

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Mar 29 2024

S.C. SUPREME COURT

On Writ of Certiorari to Court of Common Pleas
Appeal from Richland County
Honorable Jean Hoefer Toal, Circuit Court Judge
Appellate Case No. 2023-001835

ERICK E. WELLS,

Respondent,

vs.

THE STATE,

Petitioner.

APPENDIX

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Attorney General

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Appellate Defender

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ATTORNEYS FOR PETITIONER

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1 State of South Carolina
2 County of Richland
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4
5 State of South Carolina) Transcript of Record
6 vs.) 2014-GS-40-0724
7 Erick Edward Wells,) 2014-GS-40-1711
8 Defendant.) 2014-GS-40-1713
9
10
11 April 2, 2014
12 Richland, South Carolina
13
14 B E F O R E:
15
16 The Honorable R. Ferrell Cothran, Jr., Judge
17
18
19 A P P E A R A N C E S:
20
21 Daniel M. Coble, Assistant Solicitor
22 Attorney for the State
23
24 Theodore N. Lupton, Esquire
25 Attorney for the Defendant

Stacy S. Johnson, RPR
Circuit Court Reporter

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I N D E X

PAGE

CERTIFICATE OF REPORTER

19

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

P R O C E E D I N G S

MR. COBLE: The State calls Erick Wells.

(Whereupon, ERICK EDWARD WELLS was duly sworn
by the Clerk of Court.)

THE COURT: Yes, sir.

MR. COBLE: Thank you, Your Honor. May it please
the Court?

THE COURT: Yes, sir.

MR. COBLE: Daniel Coble for the State. Standing
before you is Erick Wells, represented by Ted Lupton
of the private bar. Mr. Wells is here today to plead
guilty to trafficking crack cocaine, 10 to 28 grams,
second offense; possession of crack cocaine, third
offense; as well as failure to stop for blue lights.
In exchange for his plea, we're dismissing all related
charges to these incidents, which are drug charges, as
well as we have a negotiated range of 10 to 20 years.

THE COURT: Okay. He's pleading to possession --
okay. Mr. Wells, you want to plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: You've had enough time to talk to
your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: You're satisfied with his
representation?

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

2 **THE COURT:** You understand on the trafficking
3 charge I can give you up to -- let's see. Is this a
4 first offense trafficking?

5 **MR. LUPTON:** It is a --

6 **THE COURT:** Second offense?

7 **MR. LUPTON:** -- a second offense.

8 **THE COURT:** So 5 to 30 years and you'll not be
9 eligible for parole, do you understand that?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** That's the maximum. And, of course,
12 I can give you up to 10 years for possession of cocaine,
13 third offense. Do you understand that?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** And outside of the negotiations that
16 your lawyer and the State have entered into, has anybody
17 promised you anything or threatened you?

18 **THE DEFENDANT:** No, sir.

19 **THE COURT:** And neither one of these cases have
20 been to the Grand Jury. Do you want them to go or do
21 you want to waive that?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** You want to waive that?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Are you under the influence of

1 alcohol or drugs today?

2 **THE DEFENDANT:** No, sir.

3 **THE COURT:** Do you got any mental diseases which
4 would keep you from understanding what you're doing
5 here?

6 **THE DEFENDANT:** No, sir.

7 **THE COURT:** By pleading guilty, you're giving up
8 your right to remain silent. Do you understand?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** And you're giving up your right to
11 a jury trial. In that trial, you would be presumed
12 innocent. The State would have to prove you guilty
13 of these charges beyond a reasonable doubt, all twelve
14 jurors. You'll be able to sit in the courtroom and
15 confront the witnesses who would testify against you.
16 Your lawyer could cross-examine the State's witnesses,
17 he could subpoena witnesses to testify in your behalf,
18 he could put up any defenses you may have, but when you
19 plead guilty you give all that up. Do you understand?

20 **THE DEFENDANT:** Yes, sir, I understand.

21 **THE COURT:** You're also giving up any appeals
22 that can come out of that by pleading guilty. Do you
23 understand that?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** I didn't ask you because I didn't see

1 this sheet, but you're pleading guilty to failure to
2 stop for a blue light, too?

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

4 **THE COURT:** That carries up to three years. Do
5 you understand that?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** If you want to appeal this guilty
8 plea, you've got to do it in ten days, okay?

9 **THE DEFENDANT:** (Nods head.)

10 **THE COURT:** Do you got anything you want to ask
11 me concerning your rights?

12 **THE DEFENDANT:** No, sir.

13 **THE COURT:** If you've got any problems with the
14 Solicitor's office, let us know. Have you had an
15 opportunity to go over the discovery with your attorney?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** So is there any issues about their
18 not giving you something you think you're entitled to?

19 **THE DEFENDANT:** No, sir.

20 **THE COURT:** Okay. The Solicitor is gonna give me
21 the facts.

22 **MR. COBLE:** Thank you, Your Honor. These charges
23 stem from two incidents. On the first, I'd like to note
24 that Investigator Brian Gwinn of the Richland County
25 Sheriff's Department's narcotics unit was not able to

1 attend today. He had a prior -- a lot of work to do
2 today, but he wanted to be here.

3 This first incident occurred on August 2nd of
4 last year. The Richland County Sheriff's Department
5 executed a search warrant at 2901 Chestnut Street. As
6 soon as the deputies entered the home, they saw the
7 Defendant in the kitchen by the stove. Once he saw
8 them, he ran towards another room. As he dove on a
9 couch away from them, he threw a baggy, which contained
10 crack. They ended up searching the rest of the house
11 and they found in the kitchen by the stove was -- crack
12 was in the process, as well as cocaine, of being cooked.
13 They found scales, as well as money and other -- a
14 little bit of cocaine as well. The total weight that
15 came back was just over 23 grams of crack and around
16 four grams of cocaine. As soon as the Defendant was
17 taken to the Alvin S. Glenn Detention Center, there was
18 also a jail phone call where the Defendant admits on
19 that phone call that he was cooking crack when the
20 police entered.

21 The second incident, Your Honor, occurred on
22 December 11th of last year. Deputy Lorian (ph.) was
23 patrolling the Colonial Heights neighborhood. There
24 were a lot of reports of speeding and reckless driving.
25 He saw the Defendant driving a black Mercedes at a high

1 rate of speed. He attempted to pull him over on a side
2 street. The Defendant fled from him, pulled over on
3 another side street and then once he entered Farrow Road
4 -- on Fisher Road he almost caused two collisions. He
5 accelerated at a high rate of speed, deputies continued
6 to follow him, he ended up on 277. He almost caused
7 several other collisions entering 277. They proceeded
8 down there, he would not stop for the deputies. He
9 would pull over, slow down and continue to speed up. He
10 did this a couple of times. Finally, he did pull over,
11 threw his keys out and gave up the chase. Inside the
12 car they found crack cocaine. I believe the weight came
13 back to .12 or something around there.

14 Your Honor, Investigator Gwinn, they have been
15 working this case for a long time. The Defendant is
16 somebody that they've been pursuing. He's been
17 rearrested multiple times by Investigator Gwinn and his
18 unit. He was not able to be here today, but he wanted
19 to emphasize that this is one of the bigger players, and
20 at the appropriate time we'd like to give you his prior
21 record.

22 **THE COURT:** Okay. Well, give me -- since part of
23 his prior record constitutes this crime as a second drug
24 offense, at least tell me his drug record.

25 **MR. COBLE:** Yes, sir, Your Honor. And if I may

1 give his full record for the record.

2 **THE COURT:** That will be fine.

3 **MR. COBLE:** Starting in 1992, PWID crack, as well
4 as possession of crack; 1995, possession of a stolen
5 vehicle; 1996, failure to stop for blue lights, PWID
6 crack and parole revocation; 1999, assault and battery
7 of a high and aggravated nature; 2002, PWID crack, as
8 well as possession of cocaine, second offense; 2003,
9 possession of crack, second offense; 2005, failure to
10 stop for blue lights, assault and battery with intent
11 to kill, pointing and presenting firearms at a person;
12 2006, a CDV-3rd, habitual traffic offender, pointing
13 and presenting firearms at a person; 2007, possession
14 of cocaine, second offense; 2008, assault and battery of
15 a high and aggravated nature, possession of cocaine,
16 second offense; 2011, possession of crack, third
17 offense.

18 **THE COURT:** Okay. Are those facts, correct,
19 Mr. Wells?

20 **MR. LUPTON:** Your Honor, I think that we would
21 dispute that record and I will address that at the
22 appropriate time, but as far as the basic facts, we'll
23 expand on some, but, yes.

24 **THE COURT:** Is that right, Mr. Wells?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** You had the crack cocaine and
2 cocaine?

3 **THE DEFENDANT:** On which -- on which incident?
4 I'm sorry, sir.

5 **THE COURT:** In the house.

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Okay. And you had some in the car?

8 **THE DEFENDANT:** One -- one piece in the car.

9 **THE COURT:** Okay. And he said it was a small
10 amount.

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** And you failed to stop for blue
13 lights and siren?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** And you're guilty of all that?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Okay. Then I find there's a factual
18 basis for your plea. It is -- you've had advice of
19 competent counsel with whom you're telling me you're
20 satisfied, and I'll accept your plea. Okay.

21 **MR. LUPTON:** Your Honor, may it please the Court,
22 first addressing the prior record, I think that -- that
23 rap sheets can get confusing with arrests, convictions,
24 probation revocations, that sort of thing, all mixed in,
25 but by my reading of the record I think that he is

1 double counted on some of those drug convictions. I'm
2 not making light of his prior record. He still has a
3 substantial number of drug convictions, but I counted --
4 subtracting out duplicates, is two prior PWID cracks
5 plus a prior PWID crack that he tells me he pled to
6 possession, although it shows on the rap sheet as a
7 PWID, as well as, I believe, three possessions of crack.

8 So that's still six prior drug convictions, we
9 don't dispute that, and that's obviously a bad record,
10 but other than that we -- he would dispute the 2008
11 ABHAN and states that he was incarcerated during that
12 time period, so he believes that that's somebody else
13 and he says somebody else did use his identity. And if
14 you look at the Alvin S. Glenn jail website, there is an
15 entry for another person using his name who's clearly
16 not him, so I think that that one is not attributable
17 to him, and if you take that out what you see is a
18 person with a classic drug record.

19 He's a drug user, a heavy drug user, who is a
20 user/dealer. His only violent crime -- his only crime
21 that's other than drugs and driving-type stuff, a CDV
22 and that one ABWIK from 2005 in the last fifteen years.
23 And that one ABWIK, I think it's important to note that
24 he pled to that while he was incarcerated to 157 days
25 time served, so clearly it was not a bad factual

1 situation. He tells me the victim was trying to drop
2 charges on him, that it was an accident, that she wanted
3 to drop charges and was here and spoke on his behalf,
4 but it was a situation where he was incarcerated and
5 pled to be able to get out. Obviously it was on his
6 record and he has to deal with it, but I'd ask the Court
7 to take that into account and not viewing this worse
8 than what it is.

9 When you take that out, he has a classic record
10 of somebody who has a bad drug problem, we've talked
11 about that, and this case, this sort of global case,
12 and this is a global plea, it wraps up three separate
13 investigations, wrapping up all the charges from
14 three separate investigations, which began with the
15 trafficking.

16 Each time he was arrested he was high, he was
17 stoned. He tells me that and I've been able to
18 independently verify that through the officers on two
19 out of the three. I haven't been able to talk with
20 the officer on the first case, but in the other two he
21 was stoned at the time and that partially accounts for
22 what's going on. He was so stoned on the third one
23 that the investigator who arrested him told me "I didn't
24 bother questioning him because he was too stoned".

25 I say that because he's a user/dealer. He is

1 certainly a prolific user/dealer, but if you look at his
2 cases, the weights have been small. The trafficking
3 case they talk about 23 grams, but what he had in his
4 hand was just a few grams of powder cocaine. He was at
5 his aunt's house, who was also charged with trafficking.
6 She was charged with some of these drugs, some were in
7 her exclusive control, some of it was in the kitchen,
8 and he was assisting her. And even though she's the
9 primary on that, he understands and we've discussed the
10 hand of one, hand of all. He understands that because
11 he was participating and helping that he is just as
12 guilty and that's why he's here pleading. I'll also
13 note that she was rearrested after that on another
14 trafficking, so even when he was out from there, she was
15 still doing it and had been charged with trafficking,
16 whereas his stuff was lower level.

17 Your Honor, he is from Columbia. He's lived here
18 his whole life. He's worked as an auto mechanic. He
19 worked -- before this all happened, he worked at AVF on
20 Two Notch. He's got three kids, which he helps support;
21 16 and 17 with one mother, a 16 from another mother.
22 He helps support them. Other than that, he's got two
23 sisters and a brother. His parents are deceased.

24 Your Honor, the other thing that -- and they
25 talked about him jumping -- running and jumping to

1 another room. At the time that the search warrant was
2 done on the trafficking, officers had a negligent
3 discharge as they went through the door. I'm not trying
4 to attack the officers with that, but that explains some
5 of his behavior in that he's getting shot at as far as
6 he knows and a jail phone call, I believe, verifies that
7 he was very scared when that all happened. I say all
8 this not to try and excuse, but to try and put this in
9 perspective of he is a user/dealer.

10 He is somebody who is not, despite what is being
11 said by the police in this case, and I understand that
12 there was a lot of tension with the officer in that
13 initial case because they made some mistakes in that
14 investigation regarding the shots fired, and I think
15 that there was some harsh feelings because of that, but
16 when you look at the facts and compare him to other
17 user/dealers in Richland County and throughout the
18 State, I think he deserves some time. He understands
19 that. We're asking the Court for the minimum 10 years
20 on this. It's going to be 85 percent time. He is going
21 to serve at least eight and a half of that.

22 I would also note to the Court that he
23 voluntarily turned himself in this most recent time.
24 He was out on the street. The jail let him bond out by
25 mistake. He could have not come back. He could have

1 filed the State. He knew he was looking at substantial
2 time; double-digit, 85 percent time. He still did the
3 right thing and came into court to plead guilty.

4 He's also offered -- the City of Columbia has
5 shown an interest in his supplier and his offer to
6 debrief is part of his making amends and asking for
7 mercy from the Court. He is prepared to debrief them
8 on that with CPD. All of this taken together, Your
9 Honor, I know that his record is bad, but we're asking
10 for the 10 years, 85 percent time, and we would ask the
11 Court respectfully to do that.

12 **THE COURT:** And the time negotiations were what
13 again?

14 **MR. COBLE:** 10 to 20 years. And if I may respond
15 briefly, Your Honor?

16 **THE COURT:** Okay.

17 **MR. COBLE:** As to the co-defendant, it is his
18 aunt. She is an older lady, I believe, in her sixties
19 or seventies. When she was rearrested, which is
20 correct, they were actually trying to serve a warrant
21 on the Defendant at the house. He was using her home.
22 They just missed him. He left with another co-defendant
23 and so they served her with a warrant because there
24 was crack there, I've confirmed that with the officers,
25 as well as being shot at. There was an accidental

1 discharge and that was a mistake and that was an issue
2 throughout all of our negotiations; however, when you
3 hear the jail phone calls it's not just talking about
4 being shot at, it's talking about cooking crack, not
5 that the aunt was involved. Also, when the officers
6 talked with the Defendant on that first incident of
7 trafficking, he claimed all the crack cocaine. He
8 didn't say that they were doing it together.

9 Your Honor, this was going to be a trial, we've
10 been in intense negotiations for trafficking third
11 offense. So it's not that he was turning himself in
12 because he would be looking at 25 to 30, Your Honor, if
13 he had not. And as to the record, not to harp on that
14 too long, and I could be incorrect, but I believe that
15 you can't get a rap sheet on the record with just a
16 name, I believe it takes a fingerprint as well, so that
17 we have some disputes with the record.

18 We are asking for the maximum on this, Your
19 Honor, based on the prior record of continuing drug, not
20 just use, but selling and PWIDs, as well as the violent
21 crimes, the ABWIK, the ABHAN and the CDV-3rd, and we
22 dispute the 2008 ABHAN, but even not including that,
23 it's the prior record, the drug using, selling and
24 violent crimes, as well as the investigation. They
25 aren't saying that he's a user or a smalltime dealer.

