel off. Like, I couldn't --

25 Q. All right. You also raised some issues about appellate

1 counsel with errors with your appeal?

2 A. Yes, sir.

3 Q. What are you alleging your attorney -- your appellate
4 counsel did wrong?

5 A. Being that I had the Fourth Amendment violation and
6 other stronger issues that I myself presented to -- first of
7 all, I asked her to present the Fourth Amendment violation.
8 And she -- in direct appeal, as she did it, she didn't want
9 to represent me. She didn't want to bring up the issue.

10 So she told me along with her *Anders* brief, I could
11 submit my own direct appeal, which I have. And the copy
12 which -- in the packet that I just gave you, a copy of that
13 is in there, which I brought up the same issues. But I don't
14 feel as if the Court of Appeals addressed any issues in my
15 direct appeal because if they had addressed issues in my
16 direct appeal, we wouldn't be here today.

17 Q. Okay. And so in terms of what you allege your appellate
18 counsel did wrong is that she did not raise your allegations
19 regarding the initial arrest warrant?

20 A. Yeah. She didn't raise -- neither did she raise the
21 allegations in the initial arrest warrant. She choose to
22 raise a weaker claim. With other meritorious (verbatim) claims
23 on hand, why choose the weaker claim?

24 Q. And if I understand kind of the whole basis of your
25 argument, it's that you're alleging that the arrest warrant

1 -- the initial arrest warrant was based on improper
2 information and that everything else is void as a matter of
3 that initial arrest warrant?

4 A. The arrest warrant was issued on false evidence. It
5 went from the false evidence in the arrest warrant to him,
6 the detective, testifying at the preliminary hearing to
7 knowingly and willingly false evidence. At the time of the
8 preliminary hearing, he stated that wrong date records -- er,
9 no. He stated that cell phone records negated my alibi. He
10 did not have those at -- this is my preliminary hearings on
11 August 30. I was arrested July 11.

12 Q. Okay.

13 A. The arrest warrant was taken out July 7. No records via
14 the records from North Charleston Police Department through
15 the federal court. No records were requested with my -- I'd
16 say for this, no records were requested at the time they got
17 the application.

18 By the time it was the preliminary hearing, he was
19 stating that cell phone records negated my alibi. He didn't
20 have -- at that time he didn't have the -- he had the wrong
21 date records at that time. So why testify at my preliminary
22 hearing that cell phone records place me at the scene of the
23 crime if you had the wrong date records at this time?

24 Because you said you notified -- he said he notified the
25 solicitor and his boss of the error in the arrest warrant

1 approximately 30 days after the arrest warrant was issued.
2 He said he notified the solicitor and his supervisor. That
3 is in his deposition too of the error in the arrest warrant.

4 Q. And we have -- this is within the record, the errors
5 that were made from the arrest warrant and the preliminary
6 hearing and the deposition that was taken?

7 A. Yes. All that's in the record.

8 And per discovery of cell phone records in the federal
9 court, July 16 was the date that the cell phone records of
10 the wrong dates came back. That's five days after my arrest,
11 but yet still 30 days before the preliminary hearing when he
12 testified falsely.

13 Q. And I don't think there's any issue that those are
14 factual issues of when the records were returned. And so
15 what you're saying is he said he had the records in the
16 affidavit for the arrest warrant, but clearly he didn't have
17 those cell phone records?

18 A. He didn't have any records when he made the warrant
19 application. At the preliminary hearing he had the wrong
20 date records.

21 Q. Now, I believe I have gone through each issue that you
22 have raised in your PCR application.

23 Have I missed anything?

24 A. Not to my recollection.

25 MR. MURPHY: Okay. I'm going to sit down now. If you

1 could answer any questions from Ms. Dixon.

2 THE WITNESS: Yes.

3 MS. DIXON: May it please the Court.

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION

6 BY MS. DIXON:

7 Q. How are you today, Mr. Green?

8 A. I'm all right.

9 Q. Good.

10 I just have a few questions. I want to clarify some
11 things.

12 So all right. Going back to the arrest warrant
13 itself --

14 MS. DIXON: And, your Honor, there should be a copy of
15 the arrest warrant in your packet. I think it's probably
16 pretty relevant for this hearing today.

17 Q. [By Ms. Dixon] All right. So one of the issues that
18 you take contention with is that the witnesses placed you at
19 the -- you think he's lying when he said witnesses placed you
20 at the scene. Correct?

21 A. Those statements were not corroborated.

22 Q. Those statements were not -- okay. Well, I want to look
23 at those, and I want you to tell me what sentence in here you
24 think he was lying about when he talked about the witnesses
25 placing you at the scene. Just tell me what sentence it is

1 so we're very clear on this.

2 A. "A witness to be named in court provided a third-party
3 confession indicating that the codefendant dropped off and
4 picked up the defendant, who committed the murder, and
5 advised he burned down" -- "burned the house along with
6 evidence. The witness's statements were corroborated by
7 details provided by other witnesses that viewed the car drop
8 off and pick up the suspect and gave the initial
9 description."

10 Q. Okay. So let's stop there, because that seems like one
11 statement that you're taking contention with. Correct?

12 A. (Indicated.)

13 Q. So you think that was a disregard for the truth? That
14 sentence?

15 A. Yes.

16 Q. Okay.

17 A. It was.

18 Q. Do you recall Lanika Walker?

19 A. Yes.

20 Q. Who is she?

21 A. Lanika Walker was my codefendant's girlfriend at the
22 time -- fiancée at the time.

23 Q. Okay. Okay. And do you recall her testifying at your
24 trial?

25 A. Yes.

1 Q. And what did she say at your trial?

2 A. She said that her boyfriend told her that he was in the
3 act of committing a crime or was around a crime happening.

4 Q. Did she say more than that?

5 A. I mean, she said a whole lot more, but she didn't call
6 my name.

7 Q. She didn't call your name? She didn't say her boyfriend
8 was involved with someone else?

9 A. She said her boyfriend was involved with someone else,
10 but she did not call my name.

11 Q. Okay.

12 A. She specifically stated that he told -- he never told
13 her who the person was at trial. It's in the trial
14 transcript.

15 So the third-party witness, yeah, so that's Lanika
16 Walker. And that testimony's broken down in the federal
17 complaint too.

18 Q. Okay. And do you recall Seabrook and Kendall Rice's
19 testimony?

20 A. Yes. I recall both testimonies.

21 Q. And what was their testimony?

22 A. Rice specifically stated that why was he trying -- why
23 were they trying me? I wasn't the person that they saw. He
24 stated that for the record. He also stated that --

25 Q. Did he also state he saw the Chrysler drive by? He saw

1 three people go in and out?

2 Did the State also put in text messages?

3 A. I mean, all that is for the record. You know? All that
4 is for the record.

5 But he specifically said that -- during his interview
6 with the detective, the detective called my name to him and
7 my nickname, which is overly suggestive procedure because
8 he's not supposed to give a witness the suspect's name and --

9 Q. But he did testify that he could have heard "Kone,"
10 correct?

11 A. No, he didn't.

12 Q. He did testify that.

13 A. No, he did not.

14 Q. Okay.

15 A. It's in the trial transcript.

16 MS. DIXON: One moment, your Honor.

17 THE WITNESS: It's in the trial transcript. He said he
18 didn't have -- in the trial transcript, he said he never
19 heard anything discussed.

20 MS. DIXON: One moment. It's going to take me a minute
21 to get this.

22 THE COURT: Yes, ma'am.

23 (Pause in proceedings.)

24 THE COURT: Are you looking for page 232?

25 MS. DIXON: Perhaps, your Honor. Thank you.

1 THE COURT: Starting at the bottom of the page,
2 maybe 17?

3 MS. DIXON: Correct. And then --

4 THE COURT: Going onto 233? I don't know if that's what
5 you're looking for.

6 MS. DIXON: Mm-hmm. Mm-hmm.

7 Q. [By Ms. Dixon] So right here, testimony beginning here.

8 Is it still your contention that he didn't say he saw
9 Kone?

10 A. That's Jonathan Seabrook. That's not Kendall Rice.

11 Q. Okay.

12 A. You asked me Kendall Rice, ma'am.

13 Q. Okay. But one of the two eyewitness, you would agree,
14 testified that he heard someone say "Have you seen Kone?" or
15 "Quan?" or "Corn?" or something?

16 A. You specifically asked --

17 THE COURT: Have a seat, sir.

18 THE WITNESS: -- if Kendall Rice had seen that, and that
19 was not correct. If you had said "Jerome (verbatim) Seabrook
20 had stated earlier," he was the eyewitness who was not sure
21 of what he heard. But I guess you can look at the interview
22 and --

23 BY MS. DIXON:

24 Q. So you would agree the State had a witness that
25 testified he heard someone ask for "Kone" or "Quan" or

1 "Corn"?

2 A. I would agree that the State heard a witness that asked
3 for someone. To specifications of who that person was, he
4 could not answer.

5 Q. Okay. All right. You testified "The eyewitnesses gave
6 a description opposite of me." Please tell me what the
7 description was and how it did not fit you.

8 A. Kendall Rice specifically -- and it's in the packet in
9 the -- I think in the entry 88 or the judge's report
10 recommendation. He said that --

11 Can you repeat the question again?

12 Q. I want to know how the description was opposite of you.

13 A. Oh, the description --

14 Q. What was the --

15 A. -- was opposite of me.

16 Q. -- description? And how was it --

17 A. He gave a description --

18 Q. -- opposite?

19 A. -- of a 5-8, muscular built, dark-skinned person who he
20 had seen across the street or at the scene of the crime --
21 had been at that residence prior to the incident. That's not
22 my description. At the time I probably was -- I'm 5-11, so
23 basically 6 feet.

24 Q. So three inches off?

25 A. Three inches off.

1 Q. Okay.

2 A. Complexion totally different. I'm not dark-skinned.

3 Q. You would agree it was 3:30 in the morning?

4 A. Complexion --

5 Q. You would agree it was 3:30 in the morning?

6 A. Complexion -- well, what you're telling me --

7 Q. Would you agree that they --

8 A. -- is it was 3:30 in the morning.

9 Q. -- saw the person at 3:30 in the morning?

10 A. I would.

11 Q. Would you agree the sun is not out at 3:30 in the

12 morning?

13 A. I mean, the sun's not out at 3:30 in the morning. I

14 understand you're doing your job, but that's not the question

15 I asked. You -- so --

16 Q. So three inches off, described you as dark when you

17 describe yourself as medium --

18 A. He didn't describe me at all because I wasn't there.

19 Q. All right. Moving on.

20 Now, I think you testified on direct that there was

21 testimony from the DNA expert that you did not contribute to

22 a mixture -- that your DNA could not be part of the mixture.

23 Is that correct?

24 A. Yes. The mixture inside -- located inside of the

25 so-called -- I'm going to say "so-called" because he went

1 from the original suspect to a codefendant -- the so-called
2 codefendant's car.

3 Q. But you recall multiple mixtures being analyzed,
4 correct?

5 A. Yes, multiple.

6 Q. Including a cigarette, correct?

7 A. The cigarette, right, came from my cousin's residence,
8 which I -- where I do have reasonable probability to being.
9 I frequented there. So again, it being there would not be
10 out of the ordinary.

11 Q. You would agree the testimony is that your DNA could be
12 part of that mixture, correct?

13 A. Off the cigarette butt out of the trash can? Yes, sir.
14 I agree with that.

15 Q. As to the other mixtures, would you agree that the DNA
16 expert said that you could have contributed to other mixtures
17 off of the Chrysler as well?

18 A. Other mixtures off the Chrysler as well? I can't
19 recall.

20 Q. Okay. But the record --

21 A. It was DNA evidence of me being in the Chrysler?

22 Q. Mm-hmm.

23 A. My so-called codefendant's Chrysler, whom was -- I used
24 to throw parties with?

25 Q. So based upon that, would you agree that it was

1 inaccurate when you said that the expert said that your DNA
2 just wasn't in the mixture?

3 A. No.

4 Q. Okay.

5 A. I believe you are trying to confuse the Court and me
6 with the analysis of the DNA.

7 Q. Mm-hmm.

8 A. One mixture is from a cigarette butt at the house where
9 I have frequented. The other mixture which you are
10 questioning with the victim DNA in the codefendant's car, I
11 was not --

12 MS. DIXON: And your Honor, I think the record --

13 THE WITNESS: -- a contributor to --

14 MS. DIXON: -- speaks for itself as to her testimony.
15 So I'll just refer to your judgment on that.

16 Q. [By Ms. Dixon] moving on.

17 So the cell phone records, I just want to clarify.

18 But you did testify on direct there was some cell phone
19 records that you thought the State should not have used
20 because they -- well, I don't know. But you did testify on
21 direct that those records popped up about two months before
22 trial, correct?

23 A. I never contested the State should haven't used any
24 records.

25 Q. Your testimony on direct was that those records popped

1 up -- I've got, quote, "popped up two months before trial"?

2 A. Are you talking about direct right here?

3 Q. Mm-hmm.

4 A. Oh, yeah. They popped up two months before trial.

5 Q. So you would agree your lawyers had those two months
6 before trial?

7 A. No.

8 Q. Okay. Moving on.

9 A. The solicitor stated they had those records two months
10 before trial.

11 Q. Okay.

12 A. I had never seen these records, and the solicitor is the
13 one who so-called submitted them into evidence at court. So
14 I wouldn't recall my -- I don't recall my attorneys having
15 these records at all or being forwarded these records at all
16 from the solicitor's office.

17 Q. All right. Now, you have alleged that appellate counsel
18 was ineffective for not raising a preserved Fourth Amendment
19 issue. And I just want to clarify, are you referring to the
20 *Franks* issue or something else?

21 A. I am referring to the issue and the appellate counsel --
22 referring to the issue in the arrest warrant.

23 Q. Okay.

24 A. The Fourth Amendment violation.

25 Q. Okay. And you said she filed an *Anders* brief and you

1 had an opportunity to prepare your own brief?

2 A. Yes, sir -- yes, ma'am.

3 Q. Did you do that?

4 A. Yes, ma'am.

5 Q. And what did you raise to the appellate court in your
6 brief?

7 A. I raised -- the issues are in the brief that you have.
8 I can't recall. But as I first came into SCDC, I was told
9 I'm fighting for my life.

10 Q. Mm-hmm.

11 A. So from the beginning to the end of the process, I
12 raised the same issues, whether you got to refer them
13 different ways for each process. So my direct appeal issues
14 coincide with my current issues here.

15 Q. So you argued to the Court this issue regarding the
16 arrest warrant?

17 A. Yes.

18 Q. Okay.

19 MS. DIXON: One moment.

20 (Pause in proceedings.)

21 MS. DIXON: I have nothing further. Thank you.

22 THE COURT: Anything further, Mr. Murphy?

23 REDIRECT EXAMINATION

24 BY MR. MURPHY:

25 Q. Mr. Green, because I'm assisting you hybridly, is there

1 anything -- I don't have any questions for you. Is there
2 anything that you want to say in response?

3 A. In response to what?

4 Q. To the questions you were asked.

5 A. I think she's doing a great job continuing what the
6 prosecutor's already done, trying to misconstrue --

7 MS. DIXON: I'm going to object to this, your Honor.

8 MR. MURPHY: Yes.

9 MS. DIXON: This is like a personal attack of sorts.

10 MR. MURPHY: Right.

11 MS. DIXON: And that's very inappropriate.

12 MR. MURPHY: We'll withdraw that. Strike it.

13 All right. Thank you, sir. We don't have any other
14 questions.

15 THE WITNESS: Well, you can have this. It's yours.

16 (Witness excused.)

17 THE COURT: Any additional witnesses, Mr. Murphy?

18 MR. MURPHY: One moment, your Honor. Beg the Court's
19 indulgence.

20 THE COURT: Yes, sir.

21 (Pause in proceedings.)

22 THE APPELLANT: Yes. I was trying to call -- er, I
23 subpoenaed -- I have questions for trial counsel.

24 MR. MURPHY: Okay.

25 THE APPELLANT: I have questions for the appellate

1 counsel. I do have questions and I also have my argument I
2 formulated myself.

3 THE COURT: Are you talking to me?

4 THE APPELLANT: Yes, ma'am.

5 THE COURT: Oh, I didn't ask you anything.

6 THE APPELLANT: Oh.

7 THE COURT: Your -- Mr. Murphy asked you something.

8 (Pause in proceedings.)

9 MS. DIXON: I think our next -- your Honor, they want to
10 call Taylor Stewart, who was the trial lawyer, and she's
11 virtual. So --

12 Is she on already?

13 I think she's already here.

14 THE COURT: Ms. Stewart, are you there?

15 Wonderful.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right.

18 TAYLOR STEWART,

19 called as a witness on behalf of the Appellant, having not
20 been sworn, was examined and testified via videoconference as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. MURPHY:

24 Q. All right. Ms. Stewart, can you hear me?

25 A. I sure can.

1 Q. All right. Thank you.

2 My name is Chris Murphy, and I represent Mr. Green in
3 his postconviction relief. I'm going to ask you a few
4 questions.

5 First of all, you were appointed to represent Mr. Green
6 via your role with the public defender's office, correct?

7 A. Yes.

8 Q. And do you recall approximately how many times you met
9 with him to discuss this case?

10 A. I don't remember exactly. I would think something like
11 ten.

12 Q. Do you remember Mr. Green specifically? I know you did
13 a lot of cases.

14 A. Yes.

15 Q. All right. And I assume you remember the trial that you
16 had with him?

17 A. Yes, I do.

18 Q. And do you remember talking about issues about the
19 arrest warrant and whether it contained inaccurate
20 information?

21 A. Yes.

22 Q. All right. And tell the Court what you recall about
23 that.

24 A. Well, I specifically remember there were some
25 credibility issues with the lead detective, Detective

1 Sanchez, who had included false information in an arrest
2 warrant and then also did testify about that information
3 falsely at Mr. Green's preliminary hearing.

4 Q. Okay. And were you involved in the preliminary hearing
5 at all?

6 A. I was.

7 Q. All right. And at that time with the false information,
8 did you have corroborating proof or any type of extrinsic
9 evidence that showed that that information was false?

10 A. Yes.

11 Q. Okay. And was that presented to the Court?

12 A. Well, it was -- yes. I mean, we had cell phone records.
13 Are you asking at the preliminary hearing?

14 Q. I'm asking about, yes, the preliminary hearing.

15 A. It was not presented to the Court at that time. I
16 wasn't aware of it at the preliminary hearing.

17 Q. And that was my question. I would have been shocked if
18 you had that information at the time of the preliminary
19 hearing.

20 A. Sure.

21 Q. All right.

22 A. Yeah.

23 Q. And so when you were looking at probable cause from the
24 warrant, the inconsistencies you wouldn't have found out
25 until well after discovery was done?

1 A. That's right.

2 Q. But you did find out about those inconsistencies prior
3 to going to trial?

4 A. That's right.

5 Q. And I believe you did raise those issues with the Court;
6 is that correct?

7 A. Yes, we did.

8 Q. All right. Now, I want to go back to -- do you recall
9 any offers that were made to Mr. -- by the State to Mr. Green
10 for some type of plea deal?

11 A. Yes. I don't know that I remember the exact specifics
12 except I remember it was a 20-year offer.

13 Q. Okay. Does 20 years to manslaughter sound familiar?

14 A. Yeah, that sounds right.

15 Q. All right. And did you convey that offer to Mr. Green?

16 A. I did.

17 Q. And what was his response?

18 A. He instructed me to reject it.

19 Q. All right. In terms of the evidence against him, can
20 you summarize for the Court the evidence that was against
21 Mr. Green, from your understanding.

22 A. To my recollection, it was a completely circumstantial
23 case. The case was based largely on the testimony of a
24 codefendant who was charged with accessory after the fact to
25 murder. I remember there being a little bit of physical

1 evidence in terms of I remember there was like a cigarette
2 butt with some DNA on it that was present at the victim's
3 residence.

4 I'm trying to remember what else. But like I said, it
5 largely rested on the testimony of Terrance Doucet, which was
6 Mr. Green's codefendant at the time.

7 Q. And I'm not trying to trick you with these questions.
8 But as I read the transcript, it was Mr. Doucet that put him
9 at the scene, testified against him, and that was the thrust
10 of the State's case against him?

11 A. It was.

12 Q. And at trial, you had argued that it was actually
13 Mr. Doucet that committed these crimes and not Mr. Green?

14 A. Well, I mean, we didn't put up a true third-party guilt
15 defense, but certainly I thought the evidence was as strong
16 or stronger against Mr. Doucet -- in fact, probably much
17 stronger against Mr. Doucet than Mr. Green.

18 Q. And this is kind of a question -- I used to do a lot of
19 criminal defense work. I've stopped. But kind of a question
20 I have is when you look at this evidence as trial counsel,
21 did you have an opinion as to kind of a percentage of whether
22 he'd be found guilty or innocent?

23 A. No. I don't know -- I don't know that I would ever put
24 it that way in terms of a percentage. I mean, I know that it
25 was certainly my job, and what I did was discuss what I

1 thought the strengths of the evidence were and weaknesses of
2 the evidence. But I don't know that I could really put a
3 percentage on it.

4 I mean, it certainly wasn't a case that going into trial
5 I thought was a major loser or something that was extremely
6 strong against my client. But that was probably all I could
7 say about that.

8 Q. Did you have an opinion as to whether or not the jury
9 was more likely to convict him or acquit him?

10 And the reason --

11 A. I don't -- no. I don't think I could say that today.

12 Q. And the reason I ask is because the question is when he
13 had the plea offer, would you have -- do you recall whether
14 you had recommended him accepted it or reject it? Or did
15 that even come up at all?

16 A. I don't recall making a recommendation to him. I recall
17 discussing with him the merits of the offer, discussing with
18 him what I thought to be the substance of the evidence, and
19 then asking him what he wanted to do.

20 Q. And so I have a few questions that Mr. Green wants me to
21 ask. And I'll try to summarize them.

22 Did you talk to any witnesses or do you recall whether
23 or not any witnesses other than Mr. Doucet put Mr. Green at
24 the scene of the crime?

25 A. No, not specifically. I mean, certainly I know the

1 State made an argument that a couple of other eyewitnesses
2 were describing Mr. Green when they were describing an
3 individual to police officers, but he certainly wasn't
4 identified by those witnesses.

5 Q. And do you recall what Doucet's relationship was with
6 Mr. Green? Were they friends?

7 A. I believe they were friends or acquaintances.

8 Q. Okay. And were you able to talk to Mr. Doucet prior to
9 trial, or would he talk to you at all?

10 A. No. He was represented by Joe Smiley.

11 Q. Okay. All right. And bear with me. I'm going to ask
12 some specific questions.

13 When was applicant arrested? And when was the
14 applicant's initial arrest warrant application taken out? If
15 that makes sense.

16 A. I don't recall as we sit here today.

17 Q. Were there any witnesses that viewed the crime that took
18 place -- physically viewed the crime in question that took
19 place?

20 A. Well, I mean, it sort of depends on who you believe.
21 There was testimony by an ex-girlfriend of Mr. Doucet that he
22 had -- or that she had been told that Mr. Doucet was present
23 at the crime and that may have been -- maybe even fired a
24 gun. But then at trial, she sort of recanted those
25 statements.

1 But other than the potential of Mr. Doucet being present
2 at the scene of the crime, there's no other eyewitness to the
3 crime itself that I'm aware of.

4 Q. Are there any witnesses who testified at the trial whose
5 interviews and testimony contradicts where -- or what
6 Detective Sanchez wrote in applicant's arrest warrant
7 affidavit?

8 A. I mean, I'd have to see the entirety, I think, of the
9 arrest warrant affidavit to be able to respond to that
10 question with specificity. I mean, I remember information
11 about cell phone records placing Mr. Green supposedly at the
12 scene was included in the arrest warrant affidavit. I know
13 that we were later able to obtain records showing that he did
14 not have access to that information when it was written in
15 the affidavit. But beyond that, I can't recall.

16 Q. Before and during trial, was there any reason to believe
17 that the investigator or witnesses gave or provided false
18 information?

19 A. "The investigator" meaning who?

20 Q. Mr. Sanchez. Detective Sanchez.

21 A. I mean, at some point while we were preparing for trial
22 we became aware that when information about cell phone
23 records and cell tower data was included in the arrest
24 warrant and testified to in the preliminary hearing, we
25 learned that Detective Sanchez did not have access to that

1 information at the time that he was writing the warrant and
2 testifying at the hearing. But I can't recall when exactly
3 that would have been.

4 Q. Okay. And were there any video recordings of the crime
5 on the applicant's cell phone or social media accounts?

6 A. I remember getting a phone dump. I don't really
7 remember what the contents were. But certainly I think if
8 there had been a video or pictures or something like that on
9 his phone, that would have been major evidence in the State's
10 case. So I don't believe that evidence existed.

11 Q. Do you know of any electronic device or witness that
12 placed applicant at the scene of the crime?

13 A. I mean, not any that could place him at the crime with
14 any sort of specificity. I mean, we had some cell tower data
15 that came in at the trial that the State tried to use to show
16 he was in the area at the time of the crime, but nothing that
17 would be able to pinpoint his location with exact detail.

18 Q. And what physical evidence, if any, linked the applicant
19 to the crime?

20 A. To the crime itself, there wasn't really any physical
21 evidence. I mean, the -- there was a cigarette butt that I
22 mentioned earlier that the State argued had Mr. Green's DNA
23 on it that was found outside the residence. There wasn't any
24 physical evidence at the scene that had any, you know, bodily
25 fluids or anything like that on it that didn't belong to the

1 victim.

2 Q. And do you recall, did the applicant have an alibi?

3 A. He -- I mean, I think I could say he had a partial
4 alibi, if I remember, in that he had been on -- I think he
5 had been at a party earlier that night. But I can't recall
6 anything more specific than that.

7 Q. All right. Have you talked to any witnesses in the
8 alleged warrant? If so, what did they say?

9 A. I don't remember what all we did. I know we would have
10 sent our investigator out to talk to anybody that was listed
11 in the arrest warrant, but what the substance was of those
12 investigations I don't have access to anymore as I'm not at
13 the public defender's office.

14 Q. Do you know if any of the witnesses mentioned in the
15 arrest warrant affidavit testified at trial?

16 A. I can't recall who all was mentioned in the arrest
17 warrant affidavit.

18 Q. Okay. When did the prosecution inform you that they
19 were not going to use the cell data at trial because it was
20 misplaced by Detective Sanchez?

21 A. I vaguely remember a conversation about some cell data.
22 I'm not sure it was all cell data, but that's all that I can
23 remember. I'm not sure of anything more specific than that.

24 Q. Does an indictment cure knowing and willingly false
25 information included in an arrest warrant affidavit

1 application?

2 A. I do not know the answer to that question.

3 Q. Does the detective's false testimony taint the
4 preliminary hearing?

5 A. Um --

6 MS. DIXON: I'm going to object. That's a legal
7 conclusion for your Honor ultimately to make.

8 THE COURT: Sustained.

9 MR. MURPHY: I'll withdraw it. Thank you.

10 Q. [By Mr. Murphy] Would Detective Sanchez testifying
11 falsely at trial concerning the wrong date records being the
12 reason, if any, for his violation of applicant's Fourth
13 Amendment rights --

14 A. I'm sorry. Can you rephrase that?

15 Q. Would defendant -- would Detective Sanchez testifying
16 falsely, again, at trial concerning wrong date records being
17 the reason, if any, for his violation of applicant's Fourth
18 Amendment rights, painting the picture as if it were an
19 honest mistake or oversight, while in all actuality, he did
20 not have any phone records belonging to the applicant at the
21 warrant application stage, be considered a deliberate act of
22 perjury in violation of applicant's due process rights for a
23 fair judicial process?

24 MS. DIXON: I've got several objections. First of all,
25 that's a very compound question. Second of all, it does

1 require legal conclusions that are for your Honor. And it
2 also contains what I consider to be a lot of
3 mischaracterizations about what occurred.

4 THE COURT: The objection is sustained.

5 MR. MURPHY: Okay.

6 Q. [By Mr. Murphy] Are you aware the prosecutor and
7 Detective Sanchez's supervisor were notified, according to --
8 well, are you aware that the prosecutor and Detective
9 Sanchez's supervisor were notified around 15 days after his
10 testimony at the preliminary hearing that he obtained a
11 warrant with the wrong date of phone records?

12 A. No, I'm not aware of that.

13 MR. MURPHY: And Judge --

14 THE COURT: Yes, sir.

15 MR. MURPHY: -- I've got -- Mr. Green wants to go
16 through a lot of questions here, and they all pertain around
17 these cell phone records and the dates. And we've been
18 through this ad nauseam, and I don't think there's any
19 objection by the State about the timing of these cell phone
20 records.

21 MS. DIXON: I have no problem if you want to ask them.

22 MR. MURPHY: I mean, I'm happy to go through it. It
23 just -- it's going to be -- I would just ask the Court's
24 patience with going through these.

25 THE COURT: Yes, sir.

1 BY MR. MURPHY:

2 Q. Okay. If that information -- and I'm talking about the
3 cell phone records -- had been disclosed to you, would you
4 have done anything different with the -- was disclosed to you
5 at the time of the warrant, would you have done anything
6 different in terms of the applicant's defense?

7 A. I don't know. I mean, I think that's asking a
8 hypothetical question that it would be hard to answer now
9 with the hindsight that I have about what happened in the
10 case.

11 I mean, I think there are two potential ways I could
12 have addressed it. I could have tried to elicit the same
13 testimony that I did at the preliminary hearing from
14 Detective Sanchez and then tried to, you know, see what might
15 happen with that information later at his trial. Or I
16 certainly could have confronted him with it at the
17 preliminary hearing.

18 You know, I'm not sure that that really would have
19 changed whether Mr. Green was charged and ultimately tried
20 for the offense. But, you know, I'm not sure.

21 Q. And here's a question. If it was known that the
22 detective did not have any cell phone records at the warrant
23 application stage, do you think the outcome of this case
24 would have been different, and why?

25 MS. DIXON: I'm going to object. That's a legal

1 conclusion for the judge.

2 THE COURT: Sustained.

3 BY MR. MURPHY:

4 Q. Does false testimony by an affiant in an arrest warrant
5 application, preliminary hearing, and trial taint the
6 applicant's judicial proceedings?

7 MS. DIXON: Object to the extent he's asking
8 specifically to this case again. That's a question for your
9 Honor.

10 THE COURT: Sustained.

11 BY MR. MURPHY:

12 Q. Was any evidence used at trial that was obtained as a
13 result of the questioned constitutionality --
14 constitutionally defective arrest warrant?

15 MS. DIXON: Same objection.

16 THE COURT: Sustained.

17 BY MR. MURPHY:

18 Q. And was the applicant a contributor to the mixture of
19 the victim's DNA found in codefendant's car per testimony of
20 the DNA analysis expert from SLED, Donna Money?

21 A. I remember there being several DNA mixtures. I don't
22 think I could tell you at this point what the findings were
23 on the DNA mixtures and which ones were where. I can't
24 remember that.

25 Q. Did the applicant admit, plea, or concede to committing

1 the crimes to you during your representation of him?

2 A. No.

3 Q. If you reviewed all the documents in this case, why
4 didn't you request a *Franks* hearing and motion to quash the
5 warrant?

6 A. I'm not sure I can answer that question at this point.
7 I don't really remember whether we analyzed that issue going
8 into trial. I don't practice criminal defense work anymore.
9 I'm in civil work now. I don't know what the outcome would
10 have necessarily been of a *Franks* hearing. And I know that
11 we wanted to challenge Detective Sanchez with the preliminary
12 testimony -- preliminary hearing testimony in front of the
13 jury at his trial because I did feel that it cast significant
14 doubts on his credibility.

15 Q. All right. Next, does the prosecution's failure to
16 inform you that Sanchez never had the records, as opposed to
17 misplacing them, to the defendant's ability --

18 I'm sorry.

19 Does the prosecutor's failure to inform you that Sanchez
20 never had the records, as opposed to misplacing the
21 documents, violate *Brady*?

22 MS. DIXON: Same objection. That's a legal conclusion
23 for your Honor.

24 THE COURT: Sustained.

25

1 BY MR. MURPHY:

2 Q. If any, what was your reason for not requesting a *Franks*
3 hearing after the discovery of Detective Sanchez's
4 infringement on applicant's rights?

5 A. I think I answered that one already.

6 Q. I'm sorry?

7 A. I said I think I answered that one already.

8 Q. Okay. Would you classify Detective Sanchez's testimony
9 at the preliminary hearing as perjury or mistaken
10 information?

11 MS. DIXON: Same objection.

12 THE COURT: Sustained.

13 BY MR. MURPHY:

14 Q. Did you receive a copy of the photo lineup Solicitor
15 Waring brought up to Detective Sanders in applicant's Rule 5
16 motion of discovery?

17 A. So my recollection of the photo lineup issue was that
18 there was a single-photo identification that was prepared but
19 not shown to one of the eyewitnesses in this case, which
20 would have been either Mr. Seabrook or Mr. Rice. I don't
21 believe that the single photo was disclosed at discovery, but
22 it also wasn't ever used. So I don't -- it's not necessarily
23 exonerating information.

24 Q. Are you aware that the majority of the objections and
25 motions of dismissal you made on the record at trial during

1 closing arguments are not transcribed in the transcript of
2 the applicant?

3 MS. DIXON: Can you repeat that?

4 MR. MURPHY: I'm sorry.

5 Q. [By Mr. Murphy] Are you aware that the majority of the
6 objections and motions for dismissal you made on the record
7 at trial and during closing arguments are not transcribed in
8 the transcript of the applicant?

9 MS. DIXON: I'm going to object. I guess he can ask
10 whether she thinks the record reflects what happened.

11 THE COURT: Yeah. I think you can answer that question
12 if you reviewed the transcript and if you have any belief
13 that there is any defect in the transcript or omission from
14 the transcript.

15 THE WITNESS: I don't think I could say this far out
16 whether I remember specifically which objections that I made
17 at trial. I did review the transcript before the hearing
18 today. I -- you know, it generally accurately reflects my
19 memory, but I -- you know, I couldn't say whether an
20 objection got missed or something like that.

21 BY MR. MURPHY:

22 Q. Do you recall with trial with Judge Buckner, would he --
23 would his practice be to pull you up for an objection and
24 discuss the objections off the record?

25 A. Yes.

1 Q. And do you recall that happening at this trial?

2 A. Yes.

3 Q. And do you know if those conversations were ever put on
4 the record?

5 A. Sometimes we would put them on the record when -- either
6 during a break or, you know, after whatever objection was
7 made was resolved. Other times, upon reading the transcript,
8 it was clear to me that some bench conferences were not noted
9 on the record.

10 Q. And obviously, if they're not on the record, then they
11 can't be raised on appeal because there's nothing there to
12 review?

13 A. Sure.

14 Q. Okay.

15 THE APPELLANT: Your Honor, can I ask the questions?
16 Because this is a question that he -- the only issue that he
17 talked to me on the phone with last week -- mind you, the
18 first time I ever talked to him -- the only issue that he
19 brought it up to me that he told me that he don't want to ask
20 it, so I'm going to ask it.

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY THE APPELLANT:

24 Q. Okay. That wasn't the just -- the question that he just
25 asked.

1 The specific question was is this a common practice
2 or -- as the only issue Mr. Murphy suggested I bring up was a
3 brief conversation approximately a week prior to this
4 hearing.

5 Is abuse of discretion common in cases presided by Judge
6 Buckner because his cases have lots of bench conferences and
7 comments stricken from the record that aren't transcribed
8 with -- which is critical to the defense of whether to use
9 those for collateral attack on the issues?

10 That is the specific question he didn't want to ask.

11 MS. DIXON: I'm going to object. I'm not sure what
12 specific --

13 THE COURT: Is it common practice --

14 MS. DIXON: For --

15 THE COURT: -- for Judge --

16 THE APPELLANT: For Judge Buckner --

17 THE COURT: For Judge Buckner.

18 THE APPELLANT: Yeah.

19 MS. DIXON: For a court to not transcribe things?

20 THE APPELLANT: No. That's not the way he put it to me.
21 I'm asking the Court the question the same the way that he --

22 MS. DIXON: Is it common practice for Judge Buckner to
23 have bench --

24 THE COURT: Bench conferences that are not later placed
25 on the record.

1 THE APPELLANT: And stricken from the record.

2 THE COURT: And then he goes into some language about it
3 depriving him of his ability to collaterally attack those
4 things.

5 THE APPELLANT: Those issues.

6 THE COURT: But the essence of the question is -- for
7 the witness is whether it is common for Judge Buckner to have
8 these conferences -- bench conferences and not post them on
9 the record.

10 MS. DIXON: I don't know he she would know what -- I
11 think it has to be limited to her experience. But I think
12 it's a --

13 THE APPELLANT: I also --

14 THE WITNESS: I mean, my answer was going to be I think
15 that this is the only memory I have being in front of Judge
16 Buckner. So in my experience, that was what he did. But I
17 don't recall trying another case with Judge Buckner.

18 THE COURT: Good enough. Thank you.

19 THE WITNESS: Sure.

20 THE APPELLANT: I have one last question for trial
21 counsel.

22 Q. [By the Appellant] Why weren't facts related to the
23 appellate counsel about what Detective Sanchez did? He was a
24 homicide investigator investigating the applicant on several
25 other cases, and he was the guy that was citing the wrong

1 doctrine after objecting to the State and motion to dismiss
2 how Judge Buckner sustained the objection and told the jury
3 to disregard the comment while striking it from the record
4 and denying your motion so the applicant could formally -- so
5 appellate counsel could formulate an appeal of it about the
6 judicial -- about the prejudicial comment being made in front
7 of the jury about the applicant's legal history and how that
8 could have legally and negatively influenced the jury's
9 decision and how that could have negatively -- and how they
10 could have been negatively influenced by that comment in
11 applicant's direct appeal?

12 MS. DIXON: Two objections.

13 Number 1, I'm not sure what the question is. There was
14 a lot going on there, a lot of causes.

15 THE APPELLANT: Yes.

16 MS. DIXON: But Number 2, there was also what I consider
17 a lot of mischaracterizations in that question.

18 THE COURT: The question is why did Ms. Stewart not
19 discuss certain issues with appellate counsel,
20 specifically --

21 THE APPELLANT: The prejudicial statement made by
22 Detective Sanchez in front of the jury.

23 MS. DIXON: I object to the characterization of
24 "prejudicial statement" made by Mr. Sanchez to the jury. I'm
25 not sure -- that's an opinion, not a fact.

1 THE COURT: If you recall, Ms. Stewart, why wasn't it --
2 that discussed with appellate counsel, if it wasn't?

3 THE WITNESS: I don't remember whether I had any
4 discussions with appellate counsel in this case. I know I've
5 had several cases that have gone up on appeal after I left
6 the public defender's office, and my general practice was
7 always to respond and cooperate with those counsel. So I
8 don't have any specific recollection of the issue that
9 Mr. Green is raising. But certainly, I would have -- my
10 memory is that if any appellate counsel ever reached out to
11 me, I would have spoken with them about my memory of the
12 case.

13 THE COURT: Okay. Thank you.
14 Anything further, Mr. Murphy?

15 MR. MURPHY: Pardon?

16 THE COURT: Anything further from this witness?

17 MR. MURPHY: Nothing further.

18 THE COURT: Ms. Dixon?

19 MS. DIXON: Just a few things, your Honor.

20 CROSS-EXAMINATION

21 BY MS. DIXON:

22 Q. Ms. Stewart, you testified you had several opportunities
23 to meet with Mr. Green?

24 A. I did.

25 Q. And did you have enough -- sufficient time to meet with

1 him to discuss the evidence?

2 A. I feel that I did, yes.

3 Q. And did you have sufficient time to discuss the
4 indictments, the charges, the State's burden?

5 A. Yes.

6 Q. And what was kind of your strategy going in?

7 A. I mean, I think the main strategy was to attack the
8 credibility of the codefendant. He lied a lot during the
9 investigation. And so, you know, this was a circumstantial
10 case that rested very heavily on the codefendant's testimony,
11 so, you know, we absolutely had to do everything that we
12 could to really focus the jury in on all of his lies.

13 Q. And did you have a chance to discuss that strategy with
14 Mr. Green?

15 A. Yes.

16 Q. Okay. Ever have any concerns with his ability to
17 understand your conversations?

18 A. No.

19 Q. And then I think you were asked, what was kind of your
20 strategy for not requesting a *Franks* hearing?

21 A. Well, looking back, I don't really remember the -- you
22 know, whether we considered doing a *Franks* hearing before the
23 trial or not. I do remember wanting to preserve the issue of
24 the preliminary hearing testimony that was false, and that
25 was relatively extensive during my cross-examination of

1 Detective Sanchez at trial.

2 Q. And were you able to use that at trial?

3 A. Yes.

4 Q. And was that something you were maybe wanting to kind of
5 surprise the State with, not give them a kind of tip of your
6 cards or whatever?

7 A. Yes.

8 Q. Okay. And then in terms of he's got an issue related to
9 appellate counsel not raising a Fourth Amendment issue,
10 outside of his concerns with the arrest warrant, are you
11 aware of any Fourth Amendment issues that came up during this
12 trial?

13 A. No. I don't think there were any searches done, at
14 least recovered any evidence related to the murder or the
15 arson charges.

16 Q. Okay. And then going on to his *Brady* issue, generally
17 speaking, what was your relationship with the solicitor?

18 A. In what way?

19 Q. In terms of getting discovery and evidence from him --
20 from them.

21 A. You know, I generally think that I received everything
22 in the case. I don't know that I remember any specific
23 issues.

24 Q. Did you have -- so nothing came up at trial that was
25 surprising to you in terms of evidence?

1 A. Not that I remember.

2 Q. Okay.

3 MS. DIXON: All right. Thank you. I have nothing
4 further.

5 THE COURT: Anything further from this witness?

6 MR. MURPHY: Nothing, your Honor.

7 THE COURT: And Ms. Stewart, it's come to my attention
8 that we -- in our haste to get your audio working and all
9 that, we failed to swear you in and place you under oath.

10 THE WITNESS: I was wondering. I was like, well, if I'm
11 an officer of the court, I don't know if you have to do that
12 with me.

13 THE COURT: Well, and that was my next question. Would
14 you give the same answers if sworn under oath as an officer
15 of the court?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: And do you swear or affirm that the
18 testimony that you have already given has been the truth and
19 nothing but the truth?

20 THE WITNESS: Yes, your Honor.

21 THE COURT: Okay.

22 Anything further before we let Ms. Stewart go?

23 MR. MURPHY: Nothing. Thank you.

24 MS. DIXON: Nothing.

25 THE COURT: Okay. Thank you, Ms. Stewart.

1 (Witness excused.)

2 MS. DIXON: I'm going to call our next witness.

3 Is she -- she's not in, is she, by chance?

4 THE COURT: No. Nobody else is logged in.

5 MS. DIXON: Let me just give her a call.

6 (Pause in proceedings.)

7 THE COURT: I'm going to take just a five-minute break
8 while they're working on this.

9 (Court recessed.)

10 THE COURT: Are we ready to roll, folks?

11 MS. DIXON: Ready, your Honor.

12 THE COURT: Okay. Mr. Murphy, are you ready?

13 MR. MURPHY: I'm ready, your Honor.

14 THE COURT: Let's do this. This is -- is this your
15 witness or the State's witness?

16 MR. MURPHY: This is my witness, your Honor.

17 THE COURT: Okay. Okay.

18 MR. MURPHY: Ms. --

19 THE COURT: Oh, let's swear the witness this time.

20 MR. MURPHY: Yes. All right.

21 CLERK OF THE COURT: Ms. Carter, can you raise your
22 right hand.

23 (Witness sworn.)

24 CLERK OF THE COURT: Can you please state your name for
25 the record, spelling your last name, please.

1 THE WITNESS: Certainly. It's Wanda Carter,
2 C-A-R-T-E-R.

3 WANDA CARTER,
4 called as a witness on behalf of the Applicant, being first
5 duly sworn, was examined and testified via videoconference as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. MURPHY:

9 Q. Ms. Carter, my name is Chris Murphy, and I represent
10 Mr. Green in his PCR application.

11 Can you hear me okay?

12 A. I can hear you just fine. Thank you.

13 Q. All right. And first question is do you remember
14 Mr. Green as a client or doing his brief -- his *Anders* brief?

15 A. Yes, I remember.

16 Q. Okay. Did you ever speak with Mr. Green about the --
17 did you ever -- well, let me ask you did you ever speak with
18 Mr. Green on the phone or in person?

19 A. I don't recall. I might have. If he says I did or if
20 he says I didn't, that's probably true. Usually our
21 correspondence deals with paper, but clients call in. But I
22 don't recall. If I remember correctly, this was during
23 COVID, so I probably did not speak with him.

24 Q. All right. And do you remember ever talking with him
25 about this Fourth Amendment issue violation in terms of

1 improper testimony within the arrest warrant?

2 A. Honestly, I don't recall speaking with him about that,
3 no.

4 Q. Do you remember why you did not present the Fourth
5 Amendment violation claim in your -- that was alleged during
6 -- er, brought up during trial in the direct appeal?

7 A. Are you referring to the arrest and the arrest warrant?

8 Q. I can --

9 A. And probable cause?

10 Q. Yes.

11 A. I did not see that as an issue for appellate review.

12 Q. Why didn't you see that as an issue?

13 A. Well, of course, the threshold for probable cause at
14 that juncture is relatively low. I have reviewed the arrest
15 warrant and that did not stand out to me as a meritorious
16 issue now, so I would likely say that it did not stand out as
17 an issue worthy of raising on appeal back in 2020.

18 Q. And can you tell us why did you present an *Anders* brief
19 and not address other issues that were preserved for appeal
20 -- er, that were preserved for appeal in the trial
21 transcript?

22 A. Well, that's a loaded question. On appeal, the rules
23 are a little different. First of all, the issues have to be
24 preserved properly for appellate review. And we, on appeal,
25 make a judgment call as to which issues are worthy of

1 presenting to the Court and if they contain merit.

2 This was a very long case. It was maybe 600 pages. I
3 pulled up three transcripts. So it doesn't necessarily
4 translate into meritorious issues on appeal. And if I
5 recall --

6 As a matter of fact, to be honest with you, I did review
7 this transcript. I reviewed the case. Because that was my
8 question also: Why did I file an *Anders*? And upon
9 reviewing, I could tell exactly why. There -- you know, a
10 lot happened at trial, but the appeal is different. And I
11 did not see any issues worthy of raising on appeal.

12 However, in an *Anders* procedure, I don't like for my
13 clients to drop the appeal. I will file an *Anders* brief for
14 their confidence and my confidence because in an *Anders*
15 appeal, the court will review -- the appellate court reviews
16 the entire record on appeal. And if there was an issue that
17 I missed, the court would have contacted me.

18 But what I did, I remember thinking, "I will include
19 everything in the record on appeal." There should be in the
20 record on appeal exhibits that refer to the jail calls, you
21 know, just in case that was an issue. I didn't really see
22 that as an issue. Most of the jail call -- excuse me. Most
23 were -- with what I could gather, lots of the calls or the
24 conversations and the communications were pretty much
25 exculpatory.

1 So it's -- this happens a lot. We have long cases, long
2 transcripts, but there's just not an issue for appeal. But
3 that's what the *Anders* procedure is for, which is why I filed
4 the brief anyway under *Anders*, just to be certain as a
5 check-and-balance with respect to the case.

6 Q. And did the applicant actually file his own direct
7 appeal or appellate brief?

8 A. I did review my directory, and I see where Mr. Green
9 filed his own pro se brief raising many issues; I can't
10 recall all of the issues. And that is perfectly acceptable.
11 As a matter of fact, the Court sends a letter indicating that
12 if there's anything that you, the client, want to raise,
13 you're free to submit a brief or writing or paragraph or
14 anything. And I recall that Mr. Green did submit his pro se
15 brief on appeal.

16 Q. And do you recall what the Court ultimately ruled on
17 that pro se brief or his --

18 A. The case was dismissed pursuant to *Anders versus*
19 *California*. And I don't have that opinion in front of me,
20 but usually the Court indicates that it has reviewed the
21 brief from counsel and the brief from the client and it is
22 dismissed.

23 Q. And I have one last question.

24 If the client and trial counsel presented and preserved
25 for the record claims that were more relevant and possibly

1 meritorious, why would counsel -- why would you abandon those
2 claims and choose to argue less relevant issues?

3 MS. DIXON: I'm going to object to the characterization
4 of what's relevant and not. I think she can give her
5 testimony as to why she chose to proceed the way she did.
6 However, I just think that's a mischaracterization the way
7 it's phrased.

8 THE COURT: Right. So the question -- that objection is
9 sustained.

10 The question is why did you proceed the way you did?
11 Why did you choose the issues to raise that you did or
12 abandon other issues?

13 THE WITNESS: Oh, certainly. Certainly. I can answer.
14 I'm sorry.

15 THE COURT: Go ahead.

16 THE WITNESS: I can answer that question.

17 Under *Anders versus California*, we -- as appellate
18 counselors, we have to pick out one colorable issue to bring.
19 So the rule is not to file in an *Anders* brief every frivolous
20 or nonmeritorious issue, but to pick out at least one issue
21 to present to the Court. So whether it would have been the
22 jail call cell issue or whether it was the Facebook posts or
23 anything, the arrest warrant --

24 You know, I don't really recall an objection to the
25 arrest warrant. And if I did, it wasn't specific enough for

1 me to grasp.

2 But the rule is we don't have to give the Court every
3 issue on every objection in the *Anders* procedure. So that's
4 why we choose one issue, which is what I choose -- which is
5 what I chose. But, of course, I could have chosen more than
6 one. But seeing as how -- seeing as how these issues were
7 not worthy of reversal on appeal, I selected the one I
8 thought would have been the most prejudicial. And that issue
9 concerned the Facebook posts.

10 MR. MURPHY: And that would be all I have for you,
11 Ms. Carter.

12 THE WITNESS: Thank you.

13 MS. DIXON: Nothing from the State.

14 THE COURT: Okay. Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: I know that took a while, but you can log
17 out. Your testimony is complete. Thank you.

18 MS. DIXON: Thank you.

19 THE WITNESS: All right. Thank you. And I'm sorry
20 about that. Thank you.

21 THE COURT: That's all right.

22 THE WITNESS: All right. Thank you.

23 (Witness excused.)

24 THE COURT: Call your next -- is there anyone else on
25 Webex?

1 MS. DIXON: Not that I think -- I don't believe there's
2 any other remote witnesses we're going to call.

3 Judge, we do have -- Chris and I have -- can we go off
4 the record for a second?

5 THE COURT: Mm-hmm.

6 (Court recessed to handle an unrelated matter.)

7 THE COURT: Okay. We are now back on the record with
8 Mr. Green.

9 Mr. Murphy, call your next witness.

10 MR. MURPHY: Thank you, your Honor.

11 We would call Mr. Waring to the stand.

12 (Witness sworn.)

13 CLERK OF THE COURT: Please have a seat for me.

14 If you'll state your full name for the record, spelling
15 your last name, please.

16 THE WITNESS: Thomas Richard Waring II, W-A-R-I-N-G.

17 THOMAS WARING II,

18 called as a witness on behalf of the Applicant, being first
19 duly sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MURPHY:

22 Q. Now, Mr. Waring, at the time that you were involved in
23 the trial for Mr. Green, how long had you been a solicitor --
24 er, assistant solicitor?

25 A. This was near the end -- excuse me -- of my career

1 there, which would have been end of 2019. I first started
2 there in 2012 at the beginning of the year. So it had been
3 about seven years at that point.

4 Q. All right. And during your employment, has any officer
5 or investigator admitted to you that they lied on an arrest
6 warrant or affidavit?

7 A. Not to my knowledge.

8 Q. And would you pursue a case if the investigator admitted
9 that he committed perjury?

10 A. The answer to that question is no. Obviously, the key
11 word being "intentionally" lying, presenting false
12 information. If that is the case, a hundred percent no.

13 Q. Okay. And does a grand jury indictment cure false
14 statements made in an arrest warrant?

15 A. You know, I've never really thought about that question.
16 But the grand jury reviews things that they -- you know, if
17 they believe there's probable cause, they stamp it with a
18 true bill. So that's what I can tell you.

19 Q. When did you inform trial counsel that Detective Sanchez
20 misplaced the cell phone information?

21 A. So as others testified previously before me today, I
22 believe it would have been a couple months -- a month or two
23 before trial.

24 Q. And did Detective Sanchez misplace the documents or was
25 this an intentional act to cover up facts?

1 A. So it's my perception that he made a mistake.
2 Obviously, the defense has a different characterization of
3 that. But as I mentioned in one of your previous questions,
4 if somebody intentionally falsified something, I'm not going
5 to trial on that case.

6 Q. When did you become aware that Detective Sanchez used
7 false information? Was it before or during trial?

8 A. So to reiterate what I stated in one of the previous
9 questions, it would have been a month or two prior to trial
10 when we realized that there were some errors that were made.

11 Q. All right. Did Detective Sanchez state to you and his
12 supervisor that he had the wrong dates on the warrant
13 application process, or did he state to you that he did not
14 have any records during the warrant application process
15 belonging to the applicant?

16 A. So I don't know what he would have said or not have said
17 to his supervisor. I can't answer that part of the question.
18 Regarding the rest of the question, I'm not -- obviously I'm
19 not a hundred percent sure.

