

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM UNION COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. Supreme Court

Honorable Lee S. Alford, Circuit Court Judge

Case No. 2011-CP-44-0331
Appellate Case No. 2013-001157

Christopher Lee Pride,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX

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PAGE NUMBER 93 WAS OMITTED FROM THE NUMBERING OF THE ORIGINAL TRIAL TRANSCRIPT AND PAGE NUMBER 116 WAS OMITTED FROM THE NUMBERING OF THE ORIGINAL RECORD ON APPEAL

1 IN THE CIRCUIT COURT OF UNION COUNTY, SOUTH CAROLINA
 2 STATE OF SOUTH CAROLINA
 3 VERSUS
 4 CHRISTOPHER LEE PRIDE
 5 INDICTMENT NUMBERS: 2003-GS-44-519
 6 2003-GS-44-523

7 HEARD AT THE UNION COUNTY COURTHOUSE, MAIN STREET,
 8 UNION, SOUTH CAROLINA, ON WEDNESDAY, OCTOBER 13TH,
 9 2004, BEFORE THE HONORABLE JOHN C. HAYES, III AND A
 JURY.

APPEARANCES:

10
 11 E. B. SPRINGS, IV
 12 16TH CIRCUIT SOLICITOR'S OFFICE
 13 1675 YORK HIGHWAY
 YORK, SC 29745
 REPRESENTING THE STATE

14
 15 WILLIAM ALL
 16 UNION COUNTY PUBLIC DEFENDER
 17 POST OFFICE BOX 731
 UNION, SC 29379

18
 19
 20
 21 REPORTED BY: JANET M. RICH
 22 CIRCUIT COURT REPORTER
 1992 DOWNEY STREET
 23 ROCK HILL, SC 29732
 24
 25

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1 MR. SPRINGS: YOUR HONOR, I'M GOING TO
2 CALL THE CASE FOR THE NEXT MATTER.

3 THE COURT: ALL RIGHT.

4 MR. SPRINGS: MAY IT PLEASE THE COURT.
5 THE NEXT MATTER, YOUR HONOR, IS THE STATE OF SOUTH
6 CAROLINA VERSUS CHRISTOPHER LEE PRIDE. I'M HOLDING
7 TWO TRUE BILL INDICTMENTS. INDICTMENTS BEING TRIED
8 TODAY, THE FIRST 2003-44-519 CHARGING THE GENTLEMAN
9 WITH POSSESSION OF CRACK COCAINE WITH INTENT TO
10 DISTRIBUTE. GOING ALONG WITH IT IS 2003-44-523
11 CHARGING CHRISTOPHER LEE PRIDE WITH POSSESSION OF
12 CRACK COCAINE WITH INTENT TO DISTRIBUTE WITHIN
13 PROXIMITY OF A SCHOOL. IT'S OUR UNDERSTANDING THAT
14 THE GENTLEMAN IS REPRESENTED BY PUBLIC DEFENDERS
15 OFFICE. HE WAS APPOINTED ON SEPTEMBER 13, 2004.
16 STANDING HERE REPRESENTING THE PUBLIC DEFENDER'S
17 OFFICE FOR MR. PRIDE IS MR. ALL. WE UNDERSTAND THIS
18 IS GOING TO BE A JURY TRIAL AND A PLEA OF NOT GUILTY.
19 WE'RE PREPARED TO PICK A JURY.

20 THE COURT: MR. ALL, I HAVE A LITTLE BIT
21 OF BACKGROUND ON THIS CASE. FIRST, IS MR. PRIDE
22 PRESENT?

23 MR. ALL: NO, SIR, HE IS NOT PRESENT. I
24 WENT OUTSIDE. I DID NOT SEE HIM OUTSIDE. I HAVE A
25 PHONE NUMBER IN MY FILE THAT I DON'T KNOW IF IT'S A

1 GOOD PHONE NUMBER OR NOT, BUT I CALLED IT AND IT RANG
2 AND RANG AND RANG, NOBODY EVER ANSWERED, NO ANSWERING
3 MACHINE EVER PICKED UP IN REGARDS TO THAT. YOUR
4 HONOR, FOR THE RECORD I WOULD LIKE TO POINT OUT THAT
5 I BELIEVE THE SOLICITOR IS CORRECT, ON SEPTEMBER 13
6 THIS CASE WAS ACTUALLY SCHEDULED TO GO TO TRIAL THAT
7 TERM OF COURT AND MR. SPRINGS WAS GOING TO CALL THAT
8 CASE, THIS CASE AT THAT TIME AND FLETCHER SMITH WAS
9 REPRESENTING HIM AT THAT TIME, AND JUDGE MADDOX
10 RELIEVED FLETCHER SMITH AND TOLD MR. PRIDE HE HAD TO
11 HAVE AN ATTORNEY IN SOME TIME FRAME. I CAN'T
12 REMEMBER HOW SOON IT WAS. MR. SPRINGS MAY REMEMBER,
13 LIKE TEN DAYS OR HIS BOND WOULD BE REVOKED OR
14 SOMETHING LIKE THAT. AT THAT POINT MR. SMITH ASKED
15 MS. MILLER TO QUALIFY HIM FOR THE PUBLIC DEFENDER'S
16 OFFICE TO SEE IF HE QUALIFIED AND THE INFORMATION HE
17 GAVE HE QUALIFIED AND HE WAS APPOINTED TO OUR OFFICE.
18 AT THAT POINT SINCE IT WAS THE WEEK OF COURT
19 INDICATED TO MR. PRIDE TO GO TO MY OFFICE AND MAKE AN
20 APPOINTMENT TO SEE ME. HE MADE AN APPOINTMENT TO SEE
21 ME THE WEEK AFTER THAT AND FAILED TO APPEAR FOR THAT
22 APPOINTMENT, BUT HAD SOMEBODY ELSE CALL AND INDICATED
23 THAT HE WAS WORKING. HE THEN HAD AN APPOINTMENT FOR
24 OCTOBER FIRST AND HE FAILED TO APPEAR FOR THAT
25 APPOINTMENT. ONCE AGAIN INDICATED THAT HE WAS

1 WORKING AND COULDN'T MAKE IT.

2 ON OCTOBER FIRST I WROTE HIM A LETTER
3 AT THE ADDRESS THAT HE HAD AND IT DID NOT COME BACK,
4 YOUR HONOR, SO I ASSUMED HE RECEIVED IT OR SOMEBODY
5 RECEIVED IT AT THE ADDRESS WE HAVE FOR HIM AND IF I
6 MAY I JUST WANT TO READ WHAT I WROTE TO HIM ON
7 OCTOBER FIRST 2004. DEAR MR. PRIDE, TODAY WAS THE
8 SECOND APPOINTMENT THAT YOU HAD SOMEONE CANCEL AT THE
9 LAST MOMENT. YOU ARE SCHEDULED TO GO TRIAL THE WEEK
10 OCTOBER 11, 2004. I CANNOT BE PREPARED TO REPRESENT
11 YOU ADEQUATELY IF YOU WILL NOT MEET WITH ME AND
12 DISCUSS YOUR CASE. IF YOU HAVE RETAINED PRIVATE
13 COUNSEL PLEASE ADVISE ME AND I'LL STOP WORRYING ABOUT
14 YOUR FATE. HE RESCHEDULED AN APPOINTMENT FOR OCTOBER
15 THE 7TH. HE FAILED TO SHOW AT THAT POINT, NOBODY
16 EVER CALLED, NO INDICATION OF WHAT WAS GOING ON AT
17 THAT TIME. ON MONDAY OCTOBER 11, THIS MONDAY, HE
18 CAME TO THE UNION COUNTY COURTHOUSE AND WAS ARRESTED
19 IN THE PARKING LOT FOR A DUS. MY UNDERSTANDING HE
20 HAD APPROXIMATELY \$5,000 OF MONEY IN HIS POCKET AT
21 THAT TIME, HE WAS ARRESTED, AND HE WAS ACTUALLY
22 RELEASED SEVEN O'CLOCK MONDAY NIGHT, BUT WHILE HE WAS
23 IN CUSTODY THE SHERIFF'S OFFICE BROUGHT HIM OVER HERE
24 SO I COULD HAVE A MOMENT TO TALK TO HIM. HE
25 INDICATED TO ME THAT FLETCHER SMITH WAS REPRESENTING

1 HIM AGAIN, THAT HE HAD SENT MR. SMITH SOME MONEY LAST
2 WEEK, AND HE HAD \$5,000 HE WAS ACTUALLY GOING TO GIVE
3 HIM ON MONDAY AFTER HE REPORTED TO ROLL CALL.
4 YESTERDAY MORNING HE SHOWED UP I GUESS AROUND 9:30 OR
5 SO, I SAW HIM, MR. SPRINGS HANDED ME A MEMORANDUM OF
6 LAW REGARDING ADMISSIBILITY OF PRIOR DRUG SALES TO
7 SHOW INTENT TO DISTRIBUTE AND I INDICATED TO MR.
8 PRIDE THAT HE NEEDED TO GET MR. SMITH UP HERE BECAUSE
9 I WAS GETTING HANDED PAPERS THAT MR. SMITH NEEDED TO
10 SEE AND HE INDICATED TO ME THAT MR. SMITH WOULD BE
11 HERE YESTERDAY. I CALLED MR. SMITH'S OFFICE AND
12 TALKED TO ONE OF HIS SECRETARIES, I'M NOT SURE OF THE
13 NAME OF THE INDIVIDUAL, YESTERDAY AFTERNOON AND ASKED
14 ABOUT MR. PRIDE AND SHE INDICATED MR. PRIDE HAD COME
15 TO THEIR OFFICE BUT HAD ATTEMPTED TO PAY \$250 AND I
16 TOLD HER THAT MR. PRIDE HAD INDICATED TO ME THAT HE
17 HAD \$5,000 FOR MR. SMITH AND SHE INDICATED SHE WOULD
18 CALL MR. PRIDE TELL HIM TO BRING THAT MONEY UP THERE
19 AND SEE ABOUT MR. SMITH REPRESENTING HIM AND SHE
20 WOULD CALL ME BACK. I NEVER RECEIVED A PHONE CALL
21 BACK FROM HER SO I DON'T KNOW IF SHE EVER WAS ABLE TO
22 REACH MR. PRIDE OR NOT. THE SOLICITOR'S OFFICE
23 INFORMED ME THIS MORNING THAT MR. SMITH'S OFFICE HAD
24 CALLED AND INDICATED THAT THEY WERE NOT SURE WHAT MR.
25 PRIDE WAS TRYING TO PULL BUT MR. SMITH WAS NOT