1 They have said that this Defendant is one of the big
2 players and that's why he's been rearrested multiple
3 times and these charges stem from, Your Honor.

4 **MR. LUPTON:** Your Honor, we just note that the
5 officer who made the mistake and got called on the
6 carpet for it looks at him as a bad guy, but the weights
7 involved have not borne out that he's Pablo Escobar and
8 he has been stoned each time, and I believe he would
9 like to address the Court at the appropriate time.

10 **THE COURT:** Yes, sir?

11 **THE DEFENDANT:** Yes, Your Honor. I bonded out
12 and about two days later they said I had a revoked bond
13 because they had took off the bond because I was out
14 on my third bond and my lawyer called me immediately
15 and told me to turn myself in and said I was facing 25
16 to 30 years and I was telling him I didn't want to turn
17 myself in because I was scared to go out to jail for
18 that much time. I was really -- really was scared, but
19 since 1992, that's when I first got addicted to crack
20 cocaine, so all my life -- I've been in and out of
21 prison all my life. I never had a chance, you know, to
22 -- I stayed clean for like year or two and I relapsed
23 again. I'm 40 years old and I'm sick and tired -- I'm
24 just sick and tired of getting high, I'm sick and tired
25 of selling drugs, sick and tired of going to jail. I'm

1 just tired, I need help, and I'm asking for help. I
2 need help.

3 **THE COURT:** All right. On indictment
4 2014-40-724, trafficking crack, the sentence of the
5 Court is you be committed to the State Department of
6 Corrections for a term of 15 years; for possession,
7 it's 10 years, to run concurrent; three years on the
8 failing to stop. That's the best I can do for you with
9 your prior record.

10 **MR. LUPTON:** Thank you.

11 **MR. COBLE:** Thank you, Your Honor.

12 (End of proceedings.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eighth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete transcript of record of all
the proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
2nd day of April, 2014.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

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

October 7, 2014

Stacy S. Johnson

STACY S. JOHNSON
CIRCUIT COURT REPORTER

WITNESSES

(S) M Laureano
- Richland County Sheriff

ARREST WARRANT NUMBER

2013A4010204342

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 09 2014

VERDICT
CERTIFIED TRUE COPY
ORIGINAL FILED
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS4001711

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

175

THE STATE
vs.

Erick Edward Wells

Indictment for
POSSESSION/ATTEMPT TO POSSESS
CRACK COCAINE - 1ST OFF

SC Code: 44-53-0375(A)
CDR Code: 3009

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

APP'X 20

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

POSSESSION/ATTEMPT TO POSSESS CRACK COCAINE

That Erick Edward Wells did in Richland County on or about December 11, 2013,
knowingly, willfully and intentionally possess or attempt to possess a quantity of
Crack Cocaine, a controlled substance under provisions of Section 44-53-110, et.
seq., S. C. Code of Laws, 1976, as amended, such possession not having been
authorized by law and being in violation of Section 44-53-375(A), S. C. 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.


DAN JOHNSON, SOLICITOR

WITNESSES

(S) M Laureano
- Richland County Sheriff

ARREST WARRANT NUMBER

2013A4010204342

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS4001711

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

175

THE STATE
vs.

Erick Edward Wells

Indictment for
POSSESSION/ATTEMPT TO POSSESS
CRACK COCAINE - 1st OFF

SC Code: **44-53-0375(A)**

CDR Code: **3000**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
FILED
OF ORIGINAL
C.C.C. & G.S.
COUNTY
RICHLAND
SOUTH CAROLINA

APP'X 22

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

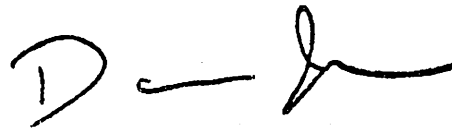
At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

POSSESSION/ATTEMPT TO POSSESS CRACK COCAINE

3rd Offense

That Erick Edward Wells did in Richland County on or about December 11, 2013,
knowingly, willfully and intentionally possess or attempt to possess a quantity of
Crack Cocaine, a controlled substance under provisions of Section 44-53-110, et
seq., S. C. Code of Laws, 1976, as amended, such possession not having been
authorized by law and being in violation of Section 44-53-375(A), S. C. 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) M Laureano

– Richland County Sheriff

ARREST WARRANT NUMBER

2013A4010204344

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS4001713

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

175

**THE STATE
vs.**

Erick Edward Wells

**Indictment for
FAILURE TO STOP BLUE LIGHT/SIREN
1ST OFFENSE**

**SC Code: 56-05-0750(B)(1)
CDR Code: 0065**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA
JUL 17 2014

APP'X 24

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

FAILURE TO STOP FOR BLUE LIGHT/SIREN – 1ST OFFENSE

CDR: 0065 56-05-0750(B)(1)

That Erick Edward Wells did in Richland County on or about December 11, 2013,
while operating a motor vehicle on a road, street, or highway of the State of South
Carolina, fail to stop his/her motor vehicle when signaled to do so by a law
enforcement vehicle, by means of a siren and/or flashing light, in violation of
Section 56-05-0750(B)(1), S. C. 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) M Laureano
- Richland County Sheriff

ARREST WARRANT NUMBER

2013A4010204344

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: **APR 09 2014**

VERDICT

Foreperson of Petit Jury
Date:

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
JUL 11 1954
D.C.C.P.S. G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

DOCKET NO. 2014GS4001713

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

175

**THE STATE
vs.**

Erick Edward Wells

**Indictment for
FAILURE TO STOP BLUE LIGHT/SIREN
1ST OFFENSE**

**SC Code: 56-05-0750(B)(1)
CDR Code: 0065**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

APP'X 26

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

FAILURE TO STOP FOR BLUE LIGHT/SIREN – 1ST OFFENSE

CDR: 0065 56-05-0750(B)(1)

That Erick Edward Wells did in Richland County on or about December 11, 2013,
while operating a motor vehicle on a road, street, or highway of the State of South
Carolina, fail to stop his/her motor vehicle when signaled to do so by a law
enforcement vehicle, by means of a siren and/or flashing light, in violation of
Section 56-05-0750(B)(1), S. C. 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) B Gwyn
- Richland County Sheriff

ARREST WARRANT NUMBER

2013A4010202782

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

FEB 19 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS4000724

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2014
175

THE STATE
vs.

Erick Edward Wells

Indictment for
TRAFFICKING CRACK COCAINE 10-28
g, 3RD & SUBSEQ

SC Code: 44-53-0375(C)

CDR Code: 452

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED TRUE COPY
ORIGINAL FILED
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

APPX 28

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 19²⁰¹⁴, the
Grand Jurors of Richland County present upon their oath:

TRAFFICKING CRACK COCAINE MORE THAN 10 GRAMS, LESS THAN
28 GRAMS – 3rd & SUBSEQUENT OFFENSE

That Erick Edward Wells did in Richland County on or about August 2, 2013, knowingly, sell, deliver, purchase, or bring into this state; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Crack Cocaine in an amount of more than ten grams but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-110, et.seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized [and such being the defendant's third or subsequent offense] and in violation of Section 44-53-375(C), S. C. Code of Laws, 1976, as amended, for the crime of trafficking

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
Erick Edward Wells

AKA:

Race: BLACK Sex: M Age: 39DOB: [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

TO: Drugs / Possession of less than one gram of meth. or cocaine base, 3rd or sub. offensein violation of § 44-53-0375(A) of the S.C. Code of Laws, bearing CDR Code # 3016
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. EW (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Coble, Daniel100576
SC Bar#Erick Wells
Defendant[Signature]
Attorney for Defendant9517
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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 the 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP days/hours Public Service EmploymentObtain GED ☐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 FundOther:

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
 JEANETTE MCBUDE
 C.C.C.P. & G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

Presiding Judge R. Samuel SmithJudge Code: 2144Sentence Date: 4-2-14Clerk of Court/ Deputy Clerk Jeanette McBudeCourt Reporter: S Johnson

SCCA/217 (03/2011)

APP'X 30

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Erick Edward Wells

AKA:

Race: BLACK Sex: M Age: 39DOB: [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
TO: Failure to Stop for A Blue Lights/Siren

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4001713A/W#: 2013A4010204344Date of Offense: 12/11/2013S.C. Code §: 56-05-0750(B)(1)CDR Code #: 0065

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. 9214 (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] 102576 [Signature] 9577

Coble, Daniel

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 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 Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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 the 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ § 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 3% to County (if paid in installments) \$ TOTAL \$ PTUP days/hours Public Service EmploymentObtain GED ☐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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: Sentence Date: 4-2-14

APP'X 31

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Erick Edward Wells

AKA:

Race: BLACK Sex: M Age: 39DOB: [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

TO: Drugs / Trafficking in ice, crack or crack - 2g or more, but less than 100g - 2nd offensein violation of § 44-53-0375(C)(2)(b) of the S.C. Code of Laws, bearing CDR Code # 0389 0451☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Coble, Daniel100576

SC Bar#

Defendant

Attorney for Defendant

9817

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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 the 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

_____ days/hours Public Service Employment

Obtain GED ☐

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: A+GCERTIFIED TRUE COPY
OF ORIGINAL FILED☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to clerk
during probation. C.C.C.P.&G.S.RICHLAND COUNTY
SOUTH CAROLINA

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

APP'X 32

ARREST WARRANT

2013A4010204342

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

1312029311-R1

against

Erick Edward Wells

Address:

Phone: [REDACTED] SSN: [REDACTED]
 Sex: M Race: B Height: 5 9 Weight: 200
 DL State: SC DL #: [REDACTED]
 DOB: [REDACTED] Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: M Laureano - 1615

Offense: Possession of Crack Cocaine

Offense Code: 3009

Code/Ordinance Sec: 44-53-0375(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Wells, Erick
12-11-13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
 1701 Main Street
 P O Box 192
 Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant M Laureano

being duly sworn deposes and says that defendant Erick Edward Wells

did within this county and state on or about 12/11/2013

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE: Possession of Crack Cocaine

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:

That on or about 12/11/13 while at High St & Farrow Rd in the Olympia Magisterial District of Richland County, it is believed that the def. did commit the crime of Possession of Crack Cocaine because One Erick Wells did have inside his vehicle a plain view under the armrest in a brown pill bottle, and on the driver's seat, and on the left side of the driver's seat that Wells was operating was several small pieces of a white rock like substance witch field tested positive for cocaine base. The white rock like substance was located following a lawful traffic stop, for careless operation filed weight was 3.1 grams. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

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 12/11/2013

defendant Erick Edward Wells

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Possession of Crack Cocaine

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 12/11/2013

Signature of Issuing Judge

M R McRae

Judge Code: 7221

(L.S.)

Judge's Address

Judge's Telephone (803)576-3284

Issuing Court:

☐ Magistrate☐ Municipal☐ Circuit

AFFIDAVIT

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

FILED
 TRUE COPY
 ORIGINAL FILED
 12/11/13
 C.C.P. & G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

FILED
 2014 JAN -7 PM 1:25
 C.C.P. & G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA
 APPX 33

BAIL set by

WITNESSES

Judge M.R. Metts
on DEC 11 2013
Type and Amount: \$ 75,000 is/so cont
Name of Surety: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

CODEFENDANTS

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS



APP'X 34

ARREST WARRANT

2013A4010204344

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

1312029311-R1

against

Erick Edward Wells

Address:

Phone: [REDACTED] SSN: [REDACTED]
 Sex: M Race: B Height: 5 9 Weight: 200
 DL State: SC DL #: [REDACTED]
 DOB: [REDACTED] Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: M Laureano - 1615

Offense: Failure to Stop for A Blue Lights/Siren

Offense Code: 0065

Code/Ordinance Sec: 56-05-0750(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Wells, Erick
 on 12-11-13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
 1701 Main Street
 P O Box 192
 Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant M Laureano

being duly sworn deposes and says that defendant Erick Edward Wells

did within this county and state on or about 12/11/2013

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE: Failure to Stop for A Blue Lights/Siren

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:

That on or about 12/11/13 while at High St & Farrow Rd in the Olympia Magisterial District of Richland County, it is believed that the def. did commit the crime of Failure to Stop for Blue Lights/Siren because one Erick Wells did fail to stop following a lawful traffic stop. I attempted to stop Mr. Wells on High St for careless operation. I initiated my vehicle blue lights and sirens attempting to stop Mr. Wells he entered onto I-277 NB for approximately 2 miles, failing to comply. I did get Mr. Wells to stop prior to Fontaine Rd. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

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 12/11/2013

defendant Erick Edward Wells

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Failure to Stop for A Blue Lights/Siren

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 12/11/2013

Signature of Issuing Judge

M R Metts

Judge Code: 7221

Judge's Address

Judge's Telephone (803)576-3284

Issuing Court:

☐ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

AFFIDAVIT

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 2014 JAN 7 PM 1:25
 RICHLAND COUNTY
 S.C. CLERK OF COURT

2014 JAN 7 PM 1:25
 RICHLAND COUNTY
 FILED
 APPX 35

BAIL set by

WITNESSES

Judge M.R. Metts
on DEC 11 2013
Type and Amount: \$75,000 CS/SB CONC
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

CODEFENDANTS





DISCHARGE FROM JAIL

SCREENING SHEET

1. Prepare this case for the Grand Jury: _____
1. Name of Defendant: **Erick Edward Wells**
2. DP or Warrant Number: **2013A4010204342**
3. Charge: **Drugs / Possession of less than one gram of meth. or cocaine base, 1st offense**
4. Officer/Agency: **M Laureano / Richland County Sheriff**
5. Please Subpoena: _____

Reviewed by: _____
Date: _____

2014GS4001711

OR

~~Pending Unindicted~~

ASOL # 175

DISPOSITION

☐ Dism. ☐ NP ☐ Remanded ☐ Dismissed At Prelim ☐ Failure to Appear ☐ PTI ☐ Restore ☐ Judicial Dismissal ☐ Other

Explain: **PLACE WITH CLOSE CASE**

Bench Warrant Served:

Bench Warrant Vacated:

Bench Warrant Recall:

OR

Date of Failure to Appear:

Date Bench Warrant Issued:

Solicitor: *Daniel Coble*
Daniel Coble

Date: April 11, 2014

APP'X 37

**CERTIFIED COPY
OF ORIGINAL FILED,
JAN 21 2014
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**



DISCHARGE FROM JAIL

SCREENING SHEET

1. Prepare this case for the Grand Jury: _____
1. Name of Defendant: **Erick Edward Wells**
2. DP or Warrant Number: **2013A4010204344**
3. Charge: **Traffic / Failure to stop for a blue light, no injury or death - 1st offense**
4. Officer/Agency: **M Laureano / Richland County Sheriff**
5. Please Subpoena: _____

Reviewed by: _____
Date: _____

2014GS4001713

OR

~~Pending Unindicted~~

ASOL # 175

DISPOSITION

☐ Dism. ☐ NP ☐ Remanded ☐ Dismissed At Prelim ☐ Failure to Appear ☐ PTI ☐ Restore ☐ Judicial Dismissal ☐ Other

Explain: **PLACE WITH CLOSED CASE**

Bench Warrant Served:

Bench Warrant Vacated:

Bench Warrant Recall:

OR

Date of Failure to Appear:

Date Bench Warrant Issued:

Solicitor: *Daniel Coble*
Daniel Coble

Date: April 11, 2014

**CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 11 2014
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

APP'X 38

JEANETTE W. McBRIDE
Clerk of Court

ANNE G. KELLY
Chief Deputy Clerk of Court



MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, S.C. 29202-2766

TELEPHONE:
Phone: (803) 576-1950
Fax: (803) 576-1785
TDD (803) 748-4999

RICHLAND COUNTY CLERK OF COURT

Richland County Judicial Center

Clerk of Court

Criminal Records Division

1701 Main Street, Room 205

Columbia, S. C. 29201

Name: Erick Wells

Date: _____

We have received your inquiry and respond as follows:

☒ Enclosed please find copies of the documents requested

☐ Your charge is: ☐ Pending ☐ Dismissed ☐ Bench Warranted ☐ A conviction

☐ Your request has been forwarded for handling to:

☐ Your Attorney ☐ Solicitors Office ☐ Public Defender's Office

Please note: Any motion or other court document has been clocked prior to forwarding to the appropriate office. This office DOES NOT schedule and/or handle motions or other legal matters)

☐ Your charge(s) have been faxed to SCDC. SCDC is responsible for clearing up detainers.