20 Q. Okay. During trial, when Detective Sanchez admitted
21 that he did not have the records claimed in this warrant, why
22 did you oppose motion for the dismissal?

23 A. Well, as I mentioned, the defense has its job and the
24 prosecution has its job. We both have vastly different views
25 of the evidence on the case. I perceived that Detective

1 Sanchez had just simply made some mistakes. And so that's
2 the reason that I did not oppose the motion for dismissal.

3 You know, if -- again, if the shoe were on the other
4 foot and I had even an inkling that he had intentionally
5 lied, then we wouldn't have even been in trial in the first
6 place.

7 Q. Since becoming aware of this, have you made any efforts,
8 in the interest of justice and preserving the integrity of
9 the law of how cases are adjudicated, to rectify the errors
10 and prejudices presented in this particular case?

11 MS. DIXON: I'm going to object to the extent that
12 they're characterizing it as "errors and prejudices."

13 THE COURT: That objection is sustained, but you can
14 otherwise answer the question.

15 THE WITNESS: Yes, your Honor.

16 Well, we went to trial. That's where everything was
17 hashed out. It was all laid out on the line. The jury heard
18 all these arguments, everything about the warrant, you know,
19 the cell phone records, the dates, this and that. They heard
20 all that. And so that was it. That was the time for
21 everything to be put out there.

22 BY MR. MURPHY:

23 Q. Okay. And did the FBI analysis contradict or support
24 Detective Sanchez's assertions that applicant was at the
25 crime scene?

1 A. If I remember correctly, I think the FBI agent's
2 testimony with his cell tower mapping analysis did not put
3 the defendant at the victim's house. If I remember
4 correctly.

5 Q. Okay. And why was the photo lineup compiled for Kendall
6 Rice not submitted to trial counsel?

7 A. So that issue was discussed earlier in testimony today.

8 There was some confusion at trial with that issue. But
9 ultimately, as petitioner's then trial counsel testified
10 earlier, we believed that because the witness Kendall Rice
11 did not get a good look at the defendant, that that
12 single-photo lineup was not presented to him and, therefore,
13 based on my understanding, there was nothing to turn over.

14 Q. Okay. And I think you answered this, but -- so despite
15 knowing Detective Sanchez, by his own admission, provided the
16 magistrate false information, would you vouch for his
17 character, stating he wasn't lying or just over -- just an
18 overworked employee who made a mistake, in your closing?

19 MS. DIXON: I'm going to object to the characterization
20 of the way that that's framed. But also, I think that it's
21 been asked and answered as to what he would or wouldn't do if
22 he knew an officer was lying.

23 THE COURT: Sustained.

24 BY MR. MURPHY:

25 Q. And was your statement "I think y'all know what to do.

1 It's time to find him guilty" in your closing argument your
2 personal opinion about the applicant's guilt, or was there
3 overwhelming evidence to support your statement?

4 MS. DIXON: Object to the compound nature of that
5 question. It's two question.

6 THE COURT: Repeat the question.

7 BY MR. MURPHY:

8 Q. Your statement at closing "I think you all know what to
9 do. It's time to find him guilty," in your closing argument,
10 was that your personal opinion?

11 A. So in closing arguments, anything I say -- said as a
12 prosecutor then would have been based specifically off of the
13 evidence or logical inferences and conclusions that you could
14 draw from that evidence.

15 Q. And kind of part B to that question is do you believe
16 that there was overwhelming evidence to support this
17 statement?

18 A. I do. I do. And I can go into detail about what we
19 used, if anybody cares.

20 Q. Let me ask you -- I'm going to move on a little bit.

21 Was there any forensic evidence obtained and confirmed
22 before the warrant application linking applicant to the
23 crime?

24 A. That I don't -- I'm not a hundred percent sure on. I
25 don't think I can answer that question accurately.

1 Q. And was there any type of forensic evidence obtained
2 linking applicant to the crime scene? And if so, what was it
3 and where was it found?

4 A. Yes, sir. May I refer to my notes?

5 Q. Yes, please.

6 A. Okay. So this all would have come out through the SLED
7 analyst Donna Money. Looks like there was a blood spot from
8 the passenger side front door handle.

9 And this was all during the time when SLED was changing
10 the lingo and the nomenclature on DNA evidence in their
11 presentations.

12 So we had, using their phraseology, moderate support for
13 the defendant's DNA and weak support for the victim's DNA in
14 that blood spot on the passenger side front door panel.

15 Let's see.

16 The SLED analyst testified at that time that even though
17 it's a low-level profile, it's still positive or otherwise in
18 favor of inclusion.

19 We also -- let's see -- a passenger door rear top frame
20 that had strong support for Terrance Doucet's DNA -- that
21 could have been his DNA, weak support for the victim's and
22 defendant's DNA. That was all inside of one blood spot.

23 Lastly, it looks like on the B post of the passenger
24 side, in between the front and the rear seats, it looks like
25 there was strong support for the victim's DNA and weak

1 support for the defendant's DNA all inside of that blood
2 spot.

3 There was also a cigarette butt that was previously
4 mentioned that had both -- I believe a mixture of the
5 defendant's and victim's DNA that was found in a trash bag
6 outside the victim's house.

7 To my knowledge, that was the majority of what we had
8 that was useful.

9 Q. And was the scene of the crime someplace that the
10 applicant would occasionally visit? And if so, would his
11 DNA's presence there be unordinary?

12 A. So I think -- I can't remember a hundred percent what
13 testimony came out from whoever about how often the defendant
14 and the victim hung out at the victim's house, but I think
15 that was a logical conclusion that they'd probably hung out
16 there before, even if nobody specifically testified to that.

17 And I'm sorry. What was the second part of the
18 question? What was the last part?

19 Q. Would his DNA's presence there be unordinary? Would it
20 be anticipated if he hung out there in the past?

21 A. I mean, I don't --

22 MS. DIXON: I'm going to object because that's getting
23 into the scope of the expert.

24 THE COURT: Sustained.

25

1 BY MR. MURPHY:

2 Q. Okay. And then one final question.

3 So based on your closing that "He wasn't lying, just an
4 overworked employee," was that the State's way of justifying
5 his statements -- or his false statements?

6 A. So the -- anything that I would have said about, you
7 know, what I guess the petitioner is saying, vouching for his
8 credibility, any of those statements were in direct response
9 to the defense attorney -- if I can refer to my notes --
10 stating in her closing argument before my reply closing
11 argument "Detective Sanchez lied under oath to get him
12 arrested. Then he lied under oath about Mr. Green in his
13 preliminary hearing."

14 So the inference was that he was deliberately and
15 intentionally lying to get the defendant arrested, and so
16 that necessitated a response of some kind in my closing
17 argument.

18 And so again, if I believed or if I saw any direct
19 evidence that he was intentionally lying, we wouldn't have
20 been in trial, period.

21 MR. MURPHY: And that's all I have, sir.

22 THE COURT: Ms. Dixon?

23 MS. DIXON: May it please the Court.

24

25

1 CROSS-EXAMINATION

2 BY MS. DIXON:

3 Q. So you talked a little bit about, I know, the DNA
4 evidence in this case. And we've talked about Terrance
5 Doucet today and some of the evidence.

6 What other evidence did the State rely on that maybe
7 hasn't been mentioned?

8 A. Yes, ma'am.

9 As you mentioned Terrance Doucet, so he obviously was
10 not perfect. He had been less than forthcoming, I think, in
11 his initial statement to police. So this was a highly
12 circumstantial case. Everything that I'm about to mention
13 went towards bringing him from, you know, the bottom of the
14 ocean up to the surface in terms of his credibility.

15 So we had the girlfriend, Lanika Walker, who
16 corroborated his -- Terrance Doucet's story that the
17 defendant, you know, was at the scene and came out with a gun
18 and blood on him and that kind of stuff. She corroborated
19 that statement by saying that Doucet told her all this
20 information later that morning. So that was a very important
21 witness because it tended to support the codefendant's
22 statement that what he was saying was correct.

23 We had Jonathan Seabrook and Kendall Rice. Though
24 Kendall Rice was not cooperative necessarily at trial, he --
25 some of his other details that he elicited I believe

1 corroborated the codefendant's story. Jonathan Seabrook, you
2 know, the part that he testified about "Somebody drove up and
3 was looking for somebody named Kone," all these things went
4 towards, you know, little chips towards corroborating the
5 codefendant's story.

6 Q. Did y'all have text messages to --

7 A. We had text messages also.

8 Q. Between Seabrook and --

9 A. Yes. All this was going down at the same timeframe,
10 which further supported the codefendant and made him more
11 believable despite his checkered past.

12 We had this witness named Brandy Dobbins, who was
13 present at the defendant's house early that morning and
14 corroborated codefendant's story that he had to leave and
15 that there was a phone call that came in where -- to the
16 defendant's wife where the -- excuse me -- codefendant had to
17 go pick him up. You know, and when they got back later, she
18 said everybody was kicked out of the house. And if I
19 remember correctly, I think she said she noticed that the
20 defendant changed his shirt; I can't remember a hundred
21 percent. But so bottom line, she corroborated codefendant's
22 story.

23 As I mentioned, the DNA analyst testified about the DNA.

24 So again, this -- I think this was mentioned earlier in
25 your initial remarks. The police, when they went to

1 apprehend the defendant, he had -- he refused to come out for
2 20 or 30 minutes and it appeared that he had snapped his
3 phone in half. Again, in and of itself, not a smoking gun.
4 But when looked at in conjunction with all these other pieces
5 of evidence, it further proves -- contributes towards proving
6 his guilty conscience.

7 Defendant's text messages, he identified himself as
8 "Kone" in there.

9 Video -- visit videos, the defendant told his wife and
10 another person to delete the contents of his cell phone.

11 Q. And just to clarify, are these while he's in jail, the
12 videos?

13 A. Yes.

14 Q. Okay.

15 A. Yes.

16 Defendant's Facebook posts two days before the murder,
17 he was sharing Facebook -- other people's Facebook posts.
18 One of them had a graphic image of a gun on it. And I'll
19 quote it, if that's permissible.

20 It says: "I cut people off with no hesitation, no
21 explanation, and no warning. If you do some funny shit or if
22 I feel you can't be trusted, life is too short and I'm
23 getting too old to be hanging out with people that don't
24 understand the concept of loyalty. Can't trust everybody,"
25 etc., etc.

1 Our argument was that this was evidence that he was not
2 happy with the victim and, therefore, corroborating the
3 motive that the unpaid drug debt led to his ultimate demise.

4 Phone records, that's obviously been a hot topic. We
5 did use these at trial. These corroborated the codefendant's
6 testimony. There's all kinds of phone calls during the
7 timeframe of the incident when they're communicating back and
8 forth, back and forth.

9 The victim's phone records, you know, which were not at
10 issue in terms of how we apprehended them -- or obtained
11 them, showed that the victim and the defendant were
12 communicating leading up to that morning, and that the last
13 communication that the victim ever made was with the
14 defendant. All this stuff corroborated the codefendant's
15 testimony.

16 And then lastly but certainly not least, we had what I
17 would say was very damning jail calls. As time went on,
18 these became more and more -- well, he elicited more and more
19 information that proved, in our opinion, his guilt. In one
20 call -- let's see -- he mentioned that the victim owed him
21 money. So that gave us a motive. He mentions he watches
22 "CSI" and that if he were to do something dumb, he knows what
23 not to do. And so we argued this corroborated codefendant's
24 testimony that the defendant bleached, you know, the car
25 seats.

1 On a different call, perhaps one of the most damning, he
2 said, quote, "So I'm going to need him somebody to go see
3 him. I need that shit, man, and be like straight up. Like,
4 you know, bruh's attorney want to know if she can get a
5 statement from you saying that ain't been him. If he can
6 just sign a statement saying that shit, then all this shit is
7 a bunch of bullshit," end quote.

8 Let's see. There was another one. And actually, this
9 is the most damning one.

10 Defendant stated in one particular call when referring
11 to the codefendant, quote, "I need this" N-word "gone, man,
12 so I can have a change in circumstances. I need him out of
13 here. Nothing else. That's the only thing I need done, my"
14 N-word. "That's what I need done. That I don't even want
15 whatever the fuck, man. That I need that shit done."

16 A little bit later: "That's the only person that can
17 put me at the fucking scene. That's the only person can mix
18 me up with any fucking thing, bruh. Him."

19 Little bit later: "If this shit can't be done, I'll
20 just go ahead and plead."

21 Little bit later: "There are only two options, my"
22 N-word, "either lay down or get that shit situated. You dig
23 what I'm saying? That shit don't get situated, I'll see
24 y'all" N-words "in the next life, man.

25 "Off that" -- a little bit later: "Off that" N-word.

1 "Fuck all the rest of the other shit. That's what I need to
2 be done."

3 Q. And those are all phone calls he made while in jail?

4 A. Correct. All given to the defense, all presented as
5 evidence at trial to prove his guilt.

6 Q. Now, there's been an allegation that you had told
7 defense counsel that you weren't going to use his cell phone
8 records. Do you recall ever telling counsel you weren't
9 going to use records?

10 A. I do. At some point I vaguely remember, you know, when
11 they looked like they weren't going to be useful, we said we
12 weren't going to be use them.

13 Q. Okay.

14 A. When I discovered an error, as soon as I figured it out,
15 I communicated that fact to the defense. I think she even
16 mentions it at trial that, you know, we got those two months
17 or a month before trial. And I indicated that to her, and so
18 there was no -- there was no hiding the ball. This was not a
19 surprise.

20 Q. Can you elaborate on that. You said you discovered an
21 error. What was the --

22 A. Yes.

23 Q. -- nature of that?

24 A. And I know -- some of this is even confusing to myself
25 sometimes. But, you know, basically, Detective Sanchez had

1 either -- and again, I can't remember a hundred percent. He
2 would know better than I would.

3 He either got a date range wrong or got the victim's
4 records or did something that rendered those records not a
5 hundred percent, you know, usable at trial. So we had to,
6 before trial, get the right records or get the return signed.
7 I can't remember exactly what happened, but whatever needed
8 to be done to make them usable at trial, we did.

9 Q. And then they've raised a Rule 5 *Brady* violation related
10 to a lineup related to Kendall Rice. And I know we've had a
11 little bit of testimony about this today.

12 Can you kind of just fill in and explain your perception
13 of how this all came down.

14 A. Sure.

15 So there was a witness, Kendall Rice. He, I guess, gave
16 a statement to police initially, but then once trial came he
17 was uncooperative.

18 There -- I guess on redirect, if I remember correctly,
19 it came up something about the lineup. And then after the
20 fact, since that raised some issues, I remember trial counsel
21 for the defense maybe made a motion to dismiss or a motion
22 for mistrial, which was denied.

23 But after the fact, we went and looked and did a, you
24 know, little investigation to figure out what exactly was the
25 nature -- what happened with this photo lineup. And we

1 determined, as Ms. Stewart mentioned earlier in her
2 testimony, that there might have been a single photo, but it
3 wasn't shown to the witness because he stated he couldn't get
4 -- didn't get a good look at the defendant. And so based on
5 my understanding and my recollection, there wasn't anything
6 to turn over.

7 Q. Okay. And do you recall what Detective Sanchez
8 testified before the jury in terms of whether or not Kendall
9 Rice selected the defendant from a lineup?

10 A. Yes. And I do want to mention one thing. So in the
11 report, I think it does mention -- it mentions something
12 about how he didn't get a good look at him, if I remember
13 correctly.

14 But as far as what Detective Sanchez said, he testified
15 that the -- I think he might have said that a lineup was
16 shown to him but he couldn't pick anybody out or didn't get a
17 good look or something like that.

18 MS. DIXON: And your Honor, that's 627 of the record
19 about his testimony.

20 Q. [By Ms. Dixon] In terms of the discovery itself, what's
21 your normal procedure in terms of turning over discovery --

22 A. Sure.

23 Q. -- to defense counsel?

24 A. Sure. I take -- I mean, I say "I take this job"; I'm
25 not in the job anymore. But when I was, I took it very

1 seriously. We had a duty to disclose all Rule 5 material,
2 Brady material, exculpatory information. So no case is more
3 important than my integrity, to me at least. So if it's
4 there and we've got it, they're going to get it. And so
5 that's what happened in this case.

6 Q. And in terms of the phone records, I think you said you
7 kind of got those later in the game. Did you turn those over
8 -- do you remember how far in advance of trial counsel got
9 those?

10 A. I want to say it was at least a month, perhaps two.

11 Q. Okay.

12 A. I can't remember exactly.

13 Q. So this isn't something that came up the morning of
14 trial?

15 A. Yeah. No, ma'am.

16 Q. And then the last thing I think I'm going to ask you
17 about is he's made an allegation that during your closing
18 argument you were dishonest when you talked about giving --
19 not giving Terrance Doucet a deal.

20 And can you kind of explain, first of all, what your
21 understanding of what a proffer is?

22 A. Sure. Yes, ma'am.

23 So the word "deal" in the criminal justice world means
24 "plea offer." And so when somebody says, "Oh, did they get a
25 deal? Did you offer them a deal?" that means "Did you give

1 them a plea offer?"

2 And so a proffer agreement is basically a contract
3 between the government and a witness where it says, "Okay.
4 We want you to tell us what you know, but as long as you tell
5 the truth, we're not going to use it against you. But if you
6 lie, then we can use whatever you say against you." And so
7 that is a contract. It's not a deal as we know that in the
8 criminal justice world.

9 Q. And did you have a proffer from Mr. Doucet?

10 A. Yes.

11 Q. And did you make any secret deals with him or any deals
12 with him?

13 A. No.

14 Q. And do you know if this is something he was questioned
15 about during trial?

16 A. He was. He was on cross-examination. I can't -- I'm
17 pretty sure I would have mentioned it. I would have asked
18 him about, I'm guessing. But certainly the defense brought
19 it up, I think.

20 Q. Okay. And did he have any charges? Was he charged, do
21 you recall?

22 A. I think he pled to accessory after the fact, if I
23 remember correctly.

24 MS. DIXON: Okay. Nothing further. Thank you.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Redirect examination?

2 REDIRECT EXAMINATION

3 BY MR. MURPHY:

4 Q. Do you recall if Mr. Doucet had any other charges
5 dropped as a result -- er, that didn't have to do with this
6 incident?

7 A. That I can't recall. I mean, it's possible. I mean, as
8 I mentioned, he was not a hundred percent clean as you would
9 think. It's possible we did, but I can't remember.

10 MR. MURPHY: Okay. Thank you. That's all I have.

11 THE WITNESS: Certainly.

12 MS. DIXON: Nothing further.

13 THE COURT: Okay. Thank you. You can step down.

14 THE WITNESS: Thank you, your Honor.

15 (Witness excused.)

16 MR. MURPHY: And your Honor, we would rest.

17 MS. DIXON: Nothing -- no further witnesses.

18 THE COURT: Let me hear your argument, Mr. Murphy.

19 MR. MURPHY: Thank you, your Honor. May it please the
20 Court.

21 We've gone into ad nauseam about the errors with the
22 arrest warrant and the clear miscommunications about the cell
23 phone records and whether the witnesses identified him and
24 such. So we believe that all of that stuff should have been
25 raised at the preliminary hearing or prior to trial and a

1 motion for dismissal should have been made. We think that
2 the Court would have ruled that it was reckless indifference,
3 and that's a question of fact for you.

4 We've also alleged the improper closing remarks saying
5 "Find him guilty" are improper vouching.

6 And the statement that Doucet did not get a deal, we
7 believe that was improper and is reversible error.

8 And then we also have the issues with the direct appeal
9 with the appellate counsel not raising this Fourth Amendment
10 issue in terms of the lack of probable cause for the warrant,
11 which would entitle him to a new trial -- to seek the trial
12 on the these original charges, your Honor.

13 THE COURT: Okay.

14 Ms. Dixon.

15 MS. DIXON: Thank you, your Honor.

16 As to the *Franks* issue, which I think has kind of been
17 the focus today, I would first admit that counsel articulated
18 a valid strategy in that she was kind of holding off on all
19 that to kind of use Sanchez's testimony from the preliminary
20 hearing to impeach him in front of the jury, which is a
21 reasonable trial strategy.

22 You know, in terms of whether their decision to not have
23 a *Franks* hearing, we would submit, your Honor, if you look at
24 the arrest warrant in and of itself, they haven't proven any
25 -- what's the language? -- reckless disregard for the truth.

1 I think the closest thing we get to that is perhaps he didn't
2 have his cell phone records as he did swear out in his
3 affidavit. But if you remove that sentence from the
4 affidavit and look at what remains, there is sufficient
5 probable cause for the arrest warrant.

6 Therefore, that would be the remedy under *Franks*. If
7 there is, in fact, a reckless disregard for the truth, you
8 strike that language and see what's left. He hasn't shown
9 anything else that rises to the level of being a reckless
10 disregard for the truth. All the other stuff in that
11 affidavit is, in fact, supported by the trial testimony
12 itself.

13 In terms of the *Brady* issue, we would submit, you know,
14 counsel had that lineup -- er, the records about a month or
15 two before trial was her testimony. I think the solicitor
16 said maybe a month. But had it in advance of trial.

17 In terms of the lineup, they did --- if you read the
18 transcript, it looks like they did move for a mistrial based
19 on the *Brady* violation. The judge denied that. The judge's
20 basis for denying that was that, frankly, Detective Sanchez's
21 testimony to the jury was that whenever Kendall was shown
22 this lineup that contained the defendant, he did not select
23 the defendant from the lineup.

24 So there's just no -- he can't show any prejudice from
25 that. Even if it could rise to the level of being a *Brady*

1 violation, which we don't think it does, he can't show
2 prejudice from that when what the jury heard was, "Yeah, he
3 didn't pick the defendant. The defendant was in here, and he
4 didn't pick him."

5 In terms of the solicitor's closing arguments, we would
6 submit that everything said there was in response -- was
7 reasonable inferences from the evidence presented at trial.

8 And then in terms of the invited reply doctrine, we
9 would cite to *Vaughn v. State*, 362 S.C. 163.

10 And then in terms of prejudice from that, *Darden v.*
11 *Wainwright*. That's 477 U.S. 168. Basically, *Darden* explains
12 that the -- you know, that a solicitor's comments can violate
13 due process -- the due process clause. But in that case they
14 determined that there was no violation of due process even
15 when the solicitor had made arguments as egregious as "I wish
16 he was sitting there with his head blown off by a shotgun.
17 He" you know, "deserves to be penned in a cage like any
18 animal."

19 Certainly nothing here rose to that level of
20 egregiousness. And so we would submit that, first of all,
21 none of the statements were improper. But even if they were,
22 he can't show prejudice under the standards that are in
23 *Darden*.

24 In terms of the appellate counsel, I think she
25 articulated a valid basis for submitting an *Anders* brief in

1 that she didn't find any preserved meritorious issues. And
2 of course, the Appellate Court had the opportunity to review
3 not just her brief, but his as well.

4 And we would just submit they've not met their burden in
5 of these claims.

6 THE COURT: Thank you.

7 So I'm going to take this under advisement. I will ask
8 Ms. Dixon to prepare an order.

9 MS. DIXON: Okay.

10 THE COURT: How long do you need?

11 MS. DIXON: May I have 30 days?

12 THE COURT: Thirty days it is.

13 Okay. I'll let you know something, Mr. Green.

14 (Court's Exhibit Number 1 marked for the record.)

15 (End of proceedings.)

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina

County of Charleston

I, Jamie L. Bickett, an 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 hearing of the captioned case in the Ninth Judicial Circuit, the Court of Common Pleas for Charleston County, South Carolina.



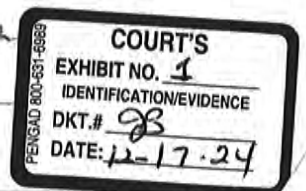
Official Court Reporter

Dated this 30th day
of June, 2025.

Before this court I bring a P.C.R. claim of a 4th Amendment violation invoked by Detective Michael Sanchez of NCPD. On Monday Dec. 8th approx. a week before this hearing, I was contacted for the first time via phone call by court appointed attorney Christopher Murphy to discuss the case at hand. He then informed me that "He thinks I should litigate this matter myself, and he guide me through the process because he feels as if the State is going to Argue that the charge has been "true billed indicted". Your honor I have before you several Questions that I need answered for the record.

① If a case is initiated through false evidence (statements), commenced because of same falsities (in reference to false testimony knowingly and willingly presented at the Preliminary Hearing), and subsequently indicted on the same false evidence is the judicial process not harmed and prejudiced by the cumulative effects of this error?

② According to the Supreme court the only way you can attack issues that you think prejudiced your case is through collateral Review. And in South Carolina PCR is that collateral Review so how can my claim be of No merits?



③ According to the law whether it is a violation of the right to counsel, the Second Amendment, Due Process, or the 4th Amendment, if a person is convicted in violation of the U.S. or the S.C. Constitution they may have grounds for PCR. The evidence in this matter was not found to be fabricated until after the preliminary Hearing and the Grand Jury Indictments. So how is it legally possible for a process to be initiated in the name of Justice not be harmful and prejudicial if the violation of constitutional rights and due process of fair judicial proceedings are not upheld by those sworn to uphold those rights and laws?

④ How can the State justify "rubber stamping", signing off on indictments without verifying the authenticity of its contained information as "Fair and Unprejudicial" legal proceedings? In Dec. 5 2017 the indictment currently named was True Billed, along with 891 other indictments. So in an 8 hr session approx 2 ~~indictments~~ were True billed per minute. How can the facts of a case be heard in the matter of seconds and this process be considered Fair and Unprejudicial?

Questions For PCR

Trial Counsel

- 1) When was applicant arrested and when was the applicants initial arrest warrant application taken out?
- 2) Were there any witnesses that viewed the crime take place? (Physically view the crime in question take place)
- 3) Have you talked to any witnesses of the alleged crime?
- 4) Are there any witnesses who testified at trial whose interviews and testimony ~~contradicts~~ what Det Sanchez wrote in applicants arrest warrant Affidavit?
- 5) Before and during trial was there any reason to believe that the investigator or witnesses gave or provided false information?
- 6) Were there any video recordings of the crime on the applicants cellphone or social media account?

- ⑦ Do you know of any electronic device or witnesses that place applicant at the crime scene?
- ⑧ What physical evidence if any linked the applicant to the crime?
- ⑨ Did the applicant have an alibi? If so would the alibi negate the Detectives assertion "that cell phone records placing the applicant at the scene of the crime" in the arrest warrant application, and the Detectives testimony at preliminary hearing?
- ⑩ Have you talked to any witness in the alleged warrant? If so what did they say?
- ⑪ Did any witness mentioned in the arrest warrant affidavit testify at trial? If so who were they?
- ⑫ When did the prosecutor inform you that they were not going to use cell data at trial because it was misplaced by Det. Sanchez?
- ⑬ Does an indictment cure knowingly and willingly falsified information included in an arrest warrant or affidavits application?

(14) Does the fact the detective gave false testimony taint the preliminary hearing?

(15) Would Det. Sanchez testifying falsely again at trial concerning "wrong date" records being the reason if any for his violation of the applicant's ~~with~~ amendment rights, putting the picture as if it were an honest mistake or oversight, while in all actuality he knew he did not have any phone records ~~belonging~~ ^{Belonging} to the applicant at the warrant application stage be considered a deliberate act of Perjury and a violation of the applicant's Due process rights to a fair judicial process?

(16) Are you aware the Prosecutor and Det. Sanchez's supervisor were notified (according to Sanchez deposition) around 15 days after his testimony at Preliminary Hearing, that he obtained the warrant with "wrong date" phone records?

(17) If that information had been disclosed to you then ~~and~~ would you have done anything different in the applicant's defense?

(18) If it was known that the detective did not have any phone records at the warrants application stage do you think the outcome of this case would

have been different and why?

(19) Does false testimony by an affiant in the arrest warrant application, preliminary hearing and trial taint the applicants judicial proceedings?

(20) Was any evidence used at trial that was obtained as a result of the in questioned constitutionally defective arrest warrant?

(21) Was the applicant a contributor to the mixture of the victims DNA found in the co-defendants car per testimony of DNA Analysis Expert from SLED Donna Money?

(22) Did the applicant admit, plea, or concede to committing the forementioned crime to you during your representation of him?

(23) If you reviewed all documents in this case why didn't you request a Franks hearing and motion to Quash the warrant?

(24) Does the prosecution's Failure to inform you that Sander never had the records opposed to "misphering the

documents violate "Brady"?

⑳ If any what was your reason for not requesting a Franks hearing after the discovery of Det. Sanchez's infringement upon the applicants rights?

㉑ Would you classify Detective Sanchez's testimony at Preliminary Hearing as "Perjury or mistaken information"?

㉒ Did you receive a copy of the photo lineup Solicitor Wang brought up to Detective Sanchez in the applicant's Rule 5 motion of Discovery?

㉓ Are you aware that majority of the objections and Motions of Dismissal you made on the record at trial and during closing arguments are not transcribed in the trial transcript of the applicant? How does this effect Applicants ability to pinpoint issues to argue in appeal or collateral review?

~~Is this~~

㉔ Is this a common practice, or as the "only issue Mr. Murphy suggested I bring up in our brief conversation approx a week prior to this hearing," an Abuse of Discretion common in cases presided upon by Judge Buckner because his cases have lots of Bench conferences and comments stricken from the record that aren't transcribed which is critical

to the defendant's ability to review matters for attack on collateral review?

(3) Why weren't the facts relayed to the appellant counsel at about when Det. Sanchez stated he was a Homicide Detective and had been investigating the applicant ~~on~~ several other cases and you began Reciting the Wong Sun Doctrine after objecting to the statement and motions to dismiss the case, How judge Buckner sustained the objection, told the jury to disregard the comment while striking it from the record, and denying your motions so the appellant counsel could formulate an appeal argument about the prejudicial comment being made in front of the jury about the applicants legal history ~~and~~ how they could have been negatively influenced by the comment in appellants direct appeal?

Appellant Counsel

- (1) Did Counsel ever speak with applicant about the issue of the 4th Amendment violation?
- (2) Why did counsel not present the 4th amendment violation claim preserved for the record by trial counsel in direct appeal?
- (3) Why did counsel present and Anders Brief when other

issues were preserved for the record?

(4) Did Applicant submit his own direct Appeal Brief? If so was it reviewed, and what was the determination of his issues?

(5) If Client and trial counsel presented and preserved for the record claims that were more relevant and possibly meritorious, why would counsel abandon those claims and choose to argue less relevant issues?

PCR Attorney

(1) Did you review all information forwarded to you in this case?

(2) Why did counsel inform the applicant that he thinks it was better for him to litigate his claims himself?

(3) Does the Applicant have any type of legal accreditation?

(4) Why choose to allow applicant to represent himself somewhat forcefully instead of arguing the 4th amendment violation claim he presented in his PCR application?

(5) So is it fair to say that if the applicant doesn't

represent himself and preserve the 4th amendment violation issue the state could automatically motion for default in the federal lawsuit stating the applicant ~~is~~ concedes that his conviction isn't a result of the invalid arrest and repeated violations of applicants rights and due process?

⑥ What reasons did you choose not to litigate against the state in this matter regarding the 4th amendment violation?

⑦ If probable cause must be present at the time the warrant is issued and if not even the ultimate proof of guilt will not cure the lack of probable cause, why tell applicant the state is going to argue the charge was indicated as a reason not to represent the applicant and argue his issues?

Solicitor Warning

① How long have you been a solicitor?

② Has anyone during your employment has an officer or investigator admit to you he lied in an arrest warrant affidavit?

③ Would you pursue a case if the investigator admitted he committed perjury?

④ Does a grand jury indictment cure false statements made in an arrest warrant? If so what law supports this? If not why?

⑤ When did you inform trial counsel that Det. Sanchez "misplaced the cell phone information?"

⑥ Did Det. Sanchez "misplace documents" or was this an intentional act to cover up the fact that the documents were never obtained prior to the warrant application?

⑦ When did you become aware that Det. Sanchez used false information before or during trial?

⑧ Did detective Sanchez state to you and his Supervisor that he had wrong date records during warrant application process or did He state to you that he did not have any records during the warrant application process belonging to the applicant?

⑨ During trial when Det. Sanchez admitted he did not have records claimed in his warrant, why did you oppose the

motion of Dismissal?

⑩ Since becoming aware of this have you made any efforts in the interest of justice and preserving the integrity of how cases are adjudicated to rectify errors and prejudices presented in this particular case?

⑪ Did the FBI analysis contradict or support Det. Sanchez's assertions applicant was at the crime scene?

⑫ Why was photo lineup compiled for Kendyl Rice not submitted to trial counsel?

⑬ So despite knowing Det Sanchez ~~provided~~ ^{by his} own admission provided magistrate false information would you vouch for his character stating he "wasn't lying just a ~~mis~~ ^{overworked} government employee who made a mistake" in your closing?

⑭ Was your statement "I think y'all know what to do, its time to find him guilty" in your closing arguments your personal opinion about the applicants guilt, or was there overwhelming evidence supporting your statement?

⑮ Was there any forensic evidence obtained and confirmed before the warrant application linking the applicant to the crime?

16) Was there any type of forensic evidence obtained linking the applicant to the scene of the crime? If so what was it and where was it found?

17) Was the scene of the crime someplace the applicant occasionally visited? Would his DNA's presence there be unordinary?

18) So based on your closing "He wasn't lying but just an overworked employee" was that the states way of justifying his false statements?

Sanchez

1) What information did you have at the time you obtained the arrest warrant; particular cell phone records and addresses mentioned in the arrest warrants, statements and records of events and forensic evidence mentioned in warrant?

2) Who did you notify about the mis information in the warrant and did you tell them that you misplaced the records or did you tell them you didn't have any records at the time you applied for the warrant?

3) What was your reason for providing false information in the warrant application?

4) How many different statements did the co-defendant give law enforcement in this specific case?

5) Did any other witness in this proceeding tell you that the co-defendant admitted to them that he robbed and shot the victim for some heroin and cocaine during a lick?

Matt Nickles

1) During your representation of the applicant in the Federal matter of the 4th Amendment violation, has there been any newly discovered evidence of perjury committed by Det. Sanchez at trial regarding his testimony about "wrong date records" being his if ~~any~~ reason the cause of his 4th amendment violation during his warrant application process?

2) Were any cell phone records obtained from NCPD, the 9th Circuit Solitors office, or the Public Defenders office besides the "wrong dates, and blank records" from Verizon, specifically the "2019" records produced as evidence at trial?

✓

STATEMENT OF ISSUES ON APPEAL

THE ARREST WARRANT IN THIS CASE WAS FRAUDULENTLY OBTAINED THROUGH DELIBERATELY FALSIFIED ^{AFFIDAVIT} PRESENTED TO THE MAGISTRATE. FURTHERMORE, THE LEAD INVESTIGATOR DET. SANCHEZ, MICHAEL OFFERED PERJURED TESTIMONY AT APPELLANT'S PRELIMINARY HEARING WHICH CONSTITUTES THE VIOLATION OF APPELLANT'S 4TH AMENDMENT RIGHTS WITH THE ILLEGAL SEIZURE OF APPELLANT.

1. Did the TRIAL COURT ERR IN DENYING MOTION OF DISMISSAL FOR LACK OF PROBABLE CAUSE TO ARREST BASED ON FALSE INFORMATION?
2. Did PROSECUTOR'S KNOWLEDGE OF PHOTO LINEUP NOT PRESENTED TO DEFENSE COUNSEL SHOW A DELIBERATE ACT OF THE POLICE TO COVER UP THE ~~PROSECUTOR'S~~ ERRORS IN THE FALSIFIED AFFIDAVIT?
3. Did JUDGE ERR IN ALLOWING JAIL CALLS AND VISITS INTO TRIAL BECAUSE APPELLANT WAS ILLEGALLY DETAINED UNDER FRAUDULENT ARREST WARRANT AFFIDAVIT?
4. WAS PROSECUTOR'S COMMENT, "I THINK YOU ALL KNOW WHAT TO DO. IT'S TIME TO FIND HIM GUILTY." PERMISSIBLE IN HIS CLOSING ARGUMENTS?
5. Did THE PROSECUTOR IMPROPERLY VOUCH FOR DET. SANCHEZ IN HIS CLOSING ARGUMENT?
6. Why WAS EXCULPATORY EVIDENCE BY STATE WITNESS DONNA MONEY SLED DNA ANALYSIS EXPERT AND FBI CELL ANALYSIS EXPERT CLAY SIMMONS DISREGARDED BY THE PROSECUTOR AND CONFLICTING TESTIMONY OF BRANDI DOBBINS ACCEPTED?
7. Did TRIAL JUDGE ERR IN DISREGARDING DEFENSE COUNSEL'S MOTION OF DISMISSAL AGAINST VALIDITY OF ARREST WARRANT?
8. Why did PROSECUTOR DENY GIVING CODEFENDANT A DEAL, DURING CLOSING ARGUMENTS?

*

STATEMENT OF THE CASE

Appellant Gregory Kyle Green was convicted of murder and possession of a weapon during the commission of a violent crime per jury trial held on November 4th - 7th of 2019 in the Charleston County General Sessions Court before Judge Perry M. Buckner, who sentenced him to an aggregate forty year prison term. Attorneys Taylor J. Stewart and Teresa L. Norris represented Appellant at trial, and Assistant Solicitors Richard Waring and White Sowards appeared on behalf of the state.

Appellant appealed his conviction and sentences. This brief follows.

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only. State v Wilson, 345 S.C. 1, 5, 545 S.E. 2d 827, 829 (2001.) This court is bound by the trial courts findings unless they are clearly erroneous. State v Quintlebaum, 338 S.C. 441, 452, 527 S.E. 2d 105, 111 (2000). A deferential standard of Review likewise applies in context of a 4th Amendment challenge to a trial courts fact driven affirmation of probable cause. Because this is a novel question the court must base its analysis on civil jurisprudence which dealt with false information in arrest warrants and false information presented at preliminary hearings. Miller v Prince George County, Md, 475 F.3d 621 (4th Cir 2007) (holding that whether an arrest violated the parameters of the 4th Amendment depends upon "a number of antecedent determinations, each of which inherent[ly] fact specific" and "entails an inquiry into the totality of the circumstances" and the appellate court must affirm if there is "any evidence" to support the rulings. This appeal presents both factual and legal challenges to the ~~appellate~~ ruling of the trial court concerning the arrest warrant. Following Miller v Prince George County Md 475 F.3d 621, Detective Sanchez violated the 4th Amendment by deliberately and recklessly making material false statements and omissions on an arrest warrant affidavit, ultimately resulting in the appellants seizure without probable cause. These falsities were elicited during cross examination during trial through the break down of the warrant and the testimony of the pre-liminary hearing. Furthermore Detective Sanchez omitted the fact that an eye witness did not pick appellant out of the photo-lineup which was only brought to the defenses attention through Re-direct examination by Solicitor Worney and not placed in the Rule 5 notice of Discovery. Yet Det Sanchez stated in affidavit that "3rd party witness

"gave a description that matched the descriptions of eye witness." Along with ~~several~~ other inconsistencies in the arrest affidavit used to mislead the magistrate into signing the affidavit. These actions furthermore bring to the appellants attention what perjurious actions were taken at the Grand Jury indictments where the Detective most likely was the testifying officer. Did he once again testify falsely to information he didn't have further commencing a criminal proceeding as he did at the Preliminary Hearing. Unlike in State v Lynch 412 S.C. 156 771 S.E. 2d 346, State v Baccus 367 S.C. 41 625 S.E. 2d 216, State v Porch 417 S.C. 619 790 S.E. 2d 440 Detective Sanchez admitted at trial that he obtained an arrest warrant with information he did not have. He also admitted at trial to withholding exculpatory evidence which contradicted the warrant even further. These acts were blatant intentional and deliberate acts of reckless disregard for the truth.

Question Presented

1) Did the trial court err in denying motion of dismissal for lack of probable cause to arrest based on false information?

A) Was trial court in error for refusing to suppress arrest warrant in violation of federal and State Constitutions?

B) Does the warrantless disregard for the truth as established in *Franks v. Delaware* apply to arrest warrants?

Facts

A)

The trial court denied counsel motion of dismissal for lack of probable cause (Tr. p. 370 lines 10-12, Tr. p. 369 lines 4-14) as such counsel asserted that the Police obtained this warrant on false information.

Based on the evidence presented at trial that the police did not obtain cell phone records until August 30, 2017, and the arrest warrant affidavit dated July 7th 2017 stated that "Defendants cell phone records indicate that he was on Baily Street during the time of the incident."

Det Sanchez testified that

Q. But you put on the warrant that quote Defendants cell phone records indicate he was on Baily Street during the time of the incident?

A. Yes

Q. So that information was not accurate

A. That's correct

(Tr. p. 606; lines 21-25; Tr. p. 607 line 1)

This evidence was critical to establishing probable cause for arrest, and the police knew they did not have this information when they obtained the warrant. Similarly, Detective Sanchez also told the magistrate that "A witness to be named in court provided a 3rd Party Confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. This witnesses statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description."

Trial Brief p. 6 Procedural issues A. Probable cause states "Walker is the ~~3rd~~ party witness. However Walker never told Det. Sanchez the name of the person Duceal allegedly gave a ride too. In fact Walker never identified the person by name, nickname photo or otherwise."

Detective Sanchez testified that

Q Detective Sanchez I kind of want to go through a couple of points that the defendant brought up. Witness Kendyl Rice were you in here earlier in the week when he was testifying?

A I was

Q Okay did you interview him

A I did

Q All Right Did you show him at any point a photographic line-up?

A I did

Q Was he able to identify the defendant as the person he saw that night?

A No he was not.

Neither was the description given by either eye witness a description close to the description of the appellant ~~Tr. p. 276 lines 17-25~~ Tr. p. 276 lines 17-25. Tr. p. 277 lines 1-9. Tr. **1113** lines 23-25 Tr. p. 2489 lines 1-4

Also stated in the arrest warrant the witnesses heard the name Kone uttered by the codefendants. Det Sanchez suggested names to the eye witnesses despite their not remembering ~~the name~~ they heard including the appellants real name and nick name in the interviews of the eye witnesses. Both eye witnesses stated they could not recall what name they heard but the officers suggestive questioning and total opposite physical description in the affidavit are false hoards also in the affidavit.

(Trp. 245 lines 12-18 Trp. 279 lines 24-25, Tr 280 lines 1-21)

All of this evidence was fabricated to obtain an arrest warrant, as a consequence it is the only evidence police had to establish probable cause for arrest. I'm showing the court that these are the evidence used to obtain the warrant once these falsities are stripped from the warrant the warrant is invalid.

B) This is a novel question of law because no state precedents or federal precedents deal with false information contained in arrest warrants to establish probable cause.

~~As~~ The arrest warrant is the central focus of this case, here in the evidence clear shows police intentionally supplied the magistrate with false information to obtain probable cause.

In State v Missouri 337 S.C. 548 (1960); State v Sachs 294 S.C. 541 (1975) this court addressed whether a defendant could attack the veracity of facts supporting a search warrant when the warrant was valid on its face. Noting that the Supreme Court had not yet squarely addressed this issue, this court answered the questions in the affirmative, providing the following limited test: Did the officer or other government official, in such capacity intentionally, recklessly, or in bad faith recite facts he knew or should have known to be erroneous without correcting the error by additional affidavit or information to obtain issuance of a warrant? This court should further provide a caveat, if the police obtain an arrest warrant based on false information, the police would in reality violate petitioner's rights of being illegally seized. See Gerstein v Pugh 420 US 103 (1975), Beck v Ohio, 379 US 89 (1964)

Legal Analysis

A warrant issued without Probable cause violates the 4th Amendment of the U.S. Constitution and Article I section 10 of the South Carolina Constitution and makes search and seizure based on ~~the~~ the warrant unlawful. US Const Amend 4
S.C. Constitution Art I, Sect 10.

State v Jones 331 S.C. 228, 500 S.E. 2d 499 (Ct App) 1998

The court of appeals held the evidence should be suppressed because the false affidavit circumvented the affidavit requirement of S.C. Code of Ann 17-13-140 (1985) and State v Mc Knight 291 S.C. 110 352 S.E. 2d 471 (1987)

State v Missouri SC of SC (1999) 337 S.C. 549

Inclusion of false statement in affidavit and exclusion of other statements required suppression.

False information will only void warrant if information was necessary to finding probable cause.

An arrest warrant is void under the 4th Amendment if the affidavit supporting the warrant contains deliberate falsities or reckless disregard for the truth
Payne v DeKalb County N.D GA (2004) 414 F. Supp 2d 1158

There are 4 circumstances in which Good Faith exception to the exclusionary rule will not apply: (1) If magistrate in issuing warrant, was misled by information in affidavit that affiant knew was false or would have known was false except for his reckless disregard for the truth, (2) issuing magistrate wholly abandoned his judicial role, (3) if affidavit supporting warrant is so lacking indicia of probable cause as to render official belief in its existence entirely unreasonable and (4) if ~~under~~ ~~circumstances~~ ~~circumstances~~ case warrant is so facially deficient, that is, in failing to particularize place to be searched or thing to be seized, that executing officers cannot reasonably presume it to be valid.

Prosser v. Parsons 245 S.C. 493, 141 S.E. 2d 342 (1965)

Probable cause must exist at the time the warrant is issued, ultimate proof of guilt will not cure lack of probable cause

Franks v. Delaware 438 U.S. 154, 164 (1978)

Statements that are knowingly false or exhibit a reckless disregard for the truth must not be used by magistrate to determine Probable cause

State v. Robinson 785, S.E. 2d 355 (2016)

Arrest ~~affidavit~~ warrant affidavit contained false statements that were made knowingly and intentionally in violation of franks; Good faith exception to exclusionary rule was not available

uses notes

constitutional law

When public officers connive at or knowingly acquiesce in use of perjured evidence, their misconduct denies defendant due process of law.

Criminal law

Deliberate deception of a court and jurors by presentation of known false evidence is incompatible with rudimentary demands of justice

State v. Nelson S.C. (1999) 336 S.C. 186, 519 S.E. 2d 756

The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of police; and the evidence has been obtained by the exploitation of that illegality.

Question Presented

2) Did prosecutors knowledge of photol lineup not presented to defense counsel show a deliberate act of the police to cover up the errors in the deliberately falsified affidavit?

Facts

In recross examination of Detective Sanchez, Solicitor Waring brought up a photol lineup given to eye witness Kendy Rice. The facts of the matter is this photol lineup furthermore proves the falsities in the detectives Affidavit. How did the solicitor have knowledge of this photo lineup not provided in the Rule 5 motion of Discovery Trp. 627 lines 3-24 This is a "Brady" violation.

Legal Analysis

Banks v U.S. 920 F Supp 688 (E.D. Va. 96)

It is a violation of the due process clause when a prosecutor knowingly suppresses evidence favorable to a defendant.

State v Fraizer (S.C. App 2011) 394 S.C. 213, 715 S.E. 2d 650

A defendant asserting a Brady Violation must demonstrate that the evidence the state failed to disclose was (1) favorable to the defendant (2) In possession of or known to the state (prosecutor or police officers), (3) suppressed by the state (4) material to guilt or punishment

Best Headnotes

Criminal Law

Prosecutors Brady disclosure duty encompasses both impeachment material and exculpatory evidence, and includes material that is known only to police investigators and not to the prosecutor; individual prosecutor has duty to learn of any favorable evidence known to others acting on the governments behalf

State v Cain (2013) 565 U.S. 73, 132 S. Ct 627, 181 L Ed 2d 572

Supreme Ct held that witness's statements made to police on night of murder and 5 days later, were material for purposes of Brady in this case. We ask the same standard apply to the photo lineup.

Question Presented

3) Judge erred in allowing jail calls and visits into trial because appellant was illegally detained under a fraudulent arrest warrant

Facts

There was a pretrial motion filed on lack of probable cause and the initial objection was made by Teresa Norris Trp. 369 lines 4-14. Due to the fact that the seizure of the appellant derived from a fraudulent arrest warrant which is the "tree of poison" the jail calls and visits are "fruits of the poisonous tree" Had the appellant not been illegally detained in violation of his 4th Amendment rights this evidence would not have been obtained. Judge buckner denied the motion stating probable cause was deemed at Preliminary Hearing. As Solicitor weising stated to him it was "Rubber Stamped" (Trp. 370 lines 1-12, Trp 369 lines 4-25) Not until cross examination of Det Sanchez was his testimony at preliminary hearing brought up and proven to be falsified. Furthermore he commenced a criminal proceeding by not only falsifying the arrest warrant affidavit he also provided false testimony at the preliminary hearing. (Trp ~~596~~⁵⁹⁶ - Trp. ~~627~~⁶²⁷) in its entirety to see the reckless disregard for the truth.)

Legal Analysis

U.S. v Najjar 300 F.3d 466, 477 (4th 2002)

Generally evidence derived from an illegal search or arrest is deemed fruit of the poisonous tree and is inadmissible

State v Nelson S.C. 1999 336 S.C. 186, 519 S.E. 2d 786

The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal search or seizure by the police; and the evidence has been obtained by the exploitation of that illegality.

4 WAS PROSECUTOR'S COMMENT "I think you all know what to do. It's time to find him guilty" PERMISSIBLE in his closing ARGUMENTS.

TR. P. 732 IN. 25, P. 733 IN. 1.

THE JURY COULD HAVE MISCONSTRUED THAT WORDING AS IF IT WAS THEIR JOB TO CONVICT THE APPELLANT. AS STATED IN ANDERS BRIEF SUBMITTED BY APPELLATE ATTORNEY WANDA H. CARTER ALL STATES EVIDENCE IN THIS CASE IS WHOLLY CIRCUMSTANTIAL AND ONLY CORROBORATED BY THREE (3) OF THE STATE'S WITNESSES, THE CO-DEFENDANT/ORIGINAL SUSPECT AND HIS TWO (2) GIRL-FRIENDS WHOM MUST BE VIEWED AS BIASED DUE TO THE RELATIONSHIPS BETWEEN THEM.

LAW/ANALYSIS

U.S. V. DE LA PAZ RENTAZ, 613 F.3d 18, 26 (1st Cir. 2010) (PROSECUTOR'S REMARKS IN HIS CLOSING ARGUMENTS "Jury should do its duty" IMPROPER BECAUSE COULD CONVEY TO JURY THAT ITS JOB WAS TO CONVICT.

THE TEST FOR REVERSIBLE PROSECUTORIAL MISCONDUCT GENERALLY HAS 2 COMPONENTS (1) THE PROSECUTOR'S REMARKS AND CONDUCT MUST IN FACT HAVE BEEN IMPROPER, AND (2) SUCH REMARKS

OR CONDUCT MUST HAVE PREJUDICIALLY EFFECTED
THE DEFENDANT'S SUBSTANTIAL RIGHTS SO AS TO
DEPRIVE DEFENDANT OF A FAIR TRIAL.

5) THE PROSECUTOR IMPROPERLY VOUCHERED FOR DET. SANCHEZ IN HIS CLOSING ARGUMENT.

TR. P. 745 LN. 17-25, P. 746 LN. 1-7.

SOLICITOR WARING ASKED THE JURY TO SIDE WITH SANCHEZ BECAUSE HE WAS AN OVER WORKED GOVERNMENT EMPLOYEE DESPITE HIS RECKLESS DISREGARD FOR THE TRUTH AND INCONSISTENCIES DURING THE WHOLE INVESTIGATION OF THE APPELLANT FROM ~~FALSIFYING~~ FALSIFYING THE AFFIDAVIT, TO OFFERING PERJURED TESTIMONY AT PRELIMINARY HEARING AND MISHANDLING EVIDENCE. TR. P. 596-626 (IN ITS ENTIRETY TO VIEW ALL FALSIFYING ACTS.).

LAW ANALYSIS

U.S. V. LOAYZA 107 F3d 257; 46 FED. R. EVID. SERV. 745. PROSECUTOR'S COMMENT DURING CLOSING ARGUMENT THAT HE BELIEVED GOVERNMENT WITNESS WAS TELLING THE TRUTH, IMPROPER. U.S. V. CLOSE, 679 F.3d 714, 717 (8th Cir. 2012) (PROSECUTOR'S COMMENT THAT POLICE WITNESS WAS A SWORN POLICE OFFICER FOR 17 YEARS, HAD NO MOTIVE TO LIE, AND WOULD LOSE HIS JOB IF HE ~~WAS~~ USED IMPROPER COMMENT ON GOVERNMENT WITNESSES CREDIBILITY. STATE V. GILCHRIST, 350 SC 221, 565 SE 2d 281 (2002) (STATE IMPROPERLY VOUCHERED FOR WITNESS CREDIBILITY IN CLOSING ARGUMENT.). VAUGHN V. STATE, 362 SC 163, 607 SE 2d 72 (2004) (STATE IMPROPERLY VOUCHERED FOR CREDIBILITY OF POLICE OFFICER.

6) Exculpatory evidence by state witnesses Donna Money SCLED DNA Analysis expert and FBI Cell Analysis expert Clay Simmonds was disregarded by the prosecutor, and conflicting testimony of Brandi Dobbins accepted.

The facts of the matter at hand are that state experts witnesses Donna Money stated that the victims blood that was found in the co-defendant's car could not have been placed there by the appellant. Tr. 7. 476 In. 8-20. And contradictory to the falsified affidavit and arrest warrants content that the appellants cell phone records located him on Bailey St. at the time of the crimes expert Clay Simmonds testified that the appellants cell records place him at his residence during the questioned times. Tr. 7. 689 In. 7-13.