1 REPRESENTING HIM ANYMORE. SO THAT'S WHERE WE STAND
2 ON THE MATTER OF REPRESENTATION.

3 I'VE BEEN GIVEN SOME DISCOVERY, MAYBE
4 ALL DISCOVERY, IN REGARDS TO THE CASE. I HAVE NOT
5 HAD AN OPPORTUNITY TO DISCUSS THIS PARTICULAR CASE
6 WITH MR. PRIDE. NOW BEFORE, I NEED TO TELL THE
7 COURT, BEFORE MR. SMITH STARTED REPRESENTING MR.
8 PRIDE I WAS ORIGINALLY APPOINTED TO REPRESENT HIM AND
9 DID HAVE ONE INTERVIEW WITH HIM AND WE ACTUALLY
10 TALKED ABOUT TWO OTHER DRUG CHARGES HE HAD, BUT AT
11 THAT POINT HE NEVER SPOKE TO ME AFTER THAT. EVERY
12 TIME WE HAD ROLL CALL HE WOULD GET EXCUSED BY ONE OF
13 THE ASSISTANT SOLICITORS AND TAKE OFF. HE EVENTUALLY
14 WAS ARRESTED ON A BENCH WARRANT AND THAT'S WHEN MR.
15 SMITH CAME IN AND GOT HIM OUT ON THE BENCH WARRANT,
16 SO THAT'S WHERE WE STAND ON REPRESENTATION. OUR
17 OFFICE HAS BEEN APPOINTED BUT I'VE NOT BEEN ABLE TO
18 TALK TO HIM AS TO ANY REAL POSSIBLE DEFENSES, YOUR
19 HONOR.

20 THE COURT: SOLICITOR'S OFFICE WANT TO ADD
21 ANYTHING OR RETRACT ON ANYTHING REGARDING THAT?

22 MR. SPRINGS: NO, THAT WAS VERY ELOQUENT
23 AND VERY DETAILED AND VERY ACCURATE TO MY KNOWLEDGE
24 OF WHAT HAS HAPPENED AT THIS POINT AND AT THIS POINT
25 I WOULD MOVE TO TRY MR. PRIDE IN HIS ABSENCE. I

1 WOULD ASK FOR A FINDING THAT HE HAS BEEN WELL
2 INFORMED THAT HE WOULD BE GOING TO TRIAL TODAY
3 PURSUANT TO HIS CONVERSATIONS WITH MR. SMITH AT THE
4 END OF MR. SMITH REPRESENTATION'S SEPTEMBER 13, HIS
5 CONVERSATIONS WITH MR. ALL HERE, AND I WOULD ALSO ASK
6 TO HAVE HIS CONDITIONS OF HIS BOND FORM MARKED AS A
7 STATE'S EXHIBIT AND I WOULD DIRECT THE COURT'S
8 ATTENTION TO THE WRITING RIGHT ABOVE HIS SIGNATURE
9 CHRIS PRIDE IT SAYS: I UNDERSTAND AND HAVE BEEN
10 INFORMED THAT I HAVE A RIGHT AND OBLIGATION TO BE
11 PRESENT AT TRIAL AND SHOULD I FAIL TO ATTEND THE
12 COURT THE TRIAL WILL PROCEED IN MY ABSENCE. I WOULD
13 ASK THAT BE MARKED AS STATE'S EXHIBIT AND I WOULD ASK
14 FOR A FINDING THAT HE'S BEEN INFORMED HE WOULD BE
15 TRIED IN HIS ABSENCE AND WOULD ASK TO PROCEED WITH
16 HIS TRIAL.

17 (STATE'S EXHIBIT 3 BOND PAPERS RECEIVED.)

18 THE COURT: ALL RIGHT. BEFORE I MAKE A
19 RULING ON THAT, MR. ALL, WHERE DO YOU STAND. DO YOU
20 WISH TO BE, DO YOU FEEL, I FEEL THAT BY HIS CONDUCT
21 YOU CERTAINLY HAVE A RIGHT TO MOVE TO BE RELIEVED
22 BECAUSE HE HAS NOT COOPERATED WITH YOU IN ANY WAY
23 WHATSOEVER AND AS HAS HAPPENED IN OTHER CASES IT
24 APPEARS THAT HE'S SORT OF PLAYING THE ATTORNEY GAME
25 SO TO SPEAK AND SAYING SOMEBODY REPRESENTS HIM AND

1 THEY SAY THEY DON'T; IN ANY EVENT, I CERTAINLY FEEL
2 VERY COMFORTABLE MAKING A FINDING HE'S WAIVED HIS
3 RIGHT TO COUNSEL BY HIS CONDUCT AND I AM CERTAINLY
4 NOT GOING TO PUT YOU IN A POSITION OF SITTING THERE
5 TRYING A CASE UNPREPARED, PARTICULARLY TRYING A CASE
6 IN SOMEONE'S ABSENCE WHEN YOU ARE, HAVE NOT HAD
7 ADEQUATE CONVERSATION WITH YOUR CLIENT DUE TO HIS
8 CONDUCT. SO DO YOU WISH TO, I KNOW THAT'S AN AWFUL
9 POSITION FOR YOU TO BE IN, BUT.

10 MR. ALL: THAT IS AN AWFUL POSITION, YOUR
11 HONOR. I WAS SITTING HERE TRYING, SITTING HERE THE
12 LAST 30 MINUTES RUNNING THROUGH MY MIND WHAT TO ASK
13 THE COURT BECAUSE I FEEL AN OBLIGATION IN SOME MANNER
14 TO MR. PRIDE EVEN THOUGH HE'S FAILED TO FULFILL
15 ANYTHING IN REGARDS TO THE ASSISTANCE AND COOPERATION
16 WITH OUR OFFICE, YOUR HONOR.

17 THE COURT: WELL, LET ME INTERJECT AND PUT
18 THIS IN YOUR THINKING, HE HAS PRETTY MUCH INDICATED
19 HE DOESN'T WANT YOU TO REPRESENT HIM BECAUSE HE'S
20 CONTINUED TO SAY THAT HE HAS RETAINED AND EITHER GONE
21 BY THEIR OFFICE AND TRIED TO PAY ANOTHER LAWYER
22 YESTERDAY, SO I THINK YOU MAY NEED TO FACTOR IN THE
23 FACT THAT IF YOU SORT OF, I HATE TO SAY THIS KIND OF
24 LANGUAGE IN COURT BUT YOU ARE SORT OF DAMNED IF YOU
25 DO AND DAMNED IF YOU DON'T BECAUSE IF YOU GO FORWARD

1 THEN HE'LL BE SAYING HE WAS REPRESENTED BY AN
2 ATTORNEY HE DIDN'T WANT. IF YOU DON'T GO FORWARD
3 HE'S GOING TO SAY HE DIDN'T HAVE AN ATTORNEY AT ALL.

4 MR. ALL: WELL, YOUR HONOR, I DO MAKE A
5 MOTION TO BE RELIEVED AS COUNSEL. YOUR HONOR, I
6 WOULD ASK THAT BEFORE THE COURT STARTS THE CASE WITH
7 MR. PRIDE THAT THEY HAVE THE SHERIFF OR THE BAILIFF
8 OR SOMEONE CALL HIS NAME.

9 THE COURT: WE'LL DO THAT.

10 MR. ALL: I WILL BE STAYING BASICALLY ON
11 STAND BY IN CASE THEY FIND MR. PRIDE AND ONCE THEY
12 FIND HIM IF HE INDICATES THAT HE WANTS AN ATTORNEY,
13 IF THE COURT FEELS FIT TO APPOINT ONE, I WILL BE
14 HERE. I'M NOT GOING TO DISAPPEAR.

15 THE COURT: ALL RIGHT. WELL, I'M GOING TO
16 RELIEVE YOU OF COUNSEL. I THINK IT WOULD BE
17 EGREGIOUS FOR THE COURT TO REQUIRE SOMEONE IN THIS
18 CONTEXT WHO NOT ONLY HAS NOT, WHO HAS MADE A VALIANT
19 ATTEMPT TO GET PREPARED AND BY HIS CLIENT'S CONDUCT
20 BEEN UNABLE TO DO WHAT HE NEEDS TO DO TO BE READY FOR
21 TRIAL AND TO PUT YOU IN THAT SPOT WOULD CERTAINLY NOT
22 BE FAIR. AND IT'S HIS CONDUCT THAT HAS CREATED THE,
23 HE HAS SORT OF HOISTED ON HIS OWN PETARD, HE IS A
24 VICTIM OF HIS OWN CONDUCT. VICTIM MIGHT NOT BE THE
25 RIGHT WORD, BUT THE RESULTS OF HIS CONDUCT PUTS HIM

1 IN THE SITUATION IN WHICH WE NOW FIND HIM, SO I'M
2 GOING TO RELIEVE YOU OF COUNSEL.

3 NOW IF I COULD HAVE ONE OF THE
4 BAILIFFS OR ONE OF THE SHERIFF OFFICERS GO IN THE
5 HALLWAY AND ON THE FRONT STEPS AND CALL FOR
6 MR. CHRISTOPHER LEE PRIDE THREE TIMES EACH PLACE AND
7 THEN COME BACK AND REPORT TO ME.