☐ For matters concerning PCR's, please contact the Attorney General's office. (803-734-3737).

☐ In order to obtain a transcript, write to SC Court Administration at 1015 Sumter Street, Suite 200, Columbia, SC 29201. You need to have the case number, Judge's name, and date of trial. Any questions, call (803)734-1800.

☐ SCDC calculates credit for time served. Necessary records have been faxed to SCDC.

☐ We need more information to process your request:

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

☐ There is no record of said charge.

☐ Please contact: _____

☐ Other: no record of 2013A4010202781 in General Session

DISCLAIMER: The role of the Clerk of Court's office is to maintain court documents. The Clerk's office provides copies of case documents (with proper identifying information) upon request, but does not provide information regarding a case. The Clerk's office is not permitted to give legal advice and/or determine length of sentence or other case specific questions.

TRUE COPY
ORIGINAL FILED
JAN 14 2014
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

Jeannette W. McBride, Clerk
P.O. Box 2766
Colg. SC 29202-2766

H
724
725
726

Date July 10, 14

Dear Ms. McBride

Please be advised, that I am
respectfully requesting the following Ind.'s
from warrants 2013A4010202781-84
and sentencing sheets. NV

And Ind.'s /sentencing sheets from
Warrants 2014A4021600348-50.

Would you also send me a PCR form.

Thank you

cc: Personal file

Sincerely
C. W. Wells

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

The South Carolina Court of Appeals

The State, Respondent,

v.

Erick Wells, Appellant.

Appellate Case No. 2014-000853

RECEIVED

JUN 30 2014

ATTORNEY GENERALS
OFFICE

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.

 **FOR THE COURT**

Columbia, South Carolina

cc:

Erick Wells, 281942

Daniel McLeod Coble, Esquire

Salley W. Elliott, Esquire

Alan McCrory Wilson, Esquire

Theodore Nichols Lupton, Esquire

Robert Michael Dudek, Esquire

FILED

6/27/14



RECEIVED

JUL 16 2014

ATTORNEY GENERALS
OFFICE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 15, 2014

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: The State v. Erick Wells
Lower Court Case No. 2014GS4000724, 2014GS4001711,
2014GS4001713, 2014Gs4000725, 2014GS4000726, 2014GS4001712,
2014GS4001714, 2014GS4001715, 2014GS4001717
Appellate Case No. 2014-000853

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

APP'X 42

cc: Erick Wells, 281942
Daniel McLeod Coble, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Theodore Nichols Lupton, Esquire
Robert Michael Dudek, Esquire

FORM 5

STATE OF SOUTH CAROLINA

County of Richland

Erick Edward Wells

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014C P400 4543

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2014 JUL 22 PM 12:06
JEANNETTE W. MCBRIDE
Clerk of Court & G.S.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

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

1. Place of detention McCormick Corr. Inst. 386 Redemption Way
McCormick SC 29899
2. Name and location of Court which imposed sentence General Sessions
Richland Co.
3. Name(s) of co-defendant(s) (if any) N / A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2014-GS-4000724/Trafficking crack 10g less than 28g.
- (b) 2014-GS-40001711/poss of Crack 3rd

- (c) 2014 - GS-40001713 / Fail to stop for blue lights
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 2, 2014 / 15 years
- (b) April 2, 2014 / 10 years
- (c) April 2, 2014 / 3 years

6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? YES

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

- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 27, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results: (i) Appellant has failed to provide a sufficient explanation as required by SCAR - Rule 203 (d) (1) (B) (iv)
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____ N
- (b) _____ A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Guilty plea "was not" voluntarily or intelligently made
- (c) _____

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

- (a) SEE attached sheet 1-B
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:

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

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

- i. South Carolina Ct of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. June 27, 2014

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: "Appellant has failed to provide a sufficient

explanation as required by SCAR - Rule 203 (d)(1)(B) (iv)

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

(a) which grounds have been presented:

i. _____

N

ii. _____

iii. _____

A

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

i. _____

N

ii. _____

iii. _____

A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) See 10 (a) Applicant first time presenting ground
(b) See 10 (b) " " " " "
(c) _____

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

- (a) your arraignment and plea? YES
(b) your trial, if any? N/A
(c) your sentencing? YES
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

None

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

- (a) the name and address of each attorney who represented you:
i. Theodore N. Lupton / Lupton Law Firm
1728 Main St. Colg. SC 29201
ii. _____
iii. _____
(b) the proceedings in which each such attorney represented you:
i. Plea & Sentencing
ii. _____
iii. _____

Revised 3/2003

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

New trial and any other relief I may be entitled to
and or the court deem just and fair

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

NO

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Erick WELLS, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Erick Wells

SWORN to and subscribed before me this 18
day of July, 2014.

J. Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

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

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

Etick Wells
Applicant

SWORN or affirmed to and subscribed before me this
18 day of July, 2014.

J. Franklin
Notary Public

My Commission Expires: 12/16/2019

RICHLAND COUNTY
FILED
2014 JUL 22 PM 12:06
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

11 (2) INEFFECTIVE ASSISTANCE OF COUNSEL

(1) Per the Bill of Rights to the Federal Constitution I was denied the right to effective assistance of counsel. Thereby, my pleas, convictions and sentences violates the Constitutions and laws of the United States, as guaranted by the 6th and 14th Amendments and U.C. Const. Article I Sec. 3 and Sec 14

Also see Strickland v Washington 104 S.Ct. 2052 : Hill v Lockhart 106 S.Ct. 366

Counsel Theodore Lupton acts

and or omissions, including but not limited to, failed to properly research and investigate the laws, the state alleged facts and my facts surrounding the entitlement of my cases, prejudiced me.

Which counsel had a **DUTY** to conduct a reasonable investigation(s) into my facts.... and the state's alleged facts surrounding my cases but counsel Lupton failed to.

do so. SEE: Ard v Cotoe 642
SE2d 590; Pelzer v State 672
SE2d 790; Strickland v Washington
466 U.S. 668; State v Williams
485 SE2d 99; Faretta v California
422 U.S. 806; Pauling v State 503
SE2d 468.

- (2) Counsel Lupton refused to talk to me on any kind of - defense level(s).
- (3) Counsel further prejudiced me

When he did not fully go over
my Rule (5) evidence with me

(4) Nor give me my own Rule (5)
evidence - to help aid in my
own defense(s) SEE: Brady v

Maryland 373 U.S. 83/83 5 Ct. 1194

Crane v Kentucky 476 U.S. 683; U.S.

v Bagley 473 U.S. 667; U.S. v Agurs

96 5 Ct. 2392; Napue v Ill 360 U.S.

264; Giglio v U.S. 92 5 Ct. 763.

Which all was needed to aid in
my own defense, and to make an

488

APP'X 54

informed decision whether to plea
or go to trial.

11(b) GUILTY PLEA "WAS NOT" VOLUNTARILY OR
INTELLIGENTLY MADE

(1) As argued.... I further argue that
my guilty pleas "WAS NOT" voluntarily or
intelligently made, where I did not
at my plea understand the true facts
surrounding my cases nor the necessary
elements. Thus the consequences thereof
SEE: Pittman v State 524 S.E.2d 623; Hill
v Lockhart 106 S. Ct. 366; Stalk v

State 681 SE2d 572:

Thereby, I should be allowed to depart from the alleged truth of my statements I made during my guilty pleas. Because if it was not for counsel Lupton unprofessional errors, I would not have pled guilty

SEE: Hill v Cockhart 106 SC. 366;

Crawford v U.S. 519 F2d 317; Edmonds v Lewis 546 F2d 566; Hughey v State 177 SE2d 533; Wolfe v State 485

688

SE2d 367; Roscoe v State, 546 SE2d 419

Which I will and can prove by
the preponderance of evidence, alone
with the aid of PCR counsel
SEE: S.C.R. Civil P. Rule 71.1 (d)
and Rule 407 "Rules of Professional
conduct" Also see Frasier v State
570 SE2d 172.

(2) I further argue that any grounds
set out in my original PCR
application expressly or not argued,
is subject to amendments per

748

S.C. Code Ann § 17-27-90 Also

See S.C.R. Civil P. Rule 71.1

(3) Moreover, I am entitled to a ruling upon "all" issues that I argue at my PCR hearing

SEE: S.C. Code Ann § 17-27-80:

Marlar v State 653 S.E.2d 266; Also

See Bostick v Stevenson 589 F.3d 164

(4) Thus, I am entitled to a FULL and FAIR evidentiary hearing SEE: Sharper v State 305 S.E.2d 247; Odom v State 523 S.E.2d 753

Respectfully submitted
/s/ Chris Wells

DATE: 7/18/14

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
#

Erick Edward Wells

281942
Applicant

NOTICE AND MOTION
FOR
COSTS / FEES

VS

The State
Respondent

NOW COMES the above named Applicant who moves this Hon. court in the above entitled matter per S.C. Code Ann § 17-3-50; 17-27-60 and any other applicable codes, laws and or rules.

This motion will be based upon the following:

The Applicant is in need of an Investigator to investigate the crime of Trafficking Crack Cocaine (surrounding facts) and witnesses.

And, an Chemical Analyst or persons qualified to testify how crack cocaine can change in weight/dried out. The Applicant further argue that without such said services he will be denied due process SEE: Glover v State 458 S2d 538; Bannister v State 509 S2d 807.

DATE: 7/18/14

Respectfully Submitted
s/ Erick Wells

PROOF OF SERVICE

I ETICK WELLS certify that I
have served the below Hon. Clerk of Ct. my PCR
and grounds - plus my motion for costs/fees. By
placing the above said into the M.C.I. mail
room on this 18 day of July 2014 to be placed in
the U.S. mail with postage prepaid

Jeanette McBride Clerk
P.O. Box 2766
Cola SC 29202-2766

SWORN to before me by Etick Wells
this 18 day of July 2014

J. Franklin
Notary Public

My Commission Expires 12-16-2019

cc: Personal file

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Erick Edward Wells, #281942,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2014-CP-40-04543

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief filed July 22, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In February 2014, the Richland County Grand Jury indicted Applicant for trafficking crack cocaine (10-28g, 3rd & subseq.) (2014-GS-40-00724). In April 2014, the Richland County Grand Jury indicted Applicant for possession/attempt to possess crack cocaine, first offense (2014-GS-40-01711) and failure to stop blue light/siren, first offense (2014-GS-40-01713). Theodore N. Lupton, Esquire represented Applicant. On April 2, 2014, Applicant pleaded guilty to possession of less than one gram of meth or cocaine base, third offense, failure to stop for a blue light/siren, and trafficking in ice, crank or crack (more than 10g but less than 28g), second offense. The Honorable R. Ferrell Cothran, Jr. sentenced Applicant to ten (10) years for possession of less than one gram of meth or cocaine, three (3) years for failure to stop for a blue light, and fifteen (15) years for trafficking in ice, crank or crack, to be served concurrently.

A notice of appeal was filed at the South Carolina Court of Appeals. Theodore N. Lupton, Esquire perfected the appeal in the form of an Anders¹ brief. The Court of Appeals affirmed the Applicant's conviction and sentence on June 27, 2014. State v. Erick Wells, Op. No. 2014-000853 (S.C. Ct. App. filed June 27, 2014). The Remittitur was sent on July 15, 2014.

II.

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

1. Ineffective Assistance Counsel
 - a. "Failed to properly research and investigate the laws, the state alleged facts and my facts surrounding the entitlement of my cases."
 - b. "Counsel Lupton refused to talk to me on any kind of defense leveles [sp]."
 - c. "Counsel further prejudiced me when he did not fully go over my Rule (5) evidence with me."
2. Involuntary Guilty Plea
 - a. "I did not at my plea understand the true facts surrounding my cases nor or the necessary elements."

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCPP.

Attached to this return and incorporated herein are the records of the Richmond County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, guilty plea transcript, and appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With

respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits Applicant's second allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376

S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Applicant must specify any claims he intends to raise at the PCR hearing. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

[SIGNATURE PAGE TO FOLLOW]

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on the claims of ineffective assistance of counsel and involuntary plea.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

 1, 2016

In the Court of Common Pleas
Fifth Judicial Circuit
2014-CP-40-4543

Transcript of Record

December 7, 2016
Columbia, South Carolina

The Honorable Jean H. Toal, Judge

Anna R. Good, Esquire
Attorney for the Applicant

Jessica E. Kinard, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Erick Edward Wells	
Direct Examination by Ms. Good	4
Cross-examination by Ms. Kinard.	17
Theodore N. Lupton	
Direct Examination by Ms. Kinard	22
Cross-examination by Ms. Good.	33
Ruling of the Court	42
Certificate Page.	47

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
A-1	Motion to Compel.	13
A-2	Memorandum.	14
A-3	Email	15
A-4	Letter.	17

1 THE COURT: All right, this is the matter of Erick
2 Edward Wells against the state, 2014-CP-40-4543. This is
3 an application for post-conviction relief. Present in the
4 courtroom is Ms. Good representing the applicant and Ms.
5 Jessica Kinard representing the state.

6 Ms. Kinard, you may proceed.

7 MS. KINARD: Thank you, Your Honor. As you stated, we
8 are here for an application of post-conviction relief that
9 was filed July 22, 2014. The applicant is presently
10 confined in the South Carolina Department of Corrections
11 pursuant to orders of commitment of the Richland County
12 Clerk of Court.

13 In February 2014, the Richland County Grand Jury
14 indicted him for trafficking crack cocaine 10 to 28 grams,
15 third or subsequent offense. He was later indicted for
16 possession or attempt to possess crack cocaine first
17 offense and failure to stop for a blue light or siren first
18 offense. Theodore Lupton represented him at his guilty
19 plea, which occurred April 2, 2014.

20 He pled guilty to possession of less than 1 gram of
21 meth or cocaine base third offense; failure to stop for a
22 blue light or siren; and trafficking in ice, crank, or
23 cocaine more than 10 but less than 28 grams second offense.
24 The Honorable Ferrell Cothran sentenced him to ten years
25 for possession of less than 1 gram of meth or cocaine,

1 three years for the failure to stop, fifteen years for
2 trafficking, all to be served concurrently.

3 A notice of appeal was filed with the South Carolina
4 Court of Appeals by Mr. Lupton, who perfected the appeal in
5 the form of an *Anders* brief. The Court of Appeals affirmed
6 the applicant's conviction and sentence on June 27, 2014,
7 and the remittitur was sent back on July 15, 2014. Thank
8 you, Your Honor.

9 THE COURT: Ms. Good.

10 MS. GOOD: Thank you, Your Honor.

11 THE COURT: You may proceed.

12 MS. GOOD: At this time, applicant calls Erick Wells.

13 THE COURT: Come around, Mr. Wells, and be sworn.

14 ERICK WELLS, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

16 DIRECT EXAMINATION BY MS. GOOD:

17 Q. Can you state your name for the record?

18 A. Erick Wells.

19 Q. Okay. Mr. Wells, you just heard Ms. Kinard state what
20 you pled guilty to in April 2014, correct?

21 A. Yes, ma'am.

22 Q. Okay. When were you are originally arrested on the
23 first set of charges?

24 A. The first one was August the 2nd.

25 Q. Okay, of what year?

1 A. 2013.

2 Q. Okay, and when did you obtain Mr. Lupton as your
3 attorney?

4 A. I believe, I believe October.

5 Q. Of 2013?

6 A. Yes, ma'am.

7 Q. And between October of 2013 and April of 2014 when you
8 pled guilty, about how many times do you remember meeting
9 or seeing Mr. Lupton?