ON Tr. 7. 289 In. 8-14 Brandi Dobbins conflicted statements she made saying that co-defendant left. Tr. 7. 291 In. 3-12, 7. 295 In. 23-25, and 7. 296 In. 1-10, she states that she never saw the appellant leave.

Legal Analysis

IN State v. Phillips, 430 S.C. 319, 844 S.E.2d 651 (2020), Gallman testified that Phillips was excluded from being the contributor of the DNA mixture.

THE MINIMAL PROBATIVE VALUE OF GALLMAN'S TESTIMONY MUST BE BALANCED AGAINST THE DANGER OF PREJUDICE, CONFUSION OF THE ISSUES OR MISTEADING THE JURY.

UNFAIR PREJUDICE IS THE TENDENCY OF THE EVIDENCE TO SUGGEST A DECISION BASED ON SOMETHING OTHER THAN THE PROBATIVE FORCE OF THE EVIDENCE. GRAY, 408 SC AT 616, 759 SE 2D 168. PHILLIPS ARGUED GALLMAN'S TESTIMONY WAS UNFAIRLY PREJUDICIAL BECAUSE IT CONFUSED MISTEAD JURY AS STATED IN DEFENDANT'S TRIAL BRIEF P. 10. THE PRESIDENT'S COUNSEL OF ADVISORS ON SCIENCE AND TECHNOLOGY ISSUED A REPORT IN SEPTEMBER 2016 AT LENGTH THE PROBLEMS WITH C.P.I. STATISTICS (COMBINED PROBABILITY OF INCLUSION) STATING THEY WERE FOUNDATIONALLY INVALID. A NEW METHOD PROVES TO BE MORE SUFFICIENT. IN TRIAL DONNA MONEY STATED THE MIXTURE OF THE VICTIM AND ~~THE~~ AN UNKNOWN UNRELATED INDIVIDUAL WAS FOUND IN THE CODEFENDANT'S CARE THEREFORE EXCLUDING THE APPELLANT FROM BEING THE APPLICANT UNDER THE PROGRAM CURRENTLY USED IN OTHER DNA REFERENCES DURING THE TRIAL WERE THOSE OF CPI AN INVALID METHOD OF OBTAINING PROPER RESULTS.

DESPITE THE INITIAL CLAIM IN THE AFFIDAVIT THE DEFENDANT'S CELLPHONE WAS LOCATED ON BAILEY ST. AT THE TIMES OF THE INCIDENT AS ASSERTED BY THE AFFIANT. FBI CELL SITE ANALYSIS EXPERT STATED THE DEFENDANT'S CELLPHONE COULD HAVE BEEN AT HIS HOUSE FOR ALL OF THOSE CALLS INFERRED BY THE PROSECUTOR.

STATE V. SULLIVAN, 43 SC 210, 21 SE 2D 7 (1895) AS TO QUESTIONS AND CONTRADICTORY TESTIMONY IN REFERENCE

to prior statements contradictory to his testimony
on trial. IN CROSS EXAMINATION Dobbins stated she
NEITHER SAW APPELLANT LEAVE NOR RETURN but in DIRECT
EXAMINATION she stated she SAW APPELLANT RETURN WITH
CODEFENDANT. Also stated she NEVER SAW DEFENDANT, IN
SAME BREATH. TR. p. 290 IN. 19-25, p. 291 IN. 1-6, p. 289
IN. 8-14

7) TRIAL JUDGE ERRED IN DISREGARDING DEFENSE COUNSEL'S MOTION OF DISMISSAL AGAINST VALIDITY OF ARREST WARRANT.

LEAD INVESTIGATOR DET. SANCHEZ ADMITTED TO FALSIFYING INFORMATION ON ARREST WARRANT AFFIDAVIT, AND THE DEFENSE COUNSEL BROUGHT TO THE COURT'S ATTENTION THE PERJURED TESTIMONY PRESENTED BY SANCHEZ AT PRELIMINARY HEARING. TAYLOR STEWART THEN PRECEDED TO RECITE THE WONG SUN DOCTRINE AND MOVED FOR A MOTION OF DISMISSAL WHERE JUDGE BUCKNER DENIED (AUDIO VERSION OF TRIAL TRANSCRIPT DURING SANCHEZ'S CROSS EXAMINATION.)

I HAVE REQUESTED THE AUDIO VERSION BE OBSERVED BECAUSE THIS ALONG WITH A PREJUDICIAL COMMENT BY SANCHEZ THAT WAS STRICKEN FROM THE RECORD AND TOLD TO BE DISREGARDED TO THE JURY, ALONG WITH SEVERAL OBJECTIONS MADE DURING CLOSING ARGUMENTS ARE NOT CONTAINED IN THE WRITTEN TRANSCRIPT. I FILED A MOTION TO BRING THIS TO THE ATTENTION OF THE COURT REQUESTING THE AUDIO. TR. P. 596-626 ARE SANCHEZ'S CROSS EXAMINATION WHICH DO NOT CONTAINED IN THE RECITATION OF THE WONG SUN DOCTRINE. BUT THE FALSITIES IN THE AFFIDAVIT AND AT PRELIMINARY HEARING ARE CONTAINED WITHIN THESE PAGES. THIS FURTHERMORE SHOWS HOW THE DETECTIVE HAS ACTED ILLEGALLY THROUGHOUT THE DURATION OF THIS CASE TAINTING IT FROM THE VERY BEGINNING.

LAW ANALYSIS

AN ABUSE OF DISCRETION OCCURS WHEN THE TRIAL COURT'S RULING IS BASED ON AN ERROR OF LAW OR WHEN GROUNDED IN FACTUAL CONCLUSIONS, IS WITHOUT EVIDENTIARY

support as in State v. Pagan, 369 S.C. 201, 631 S.E.2d 262
(2006)-

8) Why did prosecutor deny giving codefendant a deal during closing arguments?

Solicitor Waring denied giving codefendant a deal in closing arguments. Tr. 7. 746 IN. 9-11. When in fact he admitted to giving a proffer agreement which is a deal to avoid prosecution on January 24, 2018. Trial brief 7.5 and 7.156 IN. 10-18. This falsehood is believed to have been presented to the jury days after the initial testimony of the codefendant to confuse the jury of codefendant's motive to falsify testimony. That also is a blatant act of perjury because the solicitor lied to jury under oath. *Napue v. People of the State of IL*, 360 US 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) (State's attorney denied promise made for consideration made to witness for testimony.)

Criminal law

Where there exists an understanding or agreement that, in exchange for witnesses' testimony, he will receive immunity from prosecution or other favorable consideration from the state in connection with his own criminal activity, the agreement must be disclosed to the court and jury if the witness' credibility is an issue in the case; if there is any reasonable likelihood that the witness' denial of such an agreement or understanding could have affected the jury's judgment as to his credibility, the agreement or understanding is material and must be disclosed as stated in *Gunning v. Cousin*, 452 F.Supp. 916 (W.D.N.C. 1978)

A proffer agreement is an agreement grant-

immunity for an informant by a prosecutor agreeing not to use any information against the informant so by stating in his closing argument he did not give the codefendant a deal was a deliberate act to confuse the jury.

CONCLUSION

As stated since trial and before trial even started the arrest warrant in this case has proven to be invalid. Once the falsities are removed and the omitted photographic lineup facts are inserted the arrest warrant is deemed invalid because it no longer has probable cause to arrest the appellant. Along with the other evidence the police officer said he had at the time of obtaining the arrest warrant. Accordingly the Beck court established that the arrest warrant must be viewed, by looking at the evidence the police had at the time of the arrest, and not what they obtained after the arrest. Thus unlike search warrants under Sch Franks the standard set forth by these cases requires the court to review whether false information after being omitted still establishes probable cause, but under Beck, Henry the court must determine whether probable cause to arrest existed at the time of the obtaining of the warrant or was false or misleading information presented to the magistrate to make him believe probable cause existed.

RPWB

— ROGERS, PATRICK, —
WESTBROOK & BRICKMAN
— LLC —

James C. Bradley · Michael J. Brickman · Nina Fields Britt
Elizabeth Middleton Burke · Aaron R. Dias · D. Charles Dukes
Theodore (T.A.C.) Hargrove II · Caleb M. Hodge · Gregory A. Lofstead
Christiaan A. Marcum · Karl E. Novak · Matthew A. Nickles · Misty Black O'Neal
Kimberly Keevers Palmer · Thomas D. Rogers · A. Hoyt Rowell, III
Deon T. Tedder · T. Christopher Tuck · Kenneth J. Wilson · Robert S. Wood
Of Counsel: Jerry H. Evans · Gordon C. Rhea (CA, DC & USVI only)
Edward J. Westbrook · Charles W. Patrick, Jr

MATTHEW NICKLES
EMAIL: mnickles@rpwb.com
1513 Hampton Street
Columbia, SC 29201

March 5, 2024

Gregory Kyle Green, Inmate No. 299039
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Green v. Sanchez, CA No. 2:21-cv-1376-RMG-MGB
Deposition Transcript of Michael Sanchez

Mr. Green:

The court has issued an order staying this case. That means the court has essentially paused all proceedings while your post-conviction relief lawsuit is adjudicated. Accordingly, there will be no trial or other action in the Green v. Sanchez case until the PCR matter is completely resolved. We will keep an eye on the PCR matter as required by the court. This does not mean your case is dismissed or denied, it is just being paused, while the other case is heard. Thanks so much.

Sincerely,



Matthew A. Nickles

Enc.

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
clerkofcourt.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4434 FAX
clerkofcourt.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

February 22, 2021

Re: Response to FOIA request

Dear Mr. Green:

I have reviewed your request under the Freedom of Information Act and provide the following as the response of the Charleston County Clerk of Court's office:

In your request, you ask for: "Grand Jury impaneling documents, was the grand jury convened on Dec. 5, 2017, and who was the presiding judge for indictment #'s 2017-GS-10-06993 and 2017-GS-10-06994, transcripts of the indictment proceedings".

Included in this response are the responsive documents pertaining to your request. The office of the Clerk of Court does not, however, produce or maintain transcripts of proceedings. South Carolina Court Administration employs court reporters who produce and maintain transcripts of proceedings.

Respectfully submitted,

Eddie Haselden
Chief Deputy Clerk of Court

THE GRAND JURY OF CHARLESTON COUNTY MET ON
THE 5th DAY OF December, 2017

TOTAL NUMBER OF TRUE BILLS 892

TOTAL NUMBER OF NO BILLS 0

BY OUR SIGNATURES HERETO, AT LEAST TWELVE(12)
OF THE EIGHTEEN(18) GRAND JURORS CONCURRED IN
THE FINDINGS IN THEIR REPORT.

1. [Signature] FOREPERSON
2. [Signature]
3. [Signature]
4. [Signature]
5. [Signature]
6. Thomas Connolly
7. W. S. [Signature]
8. Jessamine M. [Signature]
9. [Signature]
10. Tom Wood
11. Derrick Holmes
12. Lisa D. Allison
13. [Signature]
14. [Signature]
15. [Signature]
16. [Signature]
17. [Signature]
18. _____

JUDGE

SIGNATURE [Signature] DATE 12/5/17

NINTH JUDICIAL CIRCUIT

GRAND JURY (CLERK)

Scheduled Date: Monday, December 04, 2017

DTC 19 PM 4: 24

09C-0333823	Grant, Albert	2017-GS-10-06934	Unlawful Carrying of a Pistol	2017A1010206069	NCPD 2017-025692	08/23/2017	Wetmore, Burns	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0333823	Grant, Albert	2017-GS-10-06935	Dist/PWID/Manuf Mj/Sched I-III	2017A1010205070	NCPD 2017-025692	08/23/2017	Wetmore, Burns	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0330169	Grant, Alexis	2017-GS-10-07036	Homicide By Child Abuse	2017A1010202798	NCPD 2017-013997	05/12/2017	Herring-Lash, Deborah	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0334242	Grant-Davis, King	2017-GS-10-07911	Petit Larceny Third ...	2017A1010206302	CPD 2017-15420	09/03/2017	McClellan, Matthew	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0333895	Green, Calvin	2017-GS-10-07576	Breaking Into Motor Vehicle	2017A1010205124	CCSO 2017-014088	08/25/2017	Sigal, Price	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0332339	Green, Gregory	2017-GS-10-06993	Murder	2017A1010203946	NCPD 2017-016967	07/12/2017	Waring, T.	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0332339	Green, Gregory	2017-GS-10-06994	Possession Of A Weap...	2017A1010203947	NCPD 2017-016967	07/12/2017	Waring, T.	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0332339	Green, Gregory	2017-GS-10-06995	Arson, Second Degree	2017A1010203948	NCPD 2017-016967	07/12/2017	Waring, T.	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0332340	Green, Gregory	2017-GS-10-07028	Poss Meth/Cocaine base	2017A1010204034	NCPD 2017-0201661	07/12/2017	Waring, T.	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0333824	Green, Joseph	2017-GS-10-07021	Breach of Trust with Fraudulent Intent	2017A1010204790	CCSO 2017-013184	08/23/2017	Harrell, Amy	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0334383	Green, Robert	2017-GS-10-07044	Habitual Traffic Offender	14102P0161758	NCPD 2017-027338	09/07/2017	Bourdon, Mark	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0327276	Green, Sky'lur	2017-GS-10-07965	Attempted Murder	2017A1010201144	CCSO 2017-0033003	02/27/2017	Condon, Charles	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0327276	Green, Sky'lur	2017-GS-10-07968	Armed Robbery	2017A1010201146	CCSO 2017-0033003	02/27/2017	Condon, Charles	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0327276	Green, Sky'lur	2017-GS-10-07889	Possession Of A Weap...	2017A1010201147	CCSO 2017-0033003	02/27/2017	Condon, Charles	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0327578	Green, Sky'lur	2017-GS-10-07891	Murder	2017A1010201372	CCSO 2017-003413	03/07/2017	Condon, Charles	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>
09C-0327578	Green, Sky'lur	2017-GS-10-07893	Possession Of A Weap...	2017A1010201373	CCSO 2017-003413	03/07/2017	Condon, Charles	T/B <input checked="" type="checkbox"/> N/B <input type="checkbox"/>

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Gregory Kyle Green,	)	Civil Action No. 2:21-cv-01376-RMG-MGB
)	
Plaintiff,)	
)	
v.	)	REPORT AND RECOMMENDATION
)	
Michael Sanchez,)	
)	
Defendant.)	
)	

Plaintiff Gregory Kyle Green (“Plaintiff”), a state prisoner proceeding *pro se* and *in forma pauperis*, brings this civil action seeking relief pursuant to 42 U.S.C. § 1983. This matter is now before the Court upon Defendant’s Motion for Summary Judgment. (Dkt. No. 62.) Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2), D.S.C., this matter has been assigned to the undersigned for all pretrial proceedings. For the reasons set forth below, the undersigned recommends that Defendant’s motion (Dkt. No. 62) be denied.

BACKGROUND

Plaintiff is currently incarcerated at Lee Correctional Institution in Bishopville, South Carolina for a murder conviction.¹ The instant case centers around the constitutionality of Plaintiff’s underlying arrest warrant and whether that warrant was procured by false statements in violation of Plaintiff’s Fourth Amendment rights. Plaintiff filed his initial Complaint on May 7, 2021. (Dkt. No. 1.) Upon Order of the Court, Plaintiff filed an Amended Complaint on September 7, 2021. (Dkt. No. 10.) According to the Amended Complaint, on or around July 7, 2017,

¹ See SCDC Inmate Search, <http://www.doc.sc.gov/InmateSearchDisclaimer.html> (last visited March 31, 2023); see also *Tisdale v. South Carolina Highway Patrol*, No. 0:09-cv-1009-HFF-PJG, 2009 WL 1491409, at *1 n.1 (D.S.C. May 27, 2009), *aff’d*, 347 F. App’x 965 (4th Cir. Aug. 27, 2009) (noting that the court may take judicial notice of factual information located in postings on government web sites).

genuine issue of material fact exists in support of his constitutional claim. (Dkt. No. 62 at 7.) On January 12, 2023, this Court issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the dismissal procedure and the possible consequences if he failed to adequately respond to the motion. (Dkt. No. 63.) Plaintiff responded to the motion on January 20, 2023. (Dkt. No. 65.) On January 25, 2023, Defendant filed a reply to Plaintiff's response. (Dkt. No. 66.) As such, the motion before the Court has been fully briefed and is ripe for disposition.

LEGAL STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Facts are 'material' when they might affect the outcome of the case, and a 'genuine issue' exists when the evidence would allow a reasonable jury to return a verdict for the nonmoving party." *News & Observer Pub'g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 576 (4th Cir. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A party may support or refute that a material fact is not disputed by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). Rule 56 mandates entry of summary judgment "'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" *Phillips v. Nlyte Software Am. Ltd.*, 615 Fed. App'x 151, 152 (4th Cir. 2015) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

When a court considers the motion, "'the nonmoving party's evidence is to be believed, and all justifiable inferences are to be drawn in that party's favor.'" *News & Observer Pub'g Co.*,

“The Fourth Amendment prohibits law enforcement officers from making unreasonable seizures, and seizure of an individual effected without probable cause is unreasonable.” *Brooks v. City of Winston-Salem*, 85 F.3d 178, 183 (4th Cir. 1996) (citing *Graham v. Connor*, 490 U.S. 386, 396–97 (1989)). A party challenging the veracity of a warrant application must show that the officer(s) deliberately or with a “reckless disregard for the truth” made material false statements in the warrant application, *Franks v. Delaware*, 438 U.S. 154, 171 (1978), or omitted from that application “material facts with the intent to make, or with reckless disregard of whether they thereby made, the [application] misleading,” *United States v. Colkley*, 899 F.2d 297, 300 (4th Cir. 1990) (citation omitted). “Reckless disregard can be evidenced by an officer acting ‘with a high degree of awareness of [a statement’s] probable falsity,’ meaning that ‘when viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported.’” *Humbert v. Mayor & City Council of Baltimore City*, 866 F.3d 546, 556 (4th Cir. 2017) (quoting *Miller v. Prince George’s Cty., MD*, 475 F.3d 621, 627 (4th Cir. 2007)), *as amended* (Aug. 22, 2017), *cert. denied sub nom. Mayor & City Council of City of Baltimore, Maryland v. Humbert*, 138 S. Ct. 2602, 201 L. Ed. 2d 1003 (2018). “Omissions are made with reckless disregard when the evidence demonstrates that a police officer ‘failed to inform the judicial officer of facts [he] knew would negate probable cause.’” *Id.* (quoting *Miller*, 475 F.3d at 627).

“Moreover, in order to violate the Constitution, the false statements or omissions must be ‘material,’ that is, ‘necessary to the [neutral and disinterested magistrate’s] finding of probable cause.’” *Miller*, 475 F.3d at 628 (quoting *Franks*, 438 U.S. at 155–56.) “To determine materiality, a court must excise the offending inaccuracies and insert the facts recklessly omitted, and then determine whether or not the corrected warrant affidavit would establish probable cause.” *Id.*

qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.” *Pearson*, 555 U.S. at 236 (2009).

B. Evidence

In connection to a prior motion, Plaintiff submitted the arrest warrant at issue here as well as excerpts of testimony from Plaintiff’s underlying criminal trial. (Dkt. No. 21-1.) The arrest warrant is signed by the magistrate judge and Defendant Sanchez and states that “there is probable cause to believe that the defendant named above did commit the crime[]” of “murder” and that “probable cause is based on the . . . facts” set forth in Sanchez’s affidavit. (Dkt. No. 21-1 at 1.)

Personally appeared before me, a magistrate of this County, one, [illegible] who, first being duly sworn, deposes and says that

Gregory Kyle Green

did within this County and State on the 8th day of June, 2017 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:
MURDER
16-3-10

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based upon the following facts:

On June 8th, 2017, at approximately 4:30 A.M., while at 2278 Bailey Street, which is located in the City of North Charleston, County of Charleston, State of South Carolina, the defendant, Gregory Kyle Green, did commit the offense of MURDER, in violation of section 16-3-10 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully shoot the victim, Freeman Rivers which resulted in his death.

Facts to establish the aforesaid are that on June 8th, 2017, at approximately 4:46 AM., officers of the North Charleston Police Department responded to a report of a fire located at 2278 Bailey Street. Fire fighters located the body of a male later identified as Freeman Rivers. Autopsy showed that Rivers had sustained multiple gun shots which resulted in his death. Detectives obtained a description of the vehicle used by the defendant who was seen entering and fleeing the victims [sic] residence the night of the incident. This vehicle was described as a light blue new

(Dkt. No. 21-1 at 2–3.)

During Walker's testimony, she appears to describe what an unnamed person told her about the murder at issue. Her testimony includes the following exchange:

A. . . . He said as he proceeded to the steps he said he heard some commotion and then he said that he heard two gunshots. So he turned around and he ran to his car. And as he was proceeding to back out he said a young man came out with a gun and he was bloody and he jumped in the car.

Q. Did he tell you where they went after the guy jumped in his car?

A. He said he took him back to the house.

Q. And did he tell you what happened after he took this person who jumped in his car with blood on his clothes and a gun did he tell you what happened when he went back to the house?

A. The guy's female helped him change his clothes and he said they bleached out the car.

Q. Did he tell you what happened after he bleached out the car?

A. He said he left. He said he told the guy to burn the house down. And then he said that he left.

Q. Did he tell you who this person was?

A. No, I don't know who the person was.

(Dkt. No. 21-1 at 4.)

Finally, during Rice's testimony, the following exchange is recorded:

Q. When you met with detectives about this case you described the person you saw across the street.

A. I described the person who I thought it was.

Q. Okay. I know you didn't get a good look at his face, right?

A. I never saw the person.

Q. But you were able to say a few things about what he looked like.

A. I was describing somebody.

Q. And you even told officers that you recognized the guy.

A. I was describing somebody.

Q. You said that you had seen him at Mr. Rivers' house for the past four days before Mr. Rivers was killed.

A. Not the guy who we're trying today.

Q. I'm sorry?

A. Not the guy who we're trying today. The guy who I thought it was was a whole different guy.

Q. Because you said he was dark skinned, right?

A. Right.

Q. Three shades darker than you. . . .

Sanchez testified that he “definitely did not have [Plaintiff’s] phone records in July of 2017.” (*Id.*) When asked specifically about the arrest warrant, Sanchez acknowledged that the information in his affidavit about Plaintiff’s phone records “was not accurate.” (*Id.* at 17.) Sanchez also discussed his testimony at Plaintiff’s preliminary hearing, in which he testified about phone records disproving Plaintiff’s alibi. Sanchez acknowledged that this testimony was given “fifteen days before [he] retrieved the data.” (*Id.* at 25–6.)

C. Analysis

Plaintiff argues that Defendant’s affidavit included several pieces of false information: (1) that Plaintiff’s cell phone records placed him at the crime scene; and (2) that witnesses gave information placing Plaintiff at the crime scene. (Dkt. Nos. 10 at 4–5; 65 at 2.) In his Motion, Defendant appears to dispute both that he provided false information in his affidavit with reckless disregard and that the exclusion of the alleged false information would deprive the warrant of probable cause to arrest Plaintiff for murder. (Dkt. No. 62.) Notably, neither party has provided any evidence with their briefing on the dispositive motion. The only evidence in the record are the documents discussed above, which Plaintiff submitted with his prior motion to appoint counsel. (Dkt. No. 21.)

As an initial matter, the parties dispute what facts Defendant had within his knowledge at the time he gave his affidavit testimony. Plaintiff argues that in addition to Defendant’s representations about Plaintiff’s cell phone records, his representations about the witness statements were also false. (Dkt. No. 65 at 2.) More specifically, Plaintiff asserts that Walker is the witness mentioned in the affidavit who allegedly provided Defendant with the third party confession. According to Plaintiff, Walker’s trial testimony indicates she could not have identified or implicated Plaintiff in the murder. (*Id.*) Likewise, Plaintiff asserts that Seabrook and Rice are

(Dkt. No. 21-1 at 1.)

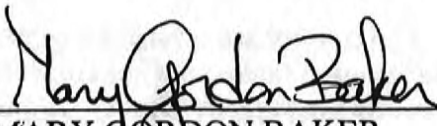
When construed in the light most favorable to Plaintiff, Walker's trial testimony indicates that she is the source of the "third party confession" referenced in Defendant's affidavit. The portion of her testimony in the record indicates she did not know the person who "committed the murder" and therefore could not have implicated Plaintiff to Defendant. (Dkt. No. 21-1 at 1, 4.) Similarly, the trial testimony from Seabrook and Rice, when construed in the light most favorable to Plaintiff, indicates these are the other witnesses referenced in Defendant's affidavit. Their testimony indicates they "viewed the car drop off and pick up the suspect," and that the person they described to Defendant did not match Plaintiff's description. (*Id.* at 1, 2–3, 5–6.) Further, Rice's testimony indicates he did not hear the name "Kone" uttered by the co-defendant, and that when Defendant mentioned the name "Kone" to Rice, he denied hearing that name. (*Id.* at 1, 8–9.) Based on the foregoing, the undersigned finds that the evidence creates an inference that Defendant did not accurately describe in his affidavit the information he was given from witnesses about the night of the murder. *See Miller*, 475 F.3d at 630–31. ("An investigation need not be perfect, but an officer who intentionally or recklessly puts lies before a magistrate, or hides facts from him, violates the Constitution unless the untainted facts themselves provide probable cause.").

Further, had the magistrate judge been fully and accurately informed of the statements obtained from Rice, Seabrook, and Walker, and had Defendant omitted the information about Plaintiff's phone records, the magistrate judge would not have found probable cause to issue the arrest warrant for Plaintiff. Without the foregoing information, there is no compelling information connecting Plaintiff to the crime scene.² *See United States v. Lull*, 824 F.3d 109, 118 (4th Cir. 2016) (finding a law enforcement officer's reckless omission of facts from his affidavit, which

² While "trace evidence of blood" was found in a car described at the crime scene, Plaintiff is only connected to this car through the above-mentioned witness statements. (Dkt. No. 21-1 at 1.)

IT IS SO RECOMMENDED.

April 6, 2023
Charleston, South Carolina



MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Gregory Kyle Green	)	Case No. 2:21-cv-1376-RMG
)	
Plaintiff,)	
	)	ORDER
v.)	
)	
Michael Sanchez,)	
)	
Defendant.)	

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that Defendant’s motion for summary judgment be denied. (Dkt. No. 67). Defendant has filed objections to the R & R. Plaintiff has filed no reply.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

By way of background, Plaintiff, a *pro se* prisoner, has filed an action against Defendant, a detective with the North Charleston Police Department, asserting that his Fourth Amendment right to be free from unreasonable searches and seizures was violated by Defendant providing

not have existed to issue the warrant in the absence of these false statements. (Dkt. No. 67 at 11-14).

Defendant has filed objections to the R & R arguing that the record contained only partial trial transcripts and there was no evidence to support the Magistrate Judge's conclusions that the trial witnesses were, in fact, the persons referred to in the application for the warrant. (Dkt. No. 69). A review of the record before the Court confirms the fact that there are certain gaps in the record before the Court, which are perhaps the product of Plaintiff acting *pro se* and presently incarcerated in state prison. The incomplete record raises serious issues, however, that should be resolved only after obtaining a full record in this matter with the assistance of competent counsel appointed by the Court.

Therefore, the Court declines to adopt the R & R (Dkt. No. 67) and remands the matter to the Magistrate Judge to develop a fuller and more complete evidentiary record. To that end, the Court will appoint counsel to represent Plaintiff before the Magistrate Judge and this Court regarding his claim. Discovery should be reopened in this matter under the guidance and direction of court appointed counsel for Plaintiff. The Court would be benefitted by a copy of the full trial transcript and discovery on what information Defendant had at the time he made the challenged representations in the application for a warrant. With this fuller record, the Magistrate Judge and this Court will address Defendant's motion for summary judgment.

Based on the foregoing, the Court declines to adopt the R & R of the Magistrate Judge (Dkt. No. 67) and remands this matter to the Magistrate Judge for further actions consistent with this Order.

AND IT IS SO ORDERED.

May 16, 2023
Charleston, South Carolina

s/ Richard Mark Gergel
United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Gregory Kyle Green,)
	) CASE NO. 2:21-cv-01376-RMG-MGB
Plaintiff,)
	) PLAINTIFF'S MEMORANDUM IN
v.	) OPPOSITION TO DEFENDANT'S
	) RENEWED MOTION FOR SUMMARY
Michael Sanchez,	) JUDGEMENT
)
Defendant.)
<hr/>)

Plaintiff respectfully files this memorandum in opposition to Defendant’s motion for summary judgment (Dkt. No. 84). The Court should deny Defendant’s Renewed Motion for Summary Judgment because there is sufficient evidence to show that Officer Sanchez acted with reckless disregard and because the “corrected” arrest warrant affidavit lacks sufficient evidence to create an individualized suspicion as to Mr. Green’s guilt of the crime alleged.

PROCEDURAL BACKGROUND AND NATURE OF THE CASE

Plaintiff refers to his motion for summary judgment as to Defendants’ affirmative defenses for a statement of the procedural background and nature of the case.

STANDARD OF REVIEW

Summary judgment is appropriate if a party “shows that there is no genuine dispute as to any material fact” and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In other words, summary judgment should be granted “only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts.” *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987). “In determining

Officer Sanchez's arrest warrant dated July 7, 2017, states in pertinent part:

On June 8th, 2017, at approximately 4:30 A.M., while at 2278 Bailey Street, which is located in the City of North Charleston, County of Charleston, State of South Carolina, the defendant, Gregory Kyle Green, did commit the offense of MURDER, in violation of section 16-3-10 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully shoot the victim, Freeman Rivers which resulted in his death.

Facts to establish the aforesaid are that on June 8th, 2017, at approximately 4:46 AM., officers of the North Charleston Police Department responded to a report of a fire located at 2278 Bailey Street. Fire fighters located the body of a male later identified as Freeman Rivers. Autopsy showed that Rivers had sustained multiple gun shots which resulted in his death. Detectives obtained a description of the vehicle used by the defendant who was seen entering and fleeing the victims [sic] residence the night of the incident. This vehicle was described as a light blue new Chrysler 200. Video from the area an hour prior to the incident shows a 2017 light blue Chrysler 200 bearing SC tag MJK 304 entering the neighborhood and pulling into the Cheapway Gas Station at 3615 Dorchester Road. A witness to be named in court provided a third party confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. The witness' statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description.

In addition, the witness stated the vehicle had blood transfer to the interior of the car as the suspect of the crime was covered in blood at the time of the incident. On June 22, 2017, Doucet's 2017 Chrysler 200 was located, after being reported stolen on June 19, 2017. Testing on the interior of the vehicle reviewed presumptive positive results for trace evidence of blood after a search was conducted of the car pursuant to a lawful search warrant. Defendant's cell phone records indicate that he was on Bailey Street during the time of the incident and match the witnesses' description and timeline of events. The witnesses also heard the name "Kone" uttered by the co-defendant when searching for him in front of the house, and this is a known alias of the defendant. All this done against the law, peace and dignity of the State of South Carolina. Det. M. Sanchez and witnesses to be named in court are witness to prove the same.

(Dkt. No. 21-1 at 1) (emphasis added)

The facts as revealed in discovery show that several key pieces of information included in the arrest warrant are incorrect, misleading, or omitted, and specifically the underlined statements above:

that night (Rice Tr. 31:16-22). He also said he believed the murderer to be someone in his late 40s, from 49 to 52, and that the person had been visiting the victim for the last 3 or 4 days prior to the shooting (Rice Tr. 9:15-22; 78:8-22)

The other witness, Mr. Seabrook, only said he heard a driver on his street say the name “Korn” or “Kone”. (Seabrook Interview at minute 3 to minute 4, Dkt. No. 84-2)

ARGUMENT

Taking all inferences in favor of Plaintiff Mr. Green, there is more than sufficient evidence to create an issue of fact whether Officer Sanchez violated Mr. Green’s Fourth Amendment rights under *Miller*. First, Officer Sanchez recklessly included false information in his affidavit and omitted key facts. Further, the “corrected” affidavit is insufficient to establish probable cause because it lacks sufficient facts pointing to Mr. Green as the suspect.

1. Plaintiff has sufficient evidence to satisfy the “reckless disregard” prong

Plaintiff has sufficient evidence to demonstrate the first prong of the *Miller* analysis. Indeed, Defendant appears to concede this element because he does not meaningfully address it in his motion. Further, this element is satisfied because Officer Sanchez has admitted he did not have the cell phone records he claimed put Mr. Green at the scene of the crime. Sanchez at first testified he must have been looking at another suspect’s records from some other crime and got them confused. (Ex. B - Sanchez Dep. 61:23-66:2). Sanchez later said he was confused because he did have records for Mr. Green at the time, but they were from the wrong dates, 2/1/17 to 4/20/17 (Ex. C – Def. Disc. Resp. dated Dec. 12, 2023). Both these excuses are so easily disproved that they create an inference of knowing falsity or recklessness.

phone records. (Ex. I – Cordray Dep. 14:5-15:4; 18:21-21:22) The only cell records ever produced in this action are the ones from the wrong dates and before the shooting. (Ex. G – Green Cell Phone Records)

Finally, as noted above, Mr. Rice said he saw the murderer and it was a man in his late 40s. Accordingly, he provided an eye-witness account that describes someone other than Mr. Green, who would have been only in his mid-30s. This information was omitted from the warrant.

2. Plaintiff satisfies the “materiality” prong because the “corrected” affidavit does not establish probable cause

Materiality is determined by “correcting” the affidavit to excise or redact the false statement(s), and then assessing whether the remaining averments in the affidavit are sufficient to establish probable cause. Here, there is clearly an issue of fact for the jury whether the “corrected” affidavit is sufficient to establish probable cause for Mr. Green’s arrest.

The touchstone of probable cause is individualized suspicion that the suspect committed the alleged crime. Here, nearly all of Officer Sanchez’s testimony in the affidavit that purports to identify Mr. Green is not truthful. To implicate Mr. Green, Officer Sanchez relies on two things and two things only: witness testimony and cell phone records. As shown below, Sanchez misstates and omits key witness testimony. Further, the cell phone records, which he regards as the most pivotal evidence, are a fabrication.

Regarding the witness testimony, no one identifies Mr. Green as the suspect except perhaps Mr. Seabrook, and he does so only indirectly. The witnesses at issue here are Ms. Walker, Mr. Rice, and Mr. Seabrook. Sanchez swore in his warrant affidavit that Ms. Walker

considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”).

CONCLUSION

The Court should deny Defendant’s Renewed Motion for Summary Judgment because, taking all inferences in Plaintiff’s favor, there is sufficient evidence to show that Officer Sanchez acted with reckless disregard and because the “corrected” affidavit lacks sufficient evidence to create an individualized suspicion as to Mr. Green’s guilt of the crime alleged.

Dated: January 12, 2024

Respectfully Submitted,

By: s/Matthew A. Nickles

Matthew A. Nickles

Fed Id: 11001

ROGERS, PATRICK,

WESTBROOK & BRICKMAN,

LLC

1513 Hampton Street

Columbia, SC 29201

mnickles@rpwb.com

Attorney for Plaintiff

Deposition of Michael Sanchez

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF SOUTH CAROLINA
 3 CHARLESTON DIVISION
 4
 5 GREGORY KYLE GREEN : C/A NO.
 6 #299039, 2:21-cv-01376-RMG-MGB
 7 Plaintiff :
 8 vs.
 9 MICHAEL SANCHEZ,
 10 Defendant
 11
 12 DEPONENT: MICHAEL SANCHEZ
 13 DATE: SEPTEMBER 18, 2023
 14 TIME: 10:00 a.m.
 15 LOCATION: HOOD LAW FIRM, LLC
 16 172 MEETING STREET
 17 CHARLESTON, SC
 18 REPORTED BY: CAROL T. LUCIC, RPR, RMR
 19
 20
 21
 22 CLARK BOLEN COURT REPORTING & VIDEO CONFERENCING
 23 CHARLESTON, SC 29405
 24 843-762-6294
 25 WWW.CLARK-ASSOCIATES.COM

1 APPEARANCES
 2
 3 ON BEHALF OF THE PLAINTIFF:
 4 ROGERS, PATRICK, WESTBROOK & BRICKMAN, LLC
 5 BY: MATTHEW A. NICKLES, ESQ.
 6 1513 HAMPTON STREET
 7 THIRD FLOOR
 8 COLUMBIA, SC 29201
 9
 10 ON BEHALF OF THE DEFENDANT:
 11 HOOD LAW FIRM, LLC
 12 BY: EVAN M. SOBOCINSKI, ESQ.
 13 172 MEETING STREET
 14 POST OFFICE BOX 508
 15 CHARLESTON, SC 29402
 16
 17 PRESENT: GRAHAM HORSMAN
 18 ALEX BOONE
 19
 20
 21
 22
 23
 24
 25

1 INDEX
 2
 3 MICHAEL SANCHEZ
 4 SEPTEMBER 18, 2023
 5
 6 EXAMINATION PAGE
 7 BY MR. NICKLES 4
 8 BY MR. SOBOCINSKI 128
 9
 10 CERTIFICATE OF REPORTER 131
 11
 12 EXHIBITS
 13 NO. PAGE
 14 1 Arrest warrant 14
 15 2 Search warrant 72
 16 3 Cell phone records 124
 17
 18
 19
 20
 21
 22
 23
 24
 25 (Exhibits attached.)

1 MICHAEL SANCHEZ,
 2 having been first duly sworn, was examined and
 3 testified as follows:
 4 EXAMINATION
 5 BY MR. NICKLES:
 6 Q. Good morning.
 7 A. Good morning.
 8 Q. How are you doing?
 9 A. I'm doing good.
 10 Q. Can you state your name for the record,
 11 please.
 12 A. Michael Sanchez.
 13 Q. How would you like me to address you?
 14 A. Mike, Michael, either way.
 15 Q. I'll go with Michael.
 16 A. That's fine.
 17 Q. Have you ever been deposed before,
 18 Michael?
 19 A. I have.
 20 Q. About how many times would you say?
 21 A. At least twice before.
 22 Q. What was the context of those?
 23 A. I believe they had to do with -- I can't
 24 remember. It had to do with something in the City
 25 of Hartsville, maybe an officer accident or

1 something like that. I can't remember. It has
 2 been 15 years or more.
 3 Q. 15 years since your last deposition?
 4 A. Yes.
 5 Q. So it has been a while, and you're doing
 6 well. I'll try and correct you as we go if there
 7 are issues, but the one thing I'm supposed to tell
 8 you is if you have questions about my questions or
 9 the documents that I show you, that you direct
 10 those questions to me and not your lawyer who is
 11 here with you. Okay?
 12 A. Okay.
 13 Q. Other than speak with Evan, did you do
 14 anything to prepare for your deposition today?
 15 A. No.
 16 Q. You didn't review any documents?
 17 A. No, no documents.
 18 Q. Have you spoken with anyone else other
 19 than Evan about this case?
 20 A. No.
 21 Q. What is your understanding of what this
 22 case is about?
 23 A. It's in reference to the homicide that
 24 happened on Bailey Drive and the defendant on that
 25 stating that I misrepresented certain facts in that

1 criminal work. Okay?
 2 A. Sure.
 3 Q. So I'm going to ask you some basic
 4 questions about how this all works. All right?
 5 A. Okay.
 6 Q. What is an arrest warrant?
 7 A. An arrest warrant is essentially an order
 8 issued by the judge that states that probable cause
 9 has been met by an investigator or an officer, that
 10 a crime has potentially been committed and that
 11 this person is likely the person who committed that
 12 crime, and it then allows you to detain that person
 13 lawfully.
 14 Q. So the reason you get an arrest warrant is
 15 so that you can detain a person?
 16 A. Yes.
 17 Q. I think you used the term "probable
 18 cause."
 19 A. Yes.
 20 Q. What does that mean?
 21 A. Probable cause are facts that would lead a
 22 reasonable person to believe that a person did
 23 commit a crime based on certain facts.
 24 Q. So probable cause means sufficient facts
 25 that would lead a reasonable person to believe a

1 case.
 2 Q. What facts do you understand were
 3 misrepresented?
 4 A. I believe he is stating that the cell
 5 phone records were in question and possibly some
 6 witness testimony if I'm correct.
 7 Q. Did anyone from the North Charleston
 8 Police Department ever talk to you about this case?
 9 A. Other than casually in the past, not
 10 officially if in regards to this specific lawsuit,
 11 no.
 12 Q. In terms of casually in the past, what
 13 does that mean?
 14 A. As in just recollecting old facts of the
 15 case and just talking about things that succeeded,
 16 things that failed, and overall just training,
 17 explaining how things went.
 18 Q. I'm sure we'll get more into that, but you
 19 were never reprimanded or given additional training
 20 based on anything that occurred in this case?
 21 A. No.
 22 Q. As you said, this case does center around
 23 an arrest warrant that you took out.
 24 A. Yes.
 25 Q. I'm a civil lawyer. I don't do a lot of

1 person probably committed a crime?
 2 A. Correct.
 3 Q. Can you walk us through what is the
 4 process for obtaining an arrest warrant?
 5 A. The process for obtaining an arrest
 6 warrant is an affidavit is typed up stating the
 7 facts that we are alleging occurred on that date
 8 for whatever crime that may be. Any of that
 9 evidence or those facts that are written on that
 10 affidavit has been signed by the affiant and
 11 produced to the judge. Those facts are then read
 12 by the judge, the judge hears any additional
 13 testimony that the officer wants to contribute to
 14 that, and then he will usually sign that affidavit
 15 and that warrant at that point.
 16 Q. This may be a difficult question to
 17 answer. How many arrest warrants have you taken
 18 out in your career?
 19 A. A lot.
 20 Q. More than 1,000?
 21 A. Easily more.
 22 Q. How many times has a judge rejected your
 23 application?
 24 A. I couldn't put a number on it, but there
 25 have been a number of times in which procedurally

1 what I would do in certain cases where a victim
 2 wished to push the matter further and they really
 3 wanted us to prosecute somebody, I draw up the
 4 facts that are available at the time and then
 5 present that to a judge so that the judge would see
 6 the same facts and let them know these are the
 7 facts, ultimately knowing that they're going to
 8 deny it so that I can then tell the victim, hey,
 9 look, we tried, and it does not fly. It does not
 10 meet probable cause as I told you it would not meet
 11 probable cause and I've advised you of that, and
 12 now you know because a judge has denied it and
 13 we're not moving any further unless more evidence
 14 comes to light.

15 It's essentially as a check, like I know
 16 this isn't going to fly, but the victim is being
 17 persistent, so in this course of doing what the
 18 victim wants us to do, a thorough investigation and
 19 attempt, I would essentially pitch it and see if
 20 the judge will bite knowing probably they won't,
 21 but those only happen in very, very rare instances.
 22 I couldn't put a number on it, but it's very rare.

23 Q. Has that happened this year?

24 A. No.

25 Q. So you haven't had an arrest warrant

1 summary court, is that what people would understand
 2 as like a small claims court?

3 A. Small claims court -- they would probably
 4 consider it maybe traffic court is what a lay
 5 person would think of, but, yes, on the same level
 6 as a small claims.

7 Q. When you present the affidavit to the
 8 judge, do you also present additional testimony or
 9 evidence?

10 A. In rare cases where the affidavit wasn't
 11 clear and the judge had further questions about
 12 certain things then, yes, some oral testimony may
 13 be included.

14 Q. What about physical evidence or documents?

15 A. That wouldn't have been -- I've never had
 16 a judge ask for the physical evidence to be brought
 17 before them during those warrants.

18 Q. Maybe you already answered this question,
 19 but do witnesses appear before the judge?

20 A. No.

21 Q. By that I mean fact witnesses.

22 A. No. We don't haul them before the judge
 23 to make their statement.

24 Q. The judge just relies on what the officer
 25 tells them?

1 application denied this year?

2 A. No.

3 Q. How many would you say you think you have
 4 had this year? It can be a guess. No one is going
 5 to hold you to it.

6 A. I would say maybe 50, maybe more. That's
 7 not counting search warrants.

8 Q. Right. Do you recall any having been
 9 denied last year?

10 A. Uh-huh.

11 Q. No.

12 A. No. I apologize. I'm usually better at
 13 this.

14 Q. You had mentioned that the process for
 15 obtaining an arrest warrant entails typing up an
 16 affidavit; correct?

17 A. Yes.

18 Q. And then the affidavit is presented to a
 19 judge?

20 A. Yes, that's correct.

21 Q. What kind of judge is it that it's
 22 presented to?

23 A. Usually it's a summary court judge, so a
 24 magistrate or a municipal judge.

25 Q. Again, when you say a magistrate or

1 A. That's correct, yes.

2 Q. I assume the judge sometimes asks
 3 questions of the officer?

4 A. Yes, they do.

5 Q. Is it important to tell the truth in your
 6 affidavits to the judge?

7 A. Absolutely.

8 Q. Why is that important to tell the truth?

9 A. Because they can't be facts that would
 10 lend to probable cause if they're not truths.

11 Q. Are you allowed to omit facts that are
 12 helpful to the defendant?

13 A. No.

14 Q. Why are you not allowed to omit facts?

15 A. As far as my given understanding as far as
 16 omission of facts, that would be the same as lying
 17 or any kind of form of deceit, and once a criminal
 18 case has been taken in it's the defendant's right
 19 to all evidence that we have for them to prepare
 20 their defense.

21 Q. And you want to paint a full picture for
 22 the judge of the facts?

23 A. Absolutely.

24 Q. Likewise, are you allowed to exaggerate
 25 evidence against a defendant?

1 A. No.
 2 Q. For the same reason that we want the judge
 3 to have a complete and accurate picture?
 4 A. Yes, that's correct.
 5 Q. Does the defendant have notice or any way
 6 to challenge the arrest warrant affidavit prior to
 7 it being presented to a judge?
 8 A. No.
 9 Q. The defendant is not there with the
 10 officer when the arrest warrant is taken out?
 11 A. No, not at all.
 12 Q. And the defendant is never shown the
 13 affidavit prior to it being presented to the judge?
 14 A. That's correct. Not at all.
 15 Q. When is the arrest warrant ever presented
 16 to the defendant?
 17 A. When it's served on them as part of the
 18 arrest warrant.
 19 Q. Understood.
 20 So when you go to take someone into
 21 custody, they are presented with a copy of the
 22 arrest warrant?
 23 A. Yes.
 24 Q. I'm going to show you the arrest warrant
 25 taken out in this case, which I'll have marked as

1 A. Yes.
 2 Q. And you go through some process to find
 3 out what the facts are; right?
 4 A. Yes.
 5 Q. This may be challenging, but to the best
 6 of your memory can you walk us through how that
 7 process went as far as your investigation in this
 8 case we're here about today --
 9 A. Okay. That might be challenging.
 10 Q. -- prior to your arrest warrant? Like I
 11 said, I know there are a lot of moving pieces in
 12 this case as in probably any criminal case, but
 13 walk us through as best you can that process of
 14 investigating the case from when you got the call
 15 to when we're typing up this affidavit.
 16 A. Okay. So to the best of my recollection I
 17 get the call in the morning, the morning of the
 18 incident just after -- it had happened overnight,
 19 so I would technically think it's the next day as
 20 far as the calendar date. I went to the scene
 21 where the house was burned down, and they had found
 22 the decedent in the bathroom of the house face down
 23 in the tub with a cord wrapped around his neck and
 24 three or four -- I think it was four bullet wounds
 25 to the back of the head. That wasn't discovered

1 Exhibit I,
 2 (Deposition Exhibit No. 1 was marked.)
 3 Q. Michael, we will go through it in detail,
 4 but just for the record what you have before you
 5 marked as Exhibit I, is it a three-page document?
 6 A. Yes.
 7 Q. Do you see the little numbers at the
 8 bottom?
 9 A. Yes.
 10 Q. You're familiar with those? Those are
 11 Bates numbers.
 12 A. Yes.
 13 Q. It starts 42, 43, 44.
 14 A. Yes.
 15 Q. Is this the arrest warrant for Mr. Green
 16 that we're here about today?
 17 A. Yes, this is.
 18 Q. Is this an accurate copy of it?
 19 A. Yes.
 20 Q. I'm going to take a quick break from the
 21 arrest warrant. I'm sorry.
 22 To the best of your memory -- let me
 23 phrase it this way: You described the process of
 24 obtaining an arrest warrant entails an affidavit of
 25 typed up facts more or less; correct?

1 immediately. That was discovered at autopsy;
 2 however, that's what we ended up finding.
 3 I started inspecting the scene for
 4 anything that we could find that would help
 5 identify how this took place. Once we were able to
 6 determine that he was shot one of the first things
 7 I looked into was the entry door for the residence.
 8 While most of it had been burned, the door dead
 9 bolt was still laying on the ground in the pile of
 10 ashes that used to be the door. It was not in a
 11 locked position. As we know, dead bolts set;
 12 hence, why they're called dead bolts. They will
 13 not retract once fully extended. This thing was
 14 fully retracted sitting in the ash, and it
 15 indicated that the door was unlocked at the time
 16 when this happened.
 17 So I made mental notes of some of these
 18 conditions, where he was, the condition of that. I
 19 started working with the fire department on trying
 20 to determine the point of origin for the fire
 21 itself. It appeared to be maybe the living room.
 22 I started reaching out to find out from any
 23 officers any history on various databases, what
 24 history we have of the victim. It's very common to
 25 start victimology at that point trying to

1 understand who the victim is and why something
 2 would happen to them.
 3 At this point we were able to get in
 4 contact with the mother. The victim's mother
 5 explained a lot about his personality and how he
 6 was technically a loner. He didn't like people
 7 coming around the house. He was known to have one
 8 girlfriend that had been there previously. They
 9 did fight for a time, and then they separated. So
 10 my first thoughts were this is likely personal.
 11 Somebody being strangled and shot in the back of
 12 the head inside the house, the dead bolt unlocked
 13 are common signs to think that this would have been
 14 somebody close to the victim.
 15 So then we'll start there and spiral out.
 16 So we immediately obtained information on the
 17 girlfriend, found that she had an alibi as to where
 18 she was, interviewed her. She gave us further
 19 information about how when they lived together, he
 20 wouldn't even let his friends in the house; he
 21 would only let them on the front porch. Only his
 22 mother and close relatives would come in and out of
 23 the house. So after talking to her we were able to
 24 determine she wasn't the one that would have been
 25 there. She had places and witnesses that could put

1 her elsewhere.
 2 So we were kind of now at a loss as to
 3 where to go from there. I located the victim's
 4 cell phone number from the mother. I ordered a
 5 record of his cell phone data to determine who, if
 6 anybody, did he speak to prior to this hopefully to
 7 try to get a timeline of events of what happened
 8 leading up to his murder. Mom said that he was
 9 normally in bed at a fairly reasonable hour most of
 10 the time. He was a drug user, but that he normally
 11 didn't stay up all night or anything like that. So
 12 he would normally be bed at a reasonable 9:00, 10
 13 o'clock hour.
 14 The investigation kind of sits at a
 15 standstill as we're working through -- sifting
 16 through the ashes and trying to see if there are
 17 any murder weapons or any other evidence that was
 18 found on the scene. That was kind of left to other
 19 officers to work on while I tried to see if I could
 20 dig up any more information out of his records and
 21 figure out any other potential leads.
 22 The information came in I don't know when,
 23 but the cell phone records for the victim came in,
 24 and there was a phone call prior to -- I apologize.
 25 Somewhere in there -- I can't remember when, I

1 think it was fairly early on -- there were two
 2 eyewitnesses from the neighborhood who had been
 3 sitting across the street. They're the ones that
 4 called in the fire. So it was probably that same
 5 day we talked to the eyewitnesses who said that
 6 they saw the fire and they called it in.
 7 In talking to them they said that they
 8 were sitting out in front of the house, saw a
 9 person come up the road with a gas can on a
 10 bicycle, go into the house, and then leave. They
 11 said that he had been up there arguing with the
 12 person for a period of time before all this, and
 13 that they also saw like a bluish silver car coming
 14 and going from the neighborhood, and at one point
 15 in time the driver of that car pulled over and
 16 asked them specifically if any of them had seen --
 17 they couldn't make out the word, but they thought
 18 it was maybe like corn or cone or something. So
 19 they said that -- they told him we don't know who
 20 that is, and the car drives off.
 21 That car eventually came by and picked up
 22 whoever was at the house before the person comes
 23 back on the bicycle and sets fire -- presumably
 24 sets fire to the house. They said that he comes up
 25 with a gas can. The one witness goes inside and

1 comes back out, and he sees the house on fire and
 2 that person no longer there, so he reasons that
 3 that person likely set the house on fire. The last
 4 direction he saw him was going on Bailey towards
 5 Azalea and making a left on Azalea, which would
 6 take it eastbound on Azalea.
 7 So past that conversation, like I said,
 8 we're going back to records, and we now had a time
 9 frame for when the fire came out, and since he said
 10 shortly before this, we were able to in my
 11 interview with that witness walk him through and
 12 get some approximate time frames as to when he saw
 13 the car, when the guy got picked up, and walk that
 14 back and get an approximate time frame as to when
 15 kind of the first visit of some strange anomaly in
 16 that area became obvious to him, and that seemed to
 17 match the last viable phone call that the victim
 18 got.
 19 I want to say it was somewhere around
 20 11:00 p.m. the victim received a phone call from I
 21 think a 702 area code number, which I think was Las
 22 Vegas, and I found that to be strange because on
 23 public record that showed as a land line from Las
 24 Vegas, and I didn't understand how that would play
 25 into anything. So after mulling over it and trying

1 to see if I could match that record to anything on
2 any public database whatsoever I finally decided to
3 cold call the phone number and just basically ask
4 who it is.