8 (COURT IS IN BRIEF RECESS.)

9 (COURT RESUMES.)

10 MR. ALL: YOUR HONOR, IF WE CAN GO BACK ON
11 THE RECORD FOR A MOMENT. I'VE BEEN INFORMED BY ONE
12 OF THE DEFENDANTS IN THE ROOM THAT MR. PRIDE IS
13 OUTSIDE AND I ACTUALLY ASKED HIM TO GO OUT AND SEE IF
14 HE CAN GET MR. PRIDE IN. SO APPARENTLY MR. PRIDE IS
15 ON THE PREMISES AT THIS TIME.

16 THE COURT: OKAY. ALL RIGHT. THANK YOU.

17 (COURT IS IN RECESS.)

18 (COURT RESUMES.)

19 THE COURT: PUT YOUR LEFT HAND ON THE
20 BIBLE AND RAISE YOUR RIGHT.

21 R.E. STALNAKER, AFTER BEING FIRST DULY
22 SWORN TESTIFIED AS FOLLOWS:

23 THE COURT: STATE YOUR FULL NAME AND YOUR
24 POSITION WITH THE COURT.

25 A R.E. STALNAKER, BAILIFF.

1 THE COURT: ALL RIGHT. AND AT MY REQUEST
2 DID YOU GO INTO THE HALL AND ON THE FRONT STEPS AND
3 CALL CHRISTOPHER LEE PRIDE THREE TIMES AT EACH PLACE?

4 A YES, SIR.

5 THE COURT: DID YOU GET ANY RESPONSE FROM
6 ANYONE IDENTIFYING THEMSELF AS CHRISTOPHER LEE PRIDE?

7 A NO RESPONSE.

8 THE COURT: ALL RIGHT. I HEARD YOU
9 TALKING TO THE SHERIFF, KIND OF OVERHEARD, WHEN YOU
10 CAME BACK IN SOMEBODY INDICATED HE HAD BEEN HERE
11 EARLIER, IS THAT CORRECT?

12 A ONE GENTLEMAN COME UP AND SAID HE WAS OUT THERE
13 EARLIER BUT HE WAS WASN'T OUT THERE THEN.

14 THE COURT: OKAY. THANK YOU. ANYTHING
15 FROM THE SOLICITOR, DO YOU HAVE ANY QUESTIONS?

16 MR. SPRINGS: I DON'T HAVE ANY QUESTIONS
17 OF THAT, YOUR HONOR, BUT I'M TRYING TO MY LAY MY
18 HANDS ON THE ORIGINAL INDICTMENTS SO I WOULD ASK FOR
19 JUST A MOMENT.

20 THE COURT: LET ME DO THIS AND WE WILL
21 TAKE A SHORT BREAK AND THEN WE'LL GET THE JURY IN. I
22 MAKE A FINDING THAT MR. PRIDE HAS RECEIVED NOTICE OF
23 HIS RIGHT TO BE PRESENT. HE HAD BEEN GIVEN A WARNING
24 THAT THE TRIAL WOULD PROCEED IN HIS ABSENCE IF HE
25 FAILS TO ATTEND. I FIND THAT HE AFFORDED NOTICE OF

1 THE CHARGES AGAINST HIM, NOTICE THAT THE CASE WOULD
2 BE CALLED THIS WEEK, AND HE'S BEEN ON THE PREMISES
3 THAT WE KNOW OF BECAUSE HE WAS ARRESTED MONDAY, BUT
4 THERE HAS BEEN INDICATION HE'S BEEN ON THE PREMISES
5 EVEN AGAIN ON TODAY'S DAY, AND HE IS NOT HERE, HIS
6 NAME HAS BEEN CALLED, AND I'M GOING TO ALLOW THE
7 STATE TO GO FORWARD AND TRY HIM IN HIM ABSENCE. I
8 WILL OF COURSE TELL THE JURY THEY CANNOT CONSIDER
9 THAT REGARDING HIS GUILT. NOW HAVE YOU FOUND WHAT
10 YOU ARE LOOKING FOR.

11 MR. SPRINGS: I HAVE NOT.

12 THE COURT: WE'LL TAKE A REAL SHORT BREAK,
13 AND LET'S BE READY TO GO WHEN WE GET BACK. DURING
14 THE BREAK LET'S GET THE JURY TO COME IN UNLESS THERE
15 IS ANYTHING ELSE YOU NEED TO DO BEFORE?

16 MR. SPRINGS: I JUST NEED TO FIND THE
17 INDICTMENTS. WE NEED TO HAVE A JACKSON VERSUS DENNO
18 BEFORE WE START THE TRIAL. THAT WOULD BE THE ONLY
19 PRETRIAL MATTER.

20 THE COURT: WELL, NOBODY HAS RAISED AN
21 ISSUE BUT YOU WANT TO HAVE A JACKSON VERSUS DENNO
22 WE'LL CERTAINLY DO IT. BUT WHY DON'T WE DRAW THE
23 JURY AND LET EVERYONE ELSE GO.

24 MR. SPRINGS: THAT'S FINE. I WOULD LIKE
25 TO DO THE JACKSON VERSE DENNO JUST OUT OF AN

1 ABUNDANCE OF PRECAUTION.

2 THE COURT: SURE. WE'LL TAKE A SHORT
3 BREAK AND MR. SPRINGS, JUST AS SOON AS YOU FIND THE
4 INDICTMENTS AND MADAM CLERK, AS SOON AS THE JURY IS
5 SEATED LET ME KNOW AND WE'LL MOVE FORWARD.

6 (COURT'S IN RECESS AT 10:35.)

7 (COURT RESUMES.)

8 THE COURT: OVER THE BREAK I UNDERSTAND
9 FROM MR. ALL THAT HE'S MADE ONE FURTHER ATTEMPT TO
10 CONTACT MR. PRIDE AND I'LL LET HIM PUT THAT ON THE
11 RECORD.

12 MR. ALL: YES, YOUR HONOR. WHEN THE COURT
13 ASKED THE BAILIFF TO CALL THE NAMES THREE TIMES ONE
14 OF THE INDIVIDUALS IN THE COURTROOM THAT INDICATED TO
15 ME THAT HE WAS OUTSIDE CAME BACK AND SAID HE HAD A
16 TAG ON HIM FOR CEDAR HILL AND HE THOUGHT HE MAY HAVE
17 GONE BACK TO WORK SO I CALLED SAID CEDAR HILL MILIKEN
18 PLANT AND SPOKE TO THE HUMAN RESOURCE OFFICE AND WAS
19 TOLD THAT HE HAD TOLD HIS SUPERVISOR HE HAD TO TAKE
20 CARE OF SOMETHING FOR HIS DAUGHTER THIS MORNING AND
21 HE WAS LEAVING TO TAKE CARE OF THAT AND THEY ALLOWED
22 HIM TO LEAVE AND I LEFT A MESSAGE WITH THE HUMAN
23 RESOURCE OFFICE THAT IF HE COMES BACK TO WORK TO TELL
24 HIM THAT IT IS AN EMERGENCY THAT HE REPORT TO THE
25 UNION COUNTY COURTHOUSE AS SOON AS POSSIBLE.

1 THE COURT: THANK YOU A LOT, MR. ALL.

2 MR. ALL: THANK YOU, SIR.

3 THE COURT: IS THE STATE READY TO PROCEED.

4 MR. SPRINGS: YES, YOUR HONOR, WE ARE.

5 THE COURT: LET'S GET IN THE JURY.

6 (THE JURY RETURNS TO THE COURTROOM.)

7 THE COURT: MEMBERS OF THE JURY PANEL,
8 FIRST LET ME THANK YOU FOR YOUR PATIENCE. WE'VE BEEN
9 DEALING WITH SOME MATTERS THAT WE HAD TO DEAL WITH
10 OUTSIDE YOUR PRESENCE. THE STATE IS NOW GOING TO TRY
11 TO CALL THE FIRST CASE FOR TRIAL. THIS IS THE CASE
12 OF THE STATE VERSUS CHRISTOPHER PRIDE AND I'M GOING
13 TO ASK THE SOLICITOR IN JUST A MOMENT TO TELL YOU
14 WHAT THE CHARGES ARE, BUT I FIRST WANT TO TELL YOU
15 THAT AT THE DEFENSE TABLE YOU WILL NOT SEE MR. PRIDE
16 AND YOU WILL NOT SEE AN ATTORNEY. MR. PRIDE IS NOT
17 PRESENT. I HAVE MADE A RULING OUTSIDE YOUR PATIENCE
18 THAT THE STATE COULD GO FORWARD WITH HIS TRIAL EVEN
19 THOUGH HE IS NOT HERE AND I'LL TELL YOU IN ADVANCE
20 AND I WILL TELL YOU IF YOU ARE SEATED ON THIS JURY
21 THAT HE IS ENTITLED TO A TRIAL JUST AS THOUGH HE WERE
22 HERE. THAT IS, IT CANNOT BE USED BY YOU IN ANY WAY
23 AGAINST HIM THAT HE IS NOT PRESENT FOR THIS TRIAL.
24 THE STATE HAS THE BURDEN OF PROVING HIS GUILT BEYOND
25 A REASONABLE DOUBT AND THIS IS TRUE IF HE'S HERE OR

1 IF HE IS NOT HERE, SO I JUST WANTED TO LET YOU KNOW
2 THAT THE CASE IS GOING FORWARD AGAINST MR. PRIDE EVEN
3 THOUGH HE'S NOT HERE AND SO THERE WILL NOT BE ANYBODY
4 SITTING AT THE DEFENSE TABLE WHERE MR. PRIDE IS NOT
5 THERE. NOW IF YOU'LL ANNOUNCE THE CASE.