10 A. He came to the county jail at least twice.

11 Q. Okay. The first time that you met with him at the
12 jail, do you remember when that was?

13 A. Yes. It was December.

14 Q. Of 2013?

15 A. Yes, ma'am.

16 Q. And do you recall about how long that meeting lasted?

17 A. About fifteen, twenty minutes.

18 Q. Okay, and what did y'all discuss in that meeting?

19 A. We discussed me sitting in the county jail for about a
20 year to wait to plead guilty.

21 Q. Okay, and was there a plea offer at that time from the
22 solicitor's office?

23 A. Fifteen to twenty.

24 Q. Fifteen to twenty, okay, and at that time had you seen
25 any discovery?

1 A. No, ma'am.

2 Q. From Mr. Lupton? Did he have any at that time? Do
3 you know?

4 A. No, ma'am, he didn't.

5 Q. Okay, and what did you tell him about that plea offer?

6 A. I told him could he get it a little lower.

7 Q. Okay. So, you hadn't accepted that at the time?

8 A. No, ma'am.

9 Q. Okay. The second time that you met with him, do you
10 remember when that was?

11 A. I think it was January, if I'm not mistaken.

12 Q. Of 2014?

13 A. Yes, ma'am.

14 Q. Okay, and about how long did that meeting last?

15 A. About twenty minutes.

16 Q. Okay, and at that time did he have that ---

17 A. No, ma'am. He was telling me they was about to go
18 off, off my bonds.

19 Q. Okay, the bonding company?

20 A. Yes, ma'am.

21 Q. Okay, but at that time you didn't see any discovery in
22 his file?

23 A. No, ma'am.

24 Q. Had y'all discussed discovery in any way?

25 A. Yes. I asked him about it, and he said he didn't have

1 it.

2 Q. Okay, and at any point -- at that point was there a
3 plea offer?

4 A. No, ma'am.

5 Q. Okay. At what point did you get the plea offer that
6 you'd end up pleading to, which was the ten to twenty?

7 A. I was in the county jail March the 2nd.

8 Q. Okay.

9 A. Of 2014.

10 Q. Okay.

11 A. And they called me to the courthouse and that's
12 when...

13 Q. So, you spoke with Mr. Lupton at the courthouse?

14 A. Yes, ma'am.

15 Q. Okay. When you spoke to him at the courthouse, at
16 that point had you seen any discovery whatsoever on the
17 case?

18 A. No, ma'am.

19 Q. Are you aware if he had any discovery in the case at
20 that time?

21 A. I believe he had something, but I didn't -- wasn't
22 quite sure exactly what it was.

23 Q. Okay. So, he never showed it to you?

24 A. No, ma'am.

25 Q. And at that point, what did you tell him about the ten

1 to twenty plea offer?

2 A. I told him I had a bad record, and I didn't want to
3 take the plea.

4 Q. Okay. Did you discuss any type of defense for trial
5 or anything with Mr. Lupton?

6 A. Yes. I asked him about trafficking; I told him I
7 wasn't quite sure of the trafficking.

8 Q. Okay, and why did you tell him that?

9 A. Because of the dramatic drop in the weight. It kept
10 dropping.

11 Q. Okay. After you met with him at the beginning of
12 March of 2014 until the plea on April 2nd of 2014, did Mr.
13 Lupton file anything, any papers with the court regarding
14 discovery?

15 A. The only thing that he filed was a motion to compel.

16 Q. A motion to compel discovery?

17 A. Yes, ma'am.

18 Q. Okay. So, that would indicate that he did not have
19 the appropriate discovery at that time?

20 A. At that time, no, he did not.

21 Q. Okay, and when you pled on April 2, at that point had
22 you seen any discovery regarding your cases?

23 A. No, ma'am.

24 Q. I'll get to the day of the plea. When was the first
25 time he saw Mr. Lupton that day?

1 A. When I was, I was detained down there.

2 Q. The holding cell?

3 A. The holding cell. He called me out.

4 Q. And about what time was that? Do you remember?

5 A. I can't remember the exact time.

6 Q. Was it the morning? Was it the afternoon? Middle of
7 the day? Do you know?

8 A. I believe it was in the morning.

9 Q. Okay. At that time, did he go over the paperwork with
10 you to sign the ---

11 A. Yes.

12 Q. --- sentencing paperwork? Okay.

13 A. Yes, ma'am.

14 Q. And at that point, had you seen any discovery?

15 A. No, ma'am.

16 Q. Why at that point did you decide to plead if you
17 hadn't seen the discovery yet?

18 A. He told me this, this was a judge and, and he could
19 argue ten years and it would be best for me to take the
20 plea.

21 Q. Okay, and so it was your understanding that you were
22 probably going to get ten years, and so that's why you took
23 it?

24 A. Yes, ma'am.

25 Q. Okay, and during your plea, I guess -- and I'm sure

1 Ms. Kinard will ask you these questions. You know there's
2 a transcript regarding you answering you were satisfied
3 with Mr. Lupton and all that during the trial -- or during
4 the plea and everything. Why at that point did you say
5 yes, you were satisfied?

6 A. Because he assured me that this was a good judge, and
7 he wasn't from around here. He was coming through, and
8 it'd be best for me to take a plea.

9 Q. Okay, and what was your understanding of what you were
10 going to get?

11 A. My understanding, I was going to get ten years.

12 Q. Okay, and, in fact, you did not receive ten years,
13 correct?

14 A. No, ma'am.

15 Q. Okay. You received fifteen?

16 A. Yes, ma'am.

17 Q. After the plea, did you discuss anything with Mr.
18 Lupton?

19 A. Yes. I was asking him about the PCR issues and
20 appeals issues.

21 Q. Okay, and what did you do after the plea?

22 A. When I went to Kirkland, I filed for a direct appeal.

23 Q. Okay, and at what point did you finally receive your
24 discovery in this case?

25 A. After I got to McCormick. I believe I got there May

1 the 5th, but I didn't receive my discovery I think, like,
2 July.

3 Q. Okay.

4 A. June or July.

5 Q. So, it was while you were at SCDC?

6 A. Yes, while I was at SCDC.

7 Q. Okay, and who sent you that discovery?

8 A. Mr. Lupton.

9 Q. Okay, and that was the first time you'd seen that?

10 A. Yes, ma'am.

11 Q. After reviewing your discovery, would you have decided
12 to plead guilty if you had known what was in the discovery?

13 A. No, ma'am, I wouldn't have pled guilty.

14 Q. And why is that?

15 A. Because I've seen a lot of issues that wasn't
16 researched or addressed.

17 Q. Okay, and you would have asked him to do those things
18 if you had known about them?

19 A. Yes, ma'am.

20 Q. Is there anything else that you think is important for
21 the court to know regarding Mr. Lupton's representation of
22 you for this PCR?

23 A. Besides the point that he never researched and he fell
24 below?

25 Q. Right.

1 A. The standard? Yes, ma'am.

2 Q. Okay. Go ahead and tell the court.

3 A. Okay. In my, in my Exhibit A, Mr. Lupton filed a
4 motion to compel, stating on March the 11th, he stated that
5 the solicitor did not have -- I had three separate charges.
6 He said the solicitor did not have the most recent
7 discovery in the first or the second arrest, and he said in
8 exhibit -- in the motion to compel, he stated it's a
9 violation of my Fifth Amendment rights of due process.

10 Q. I'm going to ---

11 MS. GOOD: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MS. GOOD:

14 Q. I'm going to show you this. You have written Exhibit
15 A on it. What is this?

16 A. Motion to compel.

17 Q. Is that what you were just discussing?

18 A. Yes, ma'am.

19 MS. GOOD: We'd like to mark this as Applicant's
20 Exhibit 1, Your Honor.

21 THE COURT: Are you familiar with the exhibit, Ms.
22 Kinard?

23 MS. KINARD: I don't think it's attached to mine.

24 MS. GOOD: I'll show it to you.

25 MS. KINARD: If I could just see it, I'm sure there's

1 no problem, Your Honor.

2 MS. GOOD: I was waiting for her to put the sticker on
3 it.

4 MS. KINARD: I think she was waiting for me.

5 MS. GOOD: Okay.

6 (A PAUSE.)

7 THE COURT: It's admitted.

8 (MOTION TO COMPEL MARKED INTO EVIDENCE AS APPLICANT'S
9 EXHIBIT NUMBER 1.)

10 BY MS. GOOD:

11 Q. And this is the motion to compel that Mr. Lupton filed
12 on March 11th of 2014?

13 A. Yes, ma'am.

14 Q. Okay, and what else would you like to tell the court?

15 A. I have exhibit B. It's a memorandum from Chief Jean
16 Toal, Justice Jean Toal, I'm sorry. Mr. Lupton had this
17 memorandum, and he stated the memorandum in the motion to
18 compel, and the memorandum states that:

19 To all solicitors in the circuits are offering
20 plea agreements to defendants that -- condition
21 to file for discovery, and there will be
22 consequences for foregoing discovery as far as
23 ineffective assistance of counsel based on that
24 the plea was not voluntary because the applicant
25 did not have access to the solicitor's file.

1 Mr. Lupton added the motion -- the memorandum in the
2 motion to compel, so I know he read it.

3 Q. Okay. So, that was attached to the motion to compel?

4 A. Yes, ma'am.

5 MS. GOOD: And I've shown this to opposing counsel,
6 Your Honor, and would like to mark this Applicant's Exhibit
7 2.

8 THE COURT: Admitted.

9 (MEMORANDUM MARKED INTO EVIDENCE AS APPLICANT'S
10 EXHIBIT NUMBER 2.)

11 BY MS. GOOD:

12 Q. And on the same day that Mr. Lupton filed his motion
13 to compel, did he send communication to the solicitor's
14 office regarding discovery that he was missing?

15 A. I don't think so, no, ma'am.

16 Q. Okay. Is there anything else you would like to tell
17 the judge?

18 A. Yes. Exhibit C will show that Mr. Lupton perjured me.

19 Q. Is, is this the email I was just discussing?

20 A. Yeah, that's the email right there.

21 (COUNSELORS CONFER.)

22 MS. KINARD: Your Honor, this appears to be an email
23 from Mr. Lupton to Assistant Solicitor Daniel Coble. I
24 don't think it's proper coming in through this witness.

25 THE COURT: Let me take a peek at it.

1 (A PAUSE.)

2 THE COURT: Overruled. I will admit it.

3 MS. GOOD: Thank you, Your Honor. Mark this as
4 Applicant's 3.

5 (EMAIL MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
6 NUMBER 3.)

7 BY MS. GOOD:

8 Q. And this is an email from Mr. Lupton requesting
9 discovery?

10 A. Yes, ma'am, dated March 17, 2004. He, he was asking
11 for a full discovery pursuant to Rule 5 for exculpatory
12 evidence, *Brady vs. Maryland*.

13 Q. Okay, and that was about half a month before your
14 plea, about two weeks before your plea?

15 A. Yes, ma'am, about two weeks before my plea.

16 Q. And do you know if he received that material before
17 your plea?

18 A. I don't think he received -- I hadn't seen it.

19 Q. Okay. So, you, you have no idea if he got that?

20 A. I have no idea.

21 Q. Is there anything else you'd like to tell the judge?

22 A. Yes, about Exhibit D. It's a search warrant.

23 Q. And what was your problem with the search warrant?

24 A. The search warrant was -- they executed a search
25 warrant August 7, 2013. I was asking for a Rule 6(b), a

1 physical chain of custody.

2 Q. Did you ever receive a chain of custody?

3 A. I never received a chain of custody, a physical chain
4 of custody on that at all.

5 Q. Okay, and when you received your discovery from Mr.
6 Lupton, was there a chain of custody in it?

7 A. No, ma'am.

8 Q. Okay, and you requested that from the solicitor's
9 office also, correct?

10 A. Yes, ma'am.

11 Q. Okay, and it was not provided to you by them?

12 A. No, ma'am.

13 Q. And then later when -- let me show you this letter.
14 Do you recognize this letter?

15 A. Yes, ma'am.

16 Q. And what is this?

17 A. A letter from Mr. Lupton, Lupton Law Firm.

18 Q. Okay, and it indicates where he's inclosed a copy of
19 the discovery to you?

20 A. Yes, ma'am.

21 Q. Okay, and what date is that letter?

22 A. June 30, 2014.

23 Q. And when did you plead?

24 A. March.

25 Q. Or April 2nd?

1 A. I mean, April the 2nd.

2 MS. GOOD: And this is Applicant's Exhibit 4, Your
3 Honor.

4 MS. KINARD: I would raise the same objection that I
5 don't think it's proper under this witness.

6 THE COURT: Overruled. I'll admit it.

7 (LETTER MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
8 NUMBER 4.)

9 BY MS. GOOD:

10 Q. And you're asking the court today to grant your PCR
11 and allow you to go -- to take your cases back to general
12 sessions?

13 A. Yes, ma'am.

14 MS. GOOD: No further questions, Your Honor.

15 THE COURT: Ms. Kinard.

16 MS. KINARD: Thank you, Your Honor.

17 CROSS-EXAMINATION BY MS. KINARD:

18 Q. Mr. Wells, you stated a few times that you did not
19 review discovery with Mr. Lupton because he didn't have
20 discovery to review. Is that correct?

21 A. Yes, ma'am.

22 Q. Every time y'all met or spoke, did you talk about
23 where the discovery was, or the fact that you didn't have
24 it?

25 A. No, ma'am.

1 Q. How often did y'all talk about that?

2 A. Well, I stayed in the county jail for about
3 thirty-five days. He came down twice.

4 Q. Right, but whenever you spoke, did you talk about,
5 hey, where's the discovery?

6 A. No, ma'am. He only talked about pleading guilty and
7 staying in jail for a year.

8 Q. Okay.

9 A. Before I pleaded.

10 Q. How did he know that that's -- in your impression, how
11 did he know that you'd be in jail for a year before you
12 pled?

13 A. He told me it'd be in my best interest just to wait.

14 Q. Did he talk to you about your version of the facts in
15 this case?

16 A. No, ma'am.

17 Q. He didn't talk to you about what actually happened?

18 A. No, ma'am.

19 Q. Did he talk to you about the charges that you were
20 facing?

21 A. Yes, ma'am.

22 Q. About what the state would have to prove?

23 A. No. He told me that the state is offering fifteen to
24 twenty years or a threat for trial.

25 Q. Did you ever want to go to trial?

1 A. At the time I didn't know because I didn't have
2 discovery; I didn't know what was going on.

3 Q. Did you talk to Mr. Lupton about the benefits of a
4 trial versus a plea?

5 A. No. He never brought that up.

6 Q. And you never brought it up to him about whether you
7 should consider if it was in your best interest to go to
8 trial?

9 A. I was trying to get him to get the trafficking charge
10 dropped, and he said he couldn't.

11 Q. So, your focus was on a negotiation for a better plea?
12 Is that fair?

13 A. Well, well, my negotiation was I never should've been
14 charged with trafficking.

15 Q. I understand that, but as far as preparation, you
16 wanted to the focus on solely on getting a better plea
17 offer?

18 A. Yes, ma'am.

19 Q. So, you really didn't try to prepare for trial with
20 him?

21 A. Well, he didn't have discovery, so.

22 Q. I understand. Thank you. As part of entering your
23 plea, did you understand the rights that you were giving
24 up?

25 A. At that time, no, I did not.

1 Q. Do you recall entering your plea with the judge?

2 A. Yes, ma'am.

3 Q. Do you recall him asking you if you were giving up
4 your constitutional rights to different elements, like a
5 jury trial, the right to confront your accusers, and right
6 to remain silent?

7 A. Yes, ma'am.

8 Q. You do recall that?

9 A. I, I, I recall that.

10 Q. And you understand replying to him that you understood
11 you were giving up those rights?

12 A. Yes, ma'am.

13 Q. And as Mr. Good -- excuse me, Ms. Good said of course
14 I'm going to ask you if you testified that you were
15 satisfied with your attorney, and you testified yes?

16 A. Yes, ma'am.

17 Q. And tell me one more time why that wasn't entirely
18 accurate.

19 A. Because at the time, he told me it would be, it would
20 be best to take the plea. So, I said that on the grounds
21 that the plea would be ten years.

22 Q. Did he promise you ten years?

23 A. He said, his exact words was this is a good judge, and
24 we're not going to get another opportunity to do this
25 again.

1 Q. Okay. So, he never promised you ten. He basically
2 said I'll go in there and argue for ten. I think we have a
3 chance with this judge.

4 A. That's what he said.

5 Q. Okay. Do you also recall the judge asking you if you
6 had gone over the discovery with your attorney?

7 A. Yes, ma'am.

8 Q. And do you remember how you answered that question?

9 A. I answered yes.

10 Q. That you had gone over it?

11 A. Yes, ma'am.

12 Q. Why did you answer it that way?

13 A. Because I felt like I was going to get ten years, 85
14 percent.

15 Q. So, you made a conscious, voluntary choice to choose
16 this scenario, this guilty plea, rather than to go to trial
17 or wait to plead another day? Is that correct?