5 As soon as I called it the person
6 answered, and I said I was investigating a case in
7 which there was a fire, and that subject
8 immediately said, "Oh, you're talking about my
9 cousin. His house caught on fire."

10 I said, "Who is your cousin?"

11 He said, "Freeman."

12 I said, "Well, who is this?"

13 He said, "This is Gregory Green, but I
14 wasn't there that night. I was downtown."

15 I said, "Okay. Well, do you know what
16 happened to him" and kind of asked him generally.

17 He said, "No. I think it was an
18 electrical fire."

19 I said, "Okay. Well, if it's okay, I
20 would like to reach back out to you and talk to you
21 a little bit further about this at a later time."

22 He said, "Okay."

23 We moved on. Mom comes to say sometime
24 later and says that one of her nieces or
25 granddaughters -- another relative of hers had just

1 also -- the only other lead that I got was about
2 the car, the silver car that they saw coming and
3 going. The witness had said something about the
4 gas can, the guy riding back with a gas can. The
5 closest gas station is a couple of blocks away. So
6 I checked surveillance video up there and noticed
7 that the car in question or a car that looked like
8 it -- he said a Chrysler 300 bluish silver -- and
9 sure enough one pulls into the -- at the time it
10 was the El Cheapo gas station. It pulls right into
11 there and the guy gets out.

12 So I looked up that dude. He was kind of
13 easy to identify. He had facial tattoos, so he
14 stood out, and that ended up being Terrance Doucet;
15 however, Terrance Doucet, I didn't have anything
16 else to work with as far as trying to put him at
17 the crime other than he drove up several times and
18 asked questions and he drove somebody to and from.
19 I couldn't get him in for an interview to just talk
20 to him without an arrest or anything. He wasn't
21 going to come in willingly.

22 So fast forward, the case is stagnant.
23 I'm waiting on records for Gregory Green.

24 Q. What records are you talking about?

25 A. Cell phone records.

1 talked to Gregory like a week or so before all that
2 and that her son had recently gotten back in
3 contact with Gregory, who was his cousin, and said
4 that Gregory was a really dangerous man. He sells
5 drugs. Her son owes him money. Gregory was at the
6 time quoted as saying to this family member, this
7 extended family member, that it doesn't matter that
8 he's family. Nobody owes me money. They got the
9 impression that there was a tenseness to that, like
10 he was going to maybe harm him and all that. I
11 said I would look into it and just hung it on the
12 side as another possible lead and ordered cell
13 phone records for Gregory Green.

14 Q. At that point did you have any other
15 leads?

16 A. No. It started to dry up at that point.
17 I had re-interviewed the witnesses, the two that
18 were in there, a couple more times. Some of my
19 peers had strong suspicions that the witnesses were
20 the ones that did it. So in an effort to rule them
21 out I talked to them and their family members and
22 got people to confirm that they were home, like
23 they were sitting on their property watching this
24 all transpire.

25 Similarly around that time there was

1 Somewhere in this time frame Lanica Walker
2 comes into play. Lanica Walker was Terrance
3 Doucet's girlfriend. She shows up at my office
4 unannounced and says she has got information on a
5 murder. What she relays to me is Terrance Doucet's
6 understanding of what happened right after he got
7 home from the incident. She says that Terrance
8 Doucet is at a party with Gregory Green. He drives
9 Gregory Green to the house.

10 Q. Your testimony is that Lanica Walker said
11 that Doucet said the name Gregory Green?

12 A. Yes.

13 Q. She provided you with the name Gregory
14 Green; correct?

15 A. She didn't provide me a name. She
16 provided Kone.

17 Q. She said the name Kone to you?

18 A. Kone. By that time we had already done a
19 biographical on Gregory Green and knew his nickname
20 to be Kone.

21 Q. Via Facebook?

22 A. Facebook and I think it was on some police
23 records as far as like a nickname or a moniker that
24 was listed for him, and I think victim's mother's
25 also told me that as well, but I can't recall if

1 that's 100 percent.
2 Q. I'm sorry. I'll let you cook from here
3 on, and then I'll try and remember my questions for
4 later.

5 A. That's fine. The difficulty is
6 understanding the order of operations.

7 Q. You're right.

8 A. What ends up happening is her interview
9 leads us -- her testimony as to what Doucet told
10 her matches like action per action to what the
11 other two witnesses viewed that night as far as she
12 says that Doucet is at the party, drops Green off
13 or drops Kone off, and she just said it's his
14 cousin. She would never identify him as Gregory
15 Green. She just related the suspect that was
16 dropped off by Doucet as being the cousin of the
17 victim and named Kone.

18 So she says that he gets dropped off.
19 Doucet goes back to the party, gets a phone call
20 from the subject, goes back to the scene, can't
21 find him, drives up and down the road, leaves, gets
22 another phone call, comes back, drives up and down
23 the road. This repeats a couple of times, and
24 those repeats match occurrence per occurrence to
25 what the other two witnesses who were sitting in

1 needs to report it to the police. He said, "No.
2 That man will kill me. I don't want to do that."
3 So she kept that to herself up until the day where
4 she shows up to tell me all about this stuff.
5 As for her phone because there was a lot
6 of text messages between her and Doucet where they
7 talk about the case in generalities, I wanted that
8 as a record as well, so we got a copy of her text
9 messages and all that. Then I ordered records for
10 Doucet as well, at which point this was the crux of
11 the case, the evidence that we had.

12 Somewhere in there -- and this is where
13 things got muddy -- I seem to have recalled back
14 then receiving the records for Green, the cell
15 phone records. Now, to put this in context, there
16 was a murder that same night in the same area on
17 St. Johns Street, which is -- I don't know -- maybe
18 a mile or two away from this location, and with the
19 five detectives that were working that day, we're
20 usually all on one case, and now we're split. So
21 I'm kind of bouncing between all of these different
22 cases helping everybody. So there is a lot of --
23 you're not working on just one; you're working on
24 that plus multiple robberies and whatnot.

25 So at some point in this I get cell phone

1 their truck said, hey, this guy drives up and down.
2 She even says then Doucet says that he pulled up,
3 and he saw two guys sitting on the side and he
4 asked them, hey, have you all seen Kone, and they
5 said no, and then he drove around, and that's when
6 Kone called him and said, "Where the F are you at?
7 I'm at my cousin's house where you dropped me off.
8 I need you to pick me up," and that's when he
9 picked him up.

10 She then said that Doucet tells her when
11 Kone gets in the car, he has got blood on him, and
12 he tells him directly that he just killed his
13 cousin and that he shot him in the house. Doucet
14 asks, "What did you do with the gun?"

15 He said, "I left it in there."

16 He said, "Well, you need to burn that
17 house."

18 They leave to go to the party again. When
19 they get to the party, Doucet breaks away. He
20 doesn't want to be part of it, and he goes straight
21 to Lanica Walker's house where he shares that
22 entire story. She helps him clean the car. She
23 said there was some blood on the seats and stuff
24 like that that they wiped up, and she tells him
25 that he needs to go ahead and tell somebody. He

1 records, and I remember seeing them and thinking to
2 myself, oh, these are Green's records, opening them
3 up, seeing data on them, tracking the location data
4 of the towers where they place somebody, and
5 saying, oh, there he is. He's in the area of
6 Bailey Drive around the time of the murder and
7 saying, well, that's just another nail in the
8 coffin as far as that in conjunction with
9 everything else that we already had from
10 eyewitnesses and whatnot.

11 So that happened sometime in the interim
12 between Lanica Walker's testimony and the beginning
13 of this investigation, but once I have Lanica
14 Walker's statement I get charges on Doucet for
15 accessory to murder and bring him in. When he
16 comes in, he doesn't want to talk. He advises that
17 he's going to get an attorney, but I felt at that
18 point with the corroborating witnesses that we had
19 enough to at least state with those witnesses that
20 we have probable cause at that point. We have
21 facts that would lead a reasonable person to
22 believe that Gregory Green committed this crime.
23 So I went and applied for the warrant including
24 that line about the cell phone records.

25 Fast forward to sometime later, I get the

1 cell phone records, and there is a sudden
 2 realization that the cell phone records are not the
 3 same, the same dates. That's when I make a
 4 correction and say, hey, clearly I wasn't looking
 5 at the right records; these are his records, and
 6 submit that as well to the solicitor's office.
 7 Q. Obviously I'll have a lot of followup
 8 questions.
 9 A. I'm sure you've got a lot of questions.
 10 Q. Would you say Lanica's testimony kind of
 11 broke the case for you?
 12 A. I believe her testimony broke a lot of it
 13 because so much of it was corroborating everything
 14 else that we already had.
 15 Q. I mean prior to her you had the
 16 eyewitnesses across the street, the two gentlemen;
 17 correct?
 18 A. Yes.
 19 Q. And they are Jonathan Seabrook and Kendall
 20 Rice?
 21 A. Kendall Rice, yes.
 22 Q. Those are the two eyewitnesses across the
 23 street?
 24 A. Yes.
 25 Q. Any idea why Lanica just showed up out of

1 face value.
 2 Q. And you don't get to pick your witnesses
 3 either.
 4 A. No.
 5 Q. Did you do any kind of background check on
 6 Lanica?
 7 A. Just the basic cursory just to see how
 8 many times she had been arrested and that kind of
 9 thing.
 10 Q. Do you recall anything about that?
 11 A. I can't remember any of that for her.
 12 Q. Had she ever been arrested before?
 13 A. I can't remember.
 14 Q. So she just shows up at the police
 15 station?
 16 A. Yes.
 17 Q. Do you recall around what time?
 18 A. I think it was like 9 o'clock at night.
 19 Q. What does she do when she gets there?
 20 A. She was just standing outside of our
 21 office door. I happened to be walking out about to
 22 go home.
 23 Q. Did she have anybody with her?
 24 A. Not a person.
 25 Q. She was there by herself?

1 the blue?
 2 A. She was mad at Doucet is what she stated.
 3 It was a way to kind of get back at him. She had a
 4 dirty secret, so she figured she would share it.
 5 It's not uncommon in the criminal underworld to
 6 have people just keeping tabs and wanting to share
 7 it later.
 8 Q. So was Lanica part of the criminal
 9 underworld?
 10 A. She wasn't the most -- she's not like a
 11 murderer or a robber or anything else, but
 12 certainly dealing in drugs and whatnot.
 13 Q. Lanica was a drug dealer?
 14 A. No. I mean like using and partaking and
 15 those kind of activities. I didn't do a huge
 16 background on Lanica to make her a primary suspect
 17 to find out what all her dealings were, but I knew
 18 her not to be the most honest and upright citizen.
 19 Let's put it that way.
 20 Q. So Lanica was a dishonest person?
 21 MR. SOBOCINSKI: Object to the form. Go
 22 ahead.
 23 A. Yes and no. You can take what she says
 24 with a grain of salt while measuring it against
 25 other information. You wouldn't take her word at

1 A. By herself.
 2 Q. How did she present herself? What did she
 3 say?
 4 A. She said she had information about a
 5 murder and said it was the one on Bailey Drive
 6 where a person got burned, the house got burned
 7 down, at which point I knew which one she was
 8 talking about and knew that that was my case.
 9 Q. Were you the first person to speak to her?
 10 A. Yes.
 11 Q. What are your next steps when someone
 12 comes to you like Lanica and says hey --
 13 A. Take them straight to a recorded interview
 14 room and start debriefing them on what they knew.
 15 Q. Is that what occurred in this case?
 16 A. Yes, absolutely.
 17 Q. How do those recordings take place?
 18 A. Each interview room has a camera on it and
 19 a microphone built into the room itself. We have
 20 access through any computer in our office and start
 21 the recording process and then put them in the room
 22 and start going.
 23 Q. And that's what you did for her in this
 24 case?
 25 A. Yes.

1 Q. That recording, does it become part of the
 2 case file?
 3 A. Absolutely.
 4 Q. Is a written transcript made of these?
 5 A. Not by us.
 6 Q. So either the solicitor's office or the
 7 defense lawyer may have a transcript made after the
 8 fact?
 9 A. They might. In certain cases I've known
 10 them to do that.
 11 Q. To the best of your memory it was just you
 12 and Lanica in the interview room?
 13 A. Yes, I believe so. I know that there was
 14 one other detective in the office at the time. I
 15 don't remember if he ever came and sat in with me,
 16 but I know he was present.
 17 Q. This occurred in 2017; right?
 18 A. Yes.
 19 Q. And I know you're doing the best to
 20 remember these facts; right?
 21 A. Yes.
 22 Q. But the recorded interview is going to be
 23 the best evidence of what she told you?
 24 A. Absolutely, yes.
 25 Q. I've listened to several of these

1 Q. Rice and Seabrook, do they give recorded
 2 interviews as well?
 3 A. Yes.
 4 Q. That's the same process as Lanica?
 5 A. Yes, although we had a system malfunction.
 6 I think either the power went out or the Internet
 7 went out or something during one of their
 8 interviews, and we switched to a body cam during
 9 one of their interviews because this was a weird
 10 anomaly that happened that day. I don't remember
 11 whose interview it was, but I remember frantically
 12 going to find another means to continue the
 13 interview on recording.
 14 Q. I've seen one of those videos, and it
 15 looks like it's recorded under the table.
 16 A. That would have been it. Normally you
 17 have this mounting system on the uniform. There is
 18 a physical mount that sits it where you want it.
 19 We didn't wear that. We're suit and tie like you
 20 are, so it's like where do you put a camera, and I
 21 think one of them hung it on a lanyard, which
 22 probably made it in the worst spot to have a body
 23 camera.
 24 Q. Likewise, these recorded interviews from
 25 Seabrook and Rice, those are going to be the best

1 interviews. I don't think I've listened to all of
 2 them. There was a mention of polygraphing people.
 3 A. Yes.
 4 Q. Tell me about that. How often do you
 5 polygraph your witnesses?
 6 A. Rarely, if ever, as it's not admissible in
 7 court. My personal opinion is that it serves no
 8 real good purpose because it's not reliable;
 9 however, there was a disagreement between me and my
 10 lieutenant at the time. She felt that it was
 11 something -- she's from an older school, and she
 12 felt it was something that needed to get done, and
 13 so all I say is yes, ma'am.
 14 Q. Sure.
 15 So I understand you correctly, one of your
 16 coworkers wanted to polygraph Lanica?
 17 A. The only person that I remember ever being
 18 told to polygraph was Seabrook -- not Seabrook --
 19 Rice. I think it was Rice.
 20 Q. Were any of the witnesses polygraphed in
 21 this case?
 22 A. No.
 23 Q. Lanica, she comes into the picture after
 24 Rice Seabrook; correct?
 25 A. Yes.

1 evidence of what they told you; correct?
 2 A. Absolutely.
 3 Q. The arrest warrant, can you tell me when
 4 it was signed by you or when you took it out?
 5 A. This warrant was signed on July 7.
 6 Q. Of 2017?
 7 A. 2017, yes.
 8 Q. You may not recall in this particular
 9 case, but on the third page, Page 44 of Exhibit I,
 10 there is a narrative typed in the middle; right?
 11 A. Yes.
 12 Q. Is that something that you typed out?
 13 A. Yes.
 14 Q. Did you type that on a Word document?
 15 A. Yes.
 16 Q. Microsoft Word?
 17 A. Yes.
 18 Q. Is that something that you're working on
 19 throughout the case or do you just sit down at one
 20 point and say I'm going to hammer this out?
 21 A. Different times, different things. It's
 22 kind of a case-by-case basis on how I would do it.
 23 Everything is going to be different for different
 24 officers, but there are times where what I would do
 25 is if I kind of think I've got enough or maybe I

1 don't think I have enough to charge somebody, I'll
 2 go ahead and start typing it with what facts I have
 3 and then read that for myself a couple of times and
 4 see does that resonate, does that sound good.
 5 Sometimes when I think I have it and I type it, it
 6 screams to me no, you don't, and it produces the
 7 hole in the puzzle where you go but I know what
 8 will fix it and we just need to get this evidence
 9 locked in and we can then fix this or you have been
 10 thinking you don't have enough for like a week now,
 11 and then you put all your thoughts on paper, and
 12 you're like it has been there the whole time. We
 13 can actually move forward with this, and then
 14 you're good.

15 So that has been my method in certain
 16 cases. In some cases I don't bother doing that
 17 until the day that I have all the information put
 18 together and I sit down and write it all at one
 19 shot and just go with what we know at the time.

20 Q. For this particular case could you say
 21 what that process was?

22 A. This one was probably an all-in-one shot
 23 because I didn't have anything fully developing
 24 until after Lanica Walker. Then I felt confident
 25 about what we knew and what we had.

1 Q. And the warrant as we said was taken out
 2 on the 7th?

3 A. On the 7th, I believe.

4 Q. So you would have typed it up at some
 5 point either on the 7th or before?

6 A. That's correct.

7 Q. The 7th of July.

8 And it can only be obviously based on
 9 evidence that you had to that point?

10 A. That's correct.

11 Q. We've already established the warrant
 12 should faithfully reflect what the witness has told
 13 you.

14 A. Yes.

15 Q. It shouldn't contain any exaggerations.

16 MR. SOBOCINSKI: Object to the form.

17 A. Yes.

18 Q. It should not contain any exaggerations;
 19 right?

20 A. Right, no exaggeration.

21 Q. It shouldn't omit any facts that are
 22 helpful to Mr. Green.

23 A. Correct.

24 Q. Let's turn our attention to the body of
 25 the arrest warrant, that narrative that I was

1 Q. I know you had mentioned -- and we'll get
 2 much more into this in detail later -- Lanica
 3 Walker came and just appeared at your office;
 4 right?

5 A. Yes.

6 Q. I have in my notes that was June 21 of
 7 2017. You may not know.

8 A. I don't.

9 Q. Would she have signed a Miranda waiver or
 10 anything like that?

11 A. No, she definitely would not because that
 12 was not a custodial interrogation.

13 Q. The recordings, some of them have date
 14 stamps on them.

15 A. Yes.

16 Q. Would those reflect when the recordings
 17 were taken?

18 A. Yes, absolutely. Those are accurate.

19 Q. When did you first look at cell phone
 20 records for what you supposed was Mr. Green?

21 A. That's where I'm foggy. I don't know when
 22 that happened.

23 Q. Whether it was before or after Lanica's --

24 A. Yes, I don't know. It was before this
 25 warrant.

1 talking about on Page 44. I know you said this is
 2 typed up in a Word document.

3 A. Yes.

4 Q. So you have a form I guess that you use
 5 for those things?

6 A. There are several -- once you've typed one
 7 they're pretty much all the same except for the
 8 body itself, so you're pretty much just taking an
 9 original one that you used for a case prior and
 10 then deleting out the nonpertinent details and
 11 going back in with the fresh stuff.

12 Q. That Word document like for Mr. Green's
 13 case, is that saved as part of the case file?

14 A. It might have been. I know that it can
 15 be. It has been in the past, but it hasn't been a
 16 standard practice across the board, so it's kind of
 17 depending on the time and place. I don't know if
 18 that's what we did back then.

19 Q. Is that something that would be easy for
 20 you to look for?

21 A. Maybe. I think all those records are
 22 filed away in an archive that I don't have access
 23 to, so I don't know.

24 Q. Who would you need to ask?

25 A. The Investigations Bureau commander would

1 have access to it.
 2 Q. What is that person's name?
 3 A. Major Kuechler.
 4 Q. As far as you know is there any policy
 5 that we keep the Word documents that we use to
 6 create these affidavits?
 7 A. The working copies? No, there is no
 8 policy expressed that says that.
 9 Q. It's just possible that it could be in a
 10 server somewhere?
 11 A. That's correct.
 12 Q. Major Kuechler, he's the one to ask?
 13 A. Yes.
 14 Q. Turning back to Page 44, I'm going to try
 15 and just go through it from top to bottom. Okay?
 16 A. Okay.
 17 Q. I think you said so already. This first
 18 probably quarter of the document on the top, that's
 19 just part of the form that's always there on your
 20 Word document?
 21 A. Yeah. That's the format that is used by
 22 the Attorney General, that was set out by the
 23 Attorney General.
 24 Q. It says at the top of the page affidavit;
 25 right?

1 Q. It says: "Personally appeared before me,
 2 a magistrate of this County, one" and there is a
 3 blank with handwritten it looks like a name; is
 4 that right?
 5 A. Yes, that's correct.
 6 Q. Whose name is that?
 7 A. Michael Powitchko.
 8 Q. Who was that person?
 9 A. He was an investigator that was also
 10 working there at the time.
 11 Q. Working where?
 12 A. The North Charleston Police Department
 13 with us.
 14 Q. He was a colleague of yours?
 15 A. Yes.
 16 Q. Was he also an investigator?
 17 A. Yes.
 18 Q. Why is his name on this document?
 19 A. Because he's the one that took the
 20 document before the judge itself and had it signed.
 21 Q. But he had no involvement in the creation
 22 of the facts section?
 23 A. No.
 24 Q. That was all just done by you?
 25 A. Yes, that's correct.

1 A. Yes.
 2 Q. What is that, affidavit?
 3 A. It's a sworn statement.
 4 Q. What do you mean by "sworn"?
 5 A. I don't know how else to describe that.
 6 Actually I'm at a loss for words on how to describe
 7 that. I don't know.
 8 Q. It's a promise to tell the truth or there
 9 will be some consequences.
 10 MR. SOBOCINSKI: Object to the form.
 11 A. Thank you.
 12 Q. Would you agree with that statement?
 13 A. Yes.
 14 Q. What is the OCA number? What does that
 15 refer to?
 16 A. That is the case number that is associated
 17 with this incident.
 18 Q. The incident being the murder of
 19 Mr. Rivers?
 20 A. Yes, correct.
 21 Q. INV. M. Sanchez, what is that?
 22 A. Investigator M. Sanchez. That's saying
 23 I'm the author.
 24 Q. You're the author of the affidavit?
 25 A. Yes.

1 Q. Then there is the name Gregory Kyle Green.
 2 That person is my client; correct?
 3 A. That's correct.
 4 Q. He was your suspect for the murder of
 5 Mr. Rivers?
 6 A. Yes, that's correct.
 7 Q. Then it says: "Did within this county and
 8 state on the 8th day of June 2017 violate the
 9 criminal laws of the State of South Carolina in the
 10 following particulars."
 11 That kind of speaks for itself, but the
 12 8th day of June 2017, that's when we suppose
 13 Mr. Rivers was killed?
 14 A. Yes.
 15 Q. It says: "Description of the offense,
 16 murder," and that's the charge Mr. Green was being
 17 charged with?
 18 A. Yes.
 19 Q. What do you need to prove to convict
 20 someone of murder?
 21 A. That the person did willfully and
 22 intentionally kill this person with malice
 23 aforethought.
 24 Q. What does malice aforethought mean?
 25 A. The courts have argued that a lot. Malice

1 would be some kind of ill intent. It has been
2 described in several different cases sometimes as a
3 wanton disregard for the life of another. There
4 are kind of different definitions over the years.
5 I don't know which revision we're on at this point,
6 but generally some kind of harm or ill intent
7 towards another person.

8 Q. At this point, meaning on July 7, it was
9 your theory that Mr. Green killed Mr. Rivers over a
10 money debt?

11 A. Yes.

12 Q. Do you have any idea what the amount of
13 money was?

14 A. The only thing I ever got, which was never
15 corroborated or proven, was I think his mother or
16 maybe another relative claimed it was like \$25
17 worth of like marijuana or something.

18 Q. So your working theory was that Mr. Green
19 murdered a man over \$25?

20 MR. SOBOCINSKI: Object to the form.

21 A. Yes.

22 Q. Over the course of your investigation did
23 you ever find out what that amount of money was?

24 A. No, never.

25 Q. But it was always your theory that it was

1 Q. You don't recall them saying anything in
2 particular about any violent incident that he was
3 involved with?

4 A. No. Nothing at that time, no.

5 Q. Did you come to learn anything later about
6 any violent incidents?

7 A. There was an incident in which a cell
8 phone that was related to him was found at the
9 scene of another murder that had taken place two
10 years prior to this one on Terry Street just down
11 the street from his house as well where it was then
12 presumed that he might have been involved in that
13 one, too. It also involved a large drug debt with
14 the victim there, but we could never prove a case
15 on that one.

16 Q. How big was that drug debt?

17 A. I don't know.

18 Q. Larger than \$25?

19 A. Definitely larger than \$25.

20 Q. But at this point you had never heard of
21 Mr. Green before?

22 A. No.

23 Q. Do you recall who the narcotics agents you
24 talked to were?

25 A. No. (Point).

1 a murder over a money debt?

2 A. On a grander scheme it was more about his
3 reputation as being a drug dealer that you don't
4 cross. It was more to drive home a point to the
5 larger community, but the direct reason would have
6 been the \$25.

7 Q. At this point on July 7, 2017, had you
8 ever heard of Mr. Green before?

9 A. No.

10 Q. Had anyone else in your department heard
11 of him?

12 A. Yeah. Narcotics agents had done things
13 with him in the past. I think they bought from him
14 or they've arrested him in the past. So I do know
15 that he was known by the narcotics units as being
16 somebody who sold drugs.

17 Q. Did he have any convictions?

18 A. I can't remember. I'm sure he did, but I
19 can't remember.

20 Q. Did your colleagues describe him as a
21 dangerous or violent person?

22 A. Yes.

23 Q. What specifics did they provide?

24 A. I can't recall what specifics they would
25 have provided back then.

1 Q. I'll just kind of walk through these facts
2 with you and then ask questions as they kind of
3 come up. Okay?

4 A. Okay.

5 Q. It says: "On June 8, 2017, at
6 approximately 4:30 a.m. while at 2278 Bailey
7 Street, which is located in the City of North
8 Charleston, County of Charleston, State of South
9 Carolina, the defendant, Gregory Kyle Green, did
10 commit the offense of murder in violation of
11 Section 16-3-10 of the South Carolina Code of Laws
12 in that the defendant did willfully and unlawfully
13 shoot the victim, Freeman Rivers, which resulted in
14 his death."

15 The date and time, we're getting that from
16 the fire department and the 911 call?

17 A. That's correct.

18 Q. This top paragraph I just read, is there
19 some form in that one, too? Because there is a
20 bold name for Mr. Green and murder. It looks like
21 maybe something that you would fill out.

22 A. Yes. That's the normal format that we use
23 with all of those.

24 Q. The next paragraph starts: "Facts to
25 establish the aforesaid are that on June 8, 2017,

1 at approximately 4:46 a.m. officers of the North
 2 Charleston Police Department responded to a report
 3 of a fire located at 2278 Bailey Street. The
 4 firefighters located the body of a male later
 5 identified as Freeman Rivers. Autopsy showed that
 6 Rivers had sustained multiple gunshot wounds, which
 7 resulted in his death." It says: "Detectives
 8 obtained a description of the vehicle used by the
 9 defendant who was seen entering and fleeing the
 10 victim's residence the night of the incident."

11 When it says "detectives" in that
 12 sentence, who does that refer to?

13 A. Collectively myself and my colleagues.

14 Q. Who else was involved?

15 A. That's a long list. Everybody who would
 16 have been working at that time. I can't remember
 17 everybody who was up there then. Powitchko would
 18 have been one of them. I think David Pritchard was
 19 there, but I can't remember the whole list because
 20 the roster has changed so much since then.

21 Q. Let me ask you this: What was the name of
 22 your unit?

23 A. Persons Crime Unit.

24 Q. Persons Crime Unit.

25 How many officers are assigned to that

1 neighborhood and pulling into the Cheapway gas
 2 station at 3615 Dorchester Road."

3 What video did you have at that point?

4 A. That was from a City camera that was on
 5 Dorchester I think at South Island and the Cheapway
 6 gas station camera.

7 Q. It says: "A witness to be named in court
 8 provided a third-party confession" -- let me go
 9 back one second.

10 The description of the vehicle, I know we
 11 said that came from Rice and Seabrook; correct?

12 A. Yes.

13 Q. Any other witnesses referred to in that
 14 one?

15 A. No.

16 Q. It says: "A witness to be named in court
 17 provided a third-party confession indicating that
 18 the co-defendant dropped off and picked up the
 19 defendant who committed the murder and advised him
 20 to burn the house along with the evidence."

21 There is a lot going on in that sentence,
 22 and I'm going to try to break it down as best I
 23 can. Okay?

24 A. Sure.

25 Q. The witness to be named in court is Lanica

1 unit?

2 A. Eight I believe total.

3 Q. Was that true at the time of this
 4 investigation?

5 A. There might have been slightly less at
 6 that time. I think we had a few openings.

7 Q. So maybe less than eight?

8 A. Yes.

9 Q. So those people would have been the
 10 detectives for this incident?

11 A. Yes.

12 Q. When it says "a description of the vehicle
 13 used by the defendant," who provided the
 14 description of the vehicle?

15 A. That was Seabrook and Rice.

16 Q. Who both gave recorded interviews; right?

17 A. Yes.

18 Q. It says: "The vehicle was described as a
 19 light blue new Chrysler 200."

20 Was that a description provided by one of
 21 the witnesses, Rice or Seabrook?

22 A. Yes.

23 Q. It says: "Video from the area an hour
 24 prior to the incident shows a 2017 light blue

25 Chrysler 200 bearing SC tag MJK 304 entering the

1 Walker; correct?

2 A. That's correct.

3 Q. A third-party confession is what?

4 A. Information that she has received from
 5 that person who is the third party confessing those
 6 facts that she just relayed.

7 Q. It's a confusing term.

8 A. Yes.

9 Q. Basically it means that she is relaying a
 10 confession she heard from somebody else?

11 A. Yes.

12 Q. And that somebody else in our case is
 13 Doucet?

14 A. Doucet, correct.

15 Q. When you say "co-defendant" in this
 16 sentence, you mean Doucet?

17 A. I do.

18 Q. So you're saying in this sentence that
 19 Lanica Walker told you that Doucet told her that

20 Doucet picked up Mr. Green, who had committed the
 21 murder; correct?

22 A. Yes.

23 Q. And then Doucet advised Mr. Green to burn
 24 Mr. Rivers' house?

25 A. Yes.



1 Q. Again, Lanica Walker's interview was
 2 recorded, correct?
 3 A. Yes.
 4 Q. So whatever testimony she provided will
 5 have been accurately preserved there; right?
 6 A. That's right.
 7 MR. SOBOCINSKI: Object to the form.
 8 Q. And it's your job to faithfully represent
 9 what she told you in this document; right?
 10 A. Yes.
 11 Q. You need to include the good, bad, and the
 12 ugly in the affidavit?
 13 MR. SOBOCINSKI: Object to the form.
 14 Q. That's a bad question. Meaning you need
 15 to include facts that are good and bad for
 16 Mr. Green.
 17 MR. SOBOCINSKI: Object to the form.
 18 A. I guess I'm trying to understand the
 19 question a little bit better because I'm confused
 20 as to what we're trying to get at. Could you
 21 restate that, please.
 22 Q. I will restate it for you.
 23 The judge only knows what you write down;
 24 right?
 25 A. Right.

1 A. It can, but maybe not the information's
 2 credibility.
 3 Q. The last sentence in this paragraph reads:
 4 "The witness' statements were corroborated by
 5 details provided by other witnesses that viewed the
 6 car drop off and pick up the suspect and gave the
 7 initial description."
 8 A. Yes.
 9 Q. When you say "the witness' statements,"
 10 that's Lanica Walker?
 11 A. Lanica Walker's statements.
 12 Q. We're saying Lanica Walker's statements
 13 were corroborated by details provided by other
 14 witnesses. Those other witnesses are Rice and
 15 Seabrook?
 16 A. Yes.
 17 Q. How were Rice's and Seabrook's testimony
 18 corroborative of Lanica's?
 19 A. Because they paint the picture with her
 20 statement as to the actions of the vehicle that
 21 Doucet was driving. The time frames that it came,
 22 the amount of times it came, when it came all match
 23 their observations of the same vehicle, and the
 24 actions of the persons that got in or out of that
 25 vehicle match her version of that same event, which

1 Q. He doesn't have any idea what the
 2 credibility of these witnesses is, correct?
 3 MR. SOBOCINSKI: Object to the form.
 4 Q. The judge I mean.
 5 A. Yes.
 6 Q. If a witness tells you inconsistent
 7 things, it indicates a lack of credibility, doesn't
 8 it?
 9 MR. SOBOCINSKI: Object to the form.
 10 A. I don't believe so.
 11 Q. You're entitled to that opinion.
 12 If a witness tells you several different
 13 stories, can you just pick the one you like best to
 14 tell the judge?
 15 A. No.
 16 Q. Why not?
 17 A. Because you have to use the one that has
 18 some facts that substantiate them.
 19 Q. If a witness told you different stories,
 20 are you allowed to leave those out?
 21 A. If they're irrelevant, then yes, because
 22 they're not factual so you would leave them out.
 23 Q. Do you agree if someone is telling you
 24 several different stories, that affects that
 25 person's credibility?

1 is why, yes, while she may not be credible, her
 2 statement is credible because those two things
 3 match and they're independent people.
 4 Q. Meaning just so I understand they saw a
 5 car drive up and down the road; correct?
 6 MR. SOBOCINSKI: Object to the form.
 7 A. In the most vague sense, yes. There is
 8 more to that, but yes.
 9 Q. More to it in that it was a sedan of that
 10 description?
 11 A. If I had the exact transcript of what all
 12 witnesses told me, I could break it down for you
 13 exactly how it corroborates and it would make
 14 perfect sense, but without that information in
 15 front of me I can't make it make sense other than
 16 to say yes, in the simplest terms yes.
 17 MR. NICKLES: I think we can take a short
 18 break.
 19 (Brief recess.)
 20 Q. We were going through the arrest warrant
 21 affidavit before we took our break, so on Page 44
 22 still the next section states: "In addition the
 23 witness stated the vehicle had blood transfer to
 24 the interior of the car as the suspect of the crime
 25 was covered in blood at the time of the incident."

1 Help me understand that sentence.
 2 A. So that's still speaking about Lanica
 3 Walker's statements, that she said that he had
 4 gotten -- that Green had entered the car with
 5 Doucet with blood on him that transferred and that
 6 she helped clean it up at the time.
 7 Q. So Lanica told you that Mr. Green was in
 8 the car?
 9 A. Yes. Well, she said the subject that he
 10 had dropped off. It's presumed to be Green at that
 11 point.
 12 Q. That you're presuming to be Green?
 13 A. Yes.
 14 Q. Again, we have access to the recorded
 15 interviews, so we will be able to see what she
 16 said; right?
 17 A. Exactly, yes.
 18 Q. But this is based on Lanica's testimony
 19 that Doucet had told her; right?
 20 A. Yes.
 21 Q. Then it goes on: "On June 22, 2017,
 22 Doucet's 2017 Chrysler 200 was located after being
 23 reported stolen on June 19, 2017."
 24 Can you tell us what did you learn about
 25 this car being reported stolen?

1 A. I know he wasn't. I just don't know why
 2 or anything like that.
 3 Q. He was never charged with trying to get
 4 rid of evidence?
 5 A. He was charged with accessory, so as kind
 6 of a blanket, yes. As a whole because of all of
 7 his involvement in trying to cover it up and taking
 8 him to the scene and all that he was charged as an
 9 accessory to the murder, but as far as specifically
 10 trying to get rid of that car or staging a false
 11 report, I don't know.
 12 Q. Was Doucet arrested around the same time
 13 as Mr. Green?
 14 A. No, I don't believe so.
 15 Q. When was Doucet arrested? Do you know?
 16 A. I have no idea.
 17 Q. The affidavit then says: "Testing on the
 18 interior of the vehicle reviewed presumptive
 19 positive results for trace evidence of blood after
 20 a search was conducted of the car pursuant to a
 21 lawful search warrant."
 22 Tell us what that means.
 23 A. So right after we recovered that vehicle
 24 we obtained a search warrant to search the interior
 25 of that car for any evidence pertaining back to

1 A. So Doucet reported it stolen from I
 2 believe it was the same El Cheapo gas station on
 3 the 19th, and it was then located a few days later.
 4 I don't remember where exactly.
 5 Q. Let me ask you was that vehicle theft ever
 6 investigated by you or someone else?
 7 A. I don't recall who was working at the time
 8 that handled all of that, but somebody would have
 9 investigated his case of the auto theft. I just
 10 don't remember who.
 11 Q. Was Doucet ever charged with anything in
 12 regards to the vehicle theft?
 13 A. No.
 14 Q. Did you believe it was a real theft?
 15 A. I believed that it was staged. It was him
 16 just trying to get rid of the car. I can't
 17 remember, but I think Lanica Walker suggested that
 18 in her interview, but refer to the interview for
 19 that because I remember there being conversations
 20 between her and him about that.
 21 Q. So it was your belief that Doucet was just
 22 trying to get rid of evidence?
 23 A. Probably so.
 24 Q. But you're not sure if he was ever charged
 25 with that?

1 this incident. Crime scene technicians used a
 2 process that they would have -- and they may have
 3 even testified in trial about it -- to find latent
 4 blood evidence inside the car, and they located
 5 that in the car at the time.
 6 Q. I think they said something like luminol?
 7 A. It's either luminol or Bluestar I think is
 8 what they were using. I can't remember.
 9 Q. Some chemical that reacts with --
 10 A. The hemoglobin and the iron in the blood
 11 and then luminesces under black light, I believe.
 12 Q. And they would have provided you some kind
 13 of report?
 14 A. Yes. That would have been in their
 15 reports.
 16 Q. And that's what you would be relying on to
 17 make that statement?
 18 A. Yes, that's correct.
 19 Q. The next sentence is: "Defendant's cell
 20 phone records indicate that he was on Bailey Street
 21 during the time of the incident and match the
 22 witnesses' description and timeline of events."
 23 We touched on this earlier; right?
 24 A. Yes.
 25 Q. The defendant's cell phone records, that

1 would be Mr. Green's cell phone records?
 2 A. That's correct.
 3 Q. It was your understanding at least on July
 4 7 that Mr. Green's cell phone records placed him on
 5 Bailey Street during the time of the murder; right?
 6 A. That's correct.
 7 Q. When you say "match the witnesses'
 8 description and timeline of events," what does that
 9 mean?
 10 A. Where they say that they see him come at
 11 an earlier time frame and go up to the house and
 12 then later come back on the bicycle. So there is a
 13 little bit of a spread in time between those
 14 events. You would have to look back to their
 15 statements, but it's not all like within a
 16 five-minute gap. It's a fairly long gap of time
 17 where they are reporting him being on the street
 18 and then leaving from that area and then coming
 19 back, and it's those references that I was at the
 20 time connecting to say his phone records are there
 21 around the times that they're seeing this
 22 mysterious subject on the street.
 23 Q. So you were looking at somebody's cell
 24 phone records?
 25 A. Yes, somebody's.

1 Q. Do you recall anything about the
 2 circumstances of that murder?
 3 A. In broad strokes there was an older couple
 4 that were living in an apartment on St. Johns. A
 5 person knocks at the door and they answer the door,
 6 and the subject shoots them either through the door
 7 or once he opens the door -- I can't remember
 8 exactly -- and then flees the area.
 9 Q. Was anyone ever arrested?
 10 A. No. Unfortunately not.
 11 Q. That's an unsolved murder?
 12 A. Yes, for the most part. We have a good
 13 suspect, but not enough to charge him.
 14 Q. Is that investigation still ongoing?
 15 A. Yes. They're always going to be kept
 16 ongoing until it's ever solved. Any murder that
 17 was never solved is always considered open.
 18 Q. How far is St. Johns from Bailey?
 19 A. I would have to approximate. Maybe a mile
 20 or so, maybe more or less.
 21 Q. Let me ask you this: I'm sure the answer
 22 is yes, but do you all still have the case file for
 23 the St. Johns murder?
 24 A. Yes.
 25 Q. So we could go in there and see what cell

1 Q. Whose were they?
 2 A. I don't know. I don't recall to this day
 3 which records we were using for that.
 4 Q. You said there was another murder that
 5 night?
 6 A. There was another murder that night, and
 7 if I checked the records, there were probably a
 8 couple more in between then and this warrant.
 9 Q. Help me understand. I feel like we should
 10 be able to figure out whose cell phone records
 11 these were.
 12 A. Absolutely.
 13 Q. You said there was another murder
 14 investigation going at the same time?
 15 A. Yes, on St. Johns.
 16 Q. On St. Johns Street?
 17 A. Yes.
 18 Q. Do you recall the name of the victim?
 19 A. No, I don't.
 20 Q. You were the investigating officer?
 21 A. No. I assisted.
 22 Q. Who was the investigating officer?
 23 A. David Pritchard.
 24 Q. You were assisting him?
 25 A. Yes.

1 phone records are there?
 2 A. Yes.
 3 Q. And that way you would be able to find out
 4 which ones you were looking at?
 5 A. I could find records. The only way I
 6 could say that that's the same records I saw that
 7 night would be to estimate that if a record in that
 8 file had data that matched what I describe here,
 9 then I would say likely that's probably the same
 10 phone data, but...
 11 Q. Well, there has to be records in there
 12 that place somebody here; right?
 13 A. Not necessarily in there. Somewhere in
 14 one of our cases around that time frame.
 15 Q. So you're saying it doesn't have to be the
 16 St. Johns murder?
 17 A. It doesn't have to be the St. Johns
 18 murder. It could have been one of the armed
 19 robberies around the time of this homicide. It
 20 could have been a numerous amount of cases that we
 21 worked around that time.
 22 Q. How many open cases did you have at that
 23 point?
 24 A. I couldn't tell you. That was the year
 25 that we broke the record for the most homicides and

1 violent crimes, so I couldn't tell you.
 2 Q. But your best guess is this is the
 3 St. Johns murder?
 4 A. No. I have no idea which one it would be.
 5 Q. Why did you mention that one?
 6 A. You asked me what other things were taking
 7 place that day, and I said it could have been that
 8 case.
 9 Q. So you could have just randomly opened any
 10 case file and looked at cell phone records?
 11 A. I was one of the few people that knew how
 12 to decipher cell phone records, so I was routinely
 13 asked by my peers to review their records and
 14 decipher them and explain them to them and tell
 15 them here are the results you have on that. So I
 16 don't know.
 17 Q. You did request -- and we'll get into this
 18 later -- Mr. Green's cell phone records; right?
 19 A. Yes.
 20 Q. Via a search warrant?
 21 A. Yes.
 22 Q. When did you receive those records from
 23 the cell phone company?
 24 A. It was sometime much later. I can't
 25 remember the exact time, but it was well after all

1 sitting out front when Doucet pulled up.
 2 Q. So it was your testimony to the judge that
 3 one of them heard the name Kone?
 4 A. Yes.
 5 Q. When you say "uttered by the
 6 co-defendant," did they identify Mr. Green as the
 7 defendant?
 8 A. No. They identified the driver of the
 9 vehicle. They said the driver of the vehicle
 10 pulled up and said that, and then using the data we
 11 have we can identify the driver of the vehicle as
 12 Doucet.
 13 Q. I misspoke there.
 14 So one of them said Doucet used the word
 15 Kone to them?
 16 A. Yes.
 17 Q. Did either of them know who Doucet was?
 18 A. No.
 19 Q. Did you present them with pictures of
 20 Mr. Doucet?
 21 A. I can't recall, but if we did, it's going
 22 to be in that interview.
 23 Q. To your recollection did either of them
 24 know who Mr. Doucet was?
 25 A. No.



1 of this had taken place.
 2 Q. How long does it typically take a cell
 3 phone company to answer your search warrant?
 4 A. There is no typicality to that. That's
 5 the unfortunate part. It could take a day, and it
 6 has lasted sometimes a year depending on their
 7 volume and how much you annoy them and who you can
 8 get on the phone to give you a response. T-Mobile
 9 I think might have been the provider at the time,
 10 and they were notoriously slow on providing
 11 records.
 12 Q. But it's your testimony that you did not
 13 have any records at all for Mr. Green prior to
 14 taking out this arrest warrant?
 15 A. Yes. Upon further review there were no
 16 records at that time.
 17 Q. The affidavit then goes on to say: "The
 18 witnesses also heard the name Kone" -- Kone is in
 19 quotations -- "uttered by the co-defendant when
 20 searching for him in front of the house, and this
 21 is a known alias of defendant."
 22 When you say the witnesses also heard the
 23 name Kone uttered by the co-defendant, what are you
 24 referring to?
 25 A. Seabrook and Kendall Rice, who were

1 Q. When you say "a known alias of the
 2 defendant," again, the defendant is Mr. Green;
 3 right?
 4 A. Yes.
 5 Q. Known alias, what does that mean?
 6 A. That's another moniker or name that the
 7 defendant would have gone by at the time.
 8 Q. How did you all figure that out?
 9 A. That was once again from reports,
 10 narcotics officers who know him, family members,
 11 and Facebook.
 12 Q. When you say "family members" --
 13 A. The victim's mother and cousins.
 14 Q. Who are the cousins?
 15 A. Kimberly -- I would have to look her up.
 16 She's in there somewhere.
 17 Q. All the interviews that you did, are they
 18 all recorded?
 19 A. Yes.
 20 Q. It says: "All this done against the law,
 21 peace, and dignity of the State of South Carolina.
 22 Det. M. Sanchez and witness to be named in court
 23 are witness to prove the same."
 24 That last sentence looks like a formula
 25 sentence; is that right?

1 A. Pretty much.
 2 Q. Detective M. Sanchez, that's you?
 3 A. Yes.
 4 Q. I know we have your case file. As far as
 5 the witnesses go, they're the two across the
 6 street. That's Rice and Seabrook?
 7 A. Yes.
 8 Q. There is Ms. Lanica Walker?
 9 A. Yes.
 10 Q. Are those the only three witnesses that
 11 provided information for this affidavit?
 12 A. For this affidavit, I believe so.
 13 Q. What are the other witnesses that you had
 14 interviewed to that point to the best of your
 15 memory?
 16 A. The mother, the girlfriend of the victim,
 17 one of the cousins. I can't remember.
 18 Q. And the witness interviews should have
 19 recordings in your file?
 20 A. Yes.
 21 Q. At the bottom of the document there is a
 22 signature block over to the left. It says: "Sworn
 23 to and subscribed before me this 7th day of July
 24 2017." It says: "Signature of Judge."
 25 Do you know what that is?



1 A. Yes, very common.
 2 Q. Are these kinds of documents handed up in
 3 batches to the magistrate judge typically?
 4 A. Not at this level, not with the
 5 seriousness of this kind of case. It would have
 6 been presented individually. Maybe at most with
 7 another case, but not a stack.
 8 Q. So your best guess would be either this
 9 standing alone or one or two other affidavits would
 10 have been presented to him?
 11 A. Yes.
 12 Q. Is Judge Bligen a man?
 13 A. Yes.
 14 Q. I want to make sure I got that right.
 15 A. Absolutely.
 16 Q. Pronounce your colleague's name again.
 17 A. Powitchko, P O W I T C H K O.
 18 Q. Any conversations with him when he comes
 19 back with the signed warrant?
 20 A. I don't know when this was signed;
 21 however, if it was Bligen, it would have been done
 22 overnight, so we wouldn't have spoken.
 23 Q. How does that work? Does Powitchko take
 24 him a hard copy of this document?
 25 A. Yes.

1 A. That's the judge's signature area.
 2 Q. Do you recall who the judge was?
 3 A. No.
 4 Q. Do you recognize the signature?
 5 A. It might be Bligen.
 6 Q. Who?
 7 A. Judge Bligen possibly.
 8 Q. How do you spell that name?
 9 A. B L I G E N, I think, a magistrate judge
 10 for Charleston County.
 11 Q. Then there is a signature block over to
 12 the right where it says affiant. Do you see that?
 13 A. Yes.
 14 Q. What does this refer to?
 15 A. That would have been the affiant who was
 16 listed at the top, Powitchko.
 17 Q. Number 251, is that his --
 18 A. That's his badge number.
 19 Q. But again he didn't have anything to do
 20 with the creation of this document?
 21 A. No.
 22 Q. So he's just certifying it's true based on
 23 your word?
 24 A. Yes.
 25 Q. And that's a common practice, I assume?

1 Q. And just leave it at his office?
 2 A. No. He would go physically meet with him
 3 because the judge worked at night, so he would meet
 4 with him at his office at night, review this case,
 5 get it signed, and then bring it back to our office
 6 and then leave it for us in the morning.
 7 Q. Does that take place in front of a court
 8 reporter?
 9 A. No.
 10 Q. Is it in his chambers?
 11 A. It's in his chambers typically.
 12 Q. Do you remember anything unusual about
 13 getting this affidavit back from the judge?
 14 A. No, not at all.
 15 Q. Nothing unusual about creating it in the
 16 first place either, right?
 17 A. No.
 18 Q. I'm going to hand you another document
 19 which I'll have marked as Exhibit No. 2.
 20 (Deposition Exhibit No. 2 was marked.)
 21 Q. I'll give you a chance to look at it, but
 22 it should be a four-page document.
 23 A. Yes.
 24 Q. Can you tell me what this document is if
 25 you recognize it?

1 A. This is a search warrant for cell phone
 2 records from Verizon Wireless.
 3 Q. And the target number?
 4 A. (702) 786-4391.
 5 Q. Do you recognize that number?
 6 A. Yes. That should have been Gregory
 7 Green's number at the time.
 8 Q. And the date?
 9 A. June 15, 2017.
 10 Q. Am I correct to say this is the search
 11 warrant that you took out to obtain Mr. Green's
 12 cell phone records?
 13 A. Yes.
 14 Q. And this is what you thought you were
 15 referring to in the arrest warrant affidavit?
 16 A. Correct.
 17 Q. Why do you request someone's cell phone
 18 records?
 19 A. It shows a log of who they spoke to. It
 20 will also show tower data as to what cell phone
 21 towers their phone was in proximity to at the time
 22 of those phone calls or text messages, and that can
 23 often help eliminate or substantiate evidence of a
 24 crime, place somebody in the general relative area.
 25 Q. So is it fair to say you wanted to request

1 to the search warrant --
 2 A. Yes.
 3 Q. -- from Verizon?
 4 A. From Verizon.
 5 Q. Should that return be in the case file?
 6 A. Yes.
 7 Q. Any reason it wouldn't be there?
 8 A. None. It should be in there. It was
 9 included in everything.
 10 Q. It would be your policy or North
 11 Charleston's policy to include the return from any
 12 search warrant in the case file?
 13 A. Absolutely.
 14 Q. Turning to the next page, the second page
 15 of this document, Exhibit 2, again, is this a form
 16 from the Attorney General's office?
 17 A. Yes.
 18 Q. The OCA number, that refers to the
 19 investigating file?
 20 A. Yes.
 21 Q. It's an identifying marker for this
 22 investigation?
 23 A. That's correct.
 24 Q. Tell me about these signatures at the
 25 bottom.

1 Mr. Green's cell phone records in order to
 2 determine who he was communicating with?
 3 A. Yes.
 4 Q. In addition you said you can try and
 5 locate that person using these records?
 6 A. Yes.
 7 Q. You said this search warrant was directed
 8 to Verizon Wireless?
 9 A. Yes, it was.
 10 Q. You had mentioned earlier you thought it
 11 was T-Mobile that you were requesting records
 12 from --
 13 A. Yes, I thought that.
 14 Q. -- and that T-Mobile apparently had a bad
 15 track record of getting you records.
 16 A. Yes. At the time they all kind of -- some
 17 get better and some get worse. They all switch
 18 out.
 19 Q. What about Verizon?
 20 A. Like I said, some were good; some were
 21 bad. I don't recall at the time, but I do remember
 22 most infamously T-Mobile, but they've all had their
 23 day in the sun, so to speak. I mean it's hard to
 24 say which one is doing good.
 25 Q. You said eventually you did get a return

1 A. That would have been the judge's
 2 signature.
 3 Q. Is that the same signature as before?
 4 A. I believe so.
 5 Q. What do those dates to the side of the
 6 signature refer to?
 7 A. The date that the judge signed the
 8 warrant.
 9 Q. That date here is what?
 10 A. June 15, 2017.
 11 Q. How quickly would you have requested the
 12 records from Verizon pursuant to this search
 13 warrant?
 14 A. As soon as I had this signed and done I
 15 would have tried to get it sent off as soon as
 16 possible.
 17 Q. How do you do that?
 18 A. At this time we would fax them. Nowadays
 19 we would email them to a specific in box that they
 20 have set aside, and some of them have a web portal
 21 that you just upload the documents to.
 22 Q. This is something Verizon is used to
 23 doing, I assume?
 24 A. Yes. They do it day in and day out.
 25 Q. How many of these kinds of forms have you

1 requested this year?
 2 A. Too many.
 3 Q. More than 50?
 4 A. Yes, probably.
 5 Q. You said now there is perhaps a portal?
 6 A. Yeah. Nowadays a lot of these guys have a
 7 web portal where you just scan the documents and
 8 upload them.
 9 Q. Is that something you personally are doing
 10 or is there admin. staff that does it for you?
 11 A. We usually do it ourselves.
 12 Q. So it would be your practice in 2017 to
 13 have submitted this search warrant yourself to
 14 Verizon?
 15 A. Yes.
 16 Q. You said that was maybe fax or email?
 17 A. Yes.
 18 Q. Do you all have a record of the faxes and
 19 emails that you send?
 20 A. Not per se, but at the top there is a
 21 stamp from our fax machine. That number listed at
 22 the top where it says NCPD Detectives Division
 23 (843) 745-1052, that's our fax line, and it has a
 24 date stamp of 06/15/2017 at 19:47 hours, which
 25 would be 7:47 p.m. is when this was faxed.