6 MR. SPRINGS: THANK YOU. MAY IT PLEASE
7 THE COURT. YOUR HONOR, THIS CASE IS THE CASE OF THE
8 STATE OF SOUTH CAROLINA VERSUS CHRISTOPHER LEE PRIDE.
9 MR. PRIDE HAS TWO CHARGES THAT WILL BE TRIED HERE
10 TODAY. THE FIRST IS POSSESSION OF CRACK COCAINE WITH
11 INTENT TO DISTRIBUTE. THE INDICTMENT NUMBER IS
12 2003-GS-44-519. THE SECOND INDICTMENT CHARGES HIM OF
13 POSSESSION OF THAT SAME CRACK COCAINE WITH THE INTENT
14 TO DISTRIBUTE IT WITHIN PROXIMITY OF A SCHOOL. THE
15 INDICTMENT NUMBER IS 2003-GS-44-523.

16 THE COURT: MAY I HAVE THE INDICTMENTS.
17 MEMBERS OF THE JURY PANEL, YOU HAVE HEARD THE
18 SOLICITOR TELL YOU WHAT THE CHARGES ARE. HE DID NOT
19 TELL YOU THE DATE THESE ARE ALLEGED TO HAVE OCCURRED
20 AND IT'S ALLEGED THAT THESE OCCURRED ON APRIL SECOND
21 OF LAST YEAR 2003 AND IT'S ALLEGED THAT MR. PRIDE DID
22 DISTRIBUTE OR POSSESS WITH INTENT TO DISTRIBUTE THE
23 CONTROLLED SUBSTANCE CALLED CRACK COCAINE AND THAT HE
24 DID SO ON THAT DAY WITHIN ONE HALF MILE OF BUFFALO
25 ELEMENTARY SCHOOL.

1 FIRST I ASK ARE ANY OF YOU ON THE JURY
2 PANEL RELATED BY BLOOD OR MARRIAGE OR ARE YOU A CLOSE
3 PERSONAL FRIEND OR ACQUAINTANCE OF MR. CHRISTOPHER
4 LEE PRIDE IF SO PLEASE STAND. NO ONE STANDS.

5 HAVE ANY OF YOU ON THE JURY PANEL BEEN
6 REPRESENTED BY MR. SPRINGS OR ANYBODY FROM THE 16
7 CIRCUIT SOLICITOR'S OFFICE IF SO PLEASE STAND. NO
8 ONE STANDS.

9 DO ANY OF YOU KNOW ANYTHING ABOUT THIS
10 CASE, HAVE ANY OF YOU HEARD ABOUT IT FROM ANY SOURCE
11 WHATSOEVER, OR HAVE ANY OF YOU FORMED OR EXPRESSED
12 ANY OPINION ABOUT ANY MATTER OR ISSUE WHICH WOULD BE
13 INVOLVED IN THIS CASE IF SO PLEASE STAND. NO ONE
14 STANDS.

15 WERE ANY OF YOU MEMBERS OF THE GRAND
16 JURY WHICH PASSED ON THIS INDICTMENT AT AN EARLIER
17 TIME IF SO PLEASE STAND. NO ONE STANDS.

18 ARE ANY OF YOU AWARE OF ANY BIAS OR
19 PREJUDICE THAT YOU WOULD HAVE TOWARDS MR. PRIDE, THE
20 SOLICITOR'S OFFICE, OR THE NATURE OF THESE CHARGES?
21 ANY BIAS OR PREJUDICE IN REGARDS TO ANY OF THOSE
22 MATTERS IF SO PLEASE STAND. NO ONE STANDS.

23 NOW I'M NOT GOING TO ASK YOU TO BE
24 REAL SPECIFIC ABOUT THIS BECAUSE I KNOW THAT IT WILL
25 BE SOMEWHAT PERSONAL, BUT HAVE ANY OF YOU OR A CLOSE

1 MEMBER OF YOUR FAMILY BEEN CHARGED WITH BEING
2 INVOLVED WITH ANY KIND OF CONTROLLED SUBSTANCES. I'M
3 NOT GOING TO ASK YOU TO GO INTO PARTICULARS, BUT IF
4 SO PLEASE STAND. YES, SIR, YOUR NAME AND NUMBER.

5 THE JUROR: TRACEY BOSTICK NUMBER 58.

6 THE COURT: WOULD THE FACT THAT YOU ARE
7 STANDING ON THIS QUESTION, WOULD THAT AFFECT YOUR
8 ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS
9 CASE?

10 THE JUROR: NO.

11 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
12 VERDICT ON THE LAW AND THE EVIDENCE IN THE TRIAL?

13 THE JUROR: YES, SIR.

14 THE COURT: THANK YOU. I APPRECIATE IT.
15 YOU'RE STANDING, YES, MA'AM, YOUR NAME AND NUMBER.

16 THE JUROR: CYNTHIA HAIR, 87, AND I KNOW
17 MR. PRIDE.

18 THE COURT: YOU KNOW MR. PRIDE?

19 THE JUROR: YES.

20 THE COURT: WOULD THAT AFFECT YOUR ABILITY
21 TO BE FAIR AND IMPARTIAL IN REGARD TO THIS TRIAL?
22 EVEN THOUGH YOU KNOW HIM WOULD YOU BE ABLE TO GO
23 THROUGH THE TRIAL AND BASE YOUR VERDICT ON THE
24 EVIDENCE?

25 THE JUROR: NO.

1 THE COURT: SHE'S SHAKING HER HEAD IN THE
2 NEGATIVE. I'LL EXCUSE YOU. JUST HAVE A SEAT AND YOU
3 WILL NOT BE PART OF THE PANEL. ANYTHING FURTHER FROM
4 THE SOLICITOR?

5 MR. SPRINGS: IF YOU WOULD ASK IF ANYONE
6 KNOWS OUR WITNESSES.

7 THE COURT: THE FOLLOWING ARE POSSIBLE
8 WITNESS IN THIS CASE. IF ANY OF YOU ARE RELATED BY
9 BLOOD OR MARRIAGE OR A CLOSE PERSONAL FRIEND OR
10 ACQUAINTANCE OF ANY OF THESE INDIVIDUALS:

11 BRIAN BAILEY, CHIEF S. W. WHITE, KEILA
12 SPANN, GERALD GREGORY, DONALD RAY MIX, W. F. GAUT,
13 BOYD WRIGHT, CHARLES HENDERSON, AND J. T. PICKENS.
14 IF ANY OF YOU KNOW OR ARE RELATED TO ANY OF THOSE
15 INDIVIDUALS PLEASE STAND. ALL RIGHT. I'M GOING TO
16 GO BACK AND WHAT I'M GOING TO DO SINCE SO MANY OF YOU
17 ARE STANDING, I'M GOING TO GO THROUGH AND ASK EACH OF
18 YOU TO JUST GIVE ME YOUR NAME AND THE INDIVIDUAL YOU
19 ARE REFERENCING, YOUR NAME AND YOUR NUMBER, THEN I
20 WILL GO BACK AND ASK ALL OF YOU THE GENERAL QUESTIONS
21 ABOUT YOUR ABILITY TO BE FAIR AND IMPARTIAL, SO WE'LL
22 START HERE AND WORK OUR WAY TOWARD THE WINDOW AND
23 THEN GO LIKE. YES, MA'AM

24 THE JUROR: CANDACE OSBORNE. I GO TO
25 CHURCH WITH BRIAN AND I KNOW FREDDY.

1 THE COURT: ALL RIGHT.

2 THE JUROR: DALE GAUT. BRIAN AND FREDDY
3 ARE BOTH ON OUR PTA BOARDS IN SCHOOL.

4 THE JUROR: I'M LISA GATLIN. I GO TO
5 CHURCH WITH BRIAN BAILEY.

6 THE COURT: YES, SIR.

7 THE JURY: JERRY HUNT. I'M ON THE FIRE
8 DEPARTMENT WITH MOST OF THE GENTLEMEN YOU MENTIONED.

9 THE JUROR: CYNTHIA YARBOROUGH. I KNOW
10 BRIAN AND FREDDY AND SEVERAL OF THE OTHERS MENTIONED.

11 THE JUROR: LARRY BLACKWELL. I KNOW A LOT
12 OF THESE PEOPLE JUST BECAUSE MY WIFE WORKS IN
13 SOLICITOR'S OFFICE.

14 THE JUROR: LEWIS JORDAN 105 AND I KNOW
15 FREDDY AND TROY AND SEVERAL OF THE OTHERS.

16 THE COURT: YES, MA'AM.

17 THE JUROR: AMELIA MOORE. I KNOW BRIAN
18 AND FREDDY.

19 THE COURT: YES, SIR.

20 THE JUROR: MIKE BURNS 146. I KNOW BRIAN
21 AND FREDDY. THEY WERE BOTH WORK WITH MY FATHER JOHN.

22 THE JUROR: I KNOW FREDDY AND I KNOW A
23 COUPLE OTHERS TOO.

24 THE COURT: YOUR NAME AGAIN.

25 THE JUROR: BURNS.

1 THE COURT: OKAY. THE LAST ONE.

2 THE JUROR: STEPHEN STONE 194. I KNOW
3 FREDDY.

4 THE COURT: ALL RIGHT. WOULD ANY OF YOU
5 STANDING, I'M DIRECTING THIS TO ANY OF YOU STANDING,
6 IF YOU COULD NOT BECAUSE OF YOUR RELATIONSHIP OR
7 FRIENDSHIP WITH THESE INDIVIDUALS, IF YOU COULD NOT
8 BE FAIR AND IMPARTIAL BECAUSE OF THAT PLEASE RAISE
9 YOUR RIGHT HAND. NO ONE DOES.