18 A. I was just following the advice of my attorney.

19 Q. But you trusted him to make a good decision for you?

20 A. I trusted his advice.

21 Q. Okay.

22 MS. KINARD: I don't have any further questions at
23 this time. Thank you.

24 THE COURT: Very good.

25 Ms. Good?

1 MS. GOOD: Nothing further, Your Honor.

2 THE COURT: All right, you may come down, Mr. Wells.

3 (THE WITNESS EXITS THE STAND.)

4 MS. GOOD: Nothing further from the applicant, Your
5 Honor.

6 MS. KINARD: The state would call Theodore Lupton.

7 THE COURT: Very good. Let Mr. Wells get seated
8 first, Mr. Lupton.

9 WITNESS: Thank you, Your Honor.

10 THE COURT: And you may come around and be sworn.

11 THEODORE N. LUPTON, BEING DULY
12 SWORN, TESTIFIES AS FOLLOWS:

13 BAILIFF: Have a seat. State your name for the
14 record.

15 WITNESS: My name is Theodore Lupton.

16 DIRECT EXAMINATION BY MS. KINARD:

17 Q. Thank you for being here, Mr. Lupton.

18 MS. KINARD: May it please the court, Your Honor?

19 Q. Can you tell me how long you have been practicing law,
20 sir?

21 A. At this point, twenty-one, almost twenty-two years.

22 Q. And what percentage roughly has that been with
23 criminal defense?

24 A. Almost 100 -- well, defense?

25 Q. Criminal in general.

1 A. Criminal, generally almost 100 percent of it.

2 Q. Do you recall how you became involved in this case?

3 A. I was appointed. My records show that the letter of
4 appointment was generated 10/29/2013.

5 Q. Was this a conflict appointment from the public
6 defender's office?

7 A. It was.

8 Q. When you were appointed, did you file for discovery?

9 A. I did.

10 Q. Let's go ahead and start with the discovery issues.
11 Did you receive anything in what you thought would be a
12 normal timeline as far as discovery goes?

13 A. I received some partial discovery on the first case in
14 order of time. The defendant had three cases, three
15 separate arrests. The first was the most serious; that was
16 the trafficking case. I received some partial discovery on
17 that almost immediately. It's hard to tell from the -- my
18 records, but it most likely was sent by the public
19 defender's office with the appointment packet based on when
20 it arrived.

21 It was partial discovery, as I said; it was not
22 complete. When I met with Mr. Wells, he gave me some
23 information that was, I thought, extremely relevant
24 regarding the fact that there had been a negligent
25 discharge of a firearm by the law enforcement as they were

1 entering his -- the house he was in. It was not -- there's
2 no information about that contained within the discovery,
3 and I immediately began pressing the solicitor's office for
4 more information about that. You want me to...

5 Q. Yes. Keep going.

6 A. All right. So with regards to that, I kept pressing
7 for that as well as generally pressing for more
8 information, sort of fleshing out the basic initial
9 discovery. As you know from -- you know, I think everybody
10 in here has done a good bit of criminal. It is very common
11 that the solicitor's office will send initial discovery and
12 then flesh it out as the case moves forward.

13 What I got gave me the basic picture of what happened
14 up front. I discovered some stuff from talking to Mr.
15 Wells when I first met him. I kept pressing for greater
16 detail, as well as investigating issues that that
17 information caused me to think might be out there or be
18 relevant.

19 I did that and while I was working on that, of course
20 he was also arrested on a second case, and I got some
21 initial discovery on that and was attempting to get more
22 information on that. And then he got out of jail again,
23 and there was a third case which I was attempting to get
24 information on as well at some point, and that was in 2014.

25 All of this was going on fairly, you know,

1 simultaneously, but I was focusing on the trafficking case
2 because that was the case that the state was pushing.
3 State was pushing that very hard very early on in the case.
4 They were threatening to call it for trial pretty early on
5 in the case. I think the case was about six to eight
6 months old and they were already noticing it for trial.

7 I ultimately filed a motion to compel, as well as
8 following up with a email to Mr. Coble pointing out I think
9 it was fourteen specific pieces of information for --
10 pieces of evidence or bits of information that I thought
11 were relevant. Part of my doing that was not just to get
12 that information, but also to point out to him problems he
13 had in his case to basically facilitate what Mr. Wells was
14 wanting, which was a better offer.

15 MS. KINARD: Your Honor, can I approach to retrieve
16 those documents?

17 THE COURT: Why certainly. Yes, ma'am. I'm handing
18 you Exhibits 1, 2, 3, and 4.

19 MS. KINARD: Thank you, Your Honor.

20 BY MS. KINARD:

21 Q. Mr. Lupton, if you wouldn't mind, would you just
22 glance through these and just identify them for the record
23 and let us know that they are documents you filed or are
24 familiar with?

25 A. Exhibit 1 is the motion to compel that I did file. It

1 has the stamp where I filed it in the Richland County
2 clerk's office. There was an attachment to that which was
3 Chief Justice Toal's memorandum which was -- she had done
4 back in March 2004, and that's in this PCR as Exhibit 2.
5 And then Exhibit 3 is the email that I sent to Mr. Coble
6 that I referenced earlier. Exhibit -- what's marked for
7 PCR as Exhibit 4 is a letter that I sent regarding the
8 discovery that he requested.

9 With regards to that last one, he made mention about
10 not going over discovery. I want to be clear. I did go
11 over what discovery I had with him. I do not -- as, as I
12 think Mr. Schnee testified in a hearing earlier today, my
13 practice is the same as his. I think most criminal
14 attorneys have the same practice. We discourage clients
15 from receiving their discovery while in jail because that's
16 dangerous. All that information floating around the jail
17 can lead to problems. So, I would not have given him a
18 copy of his discovery unless he asked for it, and whenever
19 a client asks for discovery while they're in jail, I
20 discourage them from getting it but if they insist, I
21 always provide it. He never did. That was the first time
22 he asked for a written copy or printed copy of his
23 discovery and when he did, I complied.

24 Q. Thank you. Now, stepping back to the motion to compel
25 and the email to Assistant Solicitor Coble, does that

1 outline what you still needed, what you were requesting,
2 and did that seem to hurry up the process? Did you receive
3 anything as a result of that communication?

4 A. The motion to compel I'd been pressing since probably
5 November, December at the, at the latest. I had been
6 pressing for more information about the negligent
7 discharge. I felt that that was very important,
8 particularly in light of the fact that in the discovery,
9 the sheriff's department deputies indicate that Mr. Wells,
10 when they entered the residence, had fled and dove for
11 cover.

12 They never mentioned in the incident report that there
13 was a shooting simultaneous with that. I thought it was
14 relevant, trying to say that that's an indication of guilt
15 and yet there's this much more logical explanation. So, I
16 pressed for that.

17 I never got it. I keep getting told that they
18 couldn't find it, that there was an issue. That it had
19 been typed up on a computer that was now no longer in
20 service, and they couldn't find it. Once I files the
21 motion to compel, two days later they -- I was sent a copy
22 of a one-page, two-paragraph report, being told that the
23 sheriff's department just found this. So, I, I got that
24 and, in fact, in the email follow up, I asked some
25 questions following up on that report that was turned over

1 on the 13th, March 13, 2014.

2 Other than that, I really didn't get much of anything
3 related to the trafficking case. I did get a little bit of
4 additional discovery on some other stuff. But the bulk of
5 what I had, I got some supplemental discovery on the 18th
6 but not, not a whole lot of new stuff, no.

7 Q. Okay. Now let's talk about the stance of the case as
8 it was being presented and prepared. Was this ever likely
9 to go to trial?

10 A. Well, they kept noticing it for trial. They, they had
11 a -- they were -- they being the solicitor's office -- was
12 pushing us towards trial, and I felt that there was a
13 credible threat of it going to trial in the near future at
14 that point. In fact, that was -- when I discussed the
15 situation with Mr. Wells, what I did was I, I -- we looked
16 at it in terms of where we were at: the information we had,
17 the information I had requested. I explained to him what
18 we had, went over what we had with him. I talked about the
19 things that we were missing. I discussed with him what I
20 felt was likely to be available ultimately of that. But
21 some of the stuff I felt like we would probably never get.
22 Some of the stuff like requests for certain of the
23 information about solicitor offers on the prior cases,
24 things like that, I didn't think they were ever going to
25 turn that over, and I, I felt like a judge probably would

1 not order them to go through their records. But I was
2 asking some of that to, to let him know issues that he had.

3 But I did discuss with him what we had, what I felt
4 was missing that we could get, and what we could do with
5 the information. And I explained to him that we had
6 certain defenses related to the lack of information and the
7 possibility that I felt that the sheriff's department was
8 pressing the issue because they felt that they were -- they
9 had the shooting incident, the negligent discharge that
10 they -- excuse me, that they had not potentially properly
11 investigated, and that they were trying to basically make
12 him to be a bad guy to avoid problems related to the
13 shooting incident.

14 We went over all that, and I explained these are the
15 things that we could do at trial. However, I explained to
16 him that he had six prior drug convictions, three for --
17 that were showing for PWID, although he disputed one of
18 them as being actually a possession and three possessions.
19 So, he would be a trafficking third and above, which
20 carries twenty-five to thirty years mandatory time, and
21 it's 85 percent time.

22 So, we, we discussed the fact that balanced against
23 all these issues we have if we go to trial, we have the
24 problem that if those issues don't work and you get
25 convicted, you would face a mandatory minimum of

1 twenty-five years. Ultimately we ended up with an offer of
2 -- range of ten to twenty on a trafficking second. And I
3 felt that Judge Cothran, who I think everybody in this
4 court is familiar with, is a fine and very fair and
5 respectable judge, and felt like he would do a, a --
6 provide a, a fair listening to our arguments and give a
7 fair sentence, and I was hoping for a ten-year sentence.
8 Unfortunately he gave us fifteen.

9 Q. Do you recall how he couched that fifteen?

10 A. I'm sorry?

11 Q. Is it fair to say he said that's the best I can do
12 with his prior record? Do you recall that?

13 A. I believe that that was his concern is that prior
14 record. And I, I did the best I could to mitigate that
15 prior record, but ultimately he did have six prior drug
16 convictions and an assault and battery with intent to kill,
17 which albeit one that he got less than half a year for, but
18 it was still a strike on his record.

19 Q. And in mitigation, did you bring up the negligent
20 discharge?

21 A. I did.

22 Q. Did you bring up the discovery issues?

23 A. I believe I did. I'd, I'd have to go back and reread
24 the transcript. I believe that I talked about those, but I
25 certainly know that I talked about them with Mr. Wells in

1 terms of this is what we have, this is what we don't have,
2 these issues we could raise at trial, but this is a danger
3 if we don't win those issues.

4 Q. And I, I'm sorry. I did jump ahead. You did not, I
5 don't think, specifically raise the discovery issues upon
6 review of the transcript. However, do you recall speaking
7 about his history of drug use and addiction and using ---

8 A. Oh definitely.

9 Q. --- that in mitigation?

10 A. I definitely recall that. I portrayed him as what I
11 felt he was, which is somebody who is addicted to the drugs
12 and sells to support his habit more than a money man. I
13 think I referred to Pablo Escobar as somebody who's a
14 commercial dealer as opposed to somebody who's a user
15 dealer.

16 Q. When it came to entering his plea itself, did you
17 discuss with Mr. Wells his constitutional rights that he
18 would be giving up?

19 A. Talking about right to trial by jury, confront the
20 witnesses?

21 Q. Exactly.

22 A. That was part of what we went over, yes, ma'am.

23 Q. And ultimately was it his decision to plead guilty?

24 A. Yes.

25 Q. And you supported that decision?

1 A. Because of the risk and the fact that factually I felt
2 that if we were not successful on all of our legal issues,
3 I felt that there was no question he would be convicted at
4 trial. And they had a solid factual case of guilt, and I
5 felt that based on that, that the plea was in his best
6 interest to minimize the amount of time he'd have to spend
7 in prison. And while fifteen is longer than I was hoping
8 for, it is less than twenty-five to thirty.

9 Q. Now, did you ever promise Mr. Wells ten years? Do
10 you recall that discussion that he mentioned on his
11 testimony?

12 A. I recall the discussion. I can tell you I have never
13 once promised any defendant, and I always say that it's up
14 to the judge. I can't promise you anything. I can tell
15 them I think this is possible. I can tell them I think
16 this is a good judge. That this judge, of all the judges
17 we have coming anytime soon, is the most likely to give us
18 a result that we will be happy with. But I have never told
19 a person other than a negotiated plea that they are
20 guaranteed to get a particular result. Even with a
21 negotiated pleas, I tell them you're going to get that
22 result or the judge could refuse to take the plea.

23 Q. I have no further questions. Is there anything else
24 you'd like the court to know about your representation of
25 Mr. Wells?

1 A. I'm happy to answer any questions anybody would ask
2 me.

3 Q. Please do. Thank you.

4 THE COURT: Ms. Good.

5 MS. GOOD: Thank you, Your Honor.

6 CROSS-EXAMINATION BY MS. GOOD:

7 Q. Mr. Lupton, you said you got partial discovery on the
8 first case after you filed for it, correct?

9 A. Like I said, I, I think that it actually came with the
10 appointment package. Doug Strickler is very efficient, and
11 he frequently will send whatever it is the public defender
12 already has.

13 Q. Okay, and when you filed the motion to compel on March
14 -- it's clocked March 11th, I think.

15 A. Right.

16 Q. Of 2014, was that referring to the first case, the
17 second case, the third case, or all three of them?

18 A. It would have been all three of them. The solicitor
19 was offering a package offer, a global plea that would,
20 that would resolve all of his pending Richland County
21 criminal charges.

22 Q. Okay.

23 A. And then what I did was I filed the motion to compel,
24 then a follow-up email, as well as discussions over the
25 phone, and face to face with the solicitor's office both

1 before and after the motion and email. I emphasized the
2 fact that I thought that there was substantial information
3 that had not yet been provided on the shooting case.

4 Q. Is that the first one?

5 A. I said shooting case. The trafficking.

6 Q. Okay.

7 A. The first case in order of time from August of 2013,
8 that I thought there was substantial information still out
9 there on that regarding the circumstances of the shooting.
10 The facts of the actual trafficking were pretty well
11 solidified at that point. I mean, I -- having done the
12 criminal law, having prosecuted actually as the head drug
13 prosecutor for Richland County for a number of years, I was
14 familiar with all that. I had what I needed for that. It
15 was the surrounding circumstances that, that I thought were
16 still hanging out there.

17 Q. Okay.

18 A. Then you have the two other charges that they were
19 trying to throw in as part of the package, and I was using
20 that to say you're asking me to, to deal with these charges
21 as part of the leverage on the trafficking, but I don't
22 have all the information on those.

23 Q. And that motion to compel that you filed, was it ever
24 heard in front of the court?

25 A. No.

1 Q. Okay, and did you ever -- and I guess you, you said
2 you have a follow-up email that's been admitted into
3 evidence to Mr. Coble.

4 A. Right.

5 Q. It was fourteen separate things. How many of those
6 fourteen things did you receive before the April 2nd plea?

7 A. I would have to go back and look and...

8 Q. I can hand you the email.

9 A. The, the first three regarding use of force
10 investigation of the shooting, as well as internal affairs
11 or other entity investigation, I never got anything related
12 to that, and my understanding was that there was nothing
13 ever done. There was nothing -- nothing was provided
14 because nothing happened, which gets to number 4.

15 Then-legal counsel for the sheriff's department, Scott
16 Hayes, was the one who basically made the decisions in the
17 case. I was never -- so, that was -- so, in a sense I got
18 number 4 and found out there would be nothing for the first
19 three.

20 Q. Is number 4 the two-paragraph report that you
21 received?

22 A. No, Number 4 was -- I was told that at the time of
23 the shooting that they called their legal counsel, Scott
24 Hayes, for the sheriff's department and that he did things.

25 Q. Okay.

1 A. Nothing was written about that. This was verbal
2 information I received.

3 Q. Okay.

4 A. Which I had no reason to doubt.

5 WITNESS: Beg your -- beg the court's indulgence.

6 (A PAUSE.)

7 A. I never received anything basically verifying when the
8 report was written, not that I ever expected to. That was
9 mainly to let the state know that they had some issues that
10 they, they were going to have a problem with.