1 you had mentioned earlier being the call log
 2 details and hopefully the tower data?
 3 A. Yes.
 4 Q. I assume the only thing you change in this
 5 middle section of the document is the bold number
 6 where you type in what cell phone number you're
 7 trying to get?
 8 A. Yes.
 9 Q. When Verizon responds to you all's search
 10 warrants, how does that work?
 11 A. They will typically send an email to the
 12 email address that's listed here at the bottom of
 13 this page, and it will contain several different
 14 files. It will be some PDFs including a copy of
 15 this and some Excel spreadsheets with all the data
 16 listed on them.
 17 Q. So Verizon in 2017 would have responded to
 18 your search warrant via email?
 19 A. Yes.
 20 Q. Directly to your email, M. Sanchez?
 21 A. Yes.
 22 Q. Anyone else that would have been included
 23 on that email?
 24 A. No.
 25 Q. You alone?

1 Q. So we know it was faxed at 7:47 p.m. on
 2 June 15, 2017?
 3 A. Yes.
 4 Q. The reason you do it that quickly -- I'm
 5 just reading -- it says this search warrant shall
 6 not be valid for more than ten days from the date
 7 of issuance. Is that one reason why you want to
 8 get it out quickly?
 9 A. Absolutely. One of the reasons would be
 10 it's not viable or useful if it's done after ten
 11 days.
 12 Q. In the description of things to be
 13 searched it says "described in affidavit." Is that
 14 the next page, the affidavit?
 15 A. Yes, that's correct.
 16 Q. On the third page it looks like this is
 17 what you're trying to get; is that right?
 18 A. Yes.
 19 Q. Again, this is most likely a form that
 20 you've used 100 times?
 21 A. Yes.
 22 Q. I don't really mean 100, but you've used
 23 it probably more times than that?
 24 A. Yes.
 25 Q. Basically it's searching for those things

1 A. Just me.
 2 Q. How far back can you search in your
 3 emails?
 4 A. I don't know. It kind of depends on
 5 whether it was saved or whatnot. There are various
 6 different parts of the email that I know I can
 7 search going back because I'll save certain things,
 8 and there are other parts that I couldn't get past
 9 like two weeks.
 10 Q. You're not an IT specialist?
 11 A. No.
 12 Q. Someone at NCPD is, I assume?
 13 A. Yes.
 14 Q. Who is that person I should ask if I
 15 wanted to request your emails from 2017?
 16 A. It would probably be someone with the
 17 Municipal Information Services Department. I don't
 18 know who up there would be in charge of doing that,
 19 but MIS as they're locally known.
 20 Q. If you have an IT problem at work, who do
 21 you call?
 22 A. MIS.
 23 Q. Do you know anyone who works there by
 24 name?
 25 A. No. They have a ticket system or an email

1 that you just send, and you just let them do their
 2 thing.
 3 Q. It's like a help desk thing?
 4 A. Yes.
 5 Q. You type your request in?
 6 A. Pretty much, yes.
 7 Q. The cell phone records, they're given to
 8 you I believe you mentioned by PDF and Excel
 9 spreadsheet?
 10 A. Yes.
 11 Q. Do those come directly into your in box or
 12 do they give you a link?
 13 A. Well, it depends. I don't remember what
 14 Verizon used to do. Some providers would send you
 15 a link to a secure website that then you would
 16 download the stuff off of. Some of them will send
 17 you just the raw data, and those same providers
 18 have changed methodologies in the years since. So
 19 I don't remember what Verizon was using at the
 20 time, but one way or another they would make a
 21 notification via email and either send you the
 22 documents themselves or send a link to the
 23 documents.
 24 Q. But you can't recall how that would have
 25 occurred for Mr. Green's records?

1 Q. 15th June 2017, that reflects the day he
 2 signed it?
 3 A. Yes, it is.
 4 Q. 7:36 p.m., does that reflect when he
 5 signed it?
 6 A. Yes, that's the time he signed it.
 7 Q. Is his office in you all's office?
 8 A. No. His office is maybe five minutes
 9 away. It's not far.
 10 Q. I'm trying to do the math between when he
 11 signed it and when you faxed it.
 12 A. I left his office directly and faxed it.
 13 Q. Is that particularly swift or --
 14 A. That's the normal.
 15 Q. That's normal?
 16 A. As soon as I come in the office I don't
 17 hesitate and wait because that's when another
 18 mistake will happen and you don't send it because
 19 somebody distracts you.
 20 Q. Going back to the page before when it says
 21 description of the property sought, this is your
 22 instructions to Verizon of what you want; correct?
 23 A. Yes.
 24 Q. What is the information you have to
 25 provide them to let them know what you want?

1 A. I don't.
 2 Q. Turning to the next page of this exhibit,
 3 it says: "Reasons for affiant's belief that the
 4 property sought is on the subject premises." Tell
 5 me what this part of the document is all about.
 6 A. So this would be the probable cause set
 7 out as to why we believe that the information would
 8 be on their network, why those records would be
 9 there and why we want them. So we're listing out
 10 the reason why we want them. That's the probable
 11 cause for the search.
 12 Q. And this is something that the judge looks
 13 at to make sure there is probable cause listed in
 14 the affidavit?
 15 A. Yes, that's correct.
 16 Q. So this is the judge signing off that he
 17 is satisfied that you have established probable
 18 cause?
 19 A. Yes, that's correct.
 20 Q. There is a signature on the bottom right.
 21 Is that your signature?
 22 A. Yes, it is.
 23 Q. And then there is a signature block to the
 24 left. That's the signature of the judge?
 25 A. That is.

1 A. The phone number for the phone in question
 2 unless you don't have that and then maybe the
 3 serial number for the phone that was used if you
 4 know that and then the times and dates that you are
 5 looking for data from.
 6 Q. The number you provided in this case, is
 7 that (702) 786-4391?
 8 A. Yes.
 9 Q. Just remind us how you found this number.
 10 A. That was on the victim's phone records.
 11 When I looked at the last number that called the
 12 victim, it was this number.
 13 Q. You mentioned you placed a cold call.
 14 A. Yes.
 15 Q. Had you done that prior to taking out this
 16 warrant?
 17 A. Yes.
 18 Q. I think you said the other thing you have
 19 to tell Verizon is what dates you want; right?
 20 A. Yes.
 21 Q. What dates did you provide?
 22 A. February 1 to April 20.
 23 Q. Why did you choose those dates?
 24 A. I don't know why I chose those dates
 25 because it doesn't look right, but typically we

1 would go well outside the span of time for where a
 2 record is -- the time frame you're looking for to
 3 establish what would call a pattern of life. So if
 4 we wanted to help confirm or substantiate that this
 5 phone does indeed belong to Gregory Green, the hope
 6 is you get a couple of months before and a couple
 7 of months after if possible depending on how long
 8 your investigation has been since then, and you can
 9 see where they frequently go. The frequent tower
 10 would probably be the one closest to their house,
 11 and if that is where that person lives, you can
 12 then say with a fair degree of certainty that the
 13 person you're saying owns the phone lives here and
 14 works here. Those are the two towers they use the
 15 most. Then it helps you confirm that, yes, that
 16 person is in fact -- and you can't do that with
 17 just a week's data or a day's worth of data. You
 18 need a lot of data points to make that inference.
 19 Q. In here it looks like you requested about
 20 two months' worth?
 21 A. Yes, two months' worth.
 22 Q. You said these dates don't look correct?
 23 A. Because they're not covering the date of
 24 the incident, so I'm not sure why that is.
 25 Q. You created this document, right?

1 A. No.
 2 Q. Do you think it must have been some kind
 3 of mistake on your end?
 4 A. It's possible that that might have been a
 5 clerical error, but usually I would have followed
 6 up with a new warrant, submitted a new warrant with
 7 the adjusted dates and the corrected dates to fix
 8 the error. That's normal procedure for that.
 9 Q. I believe you testified you don't recall
 10 when you received the return to this search warrant
 11 which is Exhibit 2?
 12 A. No, I don't recall.
 13 Q. It should be in the case file?
 14 A. Yes.
 15 Q. And it should be included as an email to
 16 you as well?
 17 A. Yes.
 18 Q. Any other ways we can find out when the
 19 return to this warrant was received by you?
 20 A. Email, case file. Maybe going to Verizon
 21 and asking them for copies of what they submitted
 22 and when they submitted it, that would be the only
 23 other route that I can think of.
 24 Q. Is it possible you did receive these
 25 records prior to taking out the arrest warrant?

1 A. Yes.
 2 Q. So for some reason you included February
 3 to April 21?
 4 A. Right. It should have been April to July
 5 probably. April to July or June, June 15,
 6 Q. But sitting here today you don't know why
 7 you --
 8 A. I have no idea. That's the first I've
 9 noticed that.
 10 Q. This is the first you're gaining knowledge
 11 that your search warrant to Verizon did not include
 12 the date of the incident?
 13 MR. SOBOCINSKI: Object to the form.
 14 A. Yes.
 15 Q. I didn't hear your answer.
 16 A. Yeah. I'm very confused on that, but yes.
 17 Q. And you have no explanation why you would
 18 have used those dates?
 19 A. Other than I would have used those dates
 20 to substantiate the time, the history.
 21 Q. Any search warrant you took out would be
 22 included in your case file; correct?
 23 A. Yes.
 24 Q. Do you believe you included these dates
 25 intentionally?

1 A. I couldn't say what would have happened.
 2 I just don't know when it would have happened, and
 3 anything is possible considering that they would
 4 have sometimes sent them fairly quick and sometimes
 5 they would send them well delayed.
 6 Q. That's what I'm trying to figure out. Is
 7 it more likely that you looked at these records
 8 with the wrong date rather than some other person's
 9 records?
 10 A. It is completely in the realm of
 11 possibility.
 12 Q. Would you think it's probably more likely?
 13 MR. SOBOCINSKI: Object to the form.
 14 A. I couldn't say.
 15 Q. How do you confirm you're looking at the
 16 right records?
 17 A. Usually by looking at the same thing,
 18 phone number, date, and time.
 19 Q. I have some cell phone records for
 20 Mr. Green from the time of the incident, and we can
 21 look at it together. It comes in a spreadsheet
 22 format; right?
 23 A. Yes.
 24 Q. And one of the columns says calling
 25 number?

1 A. Yes.
 2 Q. It's all the same?
 3 A. Yes.
 4 Q. It's that number that --
 5 A. 702 and so on.
 6 Q. It would be difficult to mistake whose
 7 phone we're looking at, right?
 8 A. Fairly difficult, yes. The only part
 9 where it gets difficult is that data would have
 10 then been exported into a different piece of
 11 software that takes all of the data that's on the
 12 spreadsheet and maps it onto an actual map with
 13 cones of where those calls would have taken place
 14 and whatnot. I know that at the time what we would
 15 have done -- as I said before, I was one of the few
 16 people that had the, one, software and, two, the
 17 training and knowledge to do it. It wouldn't be
 18 unusual for me to have imported the records, put it
 19 up in that format, into the map format, and then
 20 saved or minimized it and then referred back to it
 21 later. The only way I could consider that there
 22 would be confusion between two phone numbers would
 23 have occurred if I was only referring to it in map
 24 form where you're not seeing numbers.
 25 Q. I haven't seen the map form stuff.

1 A. Right.
 2 Q. Are you telling me that on that map form
 3 it doesn't show anywhere what number you're
 4 referring to?
 5 A. Yes. It's a user interface, so you would
 6 have to click on something, and then it would come
 7 up and you would see it, but it's not made for
 8 showing as evidence; it's made as a processing tool
 9 to investigate the information in a more digestible
 10 format. When it's ready to be used for trial,
 11 typically a person will prepare it -- usually the
 12 FBI has a group that certifies these, and they will
 13 make it with the phone number on the sheet and
 14 everything else so it's clearly visible, but when
 15 you're working on it, it could be that that's
 16 something that you don't see.
 17 Q. It would be your practice to check and
 18 make sure you have the right number?
 19 A. Absolutely.
 20 Q. For obvious reasons.
 21 A. For very obvious reasons.
 22 Q. So in your arrest warrant you said you had
 23 cell phone records for Mr. Green placing him on
 24 Bailey Street at the time of the crime; correct?
 25 A. Yes.

1 Q. That is not true; correct?
 2 A. At the time of that warrant -- at that
 3 time it was not true.
 4 Q. As of July 7, 2017, you did not have cell
 5 phone records for Mr. Green for the date of the
 6 crime?
 7 A. That's correct.
 8 Q. We can confidently say that?
 9 A. We can confidently say that that is true.
 10 Q. You may have had records for Mr. Green
 11 from sometime prior in 2017?
 12 A. Based on this, possibly.
 13 Q. So when you made that statement in your
 14 affidavit, you were either, A, looking at the wrong
 15 dates for Mr. Green; or, B, looking at someone
 16 else's cell phone records all together?
 17 A. Correct.
 18 Q. We don't know which right now?
 19 A. At this point I don't know.
 20 Q. And it's not difficult for you to
 21 ascertain whose records you're looking at; right?
 22 A. Yes.
 23 Q. That's something you routinely do?
 24 A. Yes.
 25 Q. How do you make sure you're looking at the

1 right records?
 2 A. Again, comparing those identifiers, the
 3 date, time, and the phone number.
 4 Q. It's fair to say when you took out this
 5 arrest warrant, Exhibit I, you had a firm belief
 6 that you had Mr. Green's correct phone records?
 7 A. Yes.
 8 Q. And yet somehow you did not; correct?
 9 A. And somehow I did not, that's correct.
 10 Q. Even though it's quite easy to tell whose
 11 records belong to who; correct?
 12 MR. SOBOCINSKI: Object to the form.
 13 A. It can be clearly seen, but it's one of
 14 those things of -- there can be confusion depending
 15 on the situation. Each situation has its own level
 16 of complexity.
 17 Q. Do you often get people's cell phone
 18 records mixed up?
 19 A. No.
 20 Q. Can you recall another occasion other than
 21 this one?
 22 A. Not one in which anything yielded -- I'm
 23 sure I've confused them before and then caught
 24 myself, but I can't recall how many or when those
 25 would happen.

1 Q. When you save them in your system, do you
 2 rename them?
 3 A. I try to, but not all the time. It's a
 4 practice you try to do, and whether or not you
 5 succeed it's still a matter of practice.
 6 Q. How do you do it?
 7 A. Typically what you don't want to do is
 8 taint the original copy, so you will try to save a
 9 separate copy of it and rename it, but depending on
 10 what you're working with and how fast you're being
 11 asked to get information, you may not take the time
 12 to save a working copy and you may just open the
 13 document and look at what you've got to look for to
 14 see if you can get the information at a reasonable
 15 time frame.
 16 Q. Do you recall being in any kind of time
 17 crunch in Mr. Green's case?
 18 A. We were all in a time crunch at that
 19 point. We had a lot going on. I don't recall how
 20 bad, but, like I said, it was a record year for
 21 violent crime, and we're minimally staffed, so..
 22 Q. Do you recall the last piece of evidence
 23 you received prior to making the arrest warrant?
 24 A. No. I assume it was her statement, Lanica
 25 Walker's statement, or maybe her cell phone dump,

1 your unit was called again?
 2 A. Persons Crime Unit.
 3 Q. Is there anyone else on that unit that has
 4 the same training?
 5 A. Now, yes, there are several.
 6 Q. Who are those folks?
 7 A. Detective Desheer is one of them,
 8 Detective Russ. Those I know for sure. I couldn't
 9 say about the others. I know those two for sure
 10 have it.
 11 Q. How many hours of training would you say
 12 you have had in cell phone record analysis?
 13 A. Probably 80 or more.
 14 Q. Are you allowed to testify at trial about
 15 cell phone records?
 16 A. Yes.
 17 Q. You've testified before about cell phone
 18 tower location methods?
 19 A. Yes.
 20 Q. Have you ever done it in federal court?
 21 A. No.
 22 Q. Just involving Charleston County cases?
 23 A. Yes.
 24 Q. When was the last time you did it?
 25 A. The last thing I testified at as to cell

1 but I'm not exactly sure.
 2 Q. Was her cell phone dump at the same time
 3 as her interview?
 4 A. I don't know.
 5 Q. So to the best of your memory the last
 6 piece of evidence you collected prior to the arrest
 7 warrant was Lanica Walker's interview?
 8 A. I believe so.
 9 Q. Sitting here today you don't remember when
 10 that interview took place --
 11 A. No.
 12 Q. -- or how soon before the arrest warrant?
 13 A. No, no idea.
 14 Q. Tell me about your training vis-a-vis cell
 15 phone data and its use in criminal proceedings.
 16 A. So cell phone data, I was trained by NW3C,
 17 an organization that does white collar crime and
 18 electronic crime training. I took an initial cell
 19 phone analysis class through them. I followed up
 20 by training with the FBI through their cell phone
 21 analysis team and became a certified analyst there,
 22 and then later I was certified through Cellebrite
 23 as a forensic analyst for cell phones and mobile
 24 devices.
 25 Q. Is there anyone else -- what did you say

1 phone data was last month or the month before. It
 2 was a murder trial within the last month or so.
 3 Q. When was the first time you did it?
 4 A. Goodness, I don't know.
 5 Q. Prior to 2017?
 6 A. Sometime around there. It would have been
 7 within a year or two of that.
 8 Q. You said you have some kind of
 9 certification?
 10 A. Yes; through CAST, the FBI's cell phone
 11 analysis. I've got certificates from NW3C and
 12 certifications through Cellebrite.
 13 Q. When did you get those certifications?
 14 A. I would have to look them up. I don't
 15 remember the exact dates.
 16 Q. Prior to 2017?
 17 A. I don't know. I don't remember if it was
 18 before or after. It was around that time. I just
 19 don't remember if it was before or after. I really
 20 don't. I think maybe after, but..
 21 Q. In 2017 were you routinely using cell
 22 phone records to locate people in the past?
 23 A. Yes.
 24 Q. How long had you been doing it as of 2017?
 25 A. I may have first dabbled in it in 2014,

1 2015. At that time it wasn't yet like a common
2 science that like -- the records were normal, but
3 like there wasn't any like formal education on it
4 provided by anybody at the time. So basically
5 everybody was pioneering the science of doing that,
6 so I had learned to interpret them myself and
7 worked from there.

8 Q. In 2017 can you describe how you would
9 have analyzed Mr. Green's records or someone else's
10 to determine where they were when a certain call
11 was made?

12 A. So typically you're looking at the call
13 log for the time in question that you're most
14 curious about. That line item, whether it be a
15 phone call or text message, is going to have an
16 identifier for a tower that the cell phone is
17 talking to essentially. You would then look up on
18 the list of all the towers that that agency has as
19 far as in the area and figure out which one that
20 one is, find its location, and then there are
21 various codes on the same line of that spreadsheet
22 that indicate the direction or which antenna
23 because each cell phone tower has three different
24 antennas that point to different orientations. It
25 would identify which antenna it's talking to, which

1 seconds of just cut and pasting from the Excel
2 sheet?
3 A. Back then it was more like hours. It
4 could be minutes to hours because of the
5 ever-changing difference of the format they would
6 give you the information on the spreadsheet for.
7 The software wasn't really good at automatically
8 parsing that data out into its respective
9 components, so you would have to manually tell it
10 what each column was and what it represented and
11 whatnot, and then there were issues with it just
12 not accepting it because of the format and then
13 having to adjust and make it understand the data.

14 Q. But even by 2017 when this arrest warrant
15 was taken out you were a relatively sophisticated
16 user of cell phone data?

17 A. I believe so.

18 Q. Do you recall when you discovered you made
19 a mistake in your arrest warrant?

20 A. It would have been when I received the
21 cell phone records for the correct dates and when
22 the email came into my in box, I made the
23 realization that this doesn't seem right because if
24 I'm receiving an email for cell phone records that
25 I already said I had, then what are these?

1 then gives you an approximately 68 degree cone in
2 the direction that it received or made that call.
3 You just need to know the orientation of those
4 antennas, their exact degree of orientation, so
5 that you can then map it and figure out exactly
6 where that was. It's only going to give you a
7 relative area, but it's going to be good for
8 excluding somebody from, you know, the difference
9 of being here or being in Mount Pleasant.

10 Q. Is that something you were doing more or
11 less by hand in 2017?

12 A. I think in 2017 we were using software to
13 do it. There was mapping software by then.

14 Q. It seems like it would be kind of
15 difficult to do it all by hand.

16 A. It was very difficult by hand.

17 Q. So by 2017 you had some software where you
18 could input the data you get from the spreadsheet,
19 and it will give you a visual display of where it
20 reckons the person is?

21 A. Yes. It will paint that cone of that
22 antenna over where the point of origin of that
23 tower is, and then you can say, hey, this is the
24 blanket area that that call was made in.

25 Q. I assume that just takes a matter of

1 Q. That makes sense.

2 So when we look at the search warrant for
3 the correct dates, we can interpret that very close
4 to that time, that's when you discovered it?

5 A. Yes, whenever those were received.

6 Q. But you don't recall any kind of ah-ha
7 moment in this case?

8 A. As in?

9 Q. Like, oh, crap, I have the wrong records.

10 A. It would have been that day when I
11 received the records and was looking through them
12 and said wait a second, I thought I had these
13 records and then looked back through and said wait
14 a second, these are in fact his records, but why
15 did I say that on whatever date that was?

16 Q. I want to make sure I understand. We do
17 have a record of I'll call it the second search
18 warrant you sent out for Mr. Green's cell records.
19 Okay?

20 A. Right.

21 Q. I'll represent to you it's August 30 of
22 2017. That's when you sent out the second one.

23 A. I would have to see. I don't know which
24 one you're talking about.

25 Q. Of course you would.



1 Assuming it is August 30, would that
 2 indicate to you that August 30 is the date you
 3 discovered you had the wrong records?
 4 A. More than likely.
 5 Q. Any reason why you would have discovered
 6 it on August 30 versus some other day?
 7 A. I have no idea. It might have been while
 8 doing a review of what I had and piecing together
 9 the case file for preparation for trial. That's a
 10 moment when you realize that you've got
 11 deficiencies is when you're looking at -- you're
 12 reviewing the case work, putting it together and
 13 preparing it when you start looking at paperwork
 14 again and you're looking for mistakes.
 15 Q. You wouldn't have been preparing for trial
 16 on August 30 of 2017, would you?
 17 MR. SOBOCINSKI: Objection.
 18 A. I might have been preparing to put it
 19 away. You're still required to file that stuff so
 20 that the defense can request it. So I may have
 21 been preparing it for that. Right now the standard
 22 is 30 days from the date of arrest, but even back
 23 then we were trying to get those things out the
 24 door.
 25 Q. That makes sense.

1 A. June 8, 2017.
 2 Q. So this correctly included the date of the
 3 incident?
 4 A. Yes.
 5 Q. Again, I know we discussed it already, but
 6 this indicates to you that on August 30, that would
 7 have been the day you found out you had the wrong
 8 records?
 9 A. I believe so. It would have been close to
 10 that date.
 11 Q. And you believe that because you would
 12 just want to correct your mistake as quickly as
 13 possible?
 14 A. Absolutely.
 15 Q. At that point you would have known that
 16 you made a mistake on the arrest warrant for
 17 Mr. Green; right?
 18 A. Yes.
 19 Q. Did you tell anyone about it?
 20 A. Yes. I immediately notified my supervisor
 21 and notified the solicitor assigned to the case
 22 that, hey, this is an error and I'm resubmitting a
 23 search warrant for the corrected documents.
 24 Q. Did you let the judge know that you made a
 25 mistake on the arrest warrant?

1 So you could have been preparing his file
 2 for release to his defense team?
 3 A. Correct.
 4 Q. I have a copy of what I'll call the second
 5 search warrant on my computer if you would like to
 6 look at it if you think it would be helpful.
 7 A. If I could see that.
 8 Q. That's fine. For the record I'm showing
 9 you a search warrant for Mr. Green. It's dated
 10 August 30, 2017; is that right?
 11 A. Yes.
 12 Q. There are some signatures on this page.
 13 Do you know what the signatures are?
 14 A. Those are the judge's signatures.
 15 Q. You will see on the second page it looks
 16 very similar to the Exhibit 2, doesn't it, on
 17 description of property sought?
 18 A. Yes.
 19 Q. It's the same cell phone number, correct?
 20 A. Yes.
 21 Q. The only difference being the date ranges?
 22 A. Yes.
 23 Q. What are the date ranges?
 24 A. 5/1/2017 and 07/13/2017.
 25 Q. And the date of the incident was what?

1 A. I couldn't remember, but I wouldn't see
 2 why I wouldn't say it.
 3 Q. How would you have let the judge know?
 4 A. Probably as casually as I requested the
 5 wrong dates, and I need a new search warrant to get
 6 the right dates.
 7 Q. I don't mean the search warrant. I mean
 8 the arrest warrant.
 9 A. So the arrest warrant, again I would have
 10 notified the supervisor and the solicitor at the
 11 time based on that information and then allowed the
 12 solicitor to make a decision as to how to follow up
 13 from there.
 14 Q. So around that August 30 date, that's when
 15 we assume we realize we've got the wrong records;
 16 correct?
 17 A. Correct.
 18 Q. And it's your testimony you would have
 19 then alerted your supervisor?
 20 A. Yes.
 21 Q. Who is that?
 22 A. I believe that was Sergeant Niemiec at the
 23 time.
 24 Q. Do you know how you would have told that
 25 person?

1 A. Directly.
 2 Q. Just verbal?
 3 A. Yes.
 4 Q. And you would have told the solicitor's
 5 office?
 6 A. Yes.
 7 Q. Do you recall who the solicitor was
 8 assigned to the case at that point?
 9 A. I know who tried it. I don't know who was
 10 assigned at the time, but the person who tried it
 11 several years later was Richard Waring. I don't
 12 know who was assigned at the time.
 13 Q. So you would have told your supervisor
 14 that I've made a mistake on the arrest warrant,
 15 right?
 16 A. Yes.
 17 Q. And you said you would have told the
 18 solicitor's office that you made a mistake?
 19 A. Yes.
 20 Q. How would you have told the solicitor's
 21 office?
 22 A. Either by phone or email, one of the two.
 23 Q. You would have used that same email
 24 address as we talked about on the search warrant?
 25 A. Yes.

1 Q. This is the only incident that you're
 2 aware of in your career where you've found out
 3 later you made a factual error?
 4 A. To my recollection, yes, this would be the
 5 only one.
 6 Q. Did anyone from the solicitor's office
 7 tell you what to do?
 8 A. I can't recall. I think they just asked
 9 me for the new warrant, and I gave them that and
 10 the new results.
 11 Q. At a minimum you needed to get the correct
 12 records?
 13 A. Right.
 14 Q. That's the obvious part.
 15 A. Yes. I believe that's all that was asked
 16 of me because that's all we did.
 17 Q. There was a preliminary hearing in this
 18 case, wasn't there?
 19 A. Yes.
 20 Q. You testified at that hearing?
 21 A. Yes.
 22 Q. Again, I'm sorry for asking you basic
 23 questions, but what is a preliminary hearing?
 24 A. That would be a hearing where you again
 25 review the probable cause that led to the arrest.

1 Q. Anyone else you would have contacted about
 2 the arrest warrant mistake?
 3 A. No. I would have just notified those two
 4 people, the solicitor's office so they could make a
 5 decision on what needed to happen next and whatnot
 6 and the supervisor because it's a mistake and he
 7 needs to know what is going on.
 8 Q. And the judge, you're saying you're not
 9 sure if you would have told the judge or not about
 10 the mistake?
 11 A. It wouldn't have been for us to do that at
 12 that point because we would need guidance from the
 13 solicitor's office on whether they would want a
 14 fresh new warrant typed up or whatnot.
 15 Q. That's fair. So it would have been up to
 16 the solicitor's office to decide on next steps?
 17 A. Right.
 18 Q. And you would have just followed their
 19 instructions?
 20 A. Correct.
 21 Q. Can you recall another instance where you
 22 found out later you had misstated evidence in an
 23 arrest warrant?
 24 A. No.
 25 MR. SOBOCINSKI: Object to the form.

1 It's done before another summary court judge where
 2 this time the defendant and counsel along with a
 3 representative of the solicitor's office are there
 4 to go over those facts with a more fine tooth comb
 5 as to what probable cause you had at the time.
 6 Q. I know you said at a preliminary hearing
 7 you go over probable cause for the arrest, right?
 8 A. Yes.
 9 Q. Why is it important to do that?
 10 A. It's another step in due process to
 11 establish that the correct procedures were followed
 12 and that there was in fact a lawful reason for the
 13 arrest and giving the defense ample time to contest
 14 those facts and view those facts probably for the
 15 first time.
 16 Q. How much time do you give the defense
 17 prior to the preliminary hearing or does it vary?
 18 A. I have no idea. They're given the
 19 information, and we just show up when we're told to
 20 be at trial.
 21 Q. So your office isn't in charge of setting
 22 dates for preliminary hearings?
 23 A. No, not at all.
 24 Q. What is the process like for you before
 25 getting to a preliminary hearing?

1 A. For a preliminary hearing I usually am
2 notified via email and through a summons sent from
3 the Court saying that we're having a hearing on
4 whatever date for this trial or this case, and then
5 I will usually check all my case file as it stands
6 at the time and present myself there with as much
7 information as I have at the time to testify on
8 that case.

9 Q. So do you bring physical and digital
10 evidence with you to the preliminary hearing?

11 A. There is nowhere to display that at a
12 preliminary hearing, so we wouldn't normally bring
13 it. I mean we can bring physical like documents,
14 but digital stuff we can't really show at a
15 preliminary hearing. I'm sure if somebody made a
16 fuss about it, we could probably do it; it has just
17 never happened. I've never had a defense attorney
18 ask for, hey, can you pull up those records right
19 now and show them to us.

20 Q. No one has ever asked you that?

21 A. No. If so, it has been contested by the
22 judge and/or the solicitor and they said, no, we're
23 not doing that.

24 Q. So would Mr. Green's defense team have a
25 copy of the witness interviews and the digital

1 A. No. We would have done that as soon as we
2 could finish everything we've got going on and
3 packaged that up and sent it up. As I was pointing
4 out, the standard is 30 days that it has to be
5 done, but, like I said, back then we would package
6 it up soon after the arrest.

7 Q. Do you recall the preliminary hearing in
8 this case?

9 A. No, not really.

10 Q. That doesn't surprise me.

11 How many of these hearings do you do a
12 year?

13 A. Lots, lots.

14 Q. More than 100?

15 A. Yes, certainly.

16 Q. Nothing about this one stands out in your
17 mind?

18 A. No.

19 Q. This takes place in a courtroom --

20 A. Yes.

21 Q. -- a preliminary hearing?

22 A. Yes.

23 Q. Is a judge present?

24 A. Yes.

25 Q. And you're on the witness stand, I guess?

1 evidence that you had collected at that time?

2 A. Everything would have been forwarded to
3 the solicitor's office, and then they would be
4 responsible to release it to the defense prior to
5 that hearing.

6 Q. How is it forwarded to the solicitor's
7 office?

8 A. Back then we made physical copies of
9 everything and digital copies of any digital media
10 and then just handed it over. They would literally
11 just come pick it out of a box that we would leave
12 for them or they would come directly to us and get
13 it. I don't think at that time we had the new
14 system in place where we would upload the
15 documents. No. That was well prior to that, so we
16 would have handed them digital copies and whatnot.

17 Q. So prior to a preliminary hearing I know
18 you said you get a summons or an email telling you
19 be at this place at this time to discuss this case.

20 A. Yes.

21 Q. How much notice do you get?

22 A. It could be a month maybe at best
23 sometimes.

24 Q. And then at that point you pack up the
25 evidence and you send it to the solicitor's office?

1 A. Yes.

2 Q. And you're sworn in?

3 A. Yes.

4 Q. So your testimony is under oath?

5 A. Yes.

6 Q. And there is a transcript made of the
7 hearing?

8 A. Yes.

9 Q. Prior to that hearing do you review your
10 case file?

11 A. I try to if there is enough time in the
12 day to actually get caught up. It's usually just
13 hitting highlights trying to remember the most you
14 can to get back into it.

15 Q. You try to refresh your memory as best you
16 can?

17 A. Yes.

18 Q. That would be your normal practice?

19 A. Yes.

20 Q. But you don't recall specifically in this
21 case whether you did or not?

22 A. Not at all.

23 Q. Do you use cell phone location data in
24 most of your cases?

25 A. It has become very common nowadays. It

1 almost feels it's more like a requirement. It's
 2 going to be in almost every case.
 3 Q. It's like the new DNA or something?
 4 A. Absolutely.
 5 Q. What about in 2017; would you have used it
 6 in most of your cases?
 7 A. It was becoming common at that point.
 8 Q. If you were relying on location data as
 9 support for probable cause, would it be your
 10 practice to review that evidence prior to a
 11 preliminary hearing?
 12 A. Not specifically.
 13 Q. Not any more than any other kind of
 14 evidence in other words?
 15 A. No.
 16 Q. That's fair, but it's your policy and
 17 practice as a competent and hard-working officer
 18 that you would endeavor to review your case file
 19 prior to a preliminary hearing?
 20 A. Yes.
 21 Q. I did read the trial testimony, and it
 22 appears that there were more issues with the cell
 23 phone records before the trial took place. This
 24 may not ring a bell for you, but I remember seeing
 25 some testimony that -- I showed you that August 30

1 have ever seen it before. You may not have. I'll
 2 represent to you it is a response to allegations
 3 made in the Complaint, and there are several
 4 affirmative defenses listed.
 5 A. I believe I do remember this one. It
 6 looks familiar. I've seen a lot of documents.
 7 Q. Of course, and that's fair.
 8 What I wanted to ask you about is to your
 9 knowledge if you have any -- as I mentioned, in a
 10 defendant's answer they will often raise something
 11 called affirmative defenses. We're back in civil
 12 litigation that I'm used to, so I may be able to
 13 teach you one thing.
 14 A. Yes.
 15 Q. These are defenses where the defendant in
 16 this case, you, have the burden of proof to produce
 17 evidence and prove those things to a jury. Okay?
 18 A. Right.
 19 Q. I'm just going to go through them and ask
 20 what, if any, evidence or if you know anything
 21 about these defenses. Okay?
 22 A. Okay.
 23 Q. The first one is called failure to state a
 24 claim. That's a legal defense, and I won't ask you
 25 any questions about that.

1 search warrant.
 2 A. Right.
 3 Q. You got a return to that one at some
 4 point; right?
 5 A. Right.
 6 Q. It looked like those got lost as well at
 7 some point. Do you recall that?
 8 A. I don't.
 9 Q. Because apparently there was another
 10 search warrant taken out in November of 2018 prior
 11 to the trial. Do you recall that?
 12 A. No, I don't.
 13 Q. You would just defer to the trial
 14 transcript?
 15 A. Probably so, yes.
 16 Q. Which is fair. You've got a lot going on,
 17 and that's why we record all of these things and
 18 write them down; right?
 19 A. Yes, absolutely.
 20 Q. I want to show you a copy of your Answer
 21 to the Amended Complaint in this case.
 22 A. Okay.
 23 Q. This is a document that's filed in the
 24 court. Your lawyer filed it for you. I'll just
 25 show you a copy. It's nine pages. Tell me if you

1 A. Okay.
 2 Q. Likewise, the second one says no
 3 constitutional violation. I don't recognize that
 4 defense, but do you know anything more about that?
 5 A. No.
 6 Q. The third one is failure to exhaust
 7 administrative remedies. Do you have any knowledge
 8 about what that means?
 9 A. I have no idea.
 10 Q. There is one titled assumption of the
 11 risk. Do you have any facts about that or know
 12 what that means?
 13 A. No.
 14 Q. There is one called frivolous,
 15 unreasonable actions.
 16 A. I have no idea what that is.
 17 Q. There is one called three strikes. Do you
 18 know what that is?
 19 A. I have no idea what that is, not in
 20 context.
 21 Q. There is one called qualified immunity.
 22 A. I'm familiar with qualified immunity, but
 23 I couldn't quote it for you.
 24 Q. What is your understanding of what it is?
 25 A. When I say "familiar," I've heard it

1 enough to know that it exists, and that's about the
2 extent of it. I don't feel comfortable being able
3 to answer that in a way that makes sense.

4 Q. I'm just asking to the best of your
5 ability, and I don't know is a perfectly acceptable
6 answer.

7 There is one here titled reasonableness
8 and good faith. Do you know what that refers to?

9 A. Not in that context.

10 Q. I'm going to skip over some because I
11 think I'm going to get the same answer.

12 A. I feel like it.

13 Q. There is one titled comparative
14 negligence. No idea?

15 A. That sounds like a very civil term.

16 Q. It is. I don't think you're going to have
17 any response to the other ones either. I just
18 wanted to make sure that you didn't have any
19 additional facts to add to any of these things.

20 A. No.

21 (Brief recess)

22 Q. I've just got three more quick things to
23 go through.

24 I believe I marked as Exhibit 2 your
25 search warrant.

1 received the warrant on this date, I served it on
2 this date, and a copy was given to blank, and this
3 was all done in the presence of yourself and
4 whoever, signed, and then that's taken back to the
5 judge, formally known as a return, handed back to
6 the judge, who then insures it for correctness and
7 then signs off on it showing that it was served
8 within that ten-day period.

9 Cell phone records are strange. We have
10 been given directive from the solicitor's office in
11 that you're not going to receive the records in ten
12 days, so you fill out the return as you served it
13 on whatever day you served it. Typically in this
14 case it would have been served 10 or 15 minutes
15 after. You do that, but you can't fill out the
16 rest of it where the inventory would be because you
17 don't have the inventory yet maybe for weeks,
18 months, whatever, so that's just retained on file
19 until that stuff comes back at which point we take
20 it back to the judge and show them that we did
21 receive this stuff and sign.

22 Q. Do you show the judge a copy of what you
23 got?

24 A. No, typically not. It's just a list of
25 the inventory.

1 A. Yes.

2 Q. What do you want to call this page?

3 A. I guess that's the actual like affidavit.

4 Yes, it's Page 2.

5 Q. On the second page of the document on
6 Exhibit 2 we talked about how it's not valid for
7 more than ten days from the date of issuance;
8 right?

9 A. Yes.

10 Q. The next sentence says: "A written
11 inventory of all property seized pursuant to this
12 search warrant shall be made to the issuing
13 magistrate within ten days from the date of this
14 warrant, such inventory to be signed by the officer
15 executing this warrant, and a copy of such
16 inventory shall be furnished to the person whose
17 premises are searched if demand for such copy is
18 made."

19 What does all that mean?

20 A. So there is an inventory sheet that's
21 included with this warrant. Once this has been
22 served that form -- it's not in this copy that we
23 see here, but on that form you would list out what
24 items you have obtained from the search and what
25 date it was served. So you're certifying I

1 Q. So for this affidavit or this search
2 warrant you would have filled out the return?

3 A. The return.

4 Q. Do you do that right away after you serve
5 it?

6 A. It's always done as soon as it's served,
7 as I said, because a copy goes with it to the
8 person who it's being served to, and they're given
9 a copy of that return.

10 Q. They're given a copy of a blank sheet of
11 paper?

12 A. For digital records, yes. It's not
13 practical in our modern electronic world.
14 Originally this was built for I'm going to go
15 search your house and I'm going to take this gun
16 out of your house. When I leave, I'm handing you a
17 copy of the return that says I took that gun from
18 your house pursuant to this warrant. That
19 methodology built into our legal system does not
20 apply well or fit well with electronic records, so
21 now the instruction we're given is just sign it,
22 certify that it was executed on so and so date, and
23 when you receive the records, then come back and
24 bring it before the judge.

25 Q. So for this search warrant, Exhibit 2, so

1 I understand, you would have signed the return as
 2 you served the warrant marking it as served --
 3 A. Correct.
 4 Q. -- and shown a copy of that to the judge?
 5 A. That would have been done when the records
 6 would have come back.
 7 Q. So you actually wait until the records are
 8 received?
 9 A. Yes.
 10 Q. Do you indicate on the return what records
 11 you got?
 12 A. Yes. Typically we would just say digital
 13 records, and then that would be it.
 14 Q. And then you show that to the judge?
 15 A. Yes.
 16 Q. Do you physically take it to the judge and
 17 show him?
 18 A. You take a full copy of the warrant with
 19 the return and hand it to them. They sign the copy
 20 and they usually keep a copy for themselves,
 21 and you go from there.
 22 Q. So the judge will also sign the return
 23 when you take it to them?
 24 A. Yes.
 25 Q. Is that included in the case file?

1 A. Yes.
 2 Q. So there should be a return to this search
 3 warrant, Exhibit 2, in the case file?
 4 A. To each and every search warrant there
 5 should be a return.
 6 Q. And that's another way we can see when you
 7 got the records from this search warrant?
 8 A. Yes. Well, they won't have the date of
 9 receipt because, as we said, we're writing the date
 10 it was served certifying that we served it within
 11 the ten days, but the receipt of the records, it's
 12 not going to be detailed on there.
 13 Q. When you take it to the judge, doesn't he
 14 sign it?
 15 A. Well, technically I guess so, but then at
 16 the same time it's not always one of those things
 17 if you received it that day, you may not look at
 18 your in box for a few days.
 19 Q. So it might not be the same day?
 20 A. It might not be the same day. It could be
 21 different days all together.
 22 Q. It was received at some point prior to the
 23 judge signing it?
 24 A. Right. Absolutely.
 25 Q. And that should be in the case file?

1 A. Yes.
 2 Q. I don't want to take too long with this,
 3 but I'm going to show you some cell phone records
 4 for Mr. Green. I will be honest. I requested
 5 these records from the police department, and I
 6 don't think they had them in the case file, so I
 7 believe I got these from the public defender's
 8 office. In any case, I've given a copy to your
 9 counsel, but I wanted to show you just so I could
 10 get a feel of what these records -- if these
 11 basically look like what you get from the search
 12 warrant to Verizon.
 13 A. Yes.
 14 Q. Does what I'm showing you on my screen
 15 right now look familiar?
 16 A. Yes.
 17 MR. SOBOCINSKI: Object to the form.
 18 A. That's a cell phone record for a cell
 19 phone provider. That's what they typically look
 20 like.
 21 Q. This is what they look like?
 22 A. Yes.
 23 Q. I'll represent to you this is for the cell
 24 phone number associated with Mr. Green at least
 25 according to your search warrants. Okay?

1 A. Okay.
 2 MR. SOBOCINSKI: For the record can we
 3 just state that as of right now the questioning was
 4 showing a file explorer window with various PDFs
 5 and files just so we know.
 6 MR. NICKLES: Yes. I'm happy to make it
 7 an exhibit if you want. It's not terribly big.
 8 I'll make it Exhibit 3. Everything you see here on
 9 the screen, I'll make that Exhibit 3, and I'll just
 10 email a copy of it to the court reporter.
 11 (Deposition Exhibit No. 3 was marked.)
 12 Q. Which one of these would you go into,
 13 which one of these electronic files, to find out
 14 the call log and tower data?
 15 A. So the one labeled cell site
 16 incoming/outgoing is one of them you would use
 17 along with the Carolinas LEA cell site key, and you
 18 might be able to get some detail out of possibly
 19 the text message detail one, but I would have to
 20 look further into each.
 21 Q. Does this look like what you received for
 22 Mr. Green?
 23 MR. SOBOCINSKI: Object to the form.
 24 A. I'm not sure what his looked like back
 25 then. I just know that this looks like records

1 that are typical of most cell phones.
 2 Q. I'm showing you this Excel spreadsheet
 3 that you mentioned, cell site incoming and
 4 outgoing; is that right?
 5 A. Yes.
 6 Q. Do you see Column B?
 7 A. Column B, yes.
 8 Q. It says mobile directory number.
 9 A. Yes.
 10 Q. Is that the number that you're searching
 11 for records for?
 12 A. In this particular case that would have
 13 been Gregory Green's number.
 14 Q. Okay. Let me try to rephrase my question.
 15 Does this look like the data that you get
 16 from Verizon when you subpoena them?
 17 A. This looks like data I would get from
 18 Verizon. I don't know if it's the data if you
 19 understand what I'm saying. I don't know that this
 20 is the data I got that day, but I know that this is
 21 what it looks like.
 22 Q. The data that you received should be in
 23 the case file?
 24 A. Yes.
 25 Q. If it's not, then some mistake was made?

1 for that call.
 2 Q. Seizure date/time, Column E, what is that?
 3 A. That's the time that the tower actually
 4 received that connection.
 5 Q. Meaning what?
 6 A. The moment that the phone actually made
 7 contact with the tower. When you hit send on the
 8 phone, there might be a millisecond or more delay
 9 between the time you physically hit send and the
 10 tower receives it, whatever distance and time that
 11 would take.
 12 Q. Seizure duration?
 13 A. Seizure duration, that is how long the
 14 phone call was held onto by the tower in seconds.
 15 Q. First serving cell site, what does that
 16 mean, Column G?
 17 A. That's the tower identification of the
 18 first one that received it.
 19 Q. Last serving cell?
 20 A. That would have been the last tower to
 21 have worked with that call. In the case of you're
 22 driving down the Interstate, your call is not going
 23 to stay on the one tower; it's going to be handed
 24 off to another one and another one as you're
 25 driving. So this is showing the first one it

1 A. Somewhere something was lost by somebody,
 2 yes.
 3 Q. But to the best of your recollection this
 4 looks like something that you probably could have
 5 received?
 6 A. I could have received something like that,
 7 yes.
 8 Q. You just can't certify --
 9 A. I can't certify that that's the data.
 10 Q. But it looks somewhat familiar to you?
 11 A. Yes.
 12 Q. Dialed digit number, what is that?
 13 A. Dialed digit number would have been the
 14 actual number that the person put into their phone.
 15 Q. So these column headings are familiar to
 16 you?
 17 A. Yes.
 18 Q. What is call direction?
 19 A. Call direction indicates whether it was
 20 received or sent. There will be a guide -- there
 21 will be a legend that's included in the PDF on here
 22 that will actually specifically tell you what each
 23 of those numbers represent. They can be anything
 24 from a missed call to voice mail, forwarded, you
 25 name it. There could be various different results

1 connected to and the last one in that 30-second
 2 time span.
 3 Q. I think you told me Column C, that's the
 4 number that they've dialed or they're calling,
 5 dialed digit number?
 6 A. That's the one they dialed, yes.
 7 Q. Other than the inaccurate portrayal of the
 8 cell phone records that you had, do you recall
 9 making any other mistakes as far as this
 10 investigation is concerned?
 11 MR. SOBOCINSKI: Object to the form.
 12 A. No. Not that I know of, no.
 13 MR. NICKLES: I think that's all the
 14 questions I have for you, sir. He might have some
 15 questions. I might follow up after him.
 16 MR. SOBOCINSKI: I just have a few.
 17 EXAMINATION
 18 BY MR. SOBOCINSKI:
 19 Q. So looking at the documents in this case,
 20 this took place around June of 2017; correct?
 21 A. Yes.
 22 Q. And that was over six years ago; correct?
 23 A. Yes.
 24 Q. So as we sit here today you might not
 25 remember every single detail that happened six

1 years ago; correct?
 2 A. That's correct.
 3 Q. You mentioned there were witnesses that
 4 you've spoken to.
 5 What does a witness mean when you're
 6 calling somebody a witness?
 7 A. Anybody who contributed information about
 8 the case, whether it be somebody who heard
 9 something, knew information about something, or
 10 directly saw something.
 11 Q. There was talk about how some or most, if
 12 not all, of your conversations with any witnesses
 13 are recorded in some way; is that correct?
 14 A. Yes.
 15 Q. I believe you said that they are recorded
 16 via a video camera in the NCPD office; is that
 17 correct?
 18 A. Yes.
 19 Q. If there was a written transcript of the
 20 interview, would that have been something you would
 21 have made?
 22 A. No.
 23 Q. Would it have been something that the
 24 north Charleston Police Department would have made?
 25 A. No.

1 Q. So if there is a written transcript of
 2 somebody's interview, there is no way that you
 3 yourself would be able to verify whether it was
 4 accurate or not; correct?
 5 A. Correct.
 6 Q. Similar to transcripts and creating a
 7 transcript from a video, as we sit here today we
 8 have a court reporter taking down everything we
 9 say; right?
 10 A. Yes.
 11 Q. Occasionally she may interject for you to
 12 clarify something; right?
 13 A. Yes.
 14 Q. There was nobody sitting with you during
 15 these interviews to interject and clarify what was
 16 said; right?
 17 A. Correct.
 18 MR. SOBOCINSKI: That's all I have. Thank
 19 you. We'll read and sign.
 20 (The deposition concluded at 1:05 p.m.)
 21
 22
 23
 24
 25

1 CERTIFICATE OF REPORTER
 2 STATE OF SOUTH CAROLINA
 3 COUNTY OF CHARLESTON
 4
 5 I, Carol T. Lucic, Registered Professional
 6 Reporter and Notary Public for the State of South
 7 Carolina at Large, do hereby certify that the
 8 witness in the foregoing deposition was by me duly
 9 sworn to testify to the truth, the whole truth, and
 10 nothing but the truth in the within-entitled cause;
 11 that said deposition was taken at the time and
 12 location therein stated; that the testimony of the
 13 witness and all objections made at the time of the
 14 examination were recorded stenographically by me
 15 and were thereafter transcribed by computer-aided
 16 transcription; that the foregoing is a full,
 17 complete, and true record of the testimony of the
 18 witness and of all objections made at the time of
 19 the examination; and that the witness was given an
 20 opportunity to read and correct said deposition and
 21 to subscribe the same.
 22
 23 Should the signature of the witness not be
 24 affixed to the deposition, the witness shall not
 25 have availed himself/herself of the opportunity to
 sign or the signature has been waived.
 I further certify that I am neither
 related to nor counsel for any party to the cause
 pending or interested in the events thereof.
 Witness my hand, I have hereunto affixed
 my official seal on September 22, 2023, at
 Charleston, Charleston County, South Carolina.
 Carol T. Lucic
 NCRA MERIT REPORTER
 REGISTERED PROFESSIONAL REPORTER
 My Commission expires: November 27, 2027

1 UNITED STATES DISTRICT COURT
 2 for the
 3 District of South Carolina
 4 Gregory Kyle Green,)
 5 Plaintiff,)
 6 vs.) C/A No.: 2:21-ev-1376-RMG-MGB
 7 Michael Sanchez,)
 8 Defendant.)

Page 1

1 INDEX TO EXAMINATION
 2 Witness:
 3 Cordray, Karen (sworn)
 4 Examination by Mr. Nickles 4
 5 Court Reporter's Certificate 28

Page 3

14 The deposition of Deputy Chief Karen Cordray,
 15 taken before Lori Webber, Stenographic Court Reporter and
 16 Notary Public, at North Charleston Police Department, 2500
 17 City Hall Lane, North Charleston, South Carolina, on
 18 Thursday, November 9, 2023, commencing at 9:57 a.m.

11 INDEX TO EXHIBITS
 12 (None offered.)

1 APPEARANCES:
 2 ROGERS, PATRICK, WESTBROOK & BRICKMAN
 3 By: MATTHEW A. NICKLES, Esq.
 4 1513 Hampton Street
 5 Columbia, South Carolina 29201
 6 803.541.7850
 7 mnickles@rpwb.com
 8 For the Plaintiff
 9 HOOD LAW FIRM
 10 By: EVAN M. SOBOCINSKI, Esq.
 11 172 Meeting Street
 12 Charleston, South Carolina 29401
 13 843.577.1224
 14 evan.sobocinski@hoodlaw.com
 15 For the Defendant
 16 AUSTEN GOWDER
 17 By: W. ANDREW GOWDER, JR., Esq.
 18 1629 Meeting Street, Suite A
 19 Charleston, South Carolina 29405
 20 843.727.2229
 21 andy@austengowder.com
 22 For North Charleston Police Department
 23 Also present: Michael Driver, Jr.

Page 2

1 DEPUTY CHIEF KAREN CORDRAY,
 2 being first duly sworn by LORI WEBBER, a Notary Public
 3 within and for the State of South Carolina, was examined
 4 and testified on her oath as follows:
 5 EXAMINATION
 6 BY MR. NICKLES:
 7 Q Good morning.
 8 A Morning.
 9 Q Can you state your name for the record, please?
 10 A Sure. Karen Cordray.
 11 Q Can I call you Karen?
 12 A Yes; absolutely.
 13 Q And Karen, have you ever given a deposition
 14 before?
 15 A I have.
 16 Q Okay. In what context have you provided
 17 deposition testimony?
 18 A I've been doing it for records, to verify
 19 records for different things. Also, I've done it for
 20 accident cases and some criminal cases.
 21 Q What kinds of things would you testify about in
 22 criminal cases?
 23 A When we had to testify for investigations on
 24 cases I made, that were my cases. But that's been, Lord,
 25 at least 15, 20 years ago. I've been here a long time.