10 IF BECAUSE OF THAT YOU COULD NOT BASE
11 YOUR VERDICT ON THE LAW AND THE EVIDENCE RAISE YOUR
12 RIGHT HAND. NO ONE DOES. ALL RIGHT. THANK YOU.
13 YOU MAY BE SEATED. ANYTHING FURTHER, MR. SOLICITOR?

14 MR. SPRINGS: NO, SIR.

15 THE COURT: ALL RIGHT.

16 (THE JURY IS DRAWN AND SEATED.)

17 NUMBER 97 CARMEN JETER FEMALE WHITE ACCEPTED.

18 NUMBER 218 CYNTHIA YARBOROUGH FEMALE WHITE ACCEPTED.

19 NUMBER 119 BRANDON LAWSON MALE WHITE STRUCK BY THE
20 STATE.

21 NUMBER 152 NORA PAGE FEMALE WHITE ACCEPTED.

22 NUMBER 105 LEWIS JORDAN MALE WHITE ACCEPTED.

23 NUMBER 89 TOMMY HILL MALE BLACK ACCEPTED.

24 NUMBER 77 DALE GARRETT MALE WHITE ACCEPTED.

25 NUMBER 139 LONNIE MOBLEY MALE BLACK STRUCK BY THE

1 STATE.

2 NUMBER 16 SANDRA BOBO FEMALE WHITE ACCEPTED.

3 NUMBER 161 TIM PRICE MALE WHITE ACCEPTED.

4 NUMBER 108 BEN KING MALE BLACK ACCEPTED.

5 NUMBER 13 LARRY BLACKWELL MALE WHITE ACCEPTED.

6 NUMBER 118 NANCY LAWING FEMALE WHITE ACCEPTED.

7 THE COURT: I'M GOING TO ASK NOW THAT ALL
8 OF YOU STAND AND RAISE YOUR RIGHT HAND AND THE CLERK
9 WILL ADMINISTER AN OATH, DON'T SIT DOWN BECAUSE I'M
10 GOING TO LET YOU GO TO THE JURY ROOM IN JUST A
11 MOMENT.

12 (THE JURY IS SWORN.)

13 THE COURT: I'M GOING TO ASK YOU TO GO
14 INTO THE JURY ROOM WHILE WE TAKE UP A COUPLE MORE
15 MATTERS OUTSIDE YOUR PRESENCE. MRS. GOFF, I WILL ASK
16 IF YOU'LL BE THE FORELADY. DON'T START DISCUSSING
17 THE CASE. YOU REALLY DON'T KNOW ENOUGH ABOUT IT TO
18 DISCUSS IT AND YOU CAN'T MAKE UP YOUR MIND UNTIL WE
19 REACH THE POINT WHERE I INSTRUCT YOU TO JOINTLY
20 DELIBERATE AND RETURN A UNANIMOUS VERDICT. PRIOR TO
21 THAT TIME YOU ARE NOT EQUIPPED WITH ALL THE TOOLS YOU
22 NEED TO MAKE A FAIR AND REASONABLE DECISION, SO UNTIL
23 WE REACH THAT POINT DO NOT DISCUSS THE CASE AMONG
24 YOURSELVES, DON'T EVEN TRY TO MAKE UP YOUR OWN MIND.
25 GO TO THE JURY ROOM AND GET REFRESHED AND WE'LL SEND

1 FOR YOU AS QUICKLY AS WE CAN.

2 (THE JURY EXITS THE COURTROOM AT
3 11:20.)

4 (THE MAIN JURY PANEL IS EXCUSED.)

5 THE COURT: ALL RIGHT. YOU HAVE WANTED A
6 DENNO HEARING ON THE STATEMENT. CALL YOUR FIRST
7 WITNESS.

8 MR. SPRINGS: WE CALL BRIAN BAILEY.

9 THE COURT: PLEASE COME UP AND BE SWORN.

10 BRIAN BAILEY, AFTER FIRST BEING
11 DULY SWORN TESTIFIES AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. SPRINGS:

13 Q TELL US YOUR NAME PLEASE SIR?

14 A MY NAME IS BRIAN BAILEY.

15 Q WHAT DO YOU DO FOR A LIVING, BRIAN BAILEY?

16 A I'M AN INVESTIGATOR WITH THE CITY OF UNION.

17 Q WERE YOU INVOLVED IN AN INVESTIGATION AND AN
18 ARREST OF CHRISTOPHER PRIDE?

19 A YES, I WAS.

20 Q AND WAS THE ARREST ON APRIL SECOND, 2003?

21 A YES, IT WAS.

22 Q AND SHORTLY AFTER YOU ARRESTED HIM, LET ME BACK
23 UP. DID YOU SERVE A SEARCH WARRANT IN THIS CASE?

24 A YES, I DID.

25 Q AND THE RESIDENCE WHERE YOU SERVED THE SEARCH

1 WARRANT WAS MR. PRIDE IN THAT RESIDENCE?

2 A YES, HE WAS.

3 Q ALL RIGHT. AND AS YOU ENTERED THE RESIDENCE,
4 DID YOU HAVE TO ENTER THE RESIDENCE WITH VIOLENCE OR
5 KICKING DOORS OR ANYTHING OF THAT NATURE?

6 A NO, I DID NOT.

7 Q IN THE RESIDENCE HOW MANY PEOPLE DID YOU FIND?

8 A IT WAS OCCUPIED BY TWO PEOPLE, MR. PRIDE AND A
9 JUVENILE FEMALE.

10 Q A LITTLE GIRL?

11 A YES, SIR.

12 Q AND AS YOU ENTERED THE RESIDENCE AND CAME IN
13 CONTACT WITH MR. PRIDE, DID YOU READ HIM HIS RIGHTS
14 ACCORDING TO MIRANDA?

15 A I DID.

16 Q WOULD YOU PLEASE READ US EXACTLY THE RIGHTS AS
17 YOU READ THEM TO HIM ON APRIL SECOND, 2003?

18 A YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING
19 YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT
20 OF LAW. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND
21 HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING
22 QUESTIONED. IF YOU CANNOT AFFORD TO HIRE A LAWYER
23 ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY
24 QUESTIONING IF YOU WISH. YOU CAN DECIDE AT ANY TIME
25 TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS

1 OR MAKE ANY STATEMENTS. DO YOU UNDERSTAND EACH OF
2 THOSE RIGHTS I HAVE EXPLAINED TO YOU. HAVING THESE
3 RIGHTS IN MIND DO YOU WISH TO TALK TO US NOW.

4 Q NOW WHEN YOU READ TO HIM HIS RIGHTS WAS HE
5 HANDCUFFED?

6 A I DON'T BELIEVE HE WAS.

7 Q ALL RIGHT. WERE YOU POINTING ANY GUNS AT HIM?

8 A NO.

9 Q WAS ANYBODY POINTING ANY GUNS AT HIM?

10 A NO.

11 Q WAS ANYBODY THREATENING HIM IN ANY WAY?

12 A NO.

13 Q DID HE APPEAR TO BE CONSCIOUS, LUCID, AND IN HIS
14 RIGHT MIND TO YOU?

15 A YES.

16 Q AS YOU READ HIM THESE RIGHTS DID HE APPEAR TO BE
17 ALERT AND LISTENING TO YOUR WORDS?

18 A YES.

19 Q AND WHEN YOU ASKED HIM IF HE UNDERSTOOD HIS
20 RIGHTS, DID HE INDICATE HE DID?

21 A HE DID.

22 Q WHEN YOU ASKED HIM IF YOU COULD TALK TO HIM DID
23 HE INDICATE HE WOULD DO THAT?

24 A YES, HE DID.

25 Q DID YOU THEN ASK HIM QUESTION?

1 A I DID.

2 Q WHAT DID YOU ASK HIM?

3 A I ASKED HIM IF THERE WERE ANY ILLEGAL DRUGS
4 INSIDE THE RESIDENCE.

5 Q WHAT DID HE SAY IF ANYTHING?

6 A HE STATED TO ME YES, THAT THERE WAS CRACK
7 COCAINE LOCATED IN A PAIR OF BLUE JEANS IN THE MAIN
8 BEDROOM.

9 Q OKAY. AND DID YOU GO LOOK IN THE BLUE JEANS?

10 A YES.

11 Q DID YOU FIND SUSPECTED CRACK?

12 A YES.

13 Q OKAY. AND DID YOU MAKE ANY PROMISES; YOU SAID
14 YOU MADE NO THREATS TO MR. PRIDE, DID YOU MAKE HIM
15 ANY PROMISES TO GET HIM TO TALK TO YOU?