11 Q. Okay.

12 A. At trial. The number 6, nobody ever told me who was
13 pushing, but I knew the narcotics agents that were the
14 investigators on the case. I knew that they were the ones
15 pushing for a high sentence. There was never any answer
16 given to number 7.

17 Number 8, there was never any answer given, but since
18 we're bringing that up, it was unusual in that the officers
19 didn't go through the normal chain of custody process.
20 They basically took the drugs straight to be tested and
21 basically jumped it in line very, very quickly.

22 Q. Okay.

23 A. Chain of custody, I received -- he mentioned the Rule
24 6(b). I received information of who was in the chain of
25 custody, but they were generated -- Richland County doesn't

1 generate 6(b) forms. They use electronic, so I got that,
2 and with regards to 6(b), the state would have produced the
3 chain witnesses at trial.

4 I received partial discovery from the February 7,
5 2014, arrest on point 10. I never received any information
6 regarding a CI. I never received anything on 12 as far as
7 any specific requests that they made to have other agencies
8 investigate or assist in an investigation of the defendant.

9 13, that was a rhetorical question more than anything
10 else. I knew he didn't have all the information. He
11 turned over what he had to me. That was more of a
12 rhetorical question.

13 In 14, as I mentioned earlier, a -- the fifteen to
14 twenty negotiation question, I knew that they weren't going
15 to research that, turn it over, but my information, having
16 been head of the drug team just two years prior for the
17 last seven, eight years, I knew that -- what the answer to
18 that was.

19 Q. Okay. So, was any of this addressed in front of the
20 judge, that you had not received some of this?

21 A. No.

22 Q. Okay, and for the CI information, the confidential
23 informant stuff, which case was that for? The first case,
24 the trafficking?

25 A. I could not specifically say, but it would apply

1 equally to the first or second.

2 Q. Okay. So, there was a CI in this, involved in this
3 case, and you requested information on this informant but
4 was given no information regarding it, correct?

5 A. Right.

6 Q. When you were appointed on the case in October of
7 2013, approximately how many times did you meet with Mr.
8 Wells before the plea in April?

9 A. I don't have an exact number, but I know it was
10 several. We spoke on the phone also a number of times.
11 Several additional times at a minimum, I went out to the
12 jail. He was only in jail -- he bonded out after, I think,
13 thirty-five days. So, I would have made two jail visits,
14 but we met multiple times coming to the courthouse for
15 things and talking on the phone, that sort of stuff. So, I
16 do not feel like that there was any lack of time to meet
17 and talk.

18 Q. During those meetings, do you remember when you went
19 over the discovery with him?

20 A. We talked about discovery every time.

21 Q. You talked about it, or did you actually show it to
22 him? Do you remember?

23 A. I would have had it out on a couple of those meetings,
24 and we didn't, we didn't go over it in detail each time,
25 but we talked about the -- most every time, we talked about

1 issues regarding what we had and what we didn't have.

2 Now, there were some times we talked where we talked
3 about other things. For example, he was allowed to bond
4 out by mistake at one point, and that was -- I raised that
5 in the plea in mitigation, that he came and turned himself
6 in when he could have run.

7 Q. Right.

8 A. So, you know, when we were talking about that, we
9 wouldn't be talking about the evidence. We'd be talking
10 about you need to come on in. We talked about the evidence
11 that we had. We talked about what we didn't have, so.

12 Q. You stated earlier that you received supplemental
13 discovery March 18th of 2014 after your email to Mr. Coble
14 and your motion to compel. At what point did you go over
15 that discovery with him before the plea?

16 A. The -- I would have gone -- that was not related to
17 the trafficking case. That was related to the other cases,
18 and we just went over that in very general terms because
19 there was no questions about that. He, he got stopped on a
20 car stop, just randomly. He was exhibiting bad driving and
21 got stopped, and we just very briefly talked about that,
22 and that was the discovery that I got. So, we, we didn't
23 go over that in great detail.

24 Q. And you stated, too, previously on direct that you
25 supported his decision to plead because if you had not been

1 successful in arguing the legal issues, he want have been
2 convicted at trial, correct?

3 A. Yes.

4 Q. Okay, and what legal issues were those?

5 A. Related to the issues surrounding the lack of certain
6 discovery. Would have made arguments that -- basic
7 prosecutorial misconduct arguments that the solicitor's
8 office should not be calling the case to trial based on an
9 objection of a global plea offer with having not provided
10 full discovery on each of the cases. In fact, we would
11 have alleged that the offer was higher than what was
12 typically offered in Richland County at the time, based on
13 the fact that we would have alleged that the law
14 enforcement officers involved were trying to cover up their
15 mistakes in the accidental discharge case.

16 Q. Okay. So, it's fair to say this discovery issue was
17 something you were going to bring up at trial and that
18 you ---

19 A. We, we ---

20 Q. --- because you still did not have everything,
21 correct?

22 A. Correct. We had, as I said before, we had what we --
23 what I needed to on the trafficking portion of it.

24 THE COURT: Ms. Good, let me ask you this.

25 MS. GOOD: That was my last question, Your Honor,

1 actually.

2 THE COURT: Oh. Okay.

3 THE COURT: Ms. Kinard has still got the ability to
4 ask reply questions, of course. I just want to get some
5 sense of where we're going here.

6 MS. GOOD: That was my last question.

7 THE COURT: Okay. I'm not trying to limit you at all.

8 MS. GOOD: No, I know. That literally was my last
9 question.

10 THE COURT: Okay.

11 BY MS. GOOD:

12 A. As I was saying, I had what I needed on the
13 trafficking case, the, the -- basically the facts of the
14 case. Fleshing out any issues regarding the shooting
15 accident and effect it might have had on the global
16 investigation, we were missing that, and that was part of
17 why I felt that we -- it was not with the risk of pressing
18 all that at a trial because it didn't go to the substance
19 of whether he was guilty or innocent. It went to more --
20 issues more appropriate to a PCR actually of whether or not
21 the state was being fair to him.

22 And nothing against Mr. Coble, but, you know, he's
23 getting pushed by narcotics officers and being told things
24 by narcotics officers. But whether or not the whole
25 process was being fair to him, those are the issues we

1 would have been able to raise at trial. And I made the
2 legal assessment that it wasn't worth the risk. I advised
3 him of that. He was aware of what we had, what we didn't
4 have, what we could argue and we -- and would be arguing,
5 and he made the decision that he didn't want to risk that.
6 He wanted to try to get the ten-year sentence, which I feel
7 was a reasonable decision.

8 MS. GOOD: No further questions, Your Honor.

9 THE COURT: Ms. Kinard?

10 MS. KINARD: No redirect, Your Honor.

11 THE COURT: All right.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: Any further witnesses, Ms. Kinard?

14 MS. KINARD: No, Your Honor. State rests.

15 THE COURT: All right. You it may come down, Mr.
16 Lupton.

17 WITNESS: Thank you, Your Honor.

18 RULING OF THE COURT:

19 THE COURT: I find the conduct of the law enforcement
20 part of this matter troubling. When defendants do not have
21 all the discovery they need and that they have asked for
22 and everything that was asked for is a legitimate request,
23 as best I can determine, when a defendant is not provided
24 with the discovery that he asks for, there are real
25 questions as to voluntariness of the plea.

1 Do y'all still the exhibits down here, Exhibits 1
2 through 4? Mr. Lupton, you didn't take those?

3 MR. LUPTON: No, Your Honor.

4 THE COURT: You left them up there?

5 MR. LUPTON: The one that I was handed is on the
6 bench.

7 THE COURT: Y'all got all four of them? Wait a
8 minute. I give up. I've got three of them. Y'all have
9 got one over there.

10 (A PAUSE.)

11 THE COURT: Exhibit 2 in this matter is Chief
12 Justice's memorandum regarding plea agreements and
13 discovery as of March 1, 2004, and it raises issues about
14 the failure to give discovery as it affects the
15 voluntariness of a plea. And I find that this plea was not
16 voluntary as a result of the failure, not of the lawyers
17 involved in this and certainly not Ms. Kinard or the
18 attorney generals's office, but the failure of the law
19 enforcement authorities to answer the discovery that was
20 requested as it regards the weapon discharge issue.

21 What happened in this case was that as the warrant was
22 being executed and the search warrant was being executed at
23 the place Mr. Wells resided, a weapon was discharged by one
24 of the deputies through the door of the residence. At
25 least that's the averment in the motions that are made.

1 And when the plea was taken, a discussion was had of Mr.
2 Wells jumping behind a piece of furniture and his conduct
3 in connection with the arrest as indication of his guilt in
4 the matter.

5 That whole issue would have been perhaps viewed in a
6 different light had the judge had the benefit of the
7 discovery that was requested with regard to this incident,
8 incident report and an investigation by the department. It
9 might also have influenced the plea offer that would have
10 been made. That is troubling.

11 Now, there is no question but what Mr. Wells's record,
12 as Mr. Lupton testified to on the stand, and as it was
13 presented to the plea judge at the time of this plea is a
14 very, very heavy record of drug convictions, at least six
15 over a long period of time, and that result of what his
16 lawyer described as a big problem with drugs. And that is
17 said not to criticize anybody, but it's simply a fact of
18 this case that would weigh heavily in the favor of the
19 state in any sentencing procedure.

20 But the fact of what took place at the time of the
21 execution of the search warrant and what Mr. Wells's
22 conduct was and what the conduct was of law enforcement
23 would have some bearing on the voluntariness of this plea
24 in terms of what Mr. Wells knew and what his counsel knew
25 about the information that was in the hands of law

1 enforcement. All solicitors can do is give the information
2 that they have been given. So, I'm not saying this with
3 respect to a criticism about everybody.

4 And certainly the grant of a post-conviction
5 application here carries with it great risks. Mr. Wells
6 has a very lengthy history of drug problems, and it may
7 very well be that a readjudication of this matter by means
8 of a trial or a plea, he may get more than what he got
9 because that is possible. Or they might try him for what
10 would in reality under the facts of this case be at least
11 arguably a third offense trafficking. That is one of the
12 reasons that Mr. Lupton and Mr. Wells wanted more
13 information about the trafficking charge.

14 So, I find this that matter should be retried, and I
15 would ask Ms. Good and Ms. Kinard to collaborate on the
16 development of an order that grants post-conviction relief
17 in this matter under the rubric of ineffective assistance
18 of counsel. The counsel was ineffective not because he
19 wanted to be ineffective, but because that ineffective
20 conduct was induced by the failure of the state to provide
21 the information that was on multiple occasions requested,
22 legitimately so. All right.

23 MS. KINARD: Thank you, Your Honor.

24 THE COURT: Very good.

25 MS. GOOD: Your Honor, are you also ruling that the

1 plea was involuntary on the two separate grounds for
2 relief?

3 THE COURT: Yes.

4 MS. GOOD: Thank you.

5 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 7TH DAY OF DECEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MARCH 4TH, 2017

RECEIPT FOR EXHIBITS

Case No. 14-CP-40-4543

Judge Toal, Jean H.

Plaintiff: Erick E. Wells

Pltf's Atty. ~~Kinard, J. E.~~ A.R.

Defendant: State

Def's. Atty. Kinard, J. E.

Date Trial Started: 12-7-16

Date Trial Ended: 12-7-16

Received of Elizabeth Harris, Court Reporter for the above case, these exhibits:

			Clerk of Court Use
A- 1	Motion to Compel	EV	✓
A- 2	Motion to Compel	EV	✓
A- 3	Email	EV	✓
A- 4	Letter	EV	✓
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This 7th day of November 2016.

Page 1 of 1

By: Bethann Jalava

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

EXHIBIT - A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

STATE OF SOUTH CAROLINA

v.

ERICK WELL,
Defendant.

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

Warrant No.s 2013A4010202782-84,
2014A4021600348-49

MOTION TO COMPEL DISCOVERY AND TO CONTINUE CASES

A's EXHIBIT 1
12 - 7 - 16

The Defendant hereby gives notice of motion and requests a hearing in the above matter before the court on the next available Motions court date. The defendant requests to be transported to the courthouse for this motion.

The basis for this motion is that the defendant has been charged for three separate incidents occurring in Richland County. The first incident occurred in August 2013 and involved a search warrant executed by the Richland County Sheriff's Department on the home of defendant's Aunt while defendant was present. During the execution of this search warrant, the RCSD fired at least one shot placing defendant in fear and causing him to react to the shot(s) fired, such actions having been listed in the RCSD incident reports as evidence of defendant's guilt. RCSD appears to concede that there was no justification for firing any shots. However, despite repeated requests for discovery concerning this shooting incident, no discovery has been produced. The shooting incident is not even acknowledged in the incident reports provided, and appears not to have been disclosed to the Solicitor's Office until after the defendant raised concerns about the RCSD's failure to properly document the shooting.

It appears upon information and belief that officers on the scene were told not to disclose the fact that shots were fired in the incident reports related to this incident; thereby concealing exculpatory information. While defendant has been told that other reports of the shooting were done, repeated requests for these reports have not produced the requested discovery.

Given that this was an officer discharge of a firearm during a search warrant, defendant is informed and believes that there should be at a minimum a use of force report, incident reports, and an independent (e.g. internal affairs unit or outside agency) investigation into the actions of the officer(s) involved in the shooting and/or the failure to properly document and investigate the shooting.

The defendant asserts that this information is particularly important and either exculpatory or evidence of mitigation in that actions he took as a result of the shooting were described out of the context of the shooting as evidence of his guilt on the underlying charges in the incident report. Additionally, after the shooting, and concealing of the shooting in reports and repeated failure to make full disclosure of the details of the shooting and/or failure to properly document the shooting, the officers involved have gone to greater than normal lengths to achieve a substantially higher prison sentence against defendant than is normal in this County.

EXHIBIT-A

Further, defendant was re-arrested on or about February 7, 2014. It appears that this arrest was made by the City of Columbia Narcotics Unit. Upon information and belief, an arrest warrant for driving under suspension was served by the CPD SWAT and/or Narcotics Unit while defendant was at a restaurant.

Within hours, police had informed the Solicitor, which was passed on to defendant. Within four days, and before any discovery on this most recent arrest was available, a package offer was made of 15-20 years 85% time with an offer expiration of 10 days from that date and the threat of trial first week of April 2014 if not accepted. Additional requests for exculpatory information on the original case were declined with the explanation that an officer did "a supplemental incident report detailing the accidental discharge (nothing formal), but he can't find it because it was sent on an old computer and he's since changed departments."

While the plea deadline was extended due to the court weather closings, it has been re-instated for March 11, 2014 despite the fact that no discovery has been provided in the most recent arrest despite the defendant having expressed concerns that there were irregularities in that arrest.

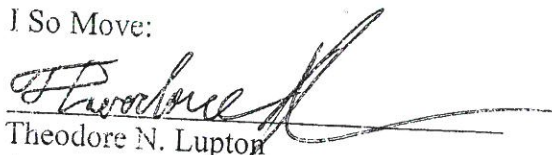
This request to compel discovery prior to making defendant plea is based on Rule 5, SCRCrimPro, 14th Amend. U.S. Const., and Rule 3.4 RLDE, Rule 407, SCACR (see attached page from Memo from Chief Justice Toal dated March 1, 2004).

Forcing a defendant to accept a very harsh plea agreement without providing even basic discovery on one of the cases used to justify and explain the harsh plea offer, and without providing specifically requested exculpatory evidence in two of the three cases involved violates the defendant's fundamental rights to due process.

Further, defendant submits that delaying his case will not cause burden or hardship to the State. He is in jail, and has consented to the revocation of his bond. Therefore, any danger to the community is eliminated. Additionally, he has only been in jail for one month; there are several hundred inmates who have been in jail much longer than the defendant. Also, the case is only just over six months old in a county with over 4,000 cases over 1 year old, and approximately 2,300 cases over 540 days old.

Based on all the above, the defendant moves for an Order compelling the State to provide all discovery in all three cases against the defendant, especially including, but not limited to all exculpatory/mitigating evidence related to the shooting incident and the documentation thereof, and all evidence surrounding February 7, 2014 arrest; as well as an Order continuing the case until a reasonable time after providing all such evidence.