Page 4

1 Q What's your current role with the city?
 2 A I'm the deputy chief over administrative
 3 services.
 4 Q And you're employed by the City of North
 5 Charleston?
 6 A I am.
 7 Q So were you formerly with the police
 8 department?
 9 A That is the police department.
 10 Q I'm sorry; say again. Where are you employed
 11 at?
 12 A The City of North Charleston Police Department.
 13 I'm the deputy chief over administrative services.
 14 Q Okay. And you were formerly an investigator?
 15 A I've been through many things. I've been in
 16 patrol investigations, internal affairs. Multiple
 17 different capacities in my 31 years.
 18 Q And how long have you been in your current
 19 role?
 20 A I've been a deputy chief since 2018, and I just
 21 came back to administrative services in September of this
 22 year.
 23 Q And I'm sure you do a lot of things, but can
 24 you just summarize for me or give me a general idea of
 25 what your job duties entail?

1 Q And if you have any questions about my
 2 questions, just ask me to rephrase. Or otherwise, if you
 3 answer, I'll assume you understood; okay?
 4 A Okay.
 5 Q Do you have any understanding of what this case
 6 is all about?
 7 A I'm vaguely familiar with the general thing.
 8 There was a fire over in Dorchester Terrace; and upon
 9 finding a body in there, it turned out to be a homicide.
 10 And that's pretty much the extent of my knowledge of the
 11 case.
 12 Q What about the the lawsuit that we're here
 13 today? Do you have any understanding of what that
 14 entails?
 15 A I understand it's something with Detective
 16 Sanchez and something about phone records, and that's the
 17 only thing. I read that in what y'all provided.
 18 Q When you say what we provided, what are you
 19 referring to?
 20 A The complaint, I guess it was, that is in
 21 there. It said that -- I guess there was a summary. I
 22 looked at it yesterday. I can go get it out my office if
 23 you'd like, but it's similar to that paper that you have
 24 in your hand. I don't know what you call it.
 25 MR. GOWDER: Matt, if I could, I

1 A Sure. I'm in charge of right now, currently,
 2 of records, the financial budget, things like that. The
 3 fleet management, our transport team, our warrants team.
 4 All those come under me. And then that's my primary
 5 responsibilities. Now I just left being in charge of
 6 patrol division for four years, which was the day-to-day
 7 operations of the police department.
 8 Q You said you're in charge of the warrants team?
 9 A Yes, warrants division. They go out and hold
 10 bond hearings, they're responsible for taking the warrants
 11 from the court, entering 'em in NCIC. And matter of fact,
 12 they're out on an extradition now. Those guys all work
 13 for me.
 14 Q Okay. And you understand you're here today not
 15 in your individual capacity, so to speak, but as a
 16 representative of the City of North Charleston.
 17 A Correct.
 18 Q Okay. And I assume you were provided a list of
 19 topics that I was going to inquire about.
 20 A Yes; uh-huh (witness indicated an affirmative
 21 response).
 22 Q And I should've said this from the beginning.
 23 We have to have verbal answers, meaning yes, no; so no
 24 uh-huhs or huh-uhs.
 25 A Okay.

1 provided her with a copy of Judge Gergel's order. I think
 2 that's what she's talking about.
 3 THE WITNESS: Yes.
 4 BY MR. NICKLES:
 5 Q Okay; so you've read a court document, the
 6 order of Judge Gergel.
 7 A Yeah; that's the only thing.
 8 Q Okay. Other than reading that document, did
 9 you do anything else in preparation for the deposition
 10 today?
 11 A No. But I helped complete some FOIA
 12 requirements, so I'm aware of stuff we submitted during
 13 FOIA, such as the interviews and things like that. So I
 14 helped collect those, because FOIA requests -- I handle a
 15 lot of the FOIA requests. Because my division keeps the
 16 case file, we archive the case files; so the actual
 17 retention of records and things like that is handled by
 18 the records division, which I'm responsible for.
 19 Q So in response to my FOIA request, you would've
 20 been the one that responded to those document requests?
 21 A Yes, Dirk came and got -- just the stuff from
 22 the police department. The e-mail stuff went to the IT
 23 department, the MIS department.
 24 Q So everything other than the e-mails would've
 25 been something that you provided?

1 A Well, they had already got a copy of the case
2 file. I helped him -- I guess he was having trouble
3 getting the interviews, videos, things like that, so I
4 helped him get those from the detectives.

5 Q Okay.

6 A And I copied the retention schedule that was
7 requested. I provided that.

8 Q And I was provided with several documents on
9 yesterday. For example, there's a policy A-19.

10 A That should be criminal intelligence, and yes.

11 Q Okay. And so you know, this is not a memory
12 contest. I was just saying that those are the retention
13 policies you're referring to?

14 A Well what happens, on that retention schedule
15 spreadsheet you got, it will reference what policy the
16 retention is listed in; so we provided you the copies
17 yesterday of the policies that the retention is listed in.
18 And then if it's retained per policy or per the schedule,
19 which is a state retention schedule for municipalities,
20 which we also provided you yesterday.

21 Q Okay. So the Excel spreadsheet titled
22 "Retention.xls," that's the spreadsheet you're referring
23 to?

24 A Yes.

25 Q And you were saying that spreadsheet -- I'm

1 investigation of -- can you remind what the victim's name
2 was if you remember? You might not.

3 MR. SOBOCINSKI: Freeman Rivers.

4 MR. NICKLES: Rivers; that's what I
5 thought.

6 Are you familiar with the contents of
7 the case file?

8 THE WITNESS: It would be everything,
9 including the incident report. Any chain of custodies for
10 evidence, any statements available. It would have any
11 photographs; I'm sure those are in electronic format on --
12 a thumb drive or something would've probably been provided
13 or e-mailed. I don't know if they put anything on a thumb
14 drive for y'all or if they gave you hard copies. If they
15 put 'em on a thumb drive, that would've been electronic
16 copies of all the documents. PDFs, more than likely.
17 That's how we normally do it.

18 BY MR. NICKLES:

19 Q And which retention policies would apply to the
20 contents of a case file like this one?

21 A Should've been in the municipal one where I
22 have to retain case files for 30 years.

23 Q And when you say retain it for 30 years, what
24 does that mean?

25 A We have the paper copies which we store, but we

1 looking at it now -- it explains what all those different
2 retention policies are for?

3 A Yes.

4 Q And is this something that you created
5 specifically for this case or is this an existing
6 document?

7 A No, we created it years ago to try to put all
8 retention in one location so we wouldn't have to go search
9 through all the policies; you'll know where it's at and
10 what the retention is for each individual thing.

11 Q Okay. So it's an index of your retention
12 policies more or less.

13 A Yes.

14 Q So on my request for documents, number 3,
15 copies of your document retention policies in place as of
16 January 1, 2017 to present, this would be a list of those
17 documents?

18 A Yes, it would.

19 Q And those PDF documents that you produced,
20 similarly, those are the specific retention policies in
21 place?

22 A The policies, and then the state archive
23 retention schedule for municipalities. There's a section
24 in there for police.

25 Q As far as the case file for the murder

1 also put them in a archive program called
2 applicationxtender where they are scanned and indexed so
3 that that's a -- kind of a backup of the paper copies.

4 Q So the materials generated during the case
5 investigation for the murder of Mr. Rivers, those
6 materials should be preserved for 30 years?

7 A Yes. That's for an arrest for a case file. If
8 there's not an arrest, there's probably not gonna be a
9 case file.

10 Q Right. And you reviewed the case file in this
11 case; right?

12 A No.

13 Q You've never seen the contents of this murder
14 investigation?

15 A No, they have a binder they keep down in the
16 detective division. Each one has a binder so that all the
17 stuff is kept in a binder in a room down in our
18 investigations; those are the originals. What comes to
19 records to be scanned is all the paper copies of anything
20 in there that we keep that -- we scan those and put those
21 in applicationxtender. But when you ask for the case
22 file, they take the case file out of the entire binder
23 that's in the murder room, the homicide room. So those
24 are all kept in cabinets down there in the detective
25 division. So when you go to that binder and produce --

1 that's where they produce the case file from so that
2 you're not missing anything. That's why you get photos
3 and everything else.

4 Q And you were right earlier that part of this
5 case has to do with telephone records. It's my
6 understanding that they were produced electronically to
7 you all?

8 A More than likely they would've printed them and
9 probably put it in the murder file. Or if it came on a
10 jump drive, they would put it on a jump drive and have it
11 stored there and in evidence.

12 Q So is that something that also would've been
13 added to the archive you were describing?

14 A No, we do -- paper archives go in to
15 applicationxender. Just the paper. That's all it
16 stores, is the paper. They have the thumb drives --
17 things put in evidence are on a thumb drive. They're put
18 in evidence, but they also keep a copy in that book that's
19 in the murder room where the murder case files are kept.

20 Q So the second topic I have which you're here to
21 talk about today is the content of your file for the
22 investigation of the murder of Mr. Freeman Rivers. Do you
23 see that?

24 A The location and storing methods, yes.

25 Q So number 2 says the contents of your file for

1 the investigation of the murder of Mr. Freeman Rivers.

2 A I mean, I don't have 'em. I can go get them if
3 we need to get them. I assumed all that was provided to
4 you.

5 Q I mean, you're not familiar with what's in the
6 file?

7 A No.

8 Q But you're the designee for this topic?

9 A I mean, like I told you, I know what is in the
10 file should be there. Did I actually go visibly put my
11 eyes on it? No. I know how they do the files, but
12 that's...

13 Q And you don't know what's in it.

14 A No.

15 Q Can we go and look at it?

16 A I can have it brought up here.

17 Q All right. I'll keep on going, but yeah, can
18 you just have it requested and have someone bring it up
19 here?

20 MR. SOBOCINSKI: Yeah, let's go off the
21 record so we can see if we can get it.

22 (Discussion held off the record.)

23 BY MR. NICKLES:

24 Q All right. Karen, before we went off the
25 record we were talking about how you're not familiar with

1 the contents of the file necessarily, and you were kind
2 enough to call downstairs and have someone deliver it up,
3 right?

4 A Yes.

5 Q So that'll be topic number 2, which we'll talk
6 about once we take a look at the file. And your
7 understanding of the case file is it's a physical binder
8 that exists in I guess the basement of the building we're
9 in right now?

10 A It's a room, actually, in the detective
11 division so that they're accessible to folks to add
12 anything that comes in or to put any new cases in. But
13 it's not -- yeah, they're available in -- we keep them
14 separate from any other case files that we have, the
15 originals.

16 Q When you were an investigator, did you ever
17 send out search warrants?

18 A Yes.

19 Q Did you ever send out a search warrant to a
20 cell phone provider?

21 A No; back then we used a duces tecum, and
22 normally they didn't provide much. Again, that was years
23 ago before we could get all the information we can get now
24 from cell phone providers.

25 Q Okay; when would've been the last time you sent

1 a request to a cell phone provider?

2 A I'd say it's been 20-plus years.

3 Q Okay; fair enough. Do you have any
4 understanding of how that's done currently?

5 A I'm not familiar with the exact forms that they
6 use. I know different companies have different ways to do
7 it but, you know, they -- I know they request 'em now on a
8 lot of things. They also have -- they dump phones more
9 now. Like back then we didn't dump phones, but they're
10 big on the dumping of phones as well.

11 Q Right. When you say phone dump, you mean like
12 take the physical phone itself and pull off the hard
13 drive?

14 A Pull the data from the phone itself.

15 Q If Verizon were to return a file in response to
16 a search warrant, do you know where it would I guess come
17 in?

18 A I think they get a lot of those now via e-mail,
19 where they would e-mail it to the investigator. And then
20 the investigator should be printing it off and putting it
21 in to the case file for the hard copy.

22 Q So your lawyer, Andy, provided me some
23 documents and information this week. A lot of which I
24 frankly had already seen before. One of them is the phone
25 records for Mr. Green, my client. And I wanna just show

Page 17

1 it to you.

2 A Okay.

3 Q The file that was provided --

4 MR. GOWDER: Is that gonna Green phone

5 records?

6 MR. NICKLES: Yes, sir.

7 MR. SOBOCINSKI: Is it the working copy

8 or just the normal one?

9 MR. NICKLES: They're both the same, but

10 we can do just the normal one.

11 MR. GOWDER: Okay.

12 MR. NICKLES: And Andy, just tell me

13 when you have it available for her.

14 MR. GOWDER: I think I have it available

15 for her.

16 MR. NICKLES: Okay.

17 THE WITNESS: It's a list of calls.

18 BY MR. NICKLES:

19 Q We're just gonna go through 'em. So this is

20 what it looks like on my screen, just so you can see.

21 A Okay.

22 Q I downloaded it to my computer.

23 A Gotcha; okay.

24 MR. GOWDER: This is in Dropbox, so it

25 looks a little different.

Page 18

1 THE WITNESS: Okay.

2 BY MR. NICKLES:

3 Q So there are several PDF format files; do you

4 see that?

5 A Yes; I see several.

6 Q And then there are several Excel documents.

7 Microsoft Excel. Do you see those?

8 A Yes.

9 Q Assuming Officer Sanchez received these via

10 e-mail, how would he I guess include it in the case file?

11 A He's probably -- again, without the case file,

12 I don't know. He'd probably put 'em, I would assume, on a

13 jump drive for the electronic versions; but he also

14 could've printed them and put a hard copy in the case

15 file.

16 Q And I guess we'll just see what he did in a

17 minute.

18 A Yes; because like I said, they put the jump

19 drives in there. All the stuff -- DVDs, anything that's

20 related to the case usually go in the binder.

21 Q So any return he got from search warrants in

22 the case, be it physical or electronic, there should be a

23 copy of those in the case file?

24 A There should be, yes.

25 Q Which is being brought up to us momentarily?

Page 19

1 A Yes. Yes.

2 Q Number 3 topic, the location and storing

3 methods of the contents of your file for OCA number

4 2017016967. I think we've discussed it to some degree

5 already. The location is here in this building; right?

6 A Yes.

7 Q The storing methods are you keep a physical

8 copy of what you have; and then if it's electronic, you

9 just put it on a jump drive?

10 A Yes. And I'm quite sure -- and then, of

11 course, they drop -- a lot of times they'll put the DVDs

12 in evidence with the chain of custody; and then they -- we

13 scan the paper pieces, such as search warrants, the phone

14 records, anything paper, we'll store in what we call

15 applicationxtender, which is an archiving system we use

16 for our case files.

17 Q The interviews that are conducted in an

18 investigation like the one for the murder of Mr. Rivers,

19 they are recorded; right?

20 A Yes.

21 MR. NICKLES: Go off the record.

22 (Discussion held off the record.)

23 BY MR. NICKLES:

24 Q And those interviews are included in the case

25 file?

Page 20

1 A Yes.

2 Q And they would be on the CDs that is in this

3 binder in front of us?

4 A Yes, all the way at the back.

5 Q And this binder that we had brought up to us,

6 this is what you mean when you say case file?

7 A Yes.

8 Q And it's my understanding now that there is

9 also a evidence file?

10 A The things in here -- you see this tab,

11 whatever, listing what is in evidence, they -- that's

12 what's in the boxes. These, probably copies of these.

13 Anything else that may --

14 MR. GOWDER: When you say "these," can

15 you just indicate --

16 THE WITNESS: I'm sorry; the DVDs that's

17 already in here. That's what he's gonna go check and make

18 sure that we have a copy of every DVD that's in evidence

19 is in here.

20 BY MR. NICKLES:

21 Q Okay. In a perfect world, there should not be

22 anything in the evidence file that is also not in this

23 case file in front of me.

24 A Correct.

25 Q But it's possible that there is something in

1 the evidence file that we don't currently have before us
2 in this case file.

3 A Yes; they may not have made a hard copy in
4 here, may have just dropped it straight into evidence.

5 Q And while we were on break, you went through
6 these CDs included in the case file; right?

7 A Yes.

8 Q And you said the only phone records were these
9 three CDs right here?

10 A That I find in that file, yes.

11 Q And as far as you know, these three CDs have
12 been produced to the lawyers in this case?

13 A As far as I know, yes.

14 Q Do you know if someone has a CD drive that we
15 can look at one of these CDs, a portable CD drive?

16 (Discussion held off the record.)

17 BY MR. NICKLES:

18 Q If there were cell phone records received from,
19 let's say, Verizon during this investigation, they should
20 either be in this case file or in the evidence file?

21 A Yes.

22 Q Is there any reason they wouldn't be present?

23 A If the investigator did not -- if he got 'em on
24 an e-mail and did not make a copy of it from his e-mail,
25 they would be in his e-mail then.

1 underneath the major over that unit.

2 Q Does he run the evidence room?

3 A It falls under investigations, yes.

4 Q I've seen on TV where they go in and they sign.
5 You know, there's the guy sitting behind the desk, you
6 sign in, and you go in the evidence room and sign out. Is
7 he the guy that's like sitting behind the desk?

8 A No, that would be Lieutenant Morgan is over our
9 evidence room; and we don't normally allow folks to go
10 inside of it. We check it out and we have a lobby area
11 they can look at the stuff in.

12 Q How long will the evidence file stay in there?
13 Is that 30 years also?

14 A No, I think there's some rules for evidence on
15 how long after the disposition of a case it's maintained
16 that we have to hold on to it pending appeals and all. I
17 think it's seven years, possibly. I forget what it is for
18 criminal cases.

19 Q You probably know more about that than any of
20 the lawyers do.

21 After the seven years, do you destroy the
22 evidence file or does it become part of the case file?

23 A That may be a question you need to ask them.
24 I'm unaware of us going through and doing a purge knowing
25 that something's coming up on the seven-year mark and

1 Q And they would be preserved for 30 years?

2 A No.

3 Q How long would the cell phone records be
4 preserved?

5 A That's a question for the MIS person, because
6 those were -- they have the e-mail retention policy.

7 Q Okay. Well assuming they made it into the case
8 file. Like for example, this CD says "phone records" with
9 the phone number ending 6967. How long will these records
10 be retained?

11 A 30 years.

12 Q And they wouldn't be destroyed for any reason?

13 A No.

14 Q Where is the evidence file located?

15 A The evidence room on the first floor.

16 Q And who was the gentleman that came to talk to
17 us a minute ago?

18 A Lieutenant Fred Hoose. He's the investigations
19 section lieutenant.

20 Q Can you spell his last name?

21 A H-o-o-s-e.

22 Q Say again what his role is.

23 A He's the investigations section lieutenant.

24 Q What does that mean to a layperson?

25 A He's over the investigations unit, but he's

1 going out and purging it; so that's probably a question
2 for the evidence person.

3 Q And I asked some questions about the e-mail
4 archiving processes and policies and your ability to
5 search e-mails. Did you have anything to do with
6 answering those questions?

7 A No; the city e-mail policy for retention and
8 archiving and stuff would be the MIS department,
9 management information systems department.

10 Q So you're not the correct person to ask about
11 how long e-mails are preserved?

12 A No, I'm not.

13 Q Or how they're searched?

14 A No, I'm not.

15 MR. NICKLES: Andy, can you pull up on
16 the Green phone records?

17 MR. GOWDER: Uh-huh (counsel indicated
18 an affirmative response).

19 MR. NICKLES: There's a PDF with a
20 number starting 170.

21 MR. GOWDER: Yeah.

22 MR. NICKLES: Can you pull that up and
23 show it to Karen?

24 MR. GOWDER: 170139128 cert?

25 MR. NICKLES: Correct.

1 And Karen, just take a second to look
2 over that document if you would. And tell me when you're
3 finished.

4 THE WITNESS: I'm finished.

5 BY MR. NICKLES:

6 Q Have you ever seen this specific document
7 before?

8 A No, I have not.

9 Q Have you ever seen a document like it?

10 A It's probably been a while; I can't say for
11 sure.

12 Q Have you ever requested records via search
13 warrant in your career?

14 A Back then we did 'em on a duces tecum, but I've
15 requested records before.

16 Q And this was, I'll represent, produced in the
17 same folder as something called the Green phone records.
18 And it's my understanding this is a document from Verizon
19 saying, you know, we received your search warrant, this is
20 our return. Is that what you understand the document to
21 be?

22 A Yes.

23 Q And if Verizon made any other -- I guess sent
24 any other letters like this one, they would be in a case
25 file somewhere?

1 e-tran.

MR. GOWDER: I don't.

(The deposition was concluded at

11:23 a.m.)

COURT REPORTER'S CERTIFICATE

1 A Yes. Well since I didn't handle the case file,
2 I'll say they should be.

3 Q They should be; okay.

4 You see the date at the top of the page?

5 A July 16th, 2017.

6 Q Would it be your understanding that would be
7 the date of the letter?

8 A Yes.

9 Q And that would indicate to you that was the
10 date the records were provided by Verizon?

11 A Yes; if this is the only set we got, yes.

12 Q And if you received another set, there would be
13 another letter like this one in the file?

14 A I would assume so; should be.

15 MR. NICKLES: Karen, I'm running out of
16 questions to ask you.

17 We can go off the record.

18 (Discussion held off the record).

19 (The deposition took a recess.)

20 MR. NICKLES: Do you have any questions
21 for her?

22 MR. SOBOCINSKI: No.

23 THE STENOGRAPHIC REPORTER: Do you want
24 copies of both transcripts?

25 MR. SOBOCINSKI: I do. I'll take an

I DO HEREBY CERTIFY THAT THE TESTIMONY

CONTAINED IN SAID DEPOSITION WAS, BY ME, REDUCED TO
WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
COMPUTERIZED TRANSCRIPTION. THE SAID DEPOSITION IS A TRUE
AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE TESTIMONY
GIVEN BY SAID WITNESS, AS AFORESAID.

I DO FURTHER CERTIFY THAT I AM NOT CONNECTED BY
BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY IN
THE MATTER OF CONTROVERSY EITHER AS COUNSEL, ATTORNEY,
AGENT, OR OTHERWISE.

SIGNED THIS 15th DAY OF NOVEMBER, 2023.

LORI WEBBER, NOTARY PUBLIC

My commission expires: April 7, 2027

WORD INDEX

- <1>
 1 10:16
 11:23 27:1
 15 4:25
 1513 2:3
 15th 28:1
 1629 2:12
 16th 26:5
 170 24:20
 170139128 24:24
 172 2:7
- <2>
 2 13:25 15:5
 2:21-cv-1376-RMG-MGB 1:4
 20 4:25
 2017 10:16 26:5
 2017016967 19:4
 2018 5:20
 2023 1:18 28:1
 2027 28:1
 20-plus 16:2
 2500 1:16
 28 3:5
 29201 2:3
 29401 2:8
 29405 2:12
- <3>
 3 10:14 19:2
 30 11:22, 23 12:6
 22:1, 11 23:13
 31 5:17
- <4>
 4 3:4
- <6>
 6967 22:9
- <7>
 7 28:1
- <8>
 803.541.7850 2:4
 843.577.1224 2:8
- 843.727.2229 2:13
- <9>
 9 1:18
 9:57 1:18
- <A>
 a.m 1:18 27:1
 A-19 9:9
 ability 24:4
 absolutely 4:12
 accessible 15:11
 accident 4:20
 ACCURATE 28:1
 actual 8:16
 add 15:11
 added 13:13
 administrative 5:2,
 13, 21
 affairs 5:16
 affirmative 6:20
 24:18
 AFORESAID 28:1
 AGENT 28:1
 AGENTS 28:1
 ago 4:25 10:7
 15:23 22:17
 allow 23:9
 ANDREW 2:11
 Andy 16:22 17:12
 24:15
 andy@austengowder.
 com 2:13
 answer 7:3
 answering 24:6
 answers 6:23
 appeals 23:16
 applicationxtender
 12:2, 21 13:15
 19:15
 apply 11:19
 April 28:1
 archive 8:16 10:22
 12:1 13:13
 archives 13:14
 archiving 19:15
 24:4, 8
 area 23:10
 arrest 12:7, 8
 asked 24:3
- assume 6:18 7:3
 18:12 26:14
 assumed 14:3
 Assuming 18:9 22:7
 ATTORNEY 28:1
 ATTORNEYS 28:1
 AUSTEN 2:11
 available 11:10
 15:13 17:13, 14
 aware 8:12
-
 back 5:21 15:21
 16:9 20:4 25:14
 backup 12:3
 basement 15:8
 beginning 6:22
 big 16:10
 binder 12:15, 16, 17,
 22, 25 15:7 18:20
 20:3, 5
 BLOOD 28:1
 body 7:9
 bond 6:10
 book 13:18
 boxes 20:12
 break 21:5
 BRICKMAN 2:2
 bring 14:18
 brought 14:16
 18:25 20:5
 budget 6:2
 building 15:8 19:5
- <C>
 C/A 1:4
 cabinets 12:24
 call 4:11 7:24
 15:2 19:14
 called 12:1 25:17
 calls 17:17
 capacities 5:17
 capacity 6:15
 career 25:13
 Carolina 1:2, 17
 2:3, 8, 12 4:3
 case 7:5, 11 8:16
 9:1 10:5, 25 11:7,
 20, 22 12:4, 7, 9, 10,
 11, 21, 22 13:1, 5, 19
- 15:7, 14 16:21
 18:10, 11, 14, 20, 22,
 23 19:16, 24 20:6,
 23 21:2, 6, 12, 20
 22:7 23:15, 22
 25:24 26:1
 cases 4:20, 22, 24
 15:12 23:18
 CD 21:14, 15 22:8
 CDs 20:2 21:6, 9,
 11, 15
 cell 15:20, 24 16:1
 21:18 22:3
 cert 24:24
 Certificate 3:5 27:1
 CERTIFY 28:1
 chain 11:9 19:12
 charge 6:1, 5, 8
 Charleston 1:16, 17
 2:8, 12, 14 5:5, 12
 6:16
 check 20:17 23:10
 Chief 1:14 4:1 5:2,
 13, 20
 City 1:17 5:1, 4, 12
 6:16 24:7
 client 16:25
 collect 8:14
 Columbia 2:3
 come 6:4 16:16
 comes 12:18 15:12
 coming 23:25
 commencing 1:18
 commission 28:1
 companies 16:6
 complaint 7:20
 complete 8:11
 computer 17:22
 COMPUTERIZED
 28:1
 concluded 27:1
 conducted 19:17
 CONNECTED 28:1
 CONTAINED 28:1
 content 13:21
 contents 11:6, 20
 12:13 13:25 15:1
 19:3
 contest 9:12
 context 4:16

CONTROVERSY

28:1
copied 9:6
copies 9:16 10:15
 11:14, 16, 25 12:3,
 19 20:12 26:24
copy 8:1 9:1
 13:18 16:21 17:7
 18:14, 23 19:8
 20:18 21:3, 24
Cordray 1:14 3:3
 4:1, 10
Correct 6:17 20:24
 24:10, 25
could've 18:14
counsel 24:17 28:1
course 19:11
COURT 1:1, 15
 3:5 6:11 8:5 27:1
created 10:4, 7
criminal 4:20, 22
 9:10 23:18
current 5:1, 18
currently 6:1 16:4
 21:1
custodies 11:9
custody 19:12

< D >
data 16:14
date 26:4, 7, 10
DAY 28:1
day-to-day 6:6
Defendant 1:6 2:9
degree 19:4
deliver 15:2
Department 1:16
 2:14 5:8, 9, 12 6:7
 8:22, 23 24:8, 9
deposition 1:14
 4:13, 17 8:9 26:19
 27:1 28:1
Deputy 1:14 4:1
 5:2, 13, 20
describing 13:13
designee 14:8
desk 23:5, 7
destroy 23:21
destroyed 22:12

Detective 7:15
 12:16, 24 15:10
detectives 9:4
different 4:19 5:17
 10:1 16:6 17:25
DIRECTLY 28:1
Dirk 8:21
discussed 19:4
Discussion 14:22
 19:22 21:16 26:18
disposition 23:15
DISTRICT 1:1, 2
division 6:6, 9 8:15,
 18 12:16, 25 15:11
document 8:5, 8, 20
 10:6, 15 25:2, 6, 9,
 18, 20
documents 9:8
 10:14, 17, 19 11:16
 16:23 18:6
doing 4:18 23:24
Dorchester 7:8
downloaded 17:22
downstairs 15:2
drive 11:12, 14, 15
 13:10, 17 16:13
 18:13 19:9 21:14,
 15
Driver 2:14
drives 13:16 18:19
drop 19:11
Dropbox 17:24
dropped 21:4
duces 15:21 25:14
duly 4:2
dump 16:8, 9, 11
dumping 16:10
duties 5:25
DVD 20:18
DVDs 18:19 19:11
 20:16

< E >
earlier 13:4
either 21:20 28:1
electronic 11:11, 15
 18:13, 22 19:8
electronically 13:6

em 6:11 11:15
 14:2 16:7 17:19
 18:12 21:23 25:14
e-mail 8:22 16:18,
 19 18:10 21:24, 25
 22:6 24:3, 7
e-mailed 11:13
e-mails 8:24 24:5,
 11
employed 5:4, 10
EMPLOYEE 28:1
entail 5:25
entails 7:14
entering 6:11
entire 12:22
Esq 2:2, 7, 11
e-tran 27:1
EVAN 2:7
**evan.sobocinski@hoo
 dlaw.com** 2:9
evidence 11:10
 13:11, 17, 18 19:12
 20:9, 11, 18, 22 21:1,
 4, 20 22:14, 15 23:2,
 6, 9, 12, 14, 22 24:2
exact 16:5
EXAMINATION
 3:1, 4 4:5
examined 4:3
example 9:9 22:8
Excel 9:21 18:6, 7
EXHIBITS 3:11
existing 10:5
exists 15:8
expires 28:1
explains 10:1
extent 7:10
extradition 6:12
eyes 14:11

< F >
fact 6:11
fair 16:3
falls 23:3
familiar 7:7 11:6
 14:5, 25 16:5
far 10:25 21:11, 13
file 8:16 9:2 10:25
 11:7, 20 12:7, 9, 10,
 22 13:1, 9, 21, 25

14:6, 10 15:1, 6, 7
 16:15, 21 17:3
 18:10, 11, 15, 23
 19:3, 25 20:6, 9, 22,
 23 21:1, 2, 6, 10, 20
 22:8, 14 23:12, 22
 25:25 26:1, 13
files 8:16 11:22
 13:19 14:11 15:14
 18:3 19:16
financial 6:2
find 21:10
finding 7:9
finished 25:3, 4
fire 7:8
FIRM 2:5
first 4:2 22:15
fleet 6:3
floor 22:15
FOIA 8:11, 13, 14,
 15, 19
folder 25:17
folks 15:11 23:9
follows 4:4
forget 23:17
format 11:11 18:3
formerly 5:7, 14
forms 16:5
four 6:6
frankly 16:24
Fred 22:18
Freeman 11:3
 13:22 14:1
front 20:3, 23
FURTHER 28:1

< G >
general 5:24 7:7
generated 12:4
gentleman 22:16
Gergel 8:6
Gergel's 8:1
getting 9:3
give 5:24
given 4:13 28:1
go 6:9 7:22 10:8
 12:25 13:14 14:2,
 10, 15, 20 17:19
 18:20 19:21 20:17
 23:4, 6, 9 26:17

Notary 1:16 4:2
28:1
November 1:18
28:1
number 10:14
13:25 15:5 19:2, 3
22:9 24:20

< O >

oath 4:4
OCA 19:3
offered 3:12
office 7:22
Officer 18:9
Okay 4:16 5:14
6:14, 18, 25 7:3, 4
8:5, 8 9:5, 11, 21
10:11 15:25 16:3
17:2, 11, 16, 21, 23
18:1 20:21 22:7
26:3
once 15:6
operations 6:7
order 8:1, 6
originals 12:18
15:15

< P >

page 26:4
paper 7:23 11:25
12:3, 19 13:14, 15,
16 19:13, 14
part 13:4 23:22
PARTIES 28:1
PATRICK 2:2
patrol 5:16 6:6
PDF 10:19 18:3
24:19
PDFs 11:16
pending 23:16
perfect 20:21
person 22:5 24:2,
10
phone 7:16 15:20,
24 16:1, 11, 12, 14,
24 17:4 19:13
21:8, 18 22:3, 8, 9
24:16 25:17
phones 16:8, 9, 10

photographs 11:11
photos 13:2
physical 15:7 16:12
18:22 19:7
pieces 19:13
place 10:15, 21
Plaintiff 1:4 2:5
please 4:9
Police 1:16 2:14
5:7, 9, 12 6:7 8:22
10:24
policies 9:13, 17
10:2, 9, 12, 15, 20, 22
11:19 24:4
policy 9:9, 15, 18
22:6 24:7
portable 21:15
possible 20:25
possibly 23:17
preparation 8:9
PRESENCE 28:1
present 2:14 10:16
21:22
preserved 12:6
22:1, 4 24:11
pretty 7:10
primary 6:4
printed 13:8 18:14
printing 16:20
probably 11:12
12:8 13:9 18:11,
12 20:12 23:19
24:1 25:10
processes 24:4
produce 12:25 13:1
produced 10:19
13:6 21:12 25:16
program 12:1
provide 15:22
provided 4:16 6:18
7:17, 18 8:1, 25
9:7, 8, 16, 20 11:12
14:3 16:22 17:3
26:10
provider 15:20 16:1
providers 15:24
Public 1:16 4:2
28:1
pull 16:12, 14

24:15, 22
purge 23:24
purging 24:1
put 10:7 11:13, 15
12:1, 20 13:9, 10, 17
14:10 15:12 18:12,
14, 18 19:9, 11
putting 16:20

< Q >

question 22:5
23:23 24:1
questions 7:1, 2
24:3, 6 26:16, 20
quite 19:10

< R >

read 7:17 8:5
reading 8:8
reason 21:22 22:12
received 18:9
21:18 25:19 26:12
recess 26:19
record 4:9 14:21,
22, 25 19:21, 22
21:16 26:17, 18
recorded 19:19
records 4:18, 19
6:2 7:16 8:17, 18
12:19 13:5 16:25
17:5 19:14 21:8,
18 22:3, 8, 9 24:16
25:12, 15, 17 26:10
REDUCED 28:1
reference 9:15
referring 7:19 9:13,
22
related 18:20
remember 11:2
remind 11:1
rephrase 7:2
report 11:9
Reporter 1:15
26:23
Reporter's 3:5 27:1
represent 25:16
representative 6:16
request 8:19 10:14
16:1, 7

requested 9:7
14:18 25:12, 15
requests 8:14, 15, 20
requirements 8:12
responded 8:20
response 6:21 8:19
16:15 24:18
responsibilities 6:5
responsible 6:10
8:18
retain 11:22, 23
retained 9:18 22:10
retention 8:17 9:6,
12, 14, 16, 17, 19
10:2, 8, 10, 11, 15, 20,
23 11:19 22:6 24:7
Retention.xls 9:22
return 16:15 18:21
25:20
reviewed 12:10
right 6:1 12:10, 11
13:4 14:17, 24
15:3, 9 16:11 19:5,
19 21:6, 9
Rivers 11:3, 4 12:5
13:22 14:1 19:18
ROGERS 2:2
role 5:1, 19 22:22
room 12:17, 23
13:19 15:10 22:15
23:2, 6, 9
rules 23:14
run 23:2
running 26:15

< S >

Sanchez 1:5 7:16
18:9
saying 9:12, 25
25:19
says 13:25 22:8
scan 12:20 19:13
scanned 12:2, 19
schedule 9:6, 14, 18,
19 10:23
screen 17:20
search 10:8 15:17,
19 16:16 18:21
19:13 24:5 25:12,

going 6:19 14:17
23:24 24:1
gonna 12:8 17:4,
19 20:17
Good 4:7
Gotcha 17:23
GOWDER 2:11
7:25 17:4, 11, 14, 24
20:14 24:17, 21, 24
27:1
Green 1:3 16:25
17:4 24:16 25:17
Gregory 1:3
guess 7:20, 21 9:2
15:8 16:16 18:10,
16 25:23
guy 23:5, 7
guys 6:12

<H>
Hall 1:17
Hampton 2:3
hand 7:24
handle 8:14 26:1
handled 8:17
happens 9:14
hard 11:14 16:12,
21 18:14 21:3
hearings 6:10
He'd 18:12
held 14:22 19:22
21:16 26:18
helped 8:11, 14 9:2,
4
hold 6:9 23:16
homicide 7:9 12:23
HOOD 2:5
Hoose 22:18
H-o-o-s-e 22:21
huh-uhs 6:24

<I>
idea 5:24
incident 11:9
include 18:10
included 19:24 21:6
including 11:9
INDEX 3:1, 11
10:11

indexed 12:2
indicate 20:15 26:9
indicated 6:20
24:17
INDIRECTLY 28:1
individual 6:15
10:10
information 15:23
16:23 24:9
inquire 6:19
inside 23:10
intelligence 9:10
INTERESTED 28:1
internal 5:16
interviews 8:13 9:3
19:17, 24
investigation 11:1
12:5, 14 13:22
14:1 19:18 21:19
investigations 4:23
5:16 12:18 22:18,
23, 25 23:3
investigator 5:14
15:16 16:19, 20
21:23

<J>
January 10:16
job 5:25
JR 2:11, 14
Judge 8:1, 6
July 26:5
jump 13:10 18:13,
18 19:9

<K>
Karen 1:14 3:3
4:1, 10, 11, 13 14:24
24:23 25:1 26:15
keep 12:15, 20
13:18 14:17 15:13
19:7
keeps 8:15
kept 12:17, 24
13:19
kind 12:3 15:1
kinds 4:21
know 7:24 9:11
10:9 11:13 14:9,
11, 13 16:6, 7, 16

18:12 21:11, 13, 14
23:5, 19 25:19
knowing 23:24
knowledge 7:10
Kyle 1:3

<L>
Lane 1:17
LAW 2:5
lawsuit 7:12
lawyer 16:22
lawyers 21:12
23:20
layperson 22:24
left 6:5
letter 26:7, 13
letters 25:24
Lieutenant 22:18,
19, 23 23:8
list 6:18 10:16
17:17
listed 9:16, 17
listing 20:11
little 17:25
lobby 23:10
located 22:14
location 10:8 13:24
19:2, 5
long 4:25 5:18
22:3, 9 23:12, 15
24:11
look 14:15 15:6
21:15 23:11 25:1
looked 7:22
looking 10:1
looks 17:20, 25
Lord 4:24
Lori 1:15 4:2 28:1
lot 5:23 8:15 16:8,
18, 23 19:11

<M>
maintained 23:15
major 23:1
management 6:3
24:9
mark 23:25
MARRIAGE 28:1
materials 12:4, 6

Matt 7:25
matter 6:11 28:1
MATTHEW 2:2
mean 11:24 14:2, 5,
9 16:11 20:6 22:24
meaning 6:23
MEANS 28:1
Meeting 2:7, 12
memory 9:11
methods 13:24
19:3, 7
Michael 1:5 2:14
Microsoft 18:7
minute 18:17 22:17
MIS 8:23 22:5
24:8
missing 13:2
mnickles@rpwb.com
2:4
momentarily 18:25
Morgan 23:8
morning 4:7, 8
Multiple 5:16
municipal 11:21
municipalities 9:19
10:23
murder 10:25 12:5,
13, 23 13:9, 19, 22
14:1 19:18

<N>
name 4:9 11:1
22:20
NCIC 6:11
necessarily 15:1
need 14:3 23:23
never 12:13
new 15:12
NICKLES 2:2 3:4
4:6 8:4 11:4, 18
14:23 17:6, 9, 12, 16,
18 18:2 19:21, 23
20:20 21:17 24:15,
19, 22, 25 25:5
26:15, 20
normal 17:8, 10
normally 11:17
15:22 23:9
North 1:16, 17
2:14 5:4, 12 6:16

19
 searched 24:13
 second 13:20 25:1
 section 10:23 22:19, 23
 see 13:23 14:21
 17:20 18:4, 5, 7, 16
 20:10 26:4
 seen 12:13 16:24
 23:4 25:6, 9
 send 15:17, 19
 sent 15:25 25:23
 separate 15:14
 September 5:21
 services 5:3, 13, 21
 set 26:11, 12
 seven 23:17, 21
 seven-year 23:25
 should've 6:22
 11:21
 show 16:25 24:23
 sign 23:4, 6
 SIGNED 28:1
 similar 7:23
 similarly 10:20
 sir 17:6
 sitting 23:5, 7
 SOBOCINSKI 2:7
 11:3 14:20 17:7
 26:22, 25
 something's 23:25
 sorry 5:10 20:16
 South 1:2, 17 2:3, 8,
 12 4:3
 speak 6:15
 specific 10:20 25:6
 specifically 10:5
 spell 22:20
 spreadsheet 9:15,
 21, 22, 25
 starting 24:20
 State 4:3, 9 9:19
 10:22
 statements 11:10
 STATES 1:1
 stay 23:12
 Stenographic 1:15
 26:23
 store 11:25 19:14

stored 13:11
 stores 13:16
 storing 13:24 19:2,
 7
 straight 21:4
 Street 2:3, 7, 12
 stuff 8:12, 21, 22
 12:17 18:19 23:11
 24:8
 submitted 8:12
 Suite 2:12
 summarize 5:24
 summary 7:21
 Sure 4:10 5:23
 6:1 11:11 19:10
 20:18 25:11
 sworn 3:3 4:2
 system 19:15
 systems 24:9
 < T >
 tab 20:10
 take 12:22 15:6
 16:12 25:1 26:25
 taken 1:15
 talk 13:21 15:5
 22:16
 talking 8:2 14:25
 team 6:3, 8
 tecum 15:21 25:14
 telephone 13:5
 tell 17:12 25:2
 Terrace 7:8
 testified 4:4
 testify 4:21, 23
 testimony 4:17 28:1
 thing 7:7, 17 8:7
 10:10
 things 4:19, 21
 5:15, 23 6:2 8:13,
 17 9:3 13:17 16:8
 20:10
 think 8:1 16:18
 17:14 19:4 23:14,
 17
 thought 11:5
 three 21:9, 11
 thumb 11:12, 13, 15
 13:16, 17

Thursday 1:18
 time 4:25 15:25
 times 19:11
 titled 9:21
 today 6:14 7:13
 8:10 13:21
 told 14:9
 top 26:4
 topic 13:20 14:8
 15:5 19:2
 topics 6:19
 TRANSCRIPT 28:1
 TRANSCRIPTION
 28:1
 transcripts 26:24
 transport 6:3
 trouble 9:2
 TRUE 28:1
 try 10:7
 turned 7:9
 TV 23:4
 < U >
 uh-huh 6:20 24:17
 uh-huhs 6:24
 unaware 23:24
 underneath 23:1
 understand 6:14
 7:15 25:20
 understanding 7:5,
 13 13:6 15:7 16:4
 20:8 25:18 26:6
 understood 7:3
 unit 22:25 23:1
 UNITED 1:1
 use 16:6 19:15
 usually 18:20
 < V >
 vaguely 7:7
 verbal 6:23
 verify 4:18
 Verizon 16:15
 21:19 25:18, 23
 26:10
 versions 18:13
 victim's 11:1
 videos 9:3
 visibly 14:10

vs 1:4
 < W >
 wanna 16:25
 want 26:23
 warrant 15:19
 16:16 25:13, 19
 warrants 6:3, 8, 9,
 10 15:17 18:21
 19:13
 way 20:4
 ways 16:6
 Webber 1:15 4:2
 28:1
 week 16:23
 Well 9:1, 14 16:10
 22:7 26:1
 went 8:22 14:24
 21:5
 we're 7:12 15:8
 17:19
 WESTBROOK 2:2
 we've 19:4
 Witness 3:2 6:20
 8:3 11:8 17:17
 18:1 20:16 25:4
 28:1
 work 6:12
 working 17:7
 world 20:21
 would've 8:19, 24
 11:12, 15 13:8, 12
 15:25
 WRITING 28:1
 < Y >
 y'all 7:17 11:14
 Yeah 8:7 14:17, 20
 15:13 24:21
 year 5:22
 years 4:25 5:17
 6:6 10:7 11:22, 23
 12:6 15:22 16:2
 22:1, 11 23:13, 17,
 21
 yesterday 7:22 9:9,
 17, 20

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
HONORABLE PERRY M. BUCKNER, CIRCUIT COURT JUDGE

THE STATE,

RESPONDENT,

v.

GREGORY KYLE GREEN,

APPELLANT.

No. 2019-001924

PRO SE BRIEF OF APPELLANT

GREGORY K. GREEN
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
PRO SE

TABLE OF CONTENTS

<u>TABLE OF CONTENTS</u>	<u>1</u>
<u>TABLE OF AUTHORITIES</u>	<u>11</u>
<u>STATEMENT OF ISSUES ON APPEAL</u>	<u>1</u>
<u>STATEMENT OF THE CASE</u>	<u>2</u>
<u>STANDARD OF REVIEW</u>	<u>3</u>
<u>ARGUMENTS</u>	<u>5</u>
<u>CONCLUSION</u>	<u>23</u>

TABLE OF Authority

- ZOOSPER V. PARSONS 245 SC 493 141 SE2d 342 (1965)
 PAYNE V. DEKALB 414 F. Supp. 2d 1158 (N.D. GA. 2004)
 FRANKS V. DELAWARE 438 US 154 98 Sct. 2674 57 LEd2d 667 (1978)
 MILLER V. PRINCE GEORGE COUNTY, Md. 475 F.3d 621 (4th Cir. 2007)
 BANKS V. US. 920 F. Supp. 683 (E.D. VA. 1996)
 SMITH V. CAIN 565 U.S. 73 132 Sct. 627, 181 L Ed 2d 571 (2012)
 MAPP V. OHIO 367 U.S. 643 81 Sct. 1684 (1961)
 VAUGHN V. STATE 362 SC 163 607 SE2d 72 (2004)
 NAPUE V. PEOPLE OF STATE OF IL. 360 US 264 79 Sct. 1173 3 L Ed 2d 1217 (1959)
 GUNNING V. COUSIN 452 F. Supp. 916 (W.D. NC. 1978)
 STATE V. WILSON 345 SC 1 545 SE2d 827 (2001)
 STATE V. QUATTLEBAUM 338 SC 441 527 SE2d 105 (2000)
 STATE V. LYNCH 412 SC 156 771 SE2d 316 (2005)
 STATE V. BACCUS 367 SC 41 625 SE2d 216 (2006)
 STATE V. PORCH 417 SC 619 990 SE2d 440 (2016)
 STATE V. JONES 331 SC 228 510 SE2d 499 (1998)
 STATE V. MockNight 291 SC 110 352 SE2d 471 (1987)
 STATE V. MISSOURI 337 SC 548, 524 SE2d 394 (1998)
 STATE V. ROBINSON 415 SC 600 785 SE2d 355 (2016)
 STATE V. FRAIZER 394 SC 213 715 SE2d 650 (2011)
 STATE V. GILCHRIST, 350 SC 221 565 SE2d 281 (2002)
 STATE V. PHILLIPS 430 SC 319 844 SE2d 651 (2020)
 STATE V. GRAY 408 SC 601 759 SE2d 166 (2014)
 STATE V. SULLIVAN 43 SC 205 21 SE 7 (1895)
 STATE V. PAGAN 369 SC 201 631 SE2d 262 (2006)
 U.S. V. NAJJAR 300 F.3d 466 (4th Cir. 2002)
 U.S. V. DE LA PAZ RENTAZ 613 F.3d 18 (1st Cir. 2010)
 U.S. V. LOAYZA 107 F.3d 257 (4th Cir. 1997)
 CLOSE V. US. 279 F.3d 714 (8th Cir. 2012)
 S. C. CODE ANN. § 17-13-140
 S. C. CONST. ART. I, § 10
 U. S. CONST. AMEND IV

AG
SOL
GS
Atty

2022-CP-10-0798

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Gregory Kyle Green, #299039,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2022-CP-10-00798

ORDER OF DISMISSAL

JULIE J. ARMSTRONG
CLERK OF COURT

2025 APR 11 AM 9:33

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Gregory Kyle Green (Applicant) on February 17, 2022. Respondent made its return requesting an evidentiary hearing. Respondent also moved to dismiss claims related to actual innocence, constitutional violations, and violations of Court rules. On December 17, 2024, an evidentiary hearing convened before the Honorable Jocelyn Newman. Applicant was present and represented by Christopher Murphy, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, the Court heard testimony from Applicant; trial counsel Taylor J. Stewart, Esquire; Appellate Defender Wanda H. Carter; and Assistant Solicitor Thomas R. Waring, II. Following a thorough review of the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate forty-year sentence. In June 2017, the Charleston County Grand Jury indicted Applicant for murder (2017-GS-10-6993), second-degree arson (2017-GS-10-6995), and possession of a weapon during the commission of a violent crime (2017-GS-10-6994).

Gregory Green v. State | 2022-CP-10-00798 | Order of Dismissal

On November 4–7, 2019, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner. Public Defenders Taylor J. Stewart and Teresa L. Norris represented Applicant, and Assistant Solicitors Thomas R. Waring, II and John W. Sowards prosecuted the case. The jury convicted Applicant of murder and the weapon charge but acquitted him of arson. Judge Buckner imposed concurrent terms of forty years for murder and five years for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Deputy Chief Appellate Defender Wanda H. Carter through the filing of an Anders¹ brief raising the following issue:

The trial judge erred in allowing appellant’s Facebook posts (state’s exhibits 116, 122, 123, and 124) into evidence at trial because they lacked relevance and were more prejudicial than probative.

The South Carolina Court of Appeals dismissed pursuant to Anders, State v. Green, Up. Op. No. 2022-UP-034 (filed Feb. 2, 2022). The remittitur was sent March 3, 2022.

SUMMARY OF EVIDENCE PRESENTED AT TRIAL

At trial, Terrance Doucet testified he went to Applicant’s house sometime after 3:00 a.m. the morning of the murder, but Applicant wasn’t home. (R. 124-26, 130-31). Doucet stated Applicant needed a ride, so Doucet left in his Chrysler 200 to pick up Applicant from a home on Bailey Drive. (R. 115, 128-29). Doucet initially had trouble finding the home and asked two men who were outside if they had seen “Kone”²; the men indicated that wasn’t his house, so Doucet left. (R. 129). After speaking to Applicant on the phone and receiving clearer directions, Doucet returned to pick him up.³ (R. 130-31, 140-44). According to Doucet, Applicant came out of the home with “some blood on his shirt” and “a firearm in his hand.” When Doucet asked Applicant

¹ Anders v. California, 386 U.S. 738 (1967).

² Kone is Applicant’s nickname.

³ During Doucet’s testimony, the State entered call records from Doucet’s phones showing multiple calls between Applicant and Doucet between 3:22 and 4:54 a.m. (R. 132-39).

2 

what was going on, Applicant responded with “mumbled words mixed with like you know I don’t know if somebody had got shot or something along those lines.” (R. 144-45). Doucet testified Applicant said, “I don’t know what the ni*** did.” (R. 145). Doucet became concerned after they returned to Applicant’s home and suggested Applicant return and burn the house. (R. 146). Doucet testified he cleaned his car with bleach, and it was stolen a few weeks later. (R. 146-48).

One of the men Doucet spoke to—Jonathan Seabrook—testified at trial and corroborated portions of Doucet’s testimony. Seabrook recalled being outside with Kendyl Rice and seeing a Chrysler 200 driving back and forth on Bailey Street. (R. 230-31). He testified the driver of the vehicle asked if they had seen “Kwan”; Seabrook acknowledged telling police he “wasn’t sure if they said Kone or Corn.” (R. 232-33). Seabrook also recalled seeing the victim enter his home with “a black man,” but he didn’t get a good look at the man. Seabrook likewise couldn’t provide a description of the driver. (R. 233-34). During Seabrook’s testimony, the State entered text messages between Seabrook and Rice recounting the events as they observed them. (R. 237-42).

The State also called Rice, who recalled hanging out with Seabrook that morning and seeing a car pull up; he stated the driver spoke to Seabrook but Rice didn’t hear the conversation. (R. 268-71). However, Rice acknowledged he “might” have told law enforcement the driver was looking for someone. (R. 271). Rice claimed he did not see anything happen prior to the fire or see anyone at the victim’s home. (R. 272). He recalled hearing “commotion” outside when he was inside and seeing someone ride away on a bike after the house was on fire. (R. 272-74).

Lanica Walker, Doucet’s girlfriend, testified Doucet went to her home around 8:45 or 9:20 the following morning acting “antsy, real fidgety”; Doucet recounted to her what had happened, including picking up a man “who came out with a gun and he was bloody.” (R. 252-57). Although Walker did not identify Applicant at trial, her testimony about what Doucet told her corroborated

Doucet's version of events. Likewise, Brandi Dobbins testified she was at Applicant's home that night and recalled Applicant leaving sometime after 2:00 a.m., and Doucet later leaving after receiving a phone call. (R. 289-90). She testified she did not see Applicant again but overheard him arguing with Doucet. (R. 291-92). Dobbins later left with Doucet, who told her he had bleached the car seat. (R. 292).

Donna Money, an expert in DNA analysis, testified a cigarette butt recovered from the top of the victim's trashcan contained a mixture of the victim's DNA and Applicant's DNA. (R.). She also analyzed blood spots from Doucet's car and testified a blood spot from the passenger side front door panel contained moderate support for Applicant's DNA and weak support for the victim's DNA; a blood spot on the passenger rear door contained strong support for Doucet's DNA and weak support for the victim's and Applicant's DNA; and a blood spot on the passenger side between the front and rear seats contained strong support for the victim's DNA and weak support for Applicant's DNA.

To establish motive, the State entered screenshots from Applicant's Facebook account of June 6, 2017⁴ posts stating:

- Those who don't know the value of loyalty won't understand the cost of betrayal.
- I cut people off with no hesitation, no explanation, no warning if you do some phony sh** or if I feel you can't be trusted. Life is too short. I'm getting too old to be hanging with people who don't understand.
- I'm getting too old to be hanging with people who don't understand the concept of loyalty. I can't trust everybody. I can't love everybody.