16 A NO.

17 Q DID YOU INTERVIEW HIM IN DEPTH A LITTLE LATER?

18 A YES, I DID.

19 Q APPROXIMATELY HOW MUCH LATER AFTER ASKING HIM IF
20 THERE WAS ANY ILLEGAL DRUGS IN THE HOUSE?

21 A HOUR AND A HALF, MAYBE TWO.

22 Q WAS THAT IN THE HOUSE OR DOWN AT THE POLICE
23 STATION?

24 A AT THE POLICE STATION.

25 Q OKAY. AND WAS THIS IN A MORE FORMAL SETTING, A

1 MORE FORMAL STATEMENT SETTING?

2 A YES, IT WAS.

3 Q AND DID YOU READ HIM MIRANDA RIGHTS AGAIN AT THE
4 POLICE STATION?

5 A YES, I DID.

6 Q WOULD YOU PLEASE READ THE RIGHTS THAT YOU READ
7 HIM AT THE POLICE STATION?

8 A THE PERSON WHO IDENTIFIED HIMSELF AS
9 INVESTIGATOR C. BRIAN BAILEY DULY WARNED AND ADVISED
10 ME AND I KNOW AND UNDERSTAND THAT I HAVE THE
11 FOLLOWING RIGHTS. THAT I HAVE THE RIGHT TO REMAIN
12 SILENT AND I DO NOT HAVE TO ANSWER ANY QUESTIONS OR
13 MAKE ANY STATEMENTS AT ALL. THAT ANY STATEMENT I
14 MAKE CAN AND WILL BE USED AGAINST ME IN COURT OR
15 COURTS OF LAW FOR THE OFFENSE OR OFFENSES CONCERNING
16 WHICH THE FOLLOWING STATEMENT IS HEREAFTER MADE.
17 THAT I HAVE THE RIGHT TO CONSULT WITH A LAWYER OF MY
18 OWN, THE CHOICE BEFORE OR ANY TIME DURING ANY
19 QUESTIONING OR STATEMENTS I MAKE. THAT IF I CANNOT
20 AFFORD TO HIRE A LAWYER I MAY REQUEST AND HAVE A
21 LAWYER APPOINTED FOR ME BY THE PROPER AUTHORITY
22 BEFORE OR AT ANY TIME DURING ANY QUESTIONING OR
23 STATEMENTS THAT I MAKE WITHOUT COST OR EXPENSE TO ME.
24 THAT I CAN STOP ANSWERING ANY QUESTIONS OR MAKE ANY
25 STATEMENTS AT ANY TIME AS I CHOOSE AND I CAN CALL FOR

1 THE PRESENCE OF THE LAWYER TO ADVISE ME BEFORE
2 CONTINUING ANYMORE QUESTIONING OR MAKING ANYMORE
3 STATEMENTS WHETHER OR NOT I HAVE ALREADY ANSWERED
4 SOME QUESTIONS OR MADE SOME STATEMENTS. I DO NOT
5 WANT TO TALK TO A LAWYER AND I HEREBY KNOWINGLY AND
6 PURPOSELY WAIVE MY RIGHT TO REMAIN SILENT AND MY
7 RIGHT TO HAVE A LAWYER PRESENT WHILE I'M MAKING THE
8 FOLLOWING STATEMENT TO THE AFORESAID PERSON. KNOWING
9 THAT I HAVE RIGHT AND PRIVILEGE TO TERMINATE ANY
10 INTERVIEW AT ANY TIME HEREAFTER AND HAVE A LAWYER
11 PRESENT WITH ME BEFORE ANSWERING ANYMORE QUESTIONS OR
12 MAKING ANYMORE STATEMENTS IF I CHOOSE TO DO SO. I
13 DECLARE THAT THE FOLLOWING VOLUNTARY STATEMENT IS
14 MADE ON MY OWN FREEWILL WITHOUT PROMISE OR HOPE OF
15 REWARD, WITHOUT FEAR OF THREAT OR PHYSICAL HARM,
16 WITHOUT COERCION, FAVOR, WITHOUT LENIENCY OR OFFER OF
17 LENIENCY BY ANY PERSON OR PERSONS WHOMSOEVER.

18 Q ALL RIGHT. YOU READ THAT OUT LOUD TO HIM?

19 A YES.

20 Q DID HE APPEAR TO BE LISTENING TO YOUR WORDS?

21 A YES.

22 Q AND THERE AT THE POLICE STATION WAS ANYBODY
23 THREATENING HIM?

24 A NO.

25 Q WAS HE INJURED OR HURTING PHYSICALLY OR

1 MENTALLY?

2 A NO.

3 Q DID YOU MAKE HIM ANY PROMISES?

4 A NO.

5 Q AND YOU'VE BEEN READING FROM A PAPER, IF I MAY

6 HAVE IT. IS THAT THE ORIGINAL STATEMENT?

7 A YES, IT IS.

8 Q I'M JUST GOING TO ASK YOU TO READ THE STATEMENT.

9 A I GOT OUT OF PRISON ON JANUARY 2003, JANUARY 5,

10 2003. I SERVED 9 MONTHS FOR DISTRIBUTION OF CRACK

11 COCAINE. ABOUT FEBRUARY OF 2003 I STARTED SELLING

12 CRACK COCAINE AGAIN. I WENT TO DEBIRD IN

13 SPARTANBURG. HE MEETS ME IN A DIFFERENT PLACE BUT

14 MOST OF THE TIME HE MEETS ME AT HOLDEN'S RANCH ON

15 HIGHWAY 295 IN SPARTANBURG. I GET UP TO THREE OUNCES

16 FOR HIM. I PAY \$1650 FOR TWO OUNCES AND \$2200 FOR

17 THREE OUNCES. I RE-UP TWO TIMES A WEEK AND MOST OF

18 THE TIME I SELL HOOK UPS AND GET UP TO \$450 FOR ONE

19 HALF OUNCE. I DO SELL 20 AND 40 PIECES TO CERTAIN

20 PEOPLE. I SELL MOST OF MY CRACK IN JONESVILLE, SOUTH

21 CAROLINA. PEOPLE CALL ME ON MY CELL PHONE 441-4272

22 AND I WILL MEET THEM OR THEY WILL COME PICK ME UP. I

23 LAST RE-UPPED ON MONDAY MARCH 31, 2003. I GOT TWO

24 OUNCES FROM D-BIRD FOR \$1650. I MET HIM AT HOLDEN'S

25 RANCH ON 295. I SELL MY DOPE QUICK BECAUSE I SELL A

1 LOT OF HOOK UPS. MOST OF THE PEOPLE WHO I SELL 20
2 AND 40 PIECES TO I ONLY KNOW BY FACE, WHITE AND BLACK
3 PEOPLE. SOME PEOPLE I HAVE SOLD HOOK UPS TO THIS
4 WEEK ARE TERRILL GOOD \$100 HOOK UP 12 PIECES SEVERAL
5 TIMES. MICHAEL FOSTER ONE-FOUR OF AN OUNCE 7 GRAMS.
6 A BLACK FEMALE I ONLY KNOW AS TEE ONE-HALF OUNCE, 14
7 GRAMS. ON MONDAY MARCH 31 I SOLD TWICE TO RONNIE
8 STEVENS. I SOLD \$50 HOOK UP TO HIM WHILE AT BUENA
9 VISTA TWO AND I SOLD HIM A \$100 HOOK UP WHILE AT LIL
10 CRICKET ON HIGHWAY 176 NORTH. THE MONEY I MAKE
11 SELLING CRACK I PAY BILLS WITH IT AND I DID NOT KEEP
12 UP WITH EXACTLY HOW MUCH I MAKE.

13 ON APRIL SECOND 2003 THE POLICE SERVED
14 A SEARCH WARRANT ON MY GIRLFRIEND'S APARTMENT BUENA
15 VISTA TWO APARTMENT ONE C. THEY FOUND A CLEAR BAG OF
16 CRACK COCAINE IN MY PANTS POCKET WHICH WAS IN THE
17 BACK BEDROOM. THEY ALSO FOUND MONEY IN THE PANT
18 POCKET WHICH I MADE FROM SELLING CRACK. THE CRACK
19 COCAINE AND MONEY BELONG TO ME. MY GIRLFRIEND LISA
20 D. SMITH HAS NOTHING TO DO WITH IT. SHE HAS NO IDEA
21 THAT I WOULD HAVE CRACK COCAINE IN THE APARTMENT.

22 Q THANK YOU. IF I CAN HAVE YOUR ORIGINAL, I'M
23 GOING TO GIVE YOU A COPY. I'M GOING TO ASK THIS BE
24 MARKED AS STATE'S EXHIBIT NOT TO GO TO THE JURY, YOUR
25 HONOR, AT THIS TIME. IT HAS BEEN MARKED AS STATE'S

1 EXHIBIT FOUR.

2 (STATE'S EXHIBIT 4 STATEMENT FOR
3 IDENTIFICATION.)

4 Q INVESTIGATOR BAILEY, DID YOU SIGN THIS
5 STATEMENT?

6 A YES, I DID.

7 Q I NOTICE THAT IT IS HANDWRITTEN. DID HE DO THE
8 HANDWRITING OF ALL THE NARRATIVE OR DID SOMEONE ELSE
9 DO IT?

10 A I DID.

11 Q OKAY. ALL RIGHT. DID HE HAVE A CHANCE TO MAKE
12 ANY CHANGES IF HE WANTED TO?

13 A YES, HE DID.

14 Q AND DID HE MAKE ANY CHANGES?

15 A NO, HE DID NOT.

16 Q OKAY. DID HE ASK FOR AN ATTORNEY AT ANY TIME
17 DURING THE TAKING OF THIS STATEMENT?

18 A NO, HE DID NOT.

19 Q DID HE INDICATE TO YOU AT ANY TIME DURING THE
20 TAKING OF THE STATEMENT HE WANTED TO EXERCISE HIS
21 RIGHT TO REMAIN SILENT?