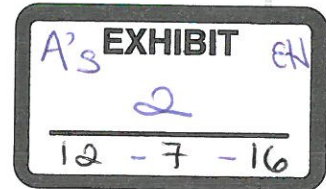
I So Move:



Theodore N. Lupton
Attorney for Defendant

March 9, 2014

EXHIBIT - B



The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE

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FAX: (803) 734-1167
E-MAIL: jhoal@scsccourts.org

MEMORANDUM

TO: All Solicitors

FROM: Chief Justice Jean Hoefer Toal

RE: Plea Agreements and Discovery

DATE: March 1, 2004

It has come to my attention that solicitors in some circuits are offering plea agreements to defendants on the condition that they forgo discovery. This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel based on a claim that the plea was not voluntary because the applicant did not have access to the solicitor's file.

Furthermore, I believe it is unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. See Rule 3.4, RILE, Rule 407, SCACR. I ask that any solicitors who are currently pursuing this practice to stop immediately.

On a separate issue, apparently some magistrates are setting bonds after *ex parte* meetings with alleged victims. This is also unethical and, although I will be communicating directly with the magistrates regarding the issue, I ask for any assistance you might be able to provide if you are aware that this is happening in magistrates courts in your area.

EXHIBIT-C

From: Ted Lupton
 To: Daniel Coble
 Subject: Erick Wells
 Date: Monday, March 17, 2014 11:04:00 PM

As I indicated last week, I am sending this to document in writing my prior requests for additional and full discovery pursuant to Rule 5, and for exculpatory evidence pursuant to Brady v. Maryland and progeny. Most of the specific requests included herein have been requested verbally, at least in general, but I wanted to formalize this request to avoid confusion, and to document them for any future review.

Any specific requests herein are not intended to waive defendant's right to discovery not listed, and should be construed broadly in favor of disclosure of any evidence in the possession of the RCSD, CPD, Solicitor's Office, or any other branch of the State or its agencies.

- 1) Richland County Sheriff's Department (RCSD) use of force form, that deputies are required by policy to fill out when a weapon is fired during an arrest, for the August 2, 2013 shooting during the search warrant resulting in defendant's arrest.
- 2) All reports, photos, measurements, sketches, reports, notes, etc of the RCSD Crime Scene Investigation unit related to the shooting during the above search warrant. Such investigation is standard with an officer involved shooting unless the matter is investigated by an outside agency.
- 3) All notes, reports, and/or results of the independent investigation of the shooting by SLED, RCSD internal affairs unit, or other entity, as is standard in an officer involved shooting.
- 4) The name of the person(s) directing/deciding that any of the above not be done, if any were not done, as well as any recordings, summaries, etc of any conversations discussing the incident.
- 5) Date Inv. Caldwell's "supplemental report" concerning shoots fired during above search warrant was entered into ASICC as required by procedure. As well as any other information concerning when it was produced and or made part of the full record of this case. This information is sought based on statements earlier in this case to the effect that it was not included in reports of this case; and on the fact that prior to the filing of a motion to compel in this case, the RCSD claimed the document could not be found.
- 6) Has RCSD requested/pushed for a high sentence against this defendant while having not turned over any of the above to the Richland County Solicitor's Office; if so, which people?
- 7) Does the lead investigator in the August arrest always obtain and listen to jail phone calls of all drug trafficking defendants?
- 8) What actions were taken, and by whom, to cause the drug report to be done earlier than normal, or to be treated any different than would otherwise be done, in the August 2013 case? This information is sought because the drug report was written and signed with a six

days of the arrest (with the analysis having been performed within five days of arrest); substantially below the usual time to complete a drug analysis and report.

- 9) Chain of custody for any evidence seized during the August 2013 arrest.
- 10) All discovery related to the February 7, 2014 City of Columbia Police Department (CPD) arrest. This request includes, but is not limited to: all reports, photos, statements, etc related to the arrest or produced as a result of the arrest; the RCSD driving under suspension warrant that was the basis for the arrest, along with all reports and discovery related to that warrant; any requests by the RCSD to "target" or arrest defendant specific to this investigation and/or arrest;
- 11) All information regarding any tipster, informant, or "CI" used in the investigation, arrest, or locating of defendant related to this arrest regardless of whether such person is a material witness requiring they be identified. If such person is a material witness, their identity must be revealed. However, the details of the use of such person - other than the person's identity must be disclosed even if not material.
- 12) Any and all requests by RCSD made after August 2, 2014 to CPD or other agencies requesting they "target," or assist in arresting, sharing information on, or in any other way coordinate, encourage, etc the investigation or arrest of defendant. This information is requested based on specific information in possession of the defense that efforts were made by RCSD to get other agencies to target defendant, such actions having occurred after the August 2, 2013 arrest.
- 13) Did the Richland County Solicitor's Office have/review the above at the time the 20 year 85% time offer was made and/or at the time the deadline to accept that offer expired?
- 14) Please list all other drug defendants in the last five years required by the Richland County Solicitor's Office to plea on an offer with a "floor" of 15 years at 85% time - or that went to trial after rejecting such an offer. This information is requested as the defendant is informed and believes that only one defendant in the last 15 years has been given such an offer; that being a defendant nearly 10 years ago who pled to a negotiated 16 years sentence based on having trafficked approximately 30 kilograms of cocaine and 12,000 pounds of marijuana.

These requests are all made based on information I have which leads me to believe that there will be relevant, and often exculpatory, evidence produced. And/or based on over 18 years of criminal law experience, most of it prosecuting drug cases, which allows me to spot actions that are not consistent with a normal investigation, or that should be present if this investigation was done in accordance with proper procedures. In short, these requests are targeted to lead to information that should be there, or to confirm that information that should be there is missing; it is not a fishing expedition.

Thanks,
 Ted

Lupton Law Firm
 140 Gibson Road

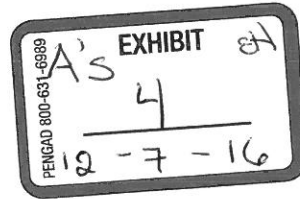
EXHIBIT - F



LUPTON LAW FIRM

1725 Main Street
Columbia, SC 29201

803-556-7220 office
803-556-1111 fax
luptonlawfirm.com



Theodore N. Lupton
Michelle Q. Lupton

June 30, 2014

Erick Wells
Inmate number 00281942
F-4-175
Redemption Way
McCormick, SC 29899

Dear Mr. Wells:

I have enclosed a copy of all the discovery I have received for your three arrests which I represented you on.

I have also enclosed the letter denying your appeal. As we discussed, your complaints in this case are not matters addressed on appeal. Rather the concerns you have need to be addressed through a Post Conviction Relief (PCR) hearing.

To answer your question concerning the magistrate level driving charges related to your middle arrest, I was able to get those dismissed earlier this month.

With regard to your probation matter, that was run concurrent, and is also now closed.

Finally, with regard to your request for a receipt, please let this letter serve as acknowledgement that you retained me on the middle arrest for possession crack and driving charges. We agreed on a fee of One Thousand Seven Hundred Fifty dollars (\$1,750). You paid One Thousand (\$1,000) of that at the initial bond revocation date in December 2013. The balance was never paid; however, I am waiving the remaining balance of that fee.

Sincerely,



Theodore N. Lupton

enclosures

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Erick Edward Wells, #281942,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. ¹⁴⁻⁴⁶⁻⁴⁵⁴³ ~~2016-CP-23-3282~~

**ORDER GRANTING
POST-CONVICTION RELIEF**

2019 SEP -5 AM 8:38
JEANNETTE W. MCBRIDE
C.C.P. & C.S.

RICHLAND COUNTY
FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 22, 2014. Respondent made its return on March 1, 2016. An evidentiary hearing on the matter was convened on December 7, 2016, at the Richland County Courthouse. Applicant was present at the hearing and represented by Anna Good, Esquire. Jessica E. Kinard, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Theodore N. Lupton, Esquire, testified for Respondent. The Court had before it the plea transcript, the Richland County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the pleadings, and Applicant's appellate records, as well as exhibits introduced during the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In February 2014, the Richland County Grand Jury indicted Applicant for trafficking crack cocaine – ten to twenty-eight grams, third or subsequent offense (2014-GS-40-00724). In April 2014, the Richland County Grand Jury indicted Applicant for failure to stop blue light/siren – first offense (2014-GS-40-01713). Additionally, Applicant waived presentment of one count of possession/attempt to possess crack cocaine – first

offense (2014-GS-40-01711). Theodore N. Lupton, Esquire represented Applicant. On April 2, 2014, Applicant pleaded guilty to possession of less than one gram of meth or cocaine base – third offense; failure to stop for a blue light/siren; and trafficking crack cocaine – more than ten grams but less than twenty-eight grams, second offense. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to ten years for possession of less than one gram of meth or cocaine, three years for failure to stop for a blue light, and fifteen years for trafficking, to be served concurrently.

A notice of appeal was filed at the South Carolina Court of Appeals. Theodore N. Lupton, Esquire perfected the appeal in the form of an Anders¹ brief. The Court of Appeals affirmed the Applicant's conviction and sentence on June 27, 2014. State v. Erick Wells, Op. No. 2014-000853 (S.C. Ct. App. filed June 27, 2014). The Remittitur was sent on July 15, 2014.

FACTS GIVING RISE TO GUILTY PLEA

On August 2, 2013, Richland County Sheriff's Deputies served a search warrant at Applicant's home. Applicant was standing by the stove in the kitchen when officers entered, and as he ran from the room, he threw a small baggie, which was tested and found to contain crack cocaine. Applicant had been in the process of cooking more crack at the stove when the officers served the warrant, and a search of the house revealed scales, money, and an additional small amount of cocaine. In total, officers seized twenty-three grams of crack and four grams of cocaine. While Applicant was in jail awaiting disposition of the charges, he admitted on a taped phone call that he had been in the process of cooking crack when law enforcement arrived. Plea Tr. p. 7.

Additionally, on December 11, 2013, a Richland County Sheriff's Deputy spotted Applicant driving a black Mercedes and attempted to stop Applicant for speeding. Instead, Applicant fled from the deputy and led a chase from Farrow Road onto SC-277, narrowly avoiding several other cars.

¹ Anders v. California, 386 U.S. 738 (1967).

Applicant eventually pulled to the side of the road, threw his keys out of the driver's side window, and surrendered to law enforcement. A search of the car found 0.12 grams of crack cocaine. Plea Tr. pp. 7-8.

ALLEGATIONS

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

1. "Ineffective Assistance Counsel
 - a. "Failed to properly research and investigate the laws, the state alleged facts and my facts surrounding the entitlement of my cases."
 - b. "Counsel Lupton refused to talk to me on any kind of defense leveles [sp]."
 - c. "Counsel further prejudiced me when he did not fully go over my Rule (5) evidence with me."
2. Involuntary Guilty Plea
 - a. "I did not at my plea understand the true facts surrounding my cases nor or the necessary elements."

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified he met with Counsel twice at the detention center from the time Counsel was appointed in October 2013 and the date of his guilty plea in April 2014. Applicant testified he never reviewed any discovery with Counsel, and Counsel told Applicant he did not have any discovery. Applicant further testified the State extended a plea offer of ten-to-twenty years in March 2014, and he and Counsel discussed it. However, Applicant told Counsel he had a bad record and did not want to accept the offer. At that time, according to Applicant, Counsel had some discovery, but Counsel did not show it to Applicant. Applicant testified, after their meeting in March, Counsel filed a motion to compel discovery.

Applicant further testified when he entered into the plea agreement, he still had not seen any discovery. According to Applicant, he agreed to plead guilty because Counsel told him Counsel

would argue for ten years, and in Counsel's opinion, it was best to accept the offer. Applicant testified he told the judge during the plea he was satisfied with Counsel and answered questions in the affirmative because of Counsel's advice that this was a "good judge." Applicant testified he did not receive any discovery documents until after his plea in June or July 2014, and if he had seen a fully copy of his file beforehand, he would not have entered the plea because there were issues which were not researched or addressed. Applicant testified he did not believe Counsel ever received the documents requested in the motion to compel, and Applicant specifically asked for and did not receive paperwork documenting the chain of custody of evidence seized pursuant to a search warrant.

However, on cross-examination, Applicant conceded he and Counsel never focused on a trial, and his concern was negotiating with the State in the hope the trafficking charge would be dropped. Additionally, Applicant testified he told the plea judge he understood the trial rights he was giving up, he was satisfied with his attorney, and he and Counsel had reviewed discovery together. However, Applicant testified he did so because he was expecting to receive a ten-year sentence, which he ultimately did not receive.

Counsel testified he received Applicant's case as a conflict appointment from the Public Defender's Office, and Applicant had a total of three separate cases, which the State was treating as one case for purposes of plea negotiations. Counsel testified he received partial discovery on the trafficking charge almost immediately, likely when the Public Defender's Office sent their file to him. Counsel explained he met with Applicant and went over the discovery he had received, and Applicant informed him of the circumstances of law enforcement's entry into the home, including the accidental discharge of one of the officers' firearms. Counsel testified he felt that information was relevant and helpful to explain some of Applicant's actions, but there was no information about the incident included in the discovery he had received at that time. Counsel further testified although Applicant

had three cases progressing simultaneously, Counsel was focused on the trafficking case because the State was looking to take it to trial quickly.

Counsel testified he filed the motion to compel not just to obtain information, but also to try to point out to the prosecutor the issues Counsel's saw with the State's case, in an attempt to negotiate a more favorable plea offer at Applicant's request. Counsel testified the focus of the motion to compel was documentation relating to the accidental discharge of the firearm, and he received a short, two-paragraph report a few days after the motion was filed. According to Counsel, he had the information he needed regarding the elements of trafficking, but he felt there was additional information regarding the surrounding circumstances of the shooting that the State had not yet provided, such as documentation regarding an internal investigation. Ultimately, Counsel testified, he was able to find out the requested information regarding an internal investigation was not provided because it did not exist. Counsel explained he believed the two-paragraph report was the only written documentation the Sheriff's Office had regarding the shooting, but he did receive further oral information to the effect that a traditional investigation had not been conducted, at the direction of the Sheriff's Office general counsel. Counsel further testified he would have brought up the discovery issues at trial, had the case gotten that far; however, he felt it was not worth the risk of pressing for a trial because the discovery issues did not go to the substance of whether Applicant was guilty or innocent. Counsel also testified he explained this legal assessment to Applicant, and Applicant was aware of the potential arguments Counsel could raise at trial, but Applicant decided he would rather plead guilty in hopes the judge would agree to a ten-year sentence.

Counsel further testified he discussed the situation with Applicant, including describing the information the defense had and the information Counsel had requested. Counsel testified he also discussed with Applicant some of the items he thought they were likely to receive and explained the

items he felt the State would be unlikely to be ordered to turn over. Counsel testified he explained to Applicant the potential defenses they had based on the lack of information and how they could use that to Applicant's advantage during a trial, specifically the possibility of arguing the Sheriff's Department had not properly investigated the negligent discharge of a firearm by its officer. Additionally, Counsel testified he explained to Applicant the potential sentence Applicant was facing at trial was a mandatory minimum of twenty-five years, and Counsel felt Applicant's record of six previous drug offenses would be problematic. Counsel testified he further explained Applicant's constitutional rights to a trial and how a trial would work, but ultimately supported Applicant's decision to plead guilty because he felt Judge Cothran would be fair and because unless the defense was successful on every legal issue, Counsel felt "there was no question [Applicant] would be convicted at trial." Finally, Counsel denied promising Applicant a specific sentence of ten years.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony, evidence, and arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

A. Ineffective Assistance of Counsel/Involuntary Guilty Plea

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range

of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18; 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983)). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Hill, 474 at 52). An applicant alleging his guilty plea was induced

by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

The Court finds Counsel was ineffective, and this ineffectiveness was induced by law enforcement's failure to answer Counsel's legitimate requests for information – particularly regarding the discharge of one of the officers' firearm during the service of the search warrant. This Court finds Applicant's plea was not voluntarily given because said failure deprived Applicant of the benefit of full discovery prior to entering his plea. Therefore, this Court finds Applicant's request for relief due to an involuntary guilty plea should be granted. The appropriate remedy is to send the case back to the trial court for a new trial. United States v. Morrison, 449 U.S. 361, 364 (1981) (recognizing the remedy for a violation of the Sixth Amendment right to counsel "should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests").

CONCLUSION

Based on all the forgoing, this Court finds Applicant has established a constitutional deprivation which requires this Court to grant relief in regards to his allegation Counsel was ineffective due to the State's failure to produce requested documents in discovery, thereby rendering Applicant's plea involuntary. Therefore, this PCR application is granted, and Applicant's case should be remanded to General Sessions for disposition.