(R. 547-47). The last post contained "a gun graphic and a bullet hole graphic on the MIME." (R.

⁴ The murder occurred in the early morning of June 8, 2017.



547). The State also entered jail calls and recording of jail visits.

Applicant did not testify or present a defense. The jury acquitted him of arson but convicted him of murder and possession of a weapon during a violent crime.

CURRENT APPLICATION

On February 17, 2022, Applicant timely filed this PCR application alleging:

1. Ineffective Assistance of Trial Counsel
 - a. “Although trial counsel made several objections to exclude evidence admitted in violation of Applicant’s 4th Amendment Rights, trial counsel never requested a Franks⁵ hearing.”
2. Ineffective Assistance of Appellate Counsel
 - a. Failed to raise preserved issue related to a Fourth Amendment Violation;
 - b. Failed to raise preserved issue related to a Brady violation.
3. "Actual Innocence"
 - a. “Victim’s DNA found in Co-defendant’s car could not have been placed by the Applicant. DNA analysis confirmed Victim’s DNA was mixed with an unidentified unrelated individual. Tr. 476 lines 8-20.”
 - b. Clay Simmonds FBI cellular analysis expert testified that contrary to information proident to Applicant’s arrest warrant affidavits stating cell phone records place Applicant at the scene of crime, Applicant’s records place him at his residence during the alleged times of incident. Tr. 689 lines 7-13.”
4. “SCR Crim P. Rule 5 and Brady⁶ Violations”
 - a. “Solicitor Waring brought up in [redirect] examination of Det. Sanchez a photo lineup presented to witness Kendyl Rice which was not placed in Applicant’s Rule 5 motion of discovery. Tr. 627 lines 3-24.”

⁵ Franks v. Delaware, 438 U.S. 154 (1978).

⁶ Brady v. Maryland, 373 U.S. 83 (1963).

5 

5. “Constitutional Violations”

- a. “Det. Sanchez obtained an arrest warrant with deliberately falsified information with reckless disregard for the truth. Det. Sanchez asserted in his warrant affidavit that (1) a third-party witness indicated that Applicant was a suspect, Lanica Walker never identified Applicant by name, nickname, photo or otherwise. Trial Brief p. 6. (2) Witness statements were corroborated by other witnesses who gave initial description. Both eyewitness descriptions were total opposite of Applicant. Trial Tr. p. 246-47 lines 20 – 3. (3) Cell phone records indicate that [Applicant] was on Bailey St. during time of the incident. Det. Sanchez did not attempt to obtain records until August 30, 2017, a month after he applied for the arrest warrant on July 7, 2017. Det. Sanchez also testified to cell state analysis at Applicant’s preliminary hearing on August 15, 2017. He stated that he had sent cell records to the solicitor’s office. Also, Det. Sanchez admitted at trial he did not have these records until September 2019, two months prior to trial. Tr. 606 line 21 – 615.”
- b. “The witnesses also heard the name ‘Kone’ uttered by co-defendant. Det. Sanchez invoked the Applicant’s government and nickname to both eyewitnesses in their interviews. Despite the uncertainty of either witness identifying what name they heard. Det. Sanchez inserted this moniker ‘Kone’ into the affidavit. Trial Tr., Pretrial Motions, and Witness interviews can confirm all above allegations. Tr. 245 lines 12-18; p. 279 lines 34-35; p. 280 lines 1-21.”

6. Prosecutorial Misconduct

- a. “Solicitor Waring knowledge of photo lineup not included in Rule 5 motion of Discovery and not disclosing this information to defense was dishonest. Tr. 627 lines 3-24.”
- b. “Solicitor Waring made improper remarks during closing arguments to the Jury. He stated, ‘I think you know what to do, it’s time to find him guilty.’ Tr. 732 line 25 – p. 733 line 1”
- c. “Solicitor Waring improperly vouched for Det. Sanchez in his closing arguments by stating that he ‘wasn’t lying and was overworked government employee’ despite the Det. Dishonesty and reckless disregard for the truth throughout the Applicant’s proceedings.” Tr. 645 line 17 – p. 746 line 2.”
- d. “Solicitor Waring denied giving codefendant a deal in his closing arguments which was dishonest and deceptive. A proffer

6 

agreement was signed by co-defendant to avoid prosecution in return for ‘identification and implication of Applicant’ on January 24, 2018. Tr. 746 line 9 – 11.”

- e. “Solicitor Waring contacted trial counsel and stating cell phone records would not be used at trial because of Det. Sanchez’s errors were deceptive and dishonest.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston Count Clerk of Court records of the underlying convictions; Applicant’s records from the South Carolina Department of Corrections; the trial transcript, the records of Applicant’s direct appeal; and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.⁷ After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court’s findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Respondent’s Motion to Dismiss

In its return, Respondent moved to dismiss Applicant’s claims of actual innocence, asserting such claims are not cognizable under the PCR Act. This Court agrees. See S.C. Code Ann. § 17-27-20(a)(6) (providing the PCR act “shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.”); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act). Thus, allegation 3, as set forth above, is dismissed with prejudice.

Respondent likewise moved to dismiss Applicant’s stand-alone claims of a Fourth Amendment violation (related to the arrest warrant); a Brady violation; and a Rule 5, SCRCrimP

⁷ This Court will reference PCR testimony where relevant below.

7 

violation. This Court agrees Applicant's claim related to an alleged Rule 5 violation should be dismissed, as there is no provision in the PCR Act that allows a stand-alone claim based on a violation of a court rule. See S.C. Code Ann. § 17-27-20 (a) (setting forth cognizable PCR claims).

This Court further finds Applicant's claims related to alleged Fourth Amendment and Brady violations are more properly addressed in the context of ineffective assistance of counsel and/or prosecutorial misconduct claim. Although the Act permits a claim based upon a Constitutional violation, such claims are often more appropriately couched as claims of ineffective assistance of counsel. See § 17-27-20(b) (providing the PCR Act "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court"); Drayton, 312 S.C. at 8, 430 S.E.2d at 520 (providing a PCR application cannot assert issues that could have been raised at trial or on appeal); Fortune v. State, 428 S.C. 545, 558, 837 S.E.2d 37, 44 (2019) ("In most circumstances, therefore, to be properly presented in a PCR action, a claim must be based on ineffective assistance of counsel."). Here, Applicant separately raised his Fourth Amendment violation allegation as a claim that counsel was ineffective for not moving to suppress the arrest warrant under Franks. Likewise, Applicant separately raised his allegation of a Brady violation as a claim of prosecutorial misconduct. This Court finds these are the proper lenses for evaluating these claims, and will address allegation four in the context of ineffective assistance of counsel and allegation five in the context of prosecutorial misconduct.

Ineffective Assistance of Counsel

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). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 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.; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him 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.

*Franks issue*⁸

Applicant alleges counsel was ineffective for not challenging the arrest warrant pursuant to Franks. He contends Detective Sanchez’s arrest warrant affidavit contained false information. Applicant further contends Detective Sanchez testified at Applicant’s preliminary hearing about records he had not yet obtained, and admitted at trial he did not have those records until later. This Court finds Applicant did not prove counsel was ineffective in this regard.

“In Franks v. Delaware, the United States Supreme Court held that the Fourth and Fourteenth Amendments gave a defendant the right in certain circumstances to challenge the veracity of a warrant affidavit after the warrant had been issued and executed.” State v. Missouri, 337 S.C. 548, 553, 524 S.E.2d 394, 396 (1999). The Franks Court set forth the following test:

- (1) To mandate an evidentiary hearing, the challengers' attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof; and
- (2) If these requirements are met, and if, when material that is

⁸ This section combines allegations (1) and (5), as set forth above.

9 

subject of the alleged falsity or recklessness disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required.

Id. at 554, 524 S.E.2d at 397.

In the affidavit supporting Applicant's search warrant, Detective Sanchez alleged:

[O]n June 8th, 2017, at approximately 4:46 A.M., officers of the North Charleston Police Department responded to a report of a fire located at Bailey Street. Fire fighters located the body of a male later identified as Freeman Rivers. Autopsy showed that Rivers had sustained multiple gun shots which resulted in his death. Detectives obtained a description of the vehicle used by the defendant who was seen entering and fleeing the victim's residence the night of the incident. This vehicle was described as a light blue new Chrysler 200. Video from the area an hour prior to the incident shows a 2017 light blue Chrysler 200 bearing SC tag [redacted] entering the neighborhood and pulling into the Cheapway Gas Station at 3615 Dorchester Road. **A witness to be named in court provided a third party confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. The witness' statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description.**

In addition, the witness stated the vehicle had blood transfer to the interior of the car as the suspect of the crime was covered in blood at the time of the incident. On June 22, 2017, Doucet's 2017 Chrysler 200 was located, after being reported stolen on June 19, 2017. **Testing of the interior of the vehicle reviewed presumptive positive results for trace evidence of blood after a search was conducted of the car pursuant to a lawful search warrant. Defendant's cell phone records indicate that he was on Bailey Street during the time of the incident and match the witness description and timeline of events. The witnesses also heard the name "Kone" uttered by the co-defendant, when searching for him in front of the house, and this is a known alias of the defendant.**

(emphasis added).⁹ At the PCR hearing, Petitioner alleged the affidavit contained false statements

⁹ The bold portions are the portions Applicant contends are false.

10 

in that: (1) Detective Sanchez did not have Applicant's phone records; (2) witnesses did not place Applicant at the scene because Applicant wasn't there and Lanica Walker did not identify him at trial; (3) the eyewitnesses provided a description "opposite of" Applicant; (4) Detective Sanchez suggested his nickname "Kone" to witnesses, and at trial the witnesses testified it could have been Korn or Kwan; and (5) Detective Sanchez alleged he had forensic evidence when he did not have DNA evidence.

Trial counsel testified she reviewed the arrest warrant and was involved in the preliminary hearing, and she believed Detective Sanchez had credibility issues. Although she did not recall whether she considered a Franks hearing, she clarified she wanted to preserve the issue of Detective Sanchez's false testimony and use it to impeach him at trial. She further clarified she wanted to surprise the State with this line of attack.¹⁰

This Court finds counsel articulated a valid strategy in using inconsistencies in Detective Sanchez's affidavit, preliminary hearing testimony, and trial testimony to impeach him at trial. At trial, counsel cross-examined Detective Sanchez about the fact he did not have Applicant's phone records when he filled out the arrest warrant affidavit, and Detective Sanchez admitted he did not have them although he alleged otherwise. (Tr. 600-06). She also cross-examined him about his testimony at the preliminary hearing, including his testimony that he had reviewed the phone records when he did not yet have them. (Tr. 607-15). Finally, she cross-examined Detective Sanchez about a discrepancy in the search warrant return for Doucet's vehicle.¹¹ (Tr. 620-23). This

¹⁰ Counsel *did* move during trial to suppress jail calls and recorded jail visits as fruits of the poisonous tree, arguing Detective Sanchez falsely stated in the search warrant affidavit that he had phone records when he did not in fact have those records. (R. 369-70, 384).

¹¹ Detective Sanchez testified he was filling out the return while another officer was collecting evidence, and he miscounted the number of swabs collected; he stated one of the items he listed as a swab "was actually a napkin." (Tr. 622).

Court finds this strategy of impeaching him with his prior sworn statements was a valid strategy. As part of this strategy, counsel credibly testified she wanted to surprise the State with this questioning. In light of this, counsel's failure to file a Franks motion was reasonable under prevailing professional norms and not deficient. In other words, filing a Franks motion would have highlighted to the solicitor—in advance of trial—the inconsistencies in Detective Sanchez's affidavit, which would have directly undermined counsel's stated strategy of surprising the State. Based on the foregoing, counsel articulated a valid strategy and was not deficient.

Further, this Court finds Applicant did not establish prejudice. Initially, Applicant had a indicted on December 5, 2017. Thus, even if the arrest warrant was subject to suppression under Franks, the State still would have been able to proceed to trial upon properly indicting Applicant. Further, nothing was recovered from Applicant at his arrest to be suppressed at trial; thus, it is not reasonably likely a successful Franks motion would have changed the outcome of trial.¹²

Finally, Applicant did not meet his burden of proving a Franks challenge would have been successful. Specifically, Applicant did not prove Detective Sanchez provided false information about witness statements or forensic evidence in Doucet's car. Although Detective Sanchez was not called as a witness at the PCR hearing, Applicant entered into evidence a deposition from a federal lawsuit Applicant has pending against Detective Sanchez.¹³ In the deposition, Detective

¹² Admittedly the State entered evidence that Application sought to flee at the time of his arrest, which arguably would have been subject to suppression had the arrest warrant been suppressed. However, in light of the other evidence presented—including Applicant's DNA at the scene and in Doucet's car, his Facebook posts establishing motive, and Doucet's testimony implicating Applicant (which was partially corroborated by Walker, Seabrook, and Rice)—this Court finds it is not reasonably likely the outcome would be different had the flight evidence been suppressed.

¹³ Green v. Sanchez, CA No. 2:21-cv-1376-RMG-MGB. This case has been held in abeyance pending the outcome of this PCR matter.

12 

Sanchez testified about his interviews of Lanica Walker¹⁴ (Depo 24-26), Terrance Seabrook, (Depo 18-20, 23) and Kendyl Rice (Depo 18-20, 23); and the forensic evidence recovered from Doucet's vehicle. This deposition testimony did not establish that the allegations about witnesses or the forensic evidence in the affidavit were false.¹⁵

Although Detective Sanchez's trial and deposition testimony establish Detective Sanchez did not have Applicant's phone records when he filled out the arrest warrant affidavit, Detective Sanchez provided an explanation for that in his deposition. This Court does not make any credibility findings related to Detective Sanchez because Detective Sanchez did not testify before this Court. *Assuming arguendo* Detective Sanchez's allegation related to the phone records rises to the level of a "deliberate falsehood or reckless disregard for the truth," this Court finds that if the sentence "*Defendant's cell phone records indicate that he was on Bailey Street during the time of the incident and match the witness description and timeline of events*" is stricken from the affidavit, probable cause remains for the arrest. Thus, Applicant did not meet his burden of proving a Franks challenge would have been successful, and he did not prove prejudice.

Ineffective Assistance of Appellate Counsel

Applicant contends appellate counsel was ineffective for not raising preserved issues related to a Fourth Amendment violation and a Brady violation. This Court finds Applicant did not prove appellate counsel was ineffective.

¹⁴ Pertinently, Detective Sanchez testified Walker provided the name "Kone" as the person that Doucet said he picked up from the home who had "blood on him" and said "he just killed his cousin and that he shot him in the house." (Depo 24-26). Detective Sanchez clarified he knew Applicant's nickname was Kone based on Facebook and "I think it was on some police records as far as like a nickname or a moniker that was listed for him."

¹⁵ This Court does not make any credibility findings related to Detective Sanchez because he did not testify before this Court. This Court simply finds this deposition transcript does not establish that these allegations were false. Applicant did not submit any other evidence before this Court to establish these allegations were false and thus did not meet his burden in this regard.

A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745 (1983). “For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy. . .” Jones, 463 U.S. at 754.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Fourth Amendment violation

Applicant’s Fourth Amendment violation claim centers on his claim related to an alleged Franks violation. At the PCR hearing, Appellate Defender Wanda Carter testified she did not raise this issue because she did not believe it was meritorious. She explained the threshold for probable cause is low, she reviewed this arrest warrant, and this didn’t stand out as a meritorious issue. Carter testified she reviewed the entire record and filed an Anders brief because she did not see any issues worthy of raising on appeal.

This Court finds Carter articulated a valid reason for not raising this issue in that she did

14 

not believe it was meritorious. Although trial counsel did not move pretrial to suppress the arrest warrant, counsel *did* move to suppress recorded jail visits and jail calls for various reasons, including that (1) the State did not obtain a search warrant to obtain the videos and calls, and (2) the recorded visits and jail calls were fruits of the poisonous tree because the search warrant affidavit falsely stated Detective Sanchez had Applicant's phone records. (R. 363, 369, 384). This Court finds Carter correctly determined these were not meritorious issues.

Initially, an inmate has no reasonable expectation to privacy in calls while incarcerated—especially when he knows is being recorded. See United States v. Van Poyck, 77 F.3d 285, 290 (9th Cir. 1996) (“The Fourth Amendment is not triggered unless the state intrudes into an area in which there is a constitutionally protected reasonable expectation of privacy.”); United States v. Castellanos, 716 F.3d 828, 832 (4th Cir. 2013) (providing that in order to have a legitimate expectation of privacy, one must have a subjective expectation of privacy that is objectively reasonable, i.e., one that society is willing to recognize as reasonable); Van Poyck, 77 F.3d at 290-91 (providing prisoners have neither a subjective nor an objective expectation of privacy in calls made on prison telephones); id. at 290 (providing a prisoner does not have a subjective expectation of privacy when the prisoner is notified that his calls are being monitored); id. at 290-91 (providing no prisoner should reasonably expect privacy in outbound calls due to the severe curtailing of other privacy rights by virtue of being imprisoned); see also United States v. Clark, 651 F. Supp. 76, 81 (M.D. Pa. 1986) (finding prisoners do not have a legitimate expectation of privacy in prison calls because prisons routinely monitor and record phone conversations to enhance security). Likewise, the record indicates Applicant was aware that the visits were recorded; thus, he did not have a reasonable expectation of privacy in those conversations. (R. 363). Thus, Carter correctly concluded this issue lacked merit.

15 

Further, trial counsel's Franks objection was limited to Detective Sanchez's misstatement that he had the phone records when he signed the affidavit. However, as this Court has found, the affidavit contained sufficient probable cause without the sentence about the phone records. Based on the foregoing, it is not reasonably likely this conviction would have been reversed had these issues been raised. Thus, Applicant did not prove deficiency or prejudice.

Brady Violation

Applicant asserts appellate counsel was ineffective for not raising on appeal an issue related to a Brady violation. This Court finds Applicant did not meet his burden.

At trial, the following exchange occurred during the State's recross-examination of Detective Sanchez:

Q. Detective Sanchez, I kind of want to go through a couple of the points that the Defendant brought up. Witness Kendyl Jerome Rice were you in here earlier in the week when he was testifying?

A. I was.

Q. Okay. Now you interviewed him.

A. I did.

Q. All right. Did you show him at any point a photographic lineup?

A. I did.

Q. And did that lineup include a picture of the Defendant?

A. It did.

Q. Was he able to identify the Defendant as the person that he saw that night?

A. No, he was not.

(Tr. 627). Counsel objected and approached the bench. The Court sustained the objection, and trial counsel then told the Court she had a matter of law. Later, the parties put the following on the record from the bench conference:

[Trial counsel]: Judge, I was not given any photographic lineup that was shown to Kendyl Rice. I wanted—

The Court: —nor was any introduced in the trial of this case.

[Trial counsel]: I understand that, Your Honor. But if there was such a lineup and a lineup was completed and not disclosed to me I absolutely would have questioned Mr. Rice about that lineup especially given that it was so close in time to the crime.

The Court: The only time that was brought up was with the testimony of Mr. Sanchez. It was not elicited during Mr. Rice's testimony either by the State. The State in direct examination of Mr. Sanchez asked about it.

Solicitor let me hear from you on this because my understanding is you went back and he confirmed that there was such a thing.

[Solicitor]: Your honor, it got a little confusing. I believe the discovery mentions a photographic lineup. I don't believe we've ever received a photographic lineup and I honestly don't know whether one exists or not.

The Court: You have none in your file?

[Solicitor]: Not to my knowledge, Your Honor. Of course I'm going to go back and comb through it but I don't remember ever seeing one.

The Court: Well, the defense attorney is right if there had been one you had a duty you understand under Rule 5—

[Solicitor]: —yes, your Honor—

The Court: —and under Brady if it was to any extent it was exculpatory. I don't see any prejudice to that at the bench when she raised the issue to me during the objection during the examination of Detective Sanchez because he was asked was he shown a lineup and he couldn't pick anybody out from the lineup.

So I don't think there is any prejudice from the Defendant for the way the jury was given the information. I don't know whether or not there is any exculpatory language. The solicitor tells me he doesn't have a photo lineup at this state that he knows of. And he believes he has given you all the discovery materials. So to the extent your motion now says that you want some relief, I assume a mistrial as a result of this, your motion is respectfully denied.

(Tr. 698-99).

17 

At the PCR hearing, Applicant alleged the State's failure to disclose the lineup violated his Brady rights, and appellate counsel should have raised this issue on appeal. Appellate counsel testified she reviewed the transcript and filed an Anders brief because she did not see any issues worthy of raising on appeal.

This Court finds counsel articulated a valid reason for filing an Anders brief in that she did not see any issue worthy of raising and thus finds counsel was not deficient. This Court further agrees with counsel's assessment that this was not a reversible issue. Assuming arguendo the lineup existed and the State failed to disclose it, this Court finds the trial court properly found Applicant cannot show prejudice because *the testimony presented to the jury indicated Rice did not select Applicant from a lineup that contained Applicant's picture*. Thus, to the extent this was exculpatory, it was presented to the jury, and this Court finds it is not reasonably probable an appellate court would have reversed this issue on appeal. See State v. Gathers, 295 S.C. 476, 481, 369 S.E.2d 140, 143 (1988) ("The State's failure to disclose information warrants a reversal as a Brady violation only if the omission deprived the defendant of a fair trial."); id. (finding defendant did not prove prejudice from alleged Brady violation when defendant effectively impeached witness at trial using the alleged undisclosed evidence); State v. Jones, 325 S.C. 310, 322, 479 S.E.2d 517, 523 (Ct. App. 1996) ("We agree with the trial judge's finding that Appellants have demonstrated no prejudice resulting from the State's failure to reveal Doe's new statement. Counsel was in fact able to impeach Doe about the new allegation by introducing her prior statement into evidence and asking her about the discrepancy. Accordingly, the trial judge did not abuse its discretion in denying the motion for a mistrial.").

Prosecutorial Misconduct

When alleging prosecutorial misconduct, an applicant bears the burden of proof. Alabama v. Smith, 490 U.S. 794 (1989). Although a PCR applicant may present a claim based on constitutional violations other than ineffective assistance of counsel, such constitutional violations may only be alleged if the issue could not have been raised at trial or on direct appeal. Gibson v. State, 329 S.C. 37, 41 496 S.E.2d 426, 428 (1998); S.C. Code Ann. § 17-27-20(B) (providing the PCR Act “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court”); S.C. Code Ann § 17-27-90; Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“[A]n application for post-conviction relief is not a substitute for an appeal.”); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel.”); but see Fortune v. State, 428 S.C. 545, 559, 837 S.E.2d 37, 44 (2019) (addressing issue of prosecutorial misconduct that implicated due process and was not adequately raised as a claim of ineffective assistance of counsel).

As a threshold matter, this Court finds these allegations of prosecutorial misconduct are not properly alleged because they could have raised at trial or on appeal. This Court thus finds they should be dismissed for failing to state a cognizable PCR claim. Nevertheless, this Court will address these allegations out of an abundance of caution.

Brady violation

Applicant’s claim of a Brady violation related to prosecutorial misconduct relates to his allegation that the solicitor did not disclose an exculpatory lineup presented to Rice. This Court incorporates herein its argument set forth above related to Applicant’s failure to demonstrate prejudice here where the information that Rice did not select Applicant from a lineup was in fact

presented to the jury. This Court further finds Applicant did not show any lineup actually was presented to Rice—and thus did not meet his heavy burden of proving prosecutorial misconduct. Specifically, at trial, counsel herself stated,

One quick matter, I wanted to clarify for the record, there was a mention of a possible lineup with the witness Kendall Rice. I just wanted to put it out there that it was mentioned in the discovery that one was complied for him. *It's my understanding that it wasn't actually shown to him due to his saying that he didn't get a good look at the suspect and we done have one and it's my understanding there wasn't one, Your Honor.*

(Tr. 712-13, emphasis added). At the PCR hearing, the solicitor testified that after reviewing the file, he did not believe Rice was ever presented the lineup because Rice did not get a good look at the person. This court finds this testimony—which is consistent with what trial counsel stated to the trial judge—to be credible. This Court further finds Applicant has failed to prove a Brady violation related to the lineup, and this claim is denied.

Closing argument

Applicant next contends the prosecutor engaged in misconduct by making the following statements during closing argument: “I think y’all know what to do. It’s time to find him guilty.” (Tr. 732-33). Applicant did not prove this ground.

“A solicitor's closing argument must not appeal to the personal biases of the jurors. In addition, the argument may not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it.” State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). “A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.” Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010). “On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's

20 

instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt.” Id. “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Id. “The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id.

This Court finds Applicant has not shown this statement was improper. Specifically, this Court finds the foregoing did not appeal to personal biases of the jury or arouse its passions and prejudices. Applicant has failed to present any valid legal objection to this argument and thus failed to meet his burden of proving it was improper. Cf. Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) (“[T]he PCR court erred in finding trial counsel ineffective for failing to object to the jury instruction when no case law existed rendering the instruction improper per se.”). Further, even if improper, this mere passing statement did not violate due process. See Vasquez, 388 S.C. at 458, 698 S.E.2d at 566 (“The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.”). Applicant thus did not meet his burden, and this claim is denied.

Closing argument – Improper Vouching

Applicant next contends the solicitor improperly vouched for Sanchez by arguing he was overworked and that he wasn't lying. Specifically, he contends the following was improper:

Ms. Stewart would like you to believe that Detective Sanchez here just got up here and lied about everything involving this case. There's a difference between willful lying about something and being mistaken about certain things in this case. He works for the North Charleston Police Department. He works in the persons crime unit. He is one of six detectives that handles all of these kinds of cases. They are overworked. That does not excuse what happened

in this case, but it shows that he's human, he's overworked, mistakes were made. But that's what these are, mistakes; these are not lies. He's not getting up there and lying.

(Tr. 745-46). Applicant did not prove this ground.

“A prosecutor arguing forcefully during closing argument that the jury should believe a particular witness is well within her proper role as a zealous advocate, so long as the argument is based on evidence admitted during trial.” State v. Busse, 439 S.C. 104, 109, 886 S.E.2d 208, 211 (2023). “Zealous advocacy crosses the line and becomes improper vouching, however, when the prosecutor indicates to the jury—even implicitly—that her argument as to the credibility of a witness is based on anything other than the evidence admitted.” Id. at 109, 886 S.E.2d at 211. “[A] prosecutor is expected to comment on the credibility of the witnesses when making a closing argument. Far from improper, . . . doing so is one of the fundamental responsibilities of a lawyer.” Id. at 111, 886 S.E.2d at 212).

As a threshold matter, the foregoing was based on reasonable inferences from the record and did not constitute improper vouching. Specifically, Detective Sanchez testified he initially subpoenaed the wrong phone records and did not realize his mistake until later because he handled a high volume and “sometimes things get lost in the mix.” He explained, “And this is one of the unfortunate moments when that happens.” (Tr. 576-77). On cross-examination, he admitted he made some mistakes in this investigation after being questioned about his preliminary hearing testimony. (Tr. 599). On redirect, Detective Sanchez reiterated he was one of six detectives in North Charleston, they were overworked, and there was room for improvement. (Tr. 629). Based on the foregoing, the solicitor's argument was a reasonable inference from the evidence and not improper vouching.

Further, the foregoing argument did not so infect the trial with unfairness as to violate due

22 

process. See Vasquez, 388 S.C. at 458, 698 S.E.2d at 566 (“The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.”). Critically, this argument was made in response to trial counsel’s closing argument—where she vigorously accused Sanchez of lying. (Tr. 737-38). See Tappeiner v. State, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016) (“[C]ourts may occasionally apply the “invited reply” doctrine, and find that although a solicitor's closing argument was inappropriate, it was responsive to statements or arguments made by the defense, and thus did not deny the defendant due process.”). This argument must, therefore, be weighed along with trial counsel’s argument in determining its overall effect on the fairness of the trial. Overall, this brief argument did not so infect the trial with unfairness as to violate due process. See Darden v. Wainwright, 477 U.S. 169 (1986) (finding solicitor’s improper comments—which included statements such as “He shouldn’t be out of his cell unless he has a leash on him and a prison guard a the other end of that leash” and “I wish that I could see him sitting here with no face, blown away by a shotgun”—did not so infect the trial with unfairness as to violate due process). Thus, this claim is denied.

Dishonest and deceptive – Closing argument

Applicant next contends the prosecutor was “dishonest and deceptive” when he argued, “I want to make something clear about Terrace Doucet, I’ve given him no deal. I want that to be clear. He has not received a deal from us.” (Tr. 746). This Court finds Applicant did not prove prosecutorial misconduct in this regard.

Initially, this Court finds the solicitor was not lying when he made this statement. At the PCR hearing, the solicitor explained what a proffer agreement is used for and credibly testified a proffer agreement is not a deal. This Court finds Applicant did not show the prosecutor was being dishonest and deceptive. Further, to the extent this can be construed as an allegation of improper

vouching, Doucet testified he did not have a deal with the State and the State had not promised him anything in exchange for his testimony. (Tr. 171, 186-90). Thus, the argument was based on the evidence and did not constitute improper vouching. Finally, this comment, in context, did not so infect the trial with unfairness as to violate due process. This claim is thus denied.

Deceptive and dishonest – Told defense would not use cell records at trial

Finally, Applicant contends the solicitor was deceptive and dishonest because he told trial counsel he would not use cell records at trial. Applicant did not prove this ground.

At the PCR hearing, the solicitor testified Detective Sanchez initially put the wrong dates in the subpoena for cell phone records. When the solicitor realized this mistake, he asked Detective Sanchez to issue a corrected warrant. The solicitor stated he notified the defense one or two months before trial that he had obtained corrected records. Trial counsel likewise testified she discussed the phone records with the solicitor prior to trial. Although trial counsel recalled the discovery did not contain a lineup that was presented to Rice, she did not recall anything else surprising at trial.

This Court finds the foregoing testimony by the solicitor and trial counsel credible. Based on this credible testimony, this Court finds Applicant has not shown the solicitor was deceptive or dishonest. Applicant thus did not meet his burden of proof, and this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, 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

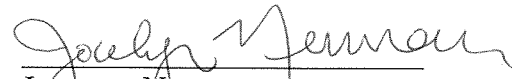
24 

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED THIS 3rd day of April, 2024. ⁵


JOCELYN NEWMAN
Presiding Judge
Ninth Judicial Circuit

Columbia, South Carolina

If you find the Defendant Not Guilty of Murder, and Not Guilty of Second Degree Arson, you must find the Defendant Not Guilty in Question 3.

3. We the Jury, by unanimous consent, find Gregory Kyle Green on the charge of Possession of a Weapon during the Commission of a Violent Crime in Indictment number 2017-GS-10-06994.

Guilty of Possession of a Weapon during the Commission of a Violent Crime

OR

Not Guilty of Possession of a Weapon during the Commission of a Violent Crime



FOREPERSON

November 7, 2019
Charleston, South Carolina.

Please indicate your finding by filling out the appropriate line and certify this finding by the foreperson's signature. Once you have done so, please knock on the door and inform the bailiff that you have reached a verdict.

COUNTY OF CHARLESTON

STATE VS.

GREGORY KYLE GREEN

AKA: Gregory Kyle Green, Gregory Green

Race: Black/African American Sex: M

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL# [redacted] SID# [redacted]

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Murder

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

T. Richard Waring 100465
T. Richard Waring, Assistant Solicitor SC Bar #

Jayla Akerman 1974
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 40 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2017-ES-10-06994

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: _____ \$ _____ Obtain GED

Payment Terms: _____ Attend Voc. Rehab. Or Job Corp. _____

Set by SCDPPPS _____ May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling

*Fine: _____ \$ _____ Random Drug/Alcohol Testing

§14-1-206 (Assessments 107.5%) \$ _____ Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100 prmts. of \$ _____ Beginning _____

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____ \$ _____ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ _____ Other: _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 9.75

TOTAL \$ 128.75

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: Sallie Todd

Presiding Judge: [Signature]
Judge Code: 2122
Sentence Date: November 7, 2019

PERRY M. BUCKNER

COUNTY OF CHARLESTON

STATE VS.

GREGORY KYLE GREEN

AKA: Gregory Kyle Green, Gregory Green

Race: Black/African American Sex: M

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL# [redacted] SID# [redacted]

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials) Negotiated Sentence, Recommendation by the State.

The plea is: Without Negotiations or Recommendation,

ATTEST: *[Signature]*
T. Richard Waring, Assistant Solicitor

100465
SC Bar # Defendant

[Signature]
Attorney for Defendant SC Bar # 101974

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2017-25-10-06923

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$ _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso (Public Def/Probation)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: *[Signature]*
Court Reporter: Sallie Todd

Presiding Judge: *[Signature]*
Judge Code: 2122
Sentence Date: November 7, 2019

PERCY M. BUCKNER

TRW/0332339
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2017-016967

ARREST WARRANT NUMBER

2017A1010203946

DATE OF ARREST

07/12/2017

ACTION OF GRAND JURY

TRIPLE BILL

For person of Grand Jury DEC 05 2017 Date:

VERDICT

GUILTY

For person of Petit Jury

Date:

11/2/19

DOCKET NO. 2017-GS-10-06993

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

DECEMBER TERM 2017

THE STATE

VS.

GREGORY KYLE GREEN

B/M DOB: [REDACTED]

Indictment for

MURDER

SC Code: § 16-03-0010

CDR Code: 0116

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened December 2017, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County, South Carolina on or about June 8, 2017, the defendant, Gregory Kyle Green, feloniously, willfully and with malice aforethought, did kill and murder Freeman Rivers by means of inflicting gunshot wounds to the head, and Freeman Rivers did die in Charleston County as a proximate result thereof on or about June 8, 2017; in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


T. RICHARD WARING
ASSISTANT SOLICITOR

TRW/0332339
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2017-016967

ARREST WARRANT NUMBER

2017A1010203947

DATE OF ARREST

07/12/2017

ACTION OF GRAND JURY

TRUE BILL

J.R.C.
Foreperson of Grand Jury DEC 05 2017 Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-10-06994

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

DECEMBER TERM 2017

FILED

12/7/2017 2:32:31 PM

JULIE J. ARMSTRONG
CLERK OF COURT

THE STATE

VS.

GREGORY KYLE GREEN

B/M DOB: [REDACTED]

Indictment for

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME**

SC Code: § 16-23-0490

CDR Code: 0549

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened December 2017, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about June 8, 2017, the Defendant, Gregory Kyle Green, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Murder; in violation of Section 16-23-490, 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.


T. RICHARD WARING
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

Indictment No(s):
) Warrant No(s): 2017A1010203946; 2017A1010204034;
2017A1010203947; 2017A1010203948
Charge(s): Drugs / Possession of less than one gram of
meth. or cocaine base, 1st offense; Murder / Murder;
Weapons / Poss. weapon during violent crime, if not also
sentenced to life without parole or death; Arson / Arson -
Second degree

STATE OF SOUTH CAROLINA

) REQUEST PURSUANT TO SC RULES
) OF CRIMINAL PROCEDURE - RULE 5&6

vs.

Gregory Kyle Green

Defendant

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense all documents, tangible objects, reports of examinations and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests the Solicitor to produce all evidence, including any police recordings, favorable to the Defendant, subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

This request is a continuing request for all such discoverable information as it becomes known to the Solicitor or any Prosecution Agents.

The Defendant hereby asserts his Fifth and Sixth Amendment rights to remain silent and does not wish to be questioned in the absence of counsel, pursuant to Montejo v. Louisiana, 129 S.Ct. 2079(2009), and Edwards v. Arizona, 451 U.S. 477 (1981). This shall serve as notice to any law enforcement personnel as well as anyone working with the Solicitor's Office.

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of persons within the chain of custody of all physical evidence.

Respectfully Submitted,



Taylor Seman
Bar #: 101974
Attorney for Defendant

FILED
JUL 14 PM 2:49
CLERK OF COURT
BY [Signature]

Charleston, South Carolina
Dated: 7/13/17

CERTIFICATE OF SERVICE

I hereby certify that this Rule 5 Motion was served on the Solicitor for the Ninth Judicial Circuit on

7/14/17

CONSENT TO VIDEO CONFERENCING

Green-Gregory

Name of Defendant

Warrant/Ticket Numbers

Type of Proceeding:

- Initial Appearance (non-capital case)
- Bond Hearing
- Preliminary Hearing
- Contested Motion
- Guilty Plea and Sentencing (Magistrate's/Municipal Court Offense)

County of Charleston

- Trial Court: General Sessions
- Magistrate Court
- Municipal Court

By my signature below, I, the defendant, consent to the use of video conference equipment in this criminal proceeding. The court will maintain the videotape of these proceeding for a period of thirty (30) days from today's date, after which the videotape may be destroyed. I have been fully informed of my rights to be personally present before the court for this proceeding and with that knowledge, I voluntarily waive that right.

Attorney for Defendant

X *[Signature]*
Signature of Defendant

The defendant waived his rights to personally appear at this criminal proceeding both orally and by writing.

Appearance or hearing date

[Signature]
Signature of Judge:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE CENTRALIZED BOND COURT FOR
) CHARLESTON COUNTY
) Warrant No(s): 2017A1010203946,
2017A1010203948, 2017A1010203947
) Charge(s): Murder, Arson 2nd Degree, Poss
Knife/Firearm During a Violent Crime

STATE OF SOUTH CAROLINA

vs.

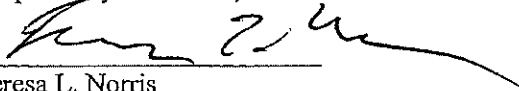
Gregory Kyle Green ,

Defendant

)
)
) **REQUEST TO WAIVE**
) **APPEARANCE AT BOND HEARING**
)
)
)
)
)
)
)

The Defendant, by and through undersigned counsel, respectfully requests to waive his bond hearing at Centralized Bond Court on the charges enumerated above. The Defendant makes this request with the knowledge that a Magistrate Judge cannot set bond on his offenses due to {the potential punishment of life imprisonment.} Since bond cannot be set on these offenses by a Circuit Court Judge until a later date, the Defendant requests that he not be required to make an appearance on this date at Centralized Bond Court.

Respectfully Submitted,



Teresa L. Norris
Attorney for Defendant
Charleston County Public Defender's Office

Charleston, South Carolina
Dated: July 12, 2017

IN THE STATE OF SOUTH CAROLINA FILED IN THE COURT OF GENERAL SESSION

COUNTY OF CHARLESTON, 2017 AUG 11 AM 11:38

JULIE J. ARMSTRONG
CLERK OF COURT

BY MA 9TH CIRCUIT

GREGORY K GREEN WARRANT, NO: 3946, 3947

DEFENDANT WARRANT NO: 17-A-1010203948

AFFIDAVIT NO: 17-016967

RE: MOTION FOR DISMISSAL, UNDER 17-13-50

THEREFORE NOW COMES DEFENDANT IN A PRO-SE MOTION, ASKING THIS HONORABLE COURT TO DISMISS THIS WARRANT, BECAUSE AFFIDAVIT STATES UNTRUE REASON, FOR GROUNDS OF ARREST, §17-13-50

THIS AFFIDAVIT STATES 2ND DEGREE ARSON, THEN IN THE AFFIDAVIT ITS SELF, IT STATES 3RD DEGREE ARSON.

THE AFFIANT UNDER OATH HAS STATED 3RD DEGREE ARSON, THIS IS A UNTRUE GROUND FOR ARREST, AND WARRANT SHOULD BE DISMISSED AS BIAS AND PREJUDICE, AND THE MURDER WARRANT STATES UNTRUE REASON FOR ARREST AND THE POSS- OF WEAPONS ALSO. THE PHONE RECORDS INDICATES HE WAS ON BAILEY ST, THIS IS A UNTRUE REASON FOR ARREST. THIS AFFIANT UNDER OATH HAS STATED THE RECORDS INDICATES HE WAS

PAGE 1 OF 2.

Gregory K Green
DEFENDANT

ON BAILEY ST. ANY PHONE CAN SHOW THE AREA, BUT NOT THE STREET. AFFIANT UNDER OATH HAS STATED UNTRUE REASONS FOR ARREST. §17-13-50 STATES THE REASON AND CHARGE FOR UNTRUE STATEMENTS.

WHEREFORE DEFENDANT PRAYS THAT THIS MOTION IS GRANTED IN THE INTEREST OF JUSTICE. DEFENDANT AWAITS HIS DAY IN OPEN COURT.

James K G
DEFENDANT

PROOF OF SERVICE

BEING DULY SWORN, I STATE AND DEPOSE THAT ALL IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, WHERE STATED TO BE TRUE AND CORRECT.

FILED
2017 AUG 11 AM 11:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY: MR

James K G
DEFENDANT

Dear clerk of court,

Please clock stamp this motion in your file book and return a clocked copy to me for my records.

and if possible, serve the solicitor a copy and one copy to the Admin, judge.

Thanking you in advance
I Remain

Dug Linn

FILED
2017 AUG 11 AM 11:38
JILL E. ARMSTRONG
CLERK OF COURT
BY MLF

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
STATE OF SOUTH CAROLINA)
)
v.)
)
GREGORY KYLE GREEN,)
)
Defendant.)
_____)

**IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT**

Warrant No(s): 2017A1010203946,
2017A1010203947, 2017A1010203948,
2017A1010204034, W10170363

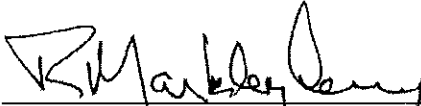
Charge(s): murder, possession of a weapon
during the commission of a violent crime,
arson (second degree), possession of less than
1 gram of cocaine base, probation violation

ORDER SETTING BOND

After motion of Defendant's attorney, Defendant's bond on all charges is set at a global \$200,000. Conditions of Defendant's bond are the following:

- Defendant is under 24-hour house arrest. However, Defendant is permitted to work, visit his lawyer and probation officer, attend court appearances, and tend to his medical needs.
- The conditions of Defendant's probation are modified and Defendant's probation is converted to intensive status. Defendant will report weekly and will be subject to random drug and alcohol testing at the discretion of his agent. Any violation of Defendant's conditions of probation will constitute a violation of Defendant's bond.
- Defendant may have no contact, directly or indirectly, with the victim's family members.
- All original bond conditions remain in effect.

IT IS SO ORDERED.



The Honorable R. Markley Dennis
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina
February 6, 2018

FILED
2018 FEB -6 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY PH

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)
v.)
GREGORY KYLE GREEN,)
Defendant.)

**IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT**

**Warrant Numbers: 2017A1010203946,
2017A1010203947, 2017A1010203948,
2017A1010204034**

**Charges: Murder, Possession of a Weapon
During the Commission of a Violent Crime,
Arson (Second Degree), Possession of Cocaine
Base**

SCHEDULING ORDER

Defendant's attorney submits this consent scheduling order for the Court's consideration:

1. On July 11, 2017, Defendant was arrested and charged with Murder, Possession of a Weapon During the Commission of a Violent Crime, Arson (Second Degree), and Possession of Cocaine Base.
2. The parties agree that more time is necessary in order to obtain additional discovery from the South Carolina Law Enforcement Division.
3. Defendant's attorney, with the consent of Assistant Solicitor Waring, asks that this case be scheduled for a trial not before August 1, 2019.

After Defendant's motion, with Assistant Solicitor Waring's consent, it is hereby ORDERED that this case be scheduled for a trial not before August 1, 2019.

AND IT IS SO ORDERED!

R Markley Dennis, Jr.
The Honorable R. Markley Dennis, Jr.
Chief Administrative Judge
Ninth Judicial Circuit

BY: *[Signature]*
JULIUS STRONG
CLERK OF COURT
2019 MAR 11 AM 11:09

FILED

[Handwritten initials]

I SO MOVE:

Taylor J. Seman

Taylor J. Seman, Attorney for Defendant

I CONSENT:

Richard Waring

Richard Waring, Assistant Solicitor

RMS

FILED

2019 MAR 11 AM 11:09

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

ML

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

FILED

2019 APR 5 AM 10:45

STATE OF SOUTH CAROLINA

**MOTION FOR BOND REVOCATION
OR MODIFICATION**

JULIE J. ARMSTRONG
CLERK OF COURT

vs.

BY MH Arrest Warrant #2017A1010203946-3948;
2017A1010204034

GREGORY KYLE GREEN,

DEFENDANT.

TO: TAYLOR JOY SEMAN, ATTORNEY FOR GREGORY KYLE GREEN

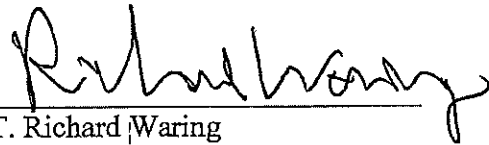
Please take notice that as soon thereafter as this matter can be heard, the State in the above-entitled case will move before the Presiding Judge of the Court of General Sessions for a bond revocation.

The motion is based upon the following:

1. Defendant in the above captioned matter was charged with Murder, Possession Of A Weapon During The Commission Of A Violent Crime, and Arson, Second Degree on July 11, 2017. He was released from incarceration on March 9, 2018, upon posting a \$200,000 bond. A condition of the Defendant's bond was that he be of "good behavior." The Defendant's bond order also stated that any "violation of Defendant's conditions of probation will constitute a violation of Defendant's bond."
2. On April 8, 2019, the U.S. Marshal's Task Force responded to the Defendant's house, looking for a fugitive wanted on federal probation. Drugs were located in the house, and the Defendant admitted to flushing drugs down the toilet. Guns were also found in the house that were considered to be constructively possessed by the Defendant. On April 11, 2019, the South Carolina Department of Probation and Parole arrested the Defendant on a probation violation warrant for the aforementioned violations of his probation. He was released the following day on a \$150,000 bond. These probation violations are therefore a direct violation of the Defendant's bond order.


3. The State is cognizant of the presumption of innocence that this Defendant and all persons charged with criminal acts are afforded. The State submits, however, that a magistrate court found probable cause to believe the Defendant has violated the criminal laws of this state. Therefore, the State submits there is probable cause to believe that the Defendant violated the "good behavior" requirement of the bond contract in the above captioned matter.
4. The State submits that Defendant is an unreasonable danger to the community considering: (1) the seriousness of the offenses for which he was granted bail; and (2) his willful violation of his bond order.
5. The State is requesting that the defendant's bond in the above captioned matter be revoked or, in the alternative, substantially increased, due to his continuous disregard for the law and dangerousness to society.

Respectfully Submitted,



T. Richard Waring
Assistant Solicitor
Ninth Judicial Circuit

Charleston, South Carolina
April 15, 2019

FILED
2019 APR 15 AM 10:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

FILED

State of South Carolina,

2019 MAY 17 PM 4:06

ORDER

Vs.

JULIE J. ARMS, CLERK OF COURT
SETTING/REDUCING/REVOKING/MODIFYING
BOND

Gregory Kyle Gness
DEFENDANT,

Case #(s): 2017A1010203946-948
2017A1010204034

THIS MATTER came before the Court on 5-17-19, for the purpose of setting/reducing/revoking/modifying/reviewing bond.

The Defendant was (circle one) present. The following attorney appeared on behalf of the Defendant Taylor Seman. The State was represented by Thomas Worney of the Solicitor's Office.

The Defendant is charged with the following offense(s): Murder; Possession Weapon
Durmg Violent crime; Arson - 2nd Degree; Possession of less
than one gram of meth or cocaine base, 1st offense

After hearing from the Defendant and the State, the Court finds it appropriate, and it is therefore ORDERED, ADJUDGED, AND DECREED that:

 Bond is denied/waived (circle one) at this time with leave for defense counsel to file a written motion for bond.

Motion for bond reduction/revocation/modification/review (circle one) is denied/granted at this time.

 A Personal Recognizance Bond in the amount of \$ _____.

 A Surety Bond in the amount of \$ _____ is set at this time; and the Defendant is/is not (circle one) allowed to post 10%.

 Bond is reduced/modified from \$ _____ to \$ _____ and does/does not (circle one) include other pending charges. It is further

ORDERED, ADJUDGED, AND DECREED, that the following are imposed as conditions of this bond:

AND IT IS SO ORDERED!

DR Jago
PRESIDING JUDGE, 9TH JUDICIAL CIRCUIT

Charleston, South Carolina
DATE: 5-17-19

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
)
 STATE OF SOUTH CAROLINA) INDICTMENT #: 2017GS1006993-6995
)
 v.) CHARGE: Murder; Poss. Weapon during
) Comm. of a Violent Crime; Arson 2nd Degree
 GREGORY KYLE GREEN,)
) S.C. CODE § 19-5-520 NOTICE
 Defendant.)
 _____)

FILED
 2019 SEP 16 PM 2:37
 JAMES L. ARMSTRONG
 CLERK OF COURT
 BY [Signature]

TO: TAYLOR STEWART, ESQ.

PLEASE TAKE NOTICE that at the trial of the above entitled action, the State intends to introduce the Defendant's Facebook records, the victim's phone records, and the co-defendant's phone records pursuant to S.C. Code §19-5-520, which allows the introduction of business records without extrinsic evidence of authenticity.

As required per §19-5-520, custodians of record are providing certificates of authenticity regarding those records. These certificates fulfill the requirements of SCRE 803(6), as required by §19-5-520. Therefore, assuming the State can establish the relevancy of all of those records, the State will seek to admit them without having to call a custodian to establish authenticity.

Richard Waring

Richard Waring
 Assistant Solicitor
 Ninth Judicial Circuit

Charleston, South Carolina
 Dated: September 16th, 2019

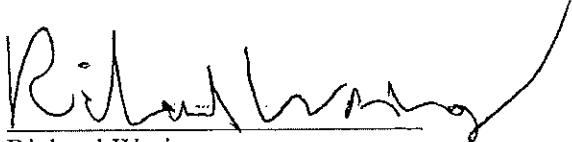
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
)	
STATE OF SOUTH CAROLINA	)	INDICTMENT #: 2017GS1006993-6995
)	
v.	)	CHARGE: Murder; Poss. Weapon during
	)	Comm. of a Violent Crime; Arson 2 nd Degree
GREGORY KYLE GREEN,)	
	)	S.C. CODE § 19-5-520 NOTICE
Defendant.)	
_____)	

TO: TAYLOR STEWART, ESQ.

PLEASE TAKE NOTICE that at the trial of the above entitled action, the State intends to introduce the Defendant's phone records pursuant to S.C. Code §19-5-520, which allows the introduction of business records without extrinsic evidence of authenticity.

As required per §19-5-520, custodians of record are providing certificates of authenticity regarding those records. These certificates fulfill the requirements of SCRE 803(6), as required by §19-5-520. Therefore, assuming the State can establish the relevancy of all of those records, the State will seek to admit them without having to call a custodian to establish authenticity.

FILED
 2019 OCT -2 PM 2:48
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY


 Richard Waring
 Assistant Solicitor
 Ninth Judicial Circuit

Charleston, South Carolina
 Dated: October 2, 2019

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA) INDICTMENT #: 2017GS1006993-6995

2019 OCT 16 AM 10:23
2019 OCT 15 AM 10:23
2019 OCT 15 AM 10:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY RAH

v.

) CHARGE: Murder; Poss. Weapon during
) Comm. of a Violent Crime; Arson 2nd Degree

GREGORY KYLE GREEN,

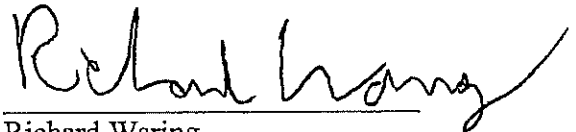
) S.C. CODE § 19-5-520 NOTICE

Defendant.

TO: TAYLOR STEWART, ESQ.

PLEASE TAKE NOTICE that at the trial of the above entitled action, the State intends to introduce the phone records for the phone number of 843-200-7909 pursuant to S.C. Code §19-5-520, which allows the introduction of business records without extrinsic evidence of authenticity.

As required per §19-5-520, custodians of record are providing certificates of authenticity regarding those records. These certificates fulfill the requirements of SCRE 803(6), as required by §19-5-520. Therefore, assuming the State can establish the relevancy of all of those records, the State will seek to admit them without having to call a custodian to establish authenticity.



Richard Waring
Assistant Solicitor
Ninth Judicial Circuit

Charleston, South Carolina
Dated: October 16, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

FILED

2019 OCT 21 PM 12:18

STATE OF SOUTH CAROLINA

**MOTION FOR EMERGENCY BOND
MODIFICATION**

vs.

W. J. ARMSTRONG
CLERK OF COURT

GREGORY KYLE GREEN,

Arrest Warrant #2017A1010203946-3948;
2017A1010204034

DEFENDANT.

TO: TAYLOR JOY SEMAN, ATTORNEY FOR GREGORY KYLE GREEN

Please take notice that as soon thereafter as this matter can be heard, the State in the above-entitled case will move before the Presiding Judge of the Court of General Sessions for a bond revocation.