22 A NO, HE DID NOT.

23 MR. SPRINGS: THAT'S OUR SHOWING ON THE
24 STATEMENT.

25 THE COURT: ALL RIGHT. YOU CAN STEP DOWN.

1 THANK YOU. CONSIDERING THE EVIDENCE I AM CONVINCED
2 BY A PREPONDERANCE OF THE EVIDENCE THAT BEFORE MR.
3 PRIDE GAVE HIS STATEMENT HE WAS ADVISED OF HIS RIGHTS
4 UNDER THE 5TH AND 6TH AMENDMENT TO THE CONSTITUTION
5 AND ADVISED OF THE CONSTITUTIONAL SAFEGUARDS REQUIRED
6 BY MIRANDA VERSUS ARIZONA. HE WAS ADVISED HE HAD THE
7 RIGHT TO REMAIN SILENT, THAT IF HE WAIVED THAT RIGHT
8 AND MADE A STATEMENT, IT WOULD AND COULD BE USED
9 AGAINST HIM IN COURT. THAT IF HE HAD THE RIGHT TO
10 HAVE AN ATTORNEY, HAVE ONE APPOINTED IF HE COULD NOT
11 AFFORD ONE. AND HE COULD CONSULT AN ATTORNEY PRIOR
12 TO AND DURING ANY INTERROGATION. HE HAD THE RIGHT TO
13 STOP THE INTERROGATION AT ANY TIME. AND I FIND HE'S
14 KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHTS UNDER
15 THE CONSTITUTIONAL PROVISIONS OF THE 5TH AND 6TH
16 AMENDMENT AND MIRANDA THAT THE INCRIMINATING
17 STATEMENT/CONFESSION WAS OBTAINED FREELY AND
18 VOLUNTARILY WITHOUT DURESS, WITHOUT UNDUE INFLUENCE,
19 WITHOUT REWARD OR HOPE OF REWARD OR PROMISE OF
20 REWARD, WITHOUT ANY PROMISES WHATSOEVER OF LENIENCY,
21 WITHOUT THREAT, WITHOUT COMPULSION OR INDUCEMENT OF
22 ANY KIND. I FIND THAT THE STATEMENTS ARE THE
23 VOLUNTARY PRODUCT OF A FREE AND UNCONSTRAINED WILL OF
24 MR. PRIDE. ALL RIGHT.

25 MR. SPRINGS: YOUR HONOR, WE WOULD LIKE TO

1 HAND UP A MEMORANDUM OF LAW WE HAVE DONE. IT IS
2 ENTITLED MEMORANDUM OF LAW REGARDING ADMISSIBILITY OF
3 PRIOR DRUG SALES TO SHOW THE INTENT TO DISTRIBUTE.
4 I'M GOING TO ASK THE COURT REPORTER TO MARK THIS AND
5 MAKE IT PART OF THE RECORD OF THIS TRIAL. AND I HAVE
6 ALSO GIVEN TO THE COURT A FULL COPY OF THE WRITTEN
7 STATEMENT ~~WITHOUT~~ REDACTED OUT AND I'VE GIVEN TO THE
8 COURT A COPY REDACTED, WITH THE FIRST SENTENCE
9 REDACTED OUT, THE FIRST SENTENCE TALKING ABOUT WHEN
10 HE WAS IN PRISON FOR A PRIOR DISTRIBUTION OF CRACK
11 COCAINE. PURSUANT TO OUR MEMORANDUM I'M GOING TO ASK
12 THE COURT FOR A RULING AS TO WHETHER WE CAN ADMIT THE
13 REDACTED STATEMENT AND PUT IT BEFORE THE JURY.

14 THE COURT: ALL RIGHT. WELL, I RULED IT
15 VOLUNTARY. I ALSO FIND THAT THERE IS CLEAR AND
16 CONVINCING EVIDENCE OF PRIOR DRUG DISTRIBUTION
17 ACTIVITIES TO THE EXTENT THAT IT WOULD ESTABLISH THE
18 ELEMENT OF INTENT AS RECOGNIZED IN STATE VERSUS
19 WILSON AND STATE VERSUS KING. AS I SAID THE EVIDENCE
20 IS CLEAR AND CONVINCING AND THE PREJUDICIAL EFFECT IS
21 OUTWEIGHED BY ITS PROBATIVE VALUE. I FIND THAT THE
22 EVIDENCE OF THE OTHER DRUG ACTIVITY IS LOGICALLY
23 RELEVANT TO PROVE INTENT AND IS ADMISSIBLE. AGAIN I
24 FIND THAT ITS PROBATIVE VALUE IS OUTWEIGHED BY ANY
25 PREJUDICE TO THE DEFENDANT.

1 MR. SPRINGS: THANK YOU, YOUR HONOR. AT
2 THIS TIME I'M GOING TO ASK OUR COURT REPORTER TO MARK
3 AS A STATE'S EXHIBIT THE REDACTED VERSION.

4 (STATE'S EXHIBIT 5 STATEMENT RECEIVED INTO
5 EVIDENCE.)

6 MR. SPRINGS: THE REDACTED VERSION IS
7 MARKED STATE'S EXHIBIT FIVE AND OFFER IT INTO
8 EVIDENCE AT THIS TIME.

9 THE COURT: BE RECEIVED.

10 MR. SPRINGS: THAT'S ALL.

11 THE COURT: LET'S TAKE ABOUT A TWO MINUTE
12 REFRESHER BREAK AND THEN WE'LL START.

13 (COURT'S IN RECESS AT 11:35.)

14 (COURT RESUMES AT 11:40)

15 THE COURT: THE STATE READY.

16 MR. SPRINGS: THE STATE IS READY.

17 THE COURT: BRING IN THE JURY.

18 (THE JURY RETURNS TO THE COURTROOM AT
19 11:53 AM.)

20 THE COURT: MEMBERS OF THE JURY PANEL, IN
21 JUST A MINUTE MR. SPRINGS WILL COME BEFORE YOU AND
22 MAKE AN OPENING STATEMENT. HE WILL NOT BE
23 ARGUING HIS CASE. HE'LL SIMPLY BE GIVING YOU AN
24 OVERVIEW OR OUTLINE OF THE TRIAL. MR. PRIDE, AS I
25 TOLD YOU, EVEN THOUGH HE'S NOT HERE HAS A RIGHT TO

1 TRIAL JUST AS THOUGH HE WERE HERE. HE IS PRESUMED
2 INNOCENT. ANYONE CHARGED WITH ANY OFFENSE IN OUR
3 SYSTEM IS PRESUMED INNOCENT OF THE CHARGES AGAINST
4 HIM UNTIL THE STATE WILL PROVE IF IT CAN THEIR GUILT
5 BEYOND A REASONABLE DOUBT.

6 NOW YOU ARE THE SOLE JUDGES OF THE
7 FACTS IN THIS CASE. IT IS SOLELY UP TO YOU TO
8 DETERMINE THE TRUE FACTS AND APPLY THE LAW AS I
9 CHARGE IT TO YOU. YOU MUST ACCEPT AND APPLY THE LAW
10 AS I CHARGE IT TO YOU. MADAM FORELADY, YOU WILL BE
11 LIAISON BETWEEN THE JURY AND MYSELF AND YOU WILL
12 PRESIDE OVER THE JURY'S DELIBERATION AND ULTIMATELY
13 SIGN THE UNANIMOUS VERDICT OF THE JURY. OVER THE
14 LUNCH BREAK OR WHENEVER YOU ARE OUT OF THE COURTROOM
15 DON'T LET ANYONE DISCUSS THIS CASE WITH YOU, DON'T
16 EVEN START A CONVERSATION ABOUT IT, DON'T LET ANYONE
17 TALK TO YOU ABOUT IT. IF ANYONE TRIES TO DISCUSS
18 THIS CASE WITH YOU TELL THEM YOU CANNOT AND REPORT
19 BACK TO ME, HOPEFULLY GIVING ME THE IDENTITY IF
20 ANYONE DOES TRY TO DISCUSS THIS CASE WITH YOU.

21 WE TRY TO TAKE BREAKS EVERY HOUR AND A
22 HALF. WE BREAK FOR LUNCH AROUND ONE. THE WITNESSES,
23 YOU DON'T NEED TO TAKE NOTES, BUT PLEASE PAY CLOSE
24 ATTENTION. ALL RIGHT.

25 MR. SPRINGS: MAY IT PLEASE THE COURT.

1 OPENING STATEMENT BY MR. SPRINGS:

2 LADIES AND GENTLEMEN OF THE JURY, THIS WILL
3 NOT BE A LONG CASE BUT IT IS AN IMPORTANT CASE. IT'S
4 NOT A COMPLICATED CASE. THE POLICE DID A GOOD JOB
5 AND IT'S MAKING MY JOB EASIER. THE GENTLEMAN IS
6 CHARGED WITH POSSESSION OF CRACK COCAINE WITH THE
7 INTENT TO DISTRIBUTE IT. DISTRIBUTE MEANS SELL IT,
8 TRADE IT, GIVE IT AWAY, OR PASS IT ON TO SOMEBODY
9 ELSE.

10 POSSESSION WITH INTENT TO DISTRIBUTE
11 CRACK COCAINE. THERE ARE TWO KINDS OF POSSESSION.
12 THERE IS ACTUAL POSSESSION. I ACTUALLY HOLD AND
13 POSSESS THIS PEN. AND THERE IS CONSTRUCTIVE
14 POSSESSION. THE THINGS I POSSESS BUT I DON'T HAVE IN
15 MY GRASP. MY BOOKS, I POSSESS THEM, I CONTROL THEIR
16 FATE, THEIR DISPOSITION. I CONTROL THE CLOTHES AT
17 HOME IN MY CLOSET. THAT'S CONSTRUCTIVE POSSESSION.
18 YOU STILL POSSESS IT, OWN IT, EVEN THOUGH IT'S NOT IN
19 YOUR HAND. THIS WILL BE A CONSTRUCTIVE POSSESSION
20 CASE. THAT'S THE FIRST CHARGE: POSSESSION WITH
21 INTENT TO DISTRIBUTE CRACK COCAINE. WE HAVE TO SHOW
22 YOU MR. PRIDE POSSESSED CRACK COCAINE. WE'LL SHOW
23 YOU THAT. WE GOT TO SHOW YOU THAT IT WAS CRACK
24 COCAINE. WE'RE GOING TO DO THAT WITH A CHEMIST. THE
25 CHEMIST IN THIS CASE IS ACTUALLY GOING TO BE THE

1 FIRST WITNESS. THE WITNESS NEEDS TO GO TO SAVANNAH
2 AND NEEDS TO GET ON THE ROAD, USUALLY I PUT THE
3 CHEMIST UP AT THE END OF THE CASE, AND WE TALK ABOUT
4 WHAT HAPPENED, WHAT WAS SEEN, WHAT EVERYBODY DID, AND
5 THEN AT THE END I ASK THE CHEMIST WHAT IS THAT STUFF
6 THAT WAS SEIZED. WE'RE GOING TO PUT HER UP FIRST
7 TODAY AND SHE'S GOING TO SAY WHAT THE STUFF IS. WHAT
8 THAT DOPE IS. SHE'S GOING TO TESTIFY IT'S CRACK
9 COCAINE AND SHE WILL TELL YOU HOW MUCH IT WEIGHS AND
10 THEN WE'RE GOING TO ASK TO HAVE HER EXCUSED AND
11 SHE'LL GET ON HER WAY TO SAVANNAH. THAT'S OUR FIRST
12 WITNESS.