IT IS THEREFORE ORDERED:

1. The application be granted based on Applicant's involuntary guilty plea;
2. Applicant's sentence shall be vacated and his case remanded to General Sessions court for a new trial.

AND IT IS SO ORDERED this 28th day of August, 2019.



JEAN HOFER TOAL
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Erick Edward Wells, #281942,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2016-CP-23-3282

**RESPONDENT'S MOTION TO
RECONSIDER, ALTER, OR AMEND
PURSUANT TO RULE 59(e), SCRC**

RICHLAND COUNTY
FILED
20 SEP 24 AM 10:46
JANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before this Court by way of an application for post-conviction relief filed on July 22, 2014, by Erick Edward Wells (Applicant). A hearing on this application was held in the Richland County Court of Common Pleas before the Honorable Jean Hoefer Toal, acting circuit court judge, on December 7, 2016. By written order filed September 5, 2019, and received by Respondent on September 9, 2019, this Court granted post-conviction relief and remanded the matter to the Richland County Court of General Sessions for a new trial, finding plea counsel was ineffective due to “law enforcement’s failure to answer Counsel’s legitimate requests for information – particularly regarding the discharge of one of the officers’ firearms during the service of the search warrant.”

Respondent, by and through undersigned counsel, making its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRC, would respectfully show unto this Court:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In February 2014, the Richland County Grand Jury indicted Applicant for trafficking crack cocaine – ten to twenty-eight grams,

third or subsequent offense (2014-GS-40-00724). In April 2014, the Richland County Grand Jury indicted Applicant for failure to stop blue light/siren – first offense (2014-GS-40-01713). Additionally, Applicant waived presentment of one count of possession/attempt to possess crack cocaine – first offense (2014-GS-40-01711). Theodore N. Lupton, Esquire represented Applicant.

On April 2, 2014, Applicant pleaded guilty to possession of less than one gram of meth or cocaine base – third offense; failure to stop for a blue light/siren; and the lesser-included offense of trafficking crack cocaine – more than ten grams but less than twenty-eight grams, second offense. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to ten years for possession of less than one gram of meth or cocaine, three years for failure to stop for a blue light, and fifteen years for trafficking, to be served concurrently.

A notice of appeal was filed with the South Carolina Court of Appeals. Theodore N. Lupton, Esquire perfected the appeal by filing an Anders¹ brief. The Court of Appeals affirmed the Applicant's conviction and sentence on June 27, 2014. State v. Erick Wells, Op. No. 2014-000853 (S.C. Ct. App. filed June 27, 2014). The Remittitur was sent on July 15, 2014.

CURRENT ACTION

On July 22, 2014, Applicant filed an application for post-conviction relief, alleging ineffective assistance of plea counsel had resulted in the entry of his guilty plea involuntarily. On March 1, 2016, Respondent served its return, requesting an evidentiary hearing on Applicant's claims of ineffective assistance of plea counsel and involuntary guilty plea.

An evidentiary hearing was convened in the Richland County Court of Common Pleas on December 7, 2016, before the Jean Hoefer Toal. Applicant was present at the hearing and

¹ Anders v. California, 386 U.S. 738 (1967).

represented by Anna Good (Browder), Esquire. The State was represented by Assistant Attorney General Jessica E. Kinard. Applicant and his former plea counsel Theodore N. Lupton both testified. At the conclusion of the hearing, this Court orally granted relief, finding Lupton was ineffective and his ineffectiveness was induced by law enforcement's failure to answer his discovery request regarding the accidental discharge of an officer's service weapon during the service of the search warrant at Applicant's home. This Court granted Applicant a new trial.

The Court requested counsel for Respondent and Applicant work together to draft a proposed order. By written order filed September 5, 2019, this Court granted post-conviction relief and remanded the matter to the Richland County Court of General Sessions for a new trial. This motion to reconsider, alter, and amend pursuant to Rule 59(e), SCRCP, follows.

ARGUMENT IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief because Applicant failed to meet his burden of establishing counsel was constitutionally ineffective.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983)). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001)

(citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Hill v. Lockhart, 474 U.S. 52 (1985)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

In its ruling on the record and in the Order Granting Post-Conviction Relief, this Court found plea counsel was ineffective, "and this ineffectiveness was induced by law enforcement's failure to answer Counsel's legitimate requests for information – particularly regarding the discharge of one of the officers' firearm during the service of the search warrant."² This Court also found "Applicant's plea was not voluntarily given because said failure deprived Applicant of the benefit of full discovery prior to entering his plea."

This Court also found Applicant's plea involuntary on the two additional grounds pleaded by Applicant – (1) "Counsel Lupton refused to talk to me on any kind of defense level[]s," and (2) "Counsel further prejudiced me when he did not fully go over my Rule (5) evidence with me." However, this Court oral ruling did not address any findings of fact or conclusions of law specifically as those issues, nor does its Order Granting Post-Conviction Relief.

Respondent respectfully asserts this Court's order is based on numerous legal and factual errors, and this Court's grant of post-conviction relief should be reconsidered and denied.

² Notably, Applicant did not allege a Brady violation in his application, nor was it argued at the evidentiary hearing. Brady v. Maryland, 373 U.S. 83 (1963) (holding the government's withholding of evidence material to the determination of the defendant's guilt or innocence violates the defendant's right to Due Process). Accordingly, Respondent respectfully asserts, to the extent this Court relied on the principles of Brady in granting relief, such relief is improper, and the Court should reverse its decision on that ground as well. See Southern Railway Co. v. Coltex, Inc., 285 S.C. 213, 214, 329 S.E.2d 736, 736 (1985) ("The sole issue is whether a trial judge *ex meru moto* can grant a new trial on a ground not raised by a party. We hold he cannot.").

Applicant Failed to Establish Counsel Was Constitutionally Ineffective and His Guilty Plea Was Involuntary Because Counsel Received All Available Discovery

In its order granting relief, this Court found, law enforcement failed to answer Counsel's legitimate requests for information – particularly regarding the discharge of one of the officers' firearm during the service of the search warrant – and this failure deprived Applicant of the benefit of full discovery prior to entering his plea, rendering the plea involuntary. In its ruling on the record, this Court relied upon a March 1, 2004, memorandum from the South Carolina Supreme Court which admonished solicitors to immediately stop the practice of conditioning plea offers to defendants on foregoing discovery. PCR Ex. 2; PCR Tr. p. 43.

Respondent respectfully asserts this Court's ruling is erroneous because the uncontroverted testimony at the evidentiary hearing was that plea counsel had received all of the discovery in existence regarding the discharge incident, as well as verbal confirmation that no internal investigation had been done, which explained the lack of an incident report or investigative report. Plea counsel testified he filed a motion to compel seeking fourteen different items of discovery. PCR Tr. p. 35. The first four items sought information or documentation regarding a use-of-force investigation of the weapon discharge, any internal affairs investigation or investigation by another similar entity, and information from the General Counsel for the Richland County Sheriff's Office. PCR Tr. p. 35.

Regarding the discovery he ultimately received in the case, plea counsel testified at the hearing as follows:

[T]he first three, regarding use of force investigation of the shooting, as well as internal affairs or other entity investigation, I never got anything related to that, and *my understanding was that there was nothing ever done. . . . [N]othing was provided because nothing happened*, which gets to number 4.

Then-legal-counsel, for the sheriff's department, Scott Hayes, was the one who basically made the decisions in the case. . . . *[S]o, in a sense I got number 4 and found out there would be nothing for the first three. . . .*

I was told at the time of the shooting that they called their legal counsel, Scott Hayes, and that he did things. . . . Nothing was written about that. This was verbal information that I received. . . . Which I had no reason to doubt.

PCR Tr. pp. 35-36 (emphasis added). However, plea counsel also received a two-paragraph report prepared by the officer who discharged the gun, documenting his version of how the discharge happened, and recording that he notified his supervisor immediately thereafter. PCR Tr. p. 27.

Thus, Respondent respectfully asserts this Court's finding that plea counsel was constitutionally ineffective because *law enforcement* failed to respond to his discovery requests is factually incorrect. Counsel testified he believed he had received all discovery that existed on the issue of the weapon discharge. PCR Tr. p. 35. Importantly, Applicant failed to introduce any evidence establishing responsive documentation or information existed that was not disclosed to plea counsel. Because of this failure, there is no evidence in the record to support this Court's finding the discovery request was not answered. Indeed, the uncontroverted evidence introduced at the PCR hearing is that the request was answered – plea counsel did not receive much documentation because it simply did not exist. PCR Tr. p. 35. However, the State turned over the information it did have, both orally and in writing. PCR Tr. p. 35.

Therefore, because this Court's finding plea counsel was ineffective due to law enforcement's failure to respond to his discovery requests is unsupported by the record, this Court should reverse its ruling and deny relief. See *Palacio v. State*, 333 S.C. 506, 513, 511

S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing).

Applicant Failed to Establish Counsel Was Constitutionally Ineffective and His Guilty Plea Was Involuntarily Entered Where Counsel Reviewed All Discovery Counsel Received With Applicant and Applicant Was Apprised of Outstanding Discovery Requests Before Entering His Plea

In its ruling on the record and the Order Granting Post-Conviction Relief, this Court found “Applicant’s plea was not voluntarily given because [the failure of law enforcement to answer plea counsel’s discovery request] deprived Applicant of the benefit of full discovery prior to entering his plea.” This Court also cited to a March 1, 2004, memorandum from the South Carolina Supreme Court which admonished solicitors to immediately stop the practice of conditioning plea offers to defendants on foregoing discovery. PCR Ex. 2; PCR Tr. p. 43. The practice referred to in this memorandum is not what happened in Applicant’s case, and the memorandum therefore does not support this Court’s finding.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.”

Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). The standard for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” North Carolina v. Alford, 400 U.S. 25, 31 (1970). Where a defendant is represented by counsel during the plea process and enters his plea with the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice “was within the range of competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

In this case, plea counsel candidly testified he filed the motion to compel discovery not just to seek information, but also to “point out to [the solicitor] problems he had in his case to basically facilitate what [Applicant] was wanting, which was a better offer.” PCR Tr. p. 25. Plea counsel testified:

I did discuss with [Applicant] what we had, what I felt was missing that we could get, and what we could do with the information. And I explained to him that we had certain defenses related to the lack of information and the possibility that I felt that the sheriff’s department was pressing the issue because... they had the shooting incident, the negligent discharge... that they had not potentially properly investigated, and that they were trying to basically make him to be a bad guy to avoid problems related to the shooting incident.

We went over all of that, and I explained these are the things that we could do at trial. However, I explained to him that he had six prior drug convictions, three... that were showing for PWID, although he disputed one of them as actually being a possession and three possessions. So, he would be a trafficking third and above, which carries twenty-five-to-thirty years mandatory time, and it’s eighty-five percent time. . . .

[W]e discussed the fact that balanced against all these issues we have if we go to trial, we have the problem that if those issues don’t work and you get convicted, you would face a mandatory minimum of twenty-five years. Ultimately, we ended up with an offer... range of ten-to-twenty on a trafficking second. . . . [A]nd I was hoping for a ten-year sentence. Unfortunately, [Judge Cothran] gave us fifteen.

PCR Tr. pp. 29-30. Plea counsel also explained he would have continued to press the discovery issues had the case gone to trial, but he had been given all of the information he needed to prepare the trafficking case, and the “missing” information regarding the accidental weapon discharge “was not worth pressing... at a trial because it didn’t go to the substance of whether he was guilty or innocent.” PCR Tr. p. 41. Plea counsel explained he further advised Applicant the State “had a solid case of guilt” on the trafficking charge, and “the plea was in [Applicant’s] best interest to minimize the amount of time he’d have to spend in prison.” PCR Tr. p. 32.

As discussed above, the “missing” information regarding the accidental discharge did not exist. Thus, Applicant, in fact, had all of the discovery that existed on the issue, and he discussed how he could use that at trial with plea counsel. This is not a situation of a solicitor conditioning a plea offer on a defendant’s agreement to forego discovery in his case. Counsel testified repeatedly he received all the discovery on the trafficking issue and the other two charges, and the only information he felt was missing was information related to the tangential issue of the accidental discharge, which did not go to Applicant’s guilt or innocence. PCR Tr. pp. 32, 41.

The record clearly reflects Applicant voluntarily chose to plead guilty because he wanted to avoid a mandatory minimum sentence of twenty-five years. Counsel unequivocally testified at the PCR hearing Applicant “was aware of what we had, what we didn’t have, what we could argue, and... would be arguing, and he made the decision that he didn’t want to risk that. He wanted to try to get the ten-year sentence, which I feel was a reasonable decision.” PCR Tr. p. 42. Applicant addressed the plea court and asked for mercy, telling the plea judge when plea counsel told him he was facing twenty-five-to-thirty years on these charges, “I was scared to go

to jail for that much time.” Plea Tr. p. 17. Reduction of actual sentencing exposure is a legitimate reason for choosing to plead guilty. See Wicker v. State, 310 S.C. 8, 425 S.E.2d 25 (1992) (“[A]lthough petitioner pled guilty to avoid a possible death sentence, the plea was entered with knowledge of the sentences attendant to the guilty plea and so was knowing and voluntary.”); Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) (pointing out that the imposition of the difficult choice between going to trial and pleading guilty is an inevitable—and permissible—attribute of any legitimate system which tolerates and encourages the negotiation of pleas).

Notably, during the plea hearing, Applicant was specifically asked if there were “any issues about [the State] not giving you something you think you’re entitled to,” and Applicant answered, “No, sir.” Plea Tr. p. 6. Furthermore, plea counsel addressed the issue of the accidental discharge on the record at the plea hearing, explaining why Applicant reacted by diving away from the officers as they entered his house. Plea Tr. p. 14.

Thus, the record reflects Applicant had full discovery as to all of the issues in his case, Applicant and plea counsel reviewed the discovery together, and plea counsel used that discovery to advocate zealously on his behalf to obtain a favorable plea offer, which was Applicant’s ultimate goal. This Court’s finding the plea was not entered voluntarily either because Counsel did not appropriately review the discovery, its implications, and potential defenses with Applicant, or because Applicant did not have sufficient discovery to enter a plea, is unsupported by the record, and this Court should reverse its finding and deny relief.

CONCLUSION

Based on all the foregoing, Respondent respectfully requests this Court reconsider its prior ruling and reverse its previous grant of post-conviction relief and remand of this case back to the court of general sessions for a new trial. Instead, this Court should deny relief. In the alternative, if the Court declines to reverse its prior ruling, this Court should issue an amended order containing findings of fact and conclusions of law as to the two additional grounds upon which it granted relief. See Fishburne v. State, Op. No. 29711 (S.C. Sup. Ct. filed July 31, 2019) (“[T]he order must include findings of fact and conclusions of law as to all issues raised by an applicant.”).

Respectfully submitted,

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September 19, 2019

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

C/A NO. 2014-CP-40-04543

**ORDER DENYING MOTION
TO RECONSIDER, ALTER,
OR AMEND PURSUANT TO
RULE 59(e), SCRPC**

**ORDER DENYING MOTION
TO RECONSIDER, ALTER,
OR AMEND PURSUANT TO
RULE 59(e), SCRPC**

OR AMEND PURSUANT TO
RULE 59(e), SCRCP

RULE 59(e), SCRCP

RICHLAND COUNTY
FILED
2023 OCT 26 AM 9:58
JEANETTE W. MCBRIDE
C.C.P., G.S., & ES
Alter or Amend

The Respondent's Motion to Reconsider argues this Court should reverse its earlier decision because the Applicant failed to meet the burden of establishing his counsel was constitutionally ineffective. Further, the Respondent argues the Court should amend its Order and include additional findings of fact and conclusions of law as to the two additional grounds upon which this Court granted relief.

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sustain its decision to remand the Applicant's case to General Sessions court for a trial. The Applicant was constitutionally deprived because of the State's failure to produce requested documents in discovery, thereby rendering his plea involuntary at the time he entered his guilty plea.

IT IS SO ORDERED.

AZ

Oct. 20, 2023
Columbia, South Carolina



The Honorable Jean H. Toal, Acting Circuit Court Judge,
Retired Chief Justice of the S.C. Supreme Court