The motion is based upon the following:

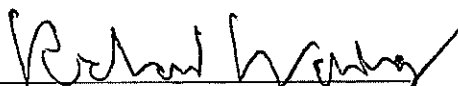
1. Defendant in the above captioned matter was charged with Murder, Possession Of A Weapon During The Commission Of A Violent Crime, Arson Second Degree, and Possession of Cocaine on July 11, 2017. He was released from incarceration on March 9, 2018, upon posting a \$200,000 bond. A condition of the Defendant's bond, which was set by the Honorable R. Markley Dennis, Jr., was that he be of "good behavior." The Defendant's bond order also stated that any "violation of Defendant's conditions of probation will constitute a violation of Defendant's bond." GPS monitoring was not ordered.
2. On April 8, 2019, the U.S. Marshal's Task Force responded to the Defendant's house, looking for a fugitive wanted on federal probation. Drugs were located in the house, and the Defendant admitted to flushing drugs down the toilet. Guns were also found in the house that were considered to be constructively possessed by the Defendant. On April 11, 2019, the South Carolina Department of Probation and Parole arrested the Defendant on a probation violation warrant for the aforementioned violations of his probation. He was released the following day on a \$150,000 bond. These probation violations were a

direct violation of the Defendant's bond order. The State brought a motion to revoke bond in front of the Honorable Deadra L. Jefferson on May 17th, 2019, and she denied that motion.

3. In 2017, the Defendant made multiple jail calls using other inmate pin numbers in which he actively attempted to hire people to kill the co-defendant on this case. Most recently, a witness in the upcoming murder trial (the existence of this witness and his interview were disclosed recently to the defense) reported to the Solicitor's Office that his tires had been slashed and that copies of his interview were being circulated on the streets, putting his life in danger. Coupling the Defendant's bona fide solicitations to hire people to murder the co-defendant along with the most recent threats to this other witness, the State has concerns for the safety of the witnesses on this case. In addition, we have concerns that the Defendant is not going to show up for his trial, which begins on November 4, 2019.
4. The State is requesting that the Defendant's bond in the above captioned matter be modified to include the following: (1) GPS monitoring so that the State can locate the Defendant if he doesn't show up for trial and/or violates his house arrest order; and (2) No Contact with any witnesses on this case either personally, by electronic communication, or by third party.

FILED
2019 OCT 21 PM 12:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Respectfully Submitted,


T. Richard Waring
Assistant Solicitor
Ninth Judicial Circuit

Charleston, South Carolina
October 21, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
)	
STATE OF SOUTH CAROLINA	)	INDICTMENT #: 2017GS1006993-6995
)	
v.)	
	)	CHARGE: Murder; Poss. Weapon during Comm. of
GREGORY KYLE GREEN,	)	a Violent Crime; Arson 2 nd Degree
)	
Defendant.	)	CONSENT BOND ORDER

By consent of both the State and the defense, the following conditions are to be added to the Defendant's February 6th, 2018 twenty four hour house arrest order:

- In addition to having No Contact, directly or indirectly, with the victim's family members, the Defendant is to have No Contact with any witness on this case, directly or indirectly, or by third party. A witness list has been provided to the defense.
- The Defendant is to be placed on GPS monitoring by Bennett Bail Bonds. Any tampering with the GPS monitor will result in a violation of the Defendant's bond.
- Any failure to comply with the GPS monitoring and/or any violations of the Defendant's probation or bond, or any failure to appear for trial will result in an immediate revocation of his bond, and the Solicitor's Office is authorized to issue a bench warrant without having to have a hearing.
- All other conditions of the Defendant's February 6th, 2018 bond order remain in effect.

IT IS SO ORDERED!

Attorney for the State

Attorney for the Defense

Chief Administrative Judge, 9th Judicial Circuit

10/24/2019

2019 OCT 25 AM 9:19
 JUDGE J. ARMSTRONG
 CLERK OF COURT
 BY

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

GREGORY KYLE GREEN,

Defendant.

FILED

) IN THE COURT OF GENERAL SESSIONS

2019 OCT 29 AM 9:45

) FOR THE NINTH JUDICIAL CIRCUIT

JUDIE J. ARMSTRONG

CLERK OF COURT

) INDICTMENT #: 2017GS1006993-6995

BY) mk

) CHARGE: Murder; Poss. Weapon during

) Comm. of a Violent Crime; Arson 2nd Degree

) **STATE'S TRIAL BRIEF**

I. QUESTIONS PRESENTED

1. Whether the State can authenticate phone records and Facebook messages under S.C. Code § 19-5-520 without having to call a business record custodian to testify?
2. Whether transcripts of the relevant portions of the Defendant's jail calls and video visitation videos should be allowed to be passed out to the jury as an aid?

II. STATEMENT OF THE CASE

On June 8th, 2017, NCPD responded to [REDACTED] in North Charleston at 4:50am in reference to a fire. On scene, the victim's house was engulfed in flames. The victim, Freeman Rivers, was found dead headfirst in the tub with his legs draped up and over the side of the tub, and a stereo cord was wrapped around his neck. He would later be found to have 4 bullet wounds to the back of his head. There was no blackening of the interior of the mouth which suggested that the victim was already deceased prior to the fire. Two neighbors of the victim's had been on scene during the time of the incident. They were hanging out earlier that night when a Chrysler 200 vehicle pulled up and the driver asked if they had seen "Kone." Kone is the Defendant's nickname, and the Defendant and victim are cousins who lived within walking distance of each other (Defendant lives on [REDACTED] Drive). The two witnesses had seen the Chrysler coming and going

multiple times, and they saw a second man entering and exiting the victim's house multiple times. The two witnesses saw the man who had gone into the victim's house get into the Chrysler at one point before that man and the driver left. They saw other suspicious activity as well. NCPD spoke with the victim's mother who said the victim owed the Defendant money over unpaid drug debts. NCPD did a work-up on the Defendant and discovered that his nickname is Kone, and they began to focus on him from then on.

NCPD then began to try to pull video surveillance from gas stations and stores in the surrounding area from the night of the incident. The nearby Cheapway gas station had video from 3am showing one of the previously mentioned neighbors entering the store. As that witness leaves the store, a Chrysler 200 pulls into the parking lot. The driver, who is the co-defendant, greets the witness and then goes inside. Using ALPR, the vehicle was identified as belonging to the co-defendant, Terrance Doucet. It was then discovered that the two witnesses on scene that night had texted with each other during the time they saw the suspect coming and going out of the victim's house. They discuss the incident as it unfolds. NCPD checked Facebook for the Defendant's page and found his page under the name "Koneski Mask."

The co-defendant's girlfriend came to NCPD and stated that the co-defendant had confessed to her what happened and to his own involvement. That story is the following: The Defendant and co-defendant, Terrance Doucet, had been at a fish fry party earlier in the night on June 8th, 2017. Later that night, the Defendant went to the victim's house at [REDACTED] in North Charleston, and the co-defendant was supposed to pick him up in his car. According to the co-defendant, the suspect then came out of the house with blood on him, carrying a gun, and got into the co-defendant's car. They went back to the Defendant's house at which point the co-defendant told this Defendant he needed to set the victim's house on fire to get rid of the evidence.

The co-defendant said that he himself cleaned the Chrysler with bleach. Other witnesses at the Defendant's house corroborate the co-defendant's story.

Presumptive blood spots were later found in the passenger seat area of the co-defendant's vehicle, which he claimed had been stolen (the Chrysler was found sometime after the incident abandoned). Indications of the victim's, Defendant's, and the co-defendant's DNA were found in the vehicle. A cigarette butt was found in the trashcan outside of the victim's house that contained both the Defendant's and the victim's DNA. The co-defendant was questioned on July 7th and was charged with Accessory after the Fact. He would later proffer with the Solicitor's Office and provide a story similar to what his girlfriend had said that he said. He also picked the Defendant out of 6 pack photographic lineup. The Defendant was later apprehended on July 11th, 2017 after a brief standoff. Cell phone records show that the Defendant's phone number was the last number that the victim's phone number communicated with prior to when the victim was murdered. In addition, the Defendant's and co-defendant's phone records show that the Defendant's and co-defendant's phones were communicating a lot during the timeframe of when this incident is believed to have occurred.

An informant from the jail also came forward and gave an interview, stating that the Defendant admitted to killing the victim. The informant also mentioned that the Defendant had tried to pay someone via jailcalls to kill the co-defendant. The Defendant did in fact make jail calls where he tried to have someone kill the co-defendant. He also made other jail calls that include incriminating statements. He made incriminating statements on video visit videos as well. The Defendant's Facebook page contains incriminating material, leading up to the day of the incident.

III. ARGUMENT

1. UNDER S.C. CODE § 19-5-520, THE STATE IS NOT REQUIRED TO HAVE A BUSINESS RECORD CUSTODIAN TESTIFY IN ORDER TO ESTABLISH AUTHENTICITY.

South Carolina Code § 19-5-520 states that “extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following: (A) The original or a copy of a domestic record that meets the requirements of Rule 803(6), South Carolina Rules of Evidence, as shown by a certification of the custodian or another qualified person that complies with a state statute or a court rule.” This statute goes on to say that “[b]efore the trial or hearing, the proponent shall give the adverse party reasonable written notice of the intent to offer the record and shall make the record and certification available for inspection so that the party has a fair opportunity to challenge the record.”

With the present case, the State will be seeking to introduce the Defendant’s Facebook records/posts, the victim’s cell phone records, the Defendant’s cell phone records, and cell phone records for each of the co-defendant’s two phones. The defense has been provided with the actual records for all of these items of evidence, and they have also been provided with custodian letters from Facebook and each respective phone service provider. Thus far, the defense has not challenged the authenticity of these records. Per § 19-5-520, the certification letters satisfy Rule 803(6) of the South Carolina Rules of evidence because they attest that the records were made at or near the time by, a person with knowledge, that the records were generated in the normal course of business, and that it was a regularly conducted business activity to generate such records. Since the State has complied with and satisfied § 19-5-520, the State will be seeking at trial to have all of the aforementioned records admitted without having to call a custodian to authenticate them.

2. IT IS PERMISSIBLE FOR THE JURY TO BE SUPPLIED WITH A TRANSCRIPT OF THE DEFENDANT'S JAIL CALLS/VIDEO VISITS TO USE AS AN AID DURING TRIAL.

“Whether to allow the use of transcripts to aid in the presentation of tape recorded evidence is within the [trial] court’s sound discretion.” U.S. v. Collazo, 732 F.2d 1200, 1203 (4th Cir. 1984)(citing U.S. v. Long, 651 F.2d 239, 243 (4th Cir. 1981)). The court in Collazo further held:

Defendants argue further that even if use of the transcripts during the presentation of evidence was proper, the jury should not have been allowed to use them when it returned from deliberations to hear the tapes replayed. The point is without merit. The jury did not use the transcript as “substitute evidence” in deliberations. Rather, as in the trial, the transcripts were used only in conjunction with the relevant tape recordings.

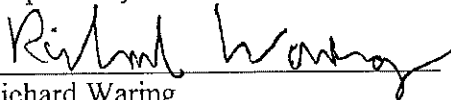
Id. In U.S. v. Frink, 2009 WL 1336709 (4th Cir. 2009), the court held that it was not an abuse of discretion for the trial court to admit the transcripts when the appellants had identified no errors in the transcript. The court also gave a limiting instruction in which it told the jury that “if there is a doubt in your mind between what the transcript shows and what you hear on the tape, then you go by the tape because it is the evidence.” Id. (see also U.S. v. Clark, 986 F.2d 65, 69 (4th Cir. 1993)(holding that district court did not abuse its discretion when it admitted the transcript of the recording even though the appellant’s counsel did not stipulate as to its accuracy); U.S. v. Wilson, 115 F.3d 1185, 1189 (4th Cir. 1997)(holding that the district court has the discretion to permit the jury to use a transcript as a guide in following the presentation of tape recorded evidence); State v. Winkler, 698 S.E.2d 596, 602 (Ct. App. 2010)(finding that the trial judge exercised proper discretion and committed no error in allowing the jury to read the transcript while listening to the 911 tape)).


Here, the State intends to introduce portions of the Defendant's recorded jail calls and video visitation videos. Most of these portions of the recordings are difficult to follow, so the help of a transcript would serve the jury as an aid in following along. As indicated above, the 4th Circuit Court of Appeals and the South Carolina courts are not opposed to the use of transcripts as aids for juries during trials, and even in deliberations. These courts have made it clear that it is within the discretion of the trial judge to make the final determination on whether transcripts will be provided to the jury. The jail custodian will testify that she has used reviewed the transcripts for each recording and that the transcripts are a fair and accurate representation of what is being said on the recordings. Furthermore, the defense has not challenged the accuracy of the transcripts. Therefore, the State requests at trial that such transcripts be allowed to assist the jury.

IV. CONCLUSION

The State requests that the Facebook records and phone records be admissible, assuming their relevance is established, without having to call custodians to authenticate them. In addition, the State respectfully requests that the State be allowed to pass out transcripts to the jury as an aid to follow along with the jail calls and video visit videos.

Respectfully submitted:


Richard Waring
Assistant Solicitor
Ninth Judicial Circuit

FILED
2019 OCT 29 AM 9:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA
v.
GREGORY KYLE GREEN,
Defendant.

FILED
IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
2019 OCT 30 PM 2:32
JULIE S. WAINSTRONG
CLERK OF COURT
Case Numbers: 2017-GS-10-06993,
2017-GS-10-06994, 2017-GS-10-06995
BY *MH*
Warrant Numbers: 2017A1010203946,
2017A1010203947, 2017A1010203948
Charges: Murder, Possession of a Weapon
During a Violent Crime, Arson (Second Degree)
PROPOSED VOIR DIRE

Defendant Green, by and through his attorneys, requests that this Court ask the following questions of potential jurors in this case:

1. Have you or any of your immediate family members or close personal friends ever worked for law enforcement? Are you or any of your immediate family members or close personal friends a friend or acquaintance of anyone who works for law enforcement?
2. Have you or any of your immediate family members or close personal friends ever worked for the Solicitor's Office? Are you or any of your immediate family members or close personal friends a friend or acquaintance of anyone who works at the Solicitor's Office?
3. Have you or any of your immediate family members or close personal friends ever been the victim of a crime?
4. This case involves a shooting and subsequent house fire on June 8, 2017 at [REDACTED] in North Charleston. Have you read or heard anything about this case?
5. Have you formed an opinion about the guilt or innocence of the defendant?
6. Have you ever served on a jury before? If so, did your experience on a jury change the way you would analyze this case?
7. Have you or any of your immediate family members or close personal friends ever been a member of a crime-focused organization like Citizens Against Violent Crime (C.A.V.E.) or Mothers Against Drunk Driving (M.A.D.D.), or have you or any of your immediate family members or close personal friends been a member of a neighborhood or community watch group?

8. Do you or any of your immediate family members or close personal friends contribute financially to or volunteer with any group affiliated with or supporting law enforcement?
9. Do you have any particular opinions or feelings about the crimes of murder or arson which would make it difficult for you to serve on a jury where the defendant is charged with murder or arson?
10. Are you aware of any reason that you could not be fair and impartial to the defendant or the State?

Taylor Stewart

Taylor J. Stewart, Assistant Public Defender
Teresa L. Norris, Assistant Public Defender
Charleston County Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, SC 29401
(843) 958-2007

ATTORNEYS FOR DEFENDANT GREGORY
KYLE GREEN

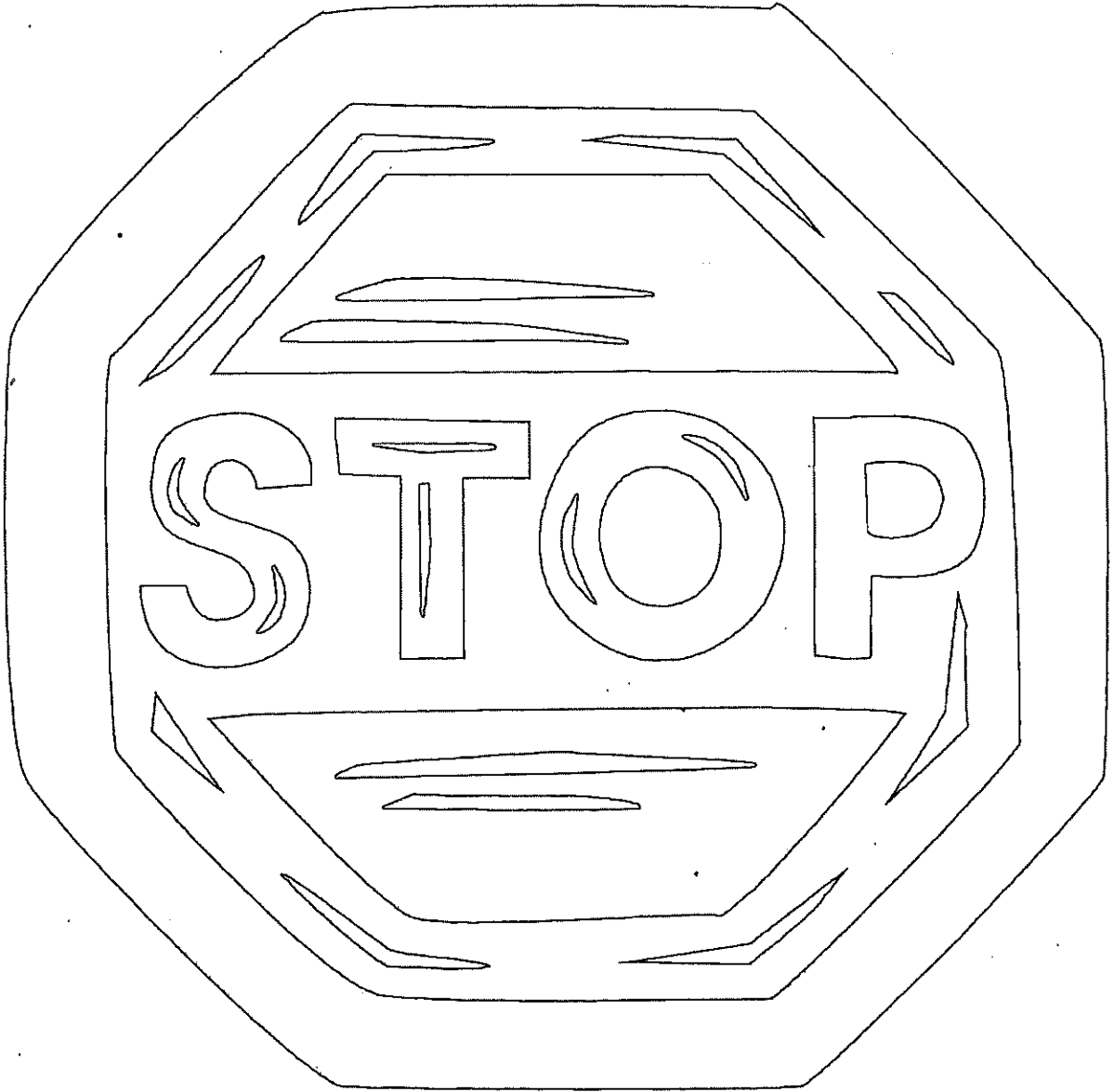
October 30, 2019
Charleston, South Carolina

FILED
2019 OCT 30 PM 2:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY MR

FILED

2010 JAN 11 AM 11:50

JULIE J. ARMSTRONG
CLERK OF COURT



Taylor Stewart

Taylor Stewart, Assistant Public Defender
Teresa L. Norris, Assistant Public Defender
Charleston County Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, SC 29401
(843) 958-2007

ATTORNEYS FOR DEFENDANT GREGORY
KYLE GREEN

October 30, 2019
Charleston, South Carolina

FILED
2019 OCT 30 PM 2:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY *MR*

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

GREGORY KYLE GREEN,

Defendant.

**IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT**

Case Numbers: 2017-GS-10-06993,
2017-GS-06994, 2017-GS-10-06995

Warrant Numbers: 2017A1010203946,
2017A1010203947, 2017A1010203948

Charges: Murder, Possession of a Weapon
During a Violent Crime, Arson (Second Degree)

TRIAL BRIEF

THE HONORABLE JUDGE PERRY M. BUCKNER III
Circuit Judge, Ninth Judicial Circuit

Appearances:

For the State:

T. Richard Waring, Assistant Solicitor
J. Whitney Sowards, Assistant Solicitor

For Defendant Green:

Taylor J. Stewart, Assistant Public Defender
Teresa L. Norris, Special Assistant Public Defender

2019 OCT 30 PM 2:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY *[Signature]*

FILED

STATEMENT OF THE CASE

On July 11, 2017, Gregory Green was arrested and charged with murder, second-degree arson, and possession of a weapon during a violent crime.

FACTS AND PROCEDURAL HISTORY

On June 8, 2017, starting at 4:46 AM, dispatch received a series of three 911 calls reporting a house fire on [REDACTED] Drive. The North Charleston Police Department and the North Charleston Fire Department responded to [REDACTED] Drive to put out the fire. By the time officers responded, the fire had almost engulfed the whole house. During their attempts to put out the fire, Fire Department personnel discovered the body of Freeman "Angelo" Rivers in the bathtub of the house. The deputy coroner responded and reported that Rivers appeared to have injuries that were inconsistent with having been caused by the fire, which made officers suspect foul play. The next day, during Rivers's autopsy, the pathologist recovered four bullets from Rivers's head. The pathologist determined that Rivers died from gunshot wounds to the head and classified his death a homicide.

Officers began investigating Rivers's murder and interviewed several neighbors, including the people who had called 911. From there, officers spoke to two separate witnesses, Kendyl Rice and Jonathan Seabrook, who said they had been outside across the street from Rivers's house around the time that officers believe he was killed. Rice and Seabrook noticed a car that kept driving up and down the street. Seabrook said that the car was a newer model Chrysler 200. They also described the man who was driving the car and a passenger that he picked up and dropped off. Seabrook said that the driver asked him and Kendyl Rice if "Cone" or "Corn" was with them. They said they had not seen the man, and the car drove off.

Officers also interviewed Rivers's family members, including Rivers's mother Vivian McNeil and his cousin Kimberly Middleton. McNeil said that in the days before Rivers's murder, Rivers told her that he owed Green some money for drugs. Rivers supposedly told McNeil that he had talked with Green about the debt, and that Green was angry about it. McNeil and Middleton both told Detective Sanchez that Green was a bad person and they believed that he was involved in Rivers's death.

On June 21, 2017, Lanica Walker walked into the North Charleston Police Department and told the duty officer that she had information about a murder. Detective Michael Sanchez interviewed her. During the interview, Walker told Detective Sanchez that Terrance Doucet had come to her house the morning of June 8, 2017, a few hours after the fire on [REDACTED] Drive. Walker said that Doucet had confessed to her that he was involved, and that Doucet went to pick the suspect up from the house on [REDACTED] Drive. Walker said that Doucet told her that he went inside and that both Doucet and the suspect had shot Rivers. Then, Doucet supposedly told Walker that he took the suspect back to his house and told the suspect to burn down the house to destroy the evidence. Walker said that Doucet did not name the suspect, but said that Doucet had told her that the man was Rivers's cousin.¹ Walker also said that Doucet knew that Walker was going to the police and hired a friend who owned a chop shop to get rid of his car, a 2017 Chrysler 200. (In fact, Doucet had reported the car stolen a few days earlier on June 19, 2017.)

Detective Sanchez began trying to contact Doucet. A few weeks later, on July 7, 2017, Doucet came in for an interview, purportedly about discussing the stolen car case. Detective Sanchez instead interviewed Doucet about Rivers's murder. Doucet implied to Detective Sanchez that he had picked up the suspect on Bailey Drive before officers responded to the fire. Doucet did

¹ Green is one of Rivers's cousins.

not name any suspect or mention anything about a cousin being involved. Detective Sanchez arrested Doucet and charged him with accessory before the fact to Rivers's murder.²

Detective Sanchez then obtained arrest warrants for Green. As probable cause, Green's arrest warrant for murder asserted that:

[O]n June 8th, 2017, at approximately 4:46 A.M., officers of the North Charleston Police Department responded to a report of a fire located at [REDACTED] Street. Fire fighters [sic] located the body of a male later identified as Freeman Rivers. Autopsy showed that Rivers had sustained multiple gun shots which resulted in his death. Detectives obtained a description of the vehicle used by the defendant who was seen entering and fleeing the victims [sic] residence the night of the incident. This vehicle was described as a light blue new Chrysler 200. Video from the area an hour prior to the incident shows a 2017 light blue Chrysler 200 bearing SC tag [REDACTED] 304 entering the neighborhood and pulling into the Cheapway Gas Station at 3615 Dorchester Road. A witness to be named in court provided a third party confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. The witness' statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description. In addition, the witness stated the vehicle had blood transfer to the interior of the car as the suspect of the crime was covered in blood at the time of the incident. On June 22, 2017, Doucet's 2017 Chrysler 200 was located, after being reported stolen on June 19, 2017. Testing on the interior of the vehicle reviewed [sic] presumptive positive results for trace evidence of blood after a search was conducted of the car pursuant to a lawful search warrant. Defendant's cell phone records indicate that he was on [REDACTED] Street during the time of the incident and match the witnesses [sic] description and timeline of events.³ The witnesses also heard the name "Kone" uttered by the co-defendant when searching for him in front of the house, and this is a known alias of the defendant.

On July 11, 2017, officers served arrest warrants on Green for murder, second-degree arson, and possession of a weapon during a violent crime. Officers took Green to be interviewed. During the interview, Green denied being involved in Rivers's murder.

² Doucet's charge was amended to accessory after the fact to murder at his preliminary hearing on August 23, 2017. Doucet was released from custody the same day after posting a \$25,000 bond.

³ Detective Sanchez did not have Green's phone records at the time that the warrant was signed. Detective Sanchez submitted a search warrant for these records on August 30, 2017.

On January 24, 2018, Assistant Solicitor Waring conducted a proffer interview with Doucet. After several statements to the contrary, Doucet admitted being involved in Rivers's murder and identified Green as the killer. Specifically, Doucet said that he went to Rivers's house on [REDACTED] Drive to pick up Green. While there, Doucet said that he overheard a physical confrontation inside the house, presumably between Green and Rivers. Doucet said that Green then got into Doucet's passenger seat. Doucet said that when Green got into the car, Doucet noticed that Green had a gun and was covered in blood. Doucet said that Green told him that something had happened. Doucet also said that Green told him that Green was not sure if Rivers was still alive. Doucet said that he drove Green back to Green's house at [REDACTED] Drive. Then, Doucet said that he took Green back to Rivers's house on [REDACTED] Drive because Green had left some items there. Doucet admitted telling Green that he should burn down Rivers's house to destroy evidence of the crime.

In September 2019, the State disclosed to Green's attorney that law enforcement had interviewed Michael Stevens. Stevens was charged with attempted murder and possession of a weapon during a violent crime on October 2, 2017 and was housed in the same jail unit as Green for a period of time.⁴ Stevens was interviewed twice: on December 12, 2017 and February 5, 2018. Stevens told law enforcement that Green had confessed to Stevens that he killed Rivers, and that Green had been trying to hire someone to kill Doucet.

Green was indicted for murder, second-degree arson, and possession of a weapon during a violent crime on December 15, 2017. On February 6, 2018, Judge Dennis set Green's bond. Green posted bond on March 9, 2018.

EVIDENTIARY ISSUES

I. Procedural Issues

⁴ Stevens pled guilty to second-degree assault and battery on November 6, 2018.

A. *Probable Cause*

1. The State may not use any jail call before December 12, 2017 because Green was arrested for Rivers's murder without probable cause.

The State seeks to use several jail calls that Green allegedly made while he was in the Charleston County jail. However, at the time of Green's arrest, Detective Sanchez did not have probable cause to arrest him. Detective Sanchez's assertion of probable cause mentions three pieces of evidence that could potentially implicate Green. First, Detective Sanchez asserted that a witness "indicat[ed] that the co-defendant dropped off and picked up the defendant who committed the murder." Walker is the witness. However, Walker never told Detective Sanchez the name of the person Doucet told her he picked up. In fact, Walker never identified the person, by name, nickname, photo, or otherwise. Second, Detective Sanchez indicated that Green's cell phone records put him on Bailey Drive at the time of the murder. Even if phone records could pinpoint a person's location with that much specificity, Detective Sanchez did not have Green's cell phone records until August 30, 2017, about six weeks after Green's arrest. Finally, Detective Sanchez asserted that "witnesses" heard Doucet ask about "Kone" outside the house on Bailey Drive. One witness mentioned a person named Cone or Corn: Seabrook. However, Seabrook could not make any further identification of the person. Doucet and Walker never named the person. There is no evidence that Green is the only person that has ever used one of these two monikers.

Ultimately, Green concedes that the State later obtained probable cause to charge Green with Rivers's murder, but not until Stevens's first interview on December 12, 2017, when Stevens told law enforcement that Green had confessed to the murder. However, because officers did not have probable cause to arrest Green, any intrusion into Green's privacy while he was in jail and before law enforcement had probable cause to arrest him is unreasonable and violates the Fourth

Amendment's prohibition against unreasonable searches and seizures.⁵ Any jail call allegedly made by Green that predates Stevens's first interview should not be admitted in his trial.

II. Motion to Suppress

A. Statement

1. Jackson v. Denno prohibits the State from introducing Green's involuntary statements against him.

At this time, Green does not believe that the State intends to use Green's statement during his trial. However, Green reserves the right to more fully challenge the evidence if the State decides to offer any part of this statement.

III. Motions in Limine

A. *The Court should bar testimony from Vivian McNeil and Michael Stevens.*

1. Vivian McNeil

According to the State's witness list, the State intends to call Vivian McNeil, Rivers's mother, as a witness in Green's trial. Detective Sanchez interviewed McNeil after Rivers's murder. During the interview, McNeil mentioned that Rivers had told her that he owed Green some money for drugs. McNeil also discussed times that Rivers talked to her about conversations with Green. In her interview, McNeil specifically said that she has not seen Green since he was young and would not even know what he looks like. McNeil also mentions that she believes that Green is a bad person and feels that Green killed her son.

The Court should prohibit McNeil from testifying. The only potentially relevant information to which McNeil could testify is what Rivers told her about Rivers's debts and Rivers's conversations with Green. McNeil was not present for any of these conversations.

⁵ "The ultimate standard set forth in the Fourth Amendment is reasonableness." *State v. Miller*, 423 S.C. 95, 100 (S.C. 2018).

Rivers's statements to McNeil are hearsay and not subject to any exemption or exception. Further, admitting Rivers's statements would violate the Confrontation Clause. Green has additional concerns that McNeil will testify about her opinion of Green or her belief that Green is a drug dealer, in violation of the prohibition against prior bad acts evidence contained in Rule 404(b) of the South Carolina Rules of Evidence. Further, Green is concerned that McNeil may testify about her "feeling" that Green was involved in the death of Rivers, which is not relevant and has a significant potential to mislead the jury as prohibited by Rule 403 of the South Carolina Rules of Evidence.

2. Michael Stevens

The State also intends to introduce the testimony of jailhouse informant Michael Stevens. Stevens was charged with attempted murder and possession of a weapon during a violent crime. Stevens and Green were in the Charleston County jail at the same time. Detective Sanchez interviewed Stevens twice. During the interviews, Detective Sanchez discusses three murder cases: Rivers's murder and two separate murder investigations.⁶ During both interviews, Stevens repeatedly confuses the cases. The following exchange is telling:

MICHAEL STEVENS: So, it started—so actually, the whole fight started with—well, he said Terrance. Terrance did boy. And he ain't get into detail like that, he told me like when the fight start that's when they shot. He already done shot him with the gun before that's how some of his blood get on him.

DETECTIVE SANCHEZ: Okay.

MICHAEL STEVENS: He hit him with the gun, they put him in the car. They ain't kill him at the house now, they take him where ever they take him. He ain't tell me where they take him at, he just told me like him and Terrance get in the car, they take him together and that's when they killed him. I guess they drove him and then they come back.

DETECTIVE SANCHEZ: And it's like he's mixing two cases together.

MICHAEL STEVENS: Yeah. You get what I'm saying?

DETECTIVE SANCHEZ: Because that's not at all what happened.

MICHAEL STEVENS: Yeah.

DETECTIVE SANCHEZ: But that is part of what happened to the other one.

⁶ Green was never charged with anything relating to either of these two separate investigations.

MICHAEL STEVENS: Right.

DETECTIVE SANCHEZ: So it's like he's telling part of the story for one case and part of the story of the other case as though they're one case.

Stevens's testimony is dangerous. Not only does Stevens's testimony lack probative value given problems with the story,⁷ but Green is also concerned that his jury could make some significant (impermissible) inferences from Green's alleged association with separate murder investigations. Given Stevens's inability to discuss Rivers's murder without also referring to the other investigations, Green believes there is a substantial risk that Stevens will mention it. Green believes that cross-examination will not be sufficient to cure the prejudicial value of his association with the separate murder investigations. The Court should exclude this testimony based on Rule 403 of the South Carolina Rules of Evidence.

B. The Court should exclude testimony from Donna Money regarding combined probability of inclusion statistics (CPI) because these statistics are foundationally invalid.

The State intends to introduce testimony from Donna Money, a forensics analyst with SLED, regarding DNA results on a cigarette butt that was found outside Rivers's home. Green believes that Money will testify that the DNA on the cigarette butt is a mixture, and both Rivers and Green are included as possible contributors to that mixture. Further, Green believes that Money will testify that she used combined probability of inclusion (CPI) statistics to calculate the probability of selecting an unrelated individual who contributed to the mixture. Green believes that Money will testify that this probability of selecting an unrelated individual is about 1 in 130 trillion.

The Court should exclude testimony about CPI statistics because they are foundationally invalid. In 2016, President Obama commissioned a report on the use of forensic science in criminal

⁷ There is no evidence that Rivers was killed outside of his house, taken anywhere in Doucet's car, or brought back to his house by Doucet.

courts. The President's Council of Advisors on Science and Technology (PCAST) issued a report in September 2016.⁸ The PCAST report discussed at length the problems with CPI statistics: namely, that they are "problematic because subjective choices made by examiners, such as about which alleles to include in the calculation, can dramatically alter the result and lead to inaccurate answers."⁹ The PCAST report ultimately made the following finding:

Foundational validity. PCAST finds that:

(1) Combined-Probability-of-Inclusion (CPI)-based methods. DNA analysis of complex mixtures based on CPI-based approaches has been an inadequately specified, subjective method that has the potential to lead to erroneous results. As such, it is not foundationally valid. A very recent paper has proposed specific rules that address a number of problems in the use of CPI. These rules are clearly necessary. However, PCAST has not adequate time to assess whether they are also sufficient to define an objective and scientifically valid method. If, for a limited time, courts choose to admit results based on the application of CPI, validity as applied would require that, at a minimum, they be consistent with the rules specified in the paper. DNA analysis of complex mixtures should move rapidly to more appropriate methods based on probabilistic genotyping.¹⁰

This Court should exclude evidence involving the CPI statistic because the statistic itself is not reliable according to Rule 702 of the South Carolina Rules of Evidence and the standards set forth in case law such as *State v. Jones*, 383 S.C. 535 (S.C. 2009).

C. *The Court should bar testimony from Special Agent Clay Simmonds regarding PCMD from Sprint.*

The State also intends to introduce testimony from Special Agent Clay Simmonds of the FBI. Green believes that this testimony will include historical cell site analysis calculated using,

⁸ PRESIDENT'S COUNCIL OF ADVISORS ON SCIENCE AND TECHNOLOGY, EXEC. OFFICE OF THE PRESIDENT, REPORT TO THE PRESIDENT, FORENSIC SCIENCE IN CRIMINAL COURTS: ENSURING SCIENTIFIC VALIDITY OF FEATURE-COMPARISON METHODS (Sept. 2016), available at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf. As an aside, most of the DNA evidence in this case was analyzed using STRmix, a program that uses probabilistic genotyping.

⁹ *Id.* at 89.

¹⁰ *Id.* at 95.

in part, per call measurement data (PCMD) from Sprint. Sprint, however, will not certify the data or its use. Specifically, in the documents provided to Green as a part of discovery, Sprint writes that “[t]he PCMD records enclosed may not be accurate or complete. Sprint is unable to explain, certify or testify to the accuracy of these records as they may be erroneous.” The Court should exclude any evidence based on PCMD records.

D. The Court should prohibit the State from referring to Green as a “drug dealer” or from any mention that Rivers’s alleged debt to Green involved drugs.

Green believes that the State intends to introduce evidence of Green’s prior involvement with drugs in its case-in-chief. Green believes that the admission of this evidence would violate the prohibition against prior bad acts evidence enumerated in Rule 404(b) of the South Carolina Rules of Evidence. If Green testifies, Green understands that he could be subject to impeachment on any prior convictions according to Rule 609 of the South Carolina Rules of Evidence.

E. The Court should prohibit the State from using transcripts in reviewing jail calls allegedly made by Green.

The State also intends to use transcripts of jail calls that Green allegedly made during its case-in chief. Green objects to the use of these transcripts in his trial. Green believes that Rule 1002 of the South Carolina Rules of Evidence provides that the jail calls themselves are the best evidence of their contents. For example, Green believes that the State would not be allowed to use or admit a summary of the contents of a photograph to help a jury interpret the meaning of the photograph. The comparison also applies to these jail calls; Green believes his jury is the appropriate body to determine their contents. Further, the transcripts were compiled by the State in its trial preparation process, not by a court reporter or any neutral party. Finally, Green’s attorneys are still reviewing the transcripts to determine if challenges to their accuracy exist.

F. The Court should prohibit the State from entering Green's alleged jail calls as evidence unless and until a hearing is conducted to determine their authentication and admissibility.

The State intends to introduce jail calls allegedly made by Green during its case-in-chief. Several of these jail calls were made on other inmates' jail phone accounts. Green also believes the calls themselves may contain objectionable content. Green asks the Court to conduct a hearing as to their authentication and admissibility before allowing the State to introduce any jail call evidence.

G. Green asks the Court to conduct a hearing to determine the admissibility of his prior convictions.

At the appropriate time, Green asks this Court to inquire into and determine the admissibility of Green's prior convictions as impeachment evidence.

H. Green asks that the Court sequester the State's witnesses.

Green asks this Court to sequester the State's witnesses according to Rule 615 of the South Carolina Rules of Evidence. Green consents to allowing the State's investigator and case agent to remain in the courtroom. Green further requests that Green's investigator Art DeGiovine be permitted to remain in the courtroom.

I. Green asks that bench conferences be conducted on the record.

In order to prepare for any possible post-trial, appellate, or post-conviction relief proceedings, Green wants to preserve all motions, objections, and legal rulings. Green asks that all bench conferences be conducted on the record.

Respectfully submitted,



Taylor J. Stewart, Assistant Public Defender
Teresa L. Norris, Assistant Public Defender
Charleston County Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, SC 29401
(843) 958-2007

ATTORNEYS FOR DEFENDANT GREGORY
KYLE GREEN

October 30, 2019
Charleston, South Carolina

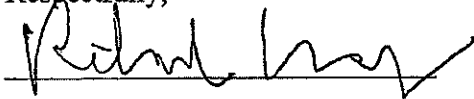
FILED
2019 OCT 30 PM 2:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY MLH

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
)	
STATE OF SOUTH CAROLINA	)	INDICTMENT #: 2017GS1006993-6995
)	
v.)	
	)	CHARGE: Murder; Poss. Weapon during
GREGORY KYLE GREEN,	)	Comm. of a Violent Crime; Arson 2 nd Degree
)	
Defendant.	)	MOTION TO SUPPRESS
)	

The State requests a hearing outside the presence of the jury to exclude any mention by the defense of the victim's toxicology report. What substances the victim had in his system are not relevant to the case, and whatever little probative value the toxicology report contains would be substantially outweighed by the danger of unfair prejudice to the state under SCRE 403

FILED
 2019 NOV -6 AM 9:14
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY RC

Respectfully,



Richard Waring
 Assistant Solicitor
 Charleston, SC

ARREST WARRANT

2017A1010203947

STATE OF SOUTH CAROLINA
County/ Municipality of

Charleston

THE STATE
Gregory Kyle Green
against

Address:

Phone:

Sex: M Race: B Height: 5 11 Weight: 153

DL State: SC DL #: Agency ORI#: SC0100800

DOB: Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Michael Sanchez - 0947

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
is to be arrested and brought before me to be dealt with according to the law. The accused

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Gregory Kyle Green on 7-11-17

Signature of Constabular Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Personally appeared before me the affiant Michael Sanchez

being duly sworn deposes and says that defendant Gregory Kyle Green

did within this county and state on or about 6/8/2017

State of South Carolina (or ordinance of County/ Municipality of Charleston

in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED

Signature of Affiant

STATE OF SOUTH CAROLINA
County/ Municipality of

Charleston

Affiant's Address: 2500 City Hall Lane
North Charleston, SC 29406

Affiant's Telephone: (843)554-5700

#251

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there/ are reasonable grounds to believe that

on or about 6/8/2017

did violate the criminal laws of the State of South Carolina (or ordinance of Charleston

as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 7/7/2017

Signature of Issuing Judge

Alvin Earl Bligden
Judge Code: 5536

Judge's Address: 3831 Leads Avenue, Ste 200
North Charleston, SC 29405-

Judge's Telephone: (843)746-9822

Issuing Court: X Magistrate Municipality Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

2017A1010203946

STATE OF SOUTH CAROLINA
County/ Municipality of
Charleston

THE STATE
against
Gregory Kyle Green

Address: [Redacted]

Phone: [Redacted] SSN: [Redacted]

Sex: M Race: B Height: 5 11 Weight: 153

DL State: SC DL #: [Redacted] Agency ORI #: SC0100800

DOB: [Redacted] Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Michael Sanchez - 0947

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

is to be arrested and brought before me to be
dealt with according to the law. The accused

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Gregory Kyle Green
on 7-11-17

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Michael Sanchez

Personally appeared before me the affiant
being duly sworn deposes and says that defendant Gregory Kyle Green

6/8/2017

State of South Carolina (or ordinance of County/ Municipality of Charleston

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED

Signature of Affiant

STATE OF SOUTH CAROLINA
County/ Municipality of

Charleston

Affiant's Address: 2500 City Hall Lane
North Charleston, SC 29406
Affiant's Telephone: (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/8/2017 defendant Gregory Kyle Green

did violate the criminal laws of the State of South Carolina (or ordinance of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me on 7/7/2017

Signature of Issuing Judge

Alvin Earl Bilgen
Judge Code: 5536

Judge's Address: 3831 Leeds Avenue, Ste 200
North Charleston, SC 29405-
Judge's Telephone: (843)746-9822

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
Apr 21, 2003
SCCA-319

ARREST WARRANT

2017A1010204034

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

THE STATE
against

Gregory Kyle Green

Address:

Phone: Sex: M Race: B Height: 5 11 Weight: 153 SSN: [REDACTED]

DL State: SC DL #: [REDACTED] Agency ORI #: SC0100800

DOB: [REDACTED] Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Christopher Holloway - 1029

Offense: Drugs / Possession of less than one gram of meth. or cocaine base, 1st offense

Offense Code: 3009

Code/Ordinance Sec: 44-53-0375 (A)

THIS WARRANT IS CERTIFIED FOR SERVICE in the County/ Municipality of

is to be arrested and brought before me to be dealt with according to the law. The accused

Signature of Jesso

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Gregory Green on 7/11/2017

Signature of Charleston Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA
 County/ Municipality of

Charleston

AFFIDAVIT

DEFENDANT COPY

Form Approved by
S.C. Attorney General
April 21, 2003
025A-518

Personally appeared before me the affiant Christopher Holloway / *Redden* Gregory Kyle Green being duly sworn deposes and says that defendant Gregory Kyle Green did within this county and state on or about 7/11/2017 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Charleston in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Possession of less than one gram of meth. or cocaine base, 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
SEE ATTACHED AFFIDAVIT

COPIES

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of

Charleston

Affiant's Address: 2500 City Hall Lane
North Charleston, SC 29406-
Affiant's Telephone: (843) 554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: it appearing from the above affidavit that there are reasonable grounds to believe that

defendant Gregory Kyle Green

on or about 7/11/2017 did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Possession of less than one gram of meth. or cocaine base, 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 7/11/2017

Signature of Issuing Officer
Priscilla Bridges Baldwin
Judge's Code: 5749

Judge's Address: 3831 Leeds Avenue, Ste 200
North Charleston, SC 29405-7469
Judge's Telephone: (843) 746-9822
Issuing Court: Magistrate Municipal Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT
OCA# 2017016967
INV M. SANCHEZ

Personally appeared before me, a magistrate of this County, one, M. Panichko who first being duly sworn, deposes and says that

Gregory Kyle Green

did within this County and State on the 8th day of June, 2017 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
16-23-490

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On June 8th, 2017, at approximately 4:30 A.M., while at [REDACTED] which is located in the City of North Charleston, County of Charleston, State of South Carolina, the defendant, **Gregory Kyle Green**, did commit the offense of **Possession Of A Firearm During The Commission Of A Violent Crime**, in violation of **16-23-490** of the South Carolina Code of Laws of 1976 as amended. In that the defendant did willfully, unlawfully while armed with a firearm, shoot the victim, Freeman Rivers, resulting in his death.

Facts to establish the aforesaid are that on June 8th, 2017, at approximately 4:46 A.M., officers of the North Charleston Police Department responded to a report of a fire located at [REDACTED]. Fire fighters located the body of a male later identified as Freeman Rivers. Autopsy showed that Rivers had sustained multiple gun shots which resulted in his death. Detectives obtained a description of the vehicle used by the defendant who was seen entering and fleeing the victims residence the night of the incident. This vehicle was described as a light blue new Chrysler 200. Video from the area an hour prior to the incident shows a 2017 light blue Chrysler 200 bearing SC tag [REDACTED] 304 entering the neighborhood and pulling into the Cheapway Gas Station at 3615 Dorchester Road. A witness to be named in court provided a third party confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. The witness' statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description.

In addition, the witness stated the vehicle had blood transfer to the interior of the car as the suspect of the crime was covered in blood at the time of the incident. On June 22, 2017, Doucet's 2017 Chrysler 200 was located, after being reported stolen on June 19, 2017. Testing on the interior of the vehicle reviewed presumptive positive results for trace evidence of blood after a search was conducted of the car pursuant to a lawful search warrant. Defendant's cell phone records indicate that he was on [REDACTED] Street during the time of the incident and match the witnesses description and timeline of events. The witnesses also heard the name "Kone" uttered by the co-defendant when searching for him in front of the house, and this is a known alias of the defendant. All this done against the law, peace and dignity of the State of South Carolina. Det. M. Sanchez and witnesses to be named in court are witness to prove the same.

Sworn to and Subscribed before me
This 7th day of JULY
2017.
Signature of Judge [Signature]

[Signature] #251
(AFFIANT)
Address: 2500 City Hall Lane
North Charleston SC, 29406
Phone: 843-554-5700

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT
OCA# 2017016967
INV M. SANCHEZ

Personally appeared before me, a magistrate of this County, one, M. Powstchko who first being duly sworn, deposes and says that

Gregory Kyle Green

did within this County and State on the 8th day of June, 2017 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
MURDER
16-3-10

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On June 8th, 2017, at approximately 4:30 A.M., while at [REDACTED] Street, which is located in the City of North Charleston, County of Charleston, State of South Carolina, the defendant, **Gregory Kyle Green**, did commit the offense of **MURDER**, in violation of section 16-3-10 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully shoot the victim, Freeman Rivers which resulted in his death.

Facts to establish the aforesaid are that on June 8th, 2017, at approximately 4:46 A.M., officers of the North Charleston Police Department responded to a report of a fire located at [REDACTED] Street. Fire fighters located the body of a male later identified as Freeman Rivers. Autopsy showed that Rivers had sustained multiple gun shots which resulted in his death. Detectives obtained a description of the vehicle used by the defendant who was seen entering and fleeing the victims residence the night of the incident. This vehicle was described as a light blue new Chrysler 200. Video from the area an hour prior to the incident shows a 2017 light blue Chrysler 200 bearing SC tag [REDACTED] 304 entering the neighborhood and pulling into the Cheapway Gas Station at 3615 Dorchester Road. A witness to be named in court provided a third party confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. The witness' statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description.

In addition, the witness stated the vehicle had blood transfer to the interior of the car as the suspect of the crime was covered in blood at the time of the incident. On June 22, 2017, Doucet's 2017 Chrysler 200 was located, after being reported stolen on June 19, 2017. Testing on the interior of the vehicle reviewed presumptive positive results for trace evidence of blood after a search was conducted of the car pursuant to a lawful search warrant. Defendant's cell phone records indicate that he was on Bailey Street during the time of the incident and match the witnesses description and timeline of events. The witnesses also heard the name "Kone" uttered by the co-defendant when searching for him in front of the house, and this is a known alias of the defendant. All this done against the law, peace and dignity of the State of South Carolina. Det. M. Sanchez and witnesses to be named in court are witness to prove the same.

Sworn to and Subscribed before me
This 17th day of July
2017.
Signature of Judge

[Signature] #1251
(AFFIANT)
Address: 2500 City Hall Lane
North Charleston SC, 29406
Phone: 843-554-5700

Probation

ARREST WARRANT

Indictment Number: 15-GS-10-00682

Warrant Number: W-10-19-0180

State Identification No. (SID) 01137206

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF CHARLESTON, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that GREGORY KYLE GREEN, did on the 11 day of April, 2019 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions 4, 6, 10, as ordered in cause number 15-GS-10-00682 by the Charleston county Court of General Sessions on 12/31/2015.

Now, therefore, you are empowered and directed to arrest the said defendant and bring GREGORY KYLE GREEN before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at CHARLESTON, S. C. this 11 day of April, 2019.

County of CHARLESTON

Signature of Probation and Parole Agent

(L.S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Eric Gantt, who, first being duly sworn, deposes and says that GREGORY KYLE GREEN did within this County and State on the 11 day of April, 2019, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

By violating conditions 4, 6, 10, as ordered in cause number 15-GS-10-00682 by the Charleston county Court of General Sessions on 12/31/2015.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

By violation of Condition 6 There is probable cause to believe that offender violated the law, drug possession. The following contraband was discovered, a measuring cup with whisk with white powder residue, miscellaneous drug paraphernalia and 6.3 grams of cocaine. This was all found in offender home and according to a statement by law enforcement at the scene offender admitted to having flushed drugs.
6- Shall not violate any federal, state, or local laws. There is probable cause to believe that offender had weapons in his possession. According to Charleston County Sheriff's Office Incident Report #2019005525, On 4/8/2019, US Marshal Task Force responded to the offender's residence, [REDACTED] Drive after intelligence in search of Tyreze Hughes, where the following firearms were found .32 S&W with obliterated serial number, 9mm Taurus 38 Rohr Revolver .380 AMT handgun, .380 Taurus Handgun. Violation of condition 4 offender cannot have weapons, there is probable cause to believe that offender had possession of weapons (as noted above). These were all in offenders home and gave him constructive possession. Additionally offender is not to associate with any person who has a criminal record, Tyreze Hughes was a fugitive in offenders home and thus had contact. Mr. Hughes was arrested at this time. Condition 10 by failure to follow advice and instructions of the agent

Sworn to and Subscribed before me
this 11 day of April, 2019.

Signature of Affiant
Affiant

Signature of Notary Public
(L.S.)

Address: 4060 BRIDGE VIEW DRIVE
SUITE 100
NORTH CHARLESTON, 29405-7464

(843) 740-1553

My Commission Expires

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 03/16/22

C0667

GREEN, GREGORY KYLE FBI # [REDACTED] SID# [REDACTED] SCDC # 00299039
OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
INSTITUTION ...: LEE CORR INST DORM.....: F4B2254B
SECURITY/CUST.: 2 ADULT-STRAIGHT SENTENCE RACE.....: B SEX...: M
CURR INCARC SENT...: 40 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 02/26/2059
CENTRAL MONITORING.: YES PROJ PAROLE DATE: 00/00/0000
SOCIAL SECURITY #...: XXXX32322 EWC JOB...: GENERAL WORKER
EDUC PGM.: NO CURR EDUC PROGRAM
CURRENT PROGRAM...: NO CURRENT PROGRAM EWC LEVEL: 2F5 EEC LEVEL: B7
AGE...: 41 DATE OF BIRTH...: [REDACTED]/81 ASSIGNMENT...: DARLINGTON UNIT

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

Table with columns: CURRENT OFFENSES, SENTENCE (YRS, MOS, DYS), COUNTY, SENTENCE (START, V/NV), CATEGORY. Includes offenses like MURDER and FIREARMS PROVISION.

Table with columns: PREVIOUS SCDC OFFENSES (COMPLETE), SENTENCE (YRS, MOS, DYS), COUNTY, SENTENCE (START, V/NV), CATEGORY. Includes offenses like MDP NARC SCHED-2ND SUBSE.

PRIOR COMMITMENTS OVER 90 DAYS:

NO PRIOR COMMITMENTS OVER 90 DAYS

DETAINERS (HOLD, WANTED, NOTIFY):

Table with columns: DETAINER TYPE, ACTION, OPEN ARREST NOTIFICATION, CATEG. Includes RESIST ARREST/ASSLT OFF. and FUGITIVE FROM JUSTICE.

NO DETAINERS

ESCAPES:

6/26/ 2 OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

Table with columns: DATE, LOCATION, STATUS, ACTION. Lists movements from 1/28/20 to 1/13/4.

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

Table with columns: JOB DESCRIPTION, START DATE, END DATE, TERMINATION REASON, JOB LVL. Lists assignments like GENERAL WORKER and CUSTODIAL WORKER.

HISTORY OF EARNED EDUCATION CREDITS:

Table with columns: EEC, START, END, TERMINATION.

GREEN, GREGORY KYLE FBI # [REDACTED] SID# [REDACTED] SCDC # 00299039 (CONTINUE
BONUS 15 OR MORE 05/18/21 0/0/0
***** END OF REPORT *****