13 THEN THE POLICE WILL TALK ABOUT GOING
14 INTO THE RESIDENCE AND SERVING A SEARCH WARRANT.
15 THEY WILL TALK ABOUT TALKING TO THE DEFENDANT MR.
16 PRIDE. THEY WILL ALSO TALK ABOUT THAT LOCATION, THE
17 LOCATION WHERE THEY FOUND HIM, AND WHERE THEY FOUND
18 THE DRUGS, HOW CLOSE IT IS TO A SCHOOL. IN THIS
19 STATE IT'S A SEPARATE CRIME TO DEAL DRUGS OR POSSESS
20 DRUGS WITH INTENT TO DISTRIBUTE, DEAL THEM, WITHIN A
21 HALF MILE OF A SCHOOL OR PARK. THE GENERAL ASSEMBLY
22 DIDN'T WANT PEOPLE DEALING THEIR DRUGS WITHIN A HALF
23 MILE OF A SCHOOL OR A PARK ANY TIME TIME OF DAY ---
24 TWO IN THE MORNING, THREE IN THE MORNING, WHILE
25 SCHOOL IS GOING ON, ON THE WEEKEND TIME, ANY TIME,

1 THEY MADE IT A CRIME TO POSSESS WITH INTENT TO
2 DISTRIBUTE CRACK COCAINE WITHIN A HALF MILE, AS THE
3 CROW FLIES, THE STRAIGHT LINE, OF A SCHOOL OR PARK.
4 THE LOCATION WHERE HE POSSESSED WITH INTENT TO
5 DISTRIBUTE THIS CRACK COCAINE WAS LESS THAN A HALF
6 MILE FROM A SCHOOL CALLED BUFFALO ELEMENTARY AND THE
7 OFFICERS WILL ALSO TALK ABOUT THAT BECAUSE THAT'S A
8 SEPARATE CRIME AND WE'RE GOING TO ASK YOU TO FIND HIM
9 GUILTY OF THAT. SO TO GET HIM CONVICTED OF THAT, TO
10 CONVINCE YOU THAT HE'S GUILTY OF THAT, WE HAVE TO
11 FIRST OF ALL SHOW YOU THAT HE'S GUILTY OF POSSESSING
12 CRACK COCAINE INTENDING TO DISTRIBUTE IT. WE'RE
13 GOING TO ASK YOU TO FIND THAT AND WE'RE GOING TO ASK
14 YOU TO FIND HE WAS DOING IT WITHIN A HALF MILE OF
15 BUFFALO ELEMENTARY SCHOOL.

16 YOU ARE JUDGING THE FACTS.. YOU ARE
17 NOT JUDGING HIS SOUL THIS WEEK. YOU ARE NOT EVEN
18 GOING TO JUDGE WHETHER HE'S A GOOD OR BAD PERSON.
19 YOU ARE GOING TO JUDGE HIS BEHAVIOR; WHAT HE WAS
20 DOING THIS DAY. YOU ARE GOING TO JUDGE THE FACTS.
21 YOU ARE CALLED THE TRIER OF FACT. THE JUDGE OF THE
22 FACTS. THE JUDGE OF THE BEHAVIOR OF HIM. OUR
23 STANDARD, OUR BURDEN, YOU HEARD IT A MILLION TIMES,
24 BEYOND A REASONABLE DOUBT. IT'S NOT BEYOND ALL
25 DOUBT, IT'S NOT BEYOND A SILLY DOUBT. AGAIN I'M

1 FORTUNATE THE POLICE DID AN EXCELLENT JOB AND WE'RE
2 GOING TO PROVE IT TO YOU BEYOND ALL DOUBT. WE'RE
3 GOING TO GO FURTHER THAN WE HAVE TO, SO WE'RE GOING
4 TO PUT THESE WITNESSES UP, PROVE THIS CASE, WE'LL GET
5 IT DONE TODAY, AND AT THE CONCLUSION OF THE CASE I'M
6 GOING TO GET UP AND ASK YOU TO DO THE RIGHT THING AND
7 GO BACK IN THE DELIBERATION ROOM AND TALK ABOUT IT
8 AND FIND HIM GUILTY OF THESE TWO CRIMES. THANK YOU
9 VERY MUCH.

10 THE COURT: CALL YOUR FIRST WITNESS.

11 MR. SPRINGS: MS. SPANN.

12 KEILA SPANN, AFTER BEING FIRST DULY
13 SWORN TESTIFIES AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. SPRINGS:

15 Q MS. SPANN, I KNOW YOU'VE DONE THIS MANY TIMES.
16 PLEASE SPEAK UP NICE AND LOUD SO EVERYONE CAN HEAR
17 YOU AND MY FIRST QUESTION IS, WHAT IS YOUR NAME?

18 A MY NAME IS KEILA SPAN.

19 Q AND HAVE YOU WORKED FOR SLED AS A CHEMIST AND A
20 DRUG ANALYST?

21 A YES.

22 Q AND AS PART OF YOUR DUTIES AT SLED AS A CHEMIST
23 AND A DRUG ANALYST DID YOU HAVE THE DUTY OF ANALYZING
24 AND IDENTIFYING CONTROLLED SUBSTANCES AND ILLEGAL
25 DRUGS?

1 A YES, I DID.

2 Q WHAT KIND OF EDUCATION AND TRAINING DID YOU
3 RECEIVE TO ENABLE YOU TO IDENTIFY AND ANALYZE
4 CONTROLLED SUBSTANCES AND ILLEGAL DRUGS?

5 A I RECEIVED A BACHELOR'S DEGREE IN CHEMISTRY FROM
6 SOUTH CAROLINA STATE UNIVERSITY IN THE YEAR 2000 AND
7 I ALSO RECEIVED SIX MONTHS OF DRUG ANALYST TRAINING
8 AT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

9 Q HAVE YOU EVER BEEN QUALIFIED IN A COURT LIKE
10 THIS AS AN EXPERT IN THE ANALYSIS AND IDENTIFICATION
11 OF ILLEGAL DRUGS AND CONTROLLED SUBSTANCES?

12 A YES, I HAVE.

13 Q ABOUT HOW MANY TIMES HAVE YOU BEEN QUALIFIED AS
14 AN EXPERT IN THAT FIELD?

15 A ABOUT SIX TIMES.

16 Q ALL RIGHT.

17 MR. SPRINGS: YOUR HONOR, WE OFFER
18 MS. KEILA SPANN AS AN EXPERT IN THE IDENTIFICATION
19 AND ANALYSIS OF CONTROLLED SUBSTANCES AND ILLEGAL
20 DRUGS.

21 THE COURT: I FIND SHE'S QUALIFIED.

22 Q ALL RIGHT. WHEN YOU'VE DONE THIS WORK AS A
23 CHEMIST ANALYZING AND IDENTIFYING ILLEGAL DRUGS AND
24 CONTROLLED SUBSTANCES, WHERE IS YOUR OFFICE BEEN, THE
25 LOCATION?

- 1 A MY OFFICE IS LOCATED IN COLUMBIA AT THE SLED
2 FORENSIC LABORATORY.
- 3 Q ALL RIGHT. I'M SHOWING YOU WHAT'S BEEN MARKED
4 STATE'S EXHIBIT ONE FOR IDENTIFICATION AND LOOK AT
5 THAT AND TELL THE JURY IF IT'S SOMETHING THAT YOU
6 HAVE WORKED WITH IN THE PAST?
- 7 A YES, THIS IS SOMETHING THAT I WORKED WITH IN THE
8 PAST. I RECOGNIZE MY SIGNATURE ON IT.
- 9 Q AND THAT PLASTIC BAG, WHAT SORT OF BAG IS THAT?
10 IS THAT A BAG, TYPE BAG, YOU ARE FAMILIAR WITH?
- 11 A YES, THIS IS A EVIDENCE ADMISSION BAG. THIS IS
12 A TAMPER PROOF BAG THAT WAS SUBMITTED TO SLED WITH
13 THE SUSPECTED CONTROL SUBSTANCE IN IT.
- 14 Q ALL RIGHT. AND YOU SAID YOU HAVE SEEN STATE'S
15 EXHIBIT ONE BEFORE?
- 16 A YES.
- 17 Q AND DID YOU SEE IT AT YOUR OFFICE IN COLUMBIA AT
18 SLED?
- 19 A YES, I ALSO HAVE THE DATE AND MY INITIALS ON IT.
- 20 Q OKAY. WHEN YOU RECEIVED IT WAS IT IN A PLASTIC
21 BAG?
- 22 A YES.
- 23 Q WAS IT IN ONE OF THE TAMPER PROOF SPECIAL
24 EVIDENCE BAGS YOU JUST DESCRIBED?
- 25 A RIGHT. THAT PARTICULAR BAG IS IN HERE AND IN

1 ORDER TO INDICATE THAT IT WAS INDEED SEALED AND
2 HADN'T BEEN TAMPERED WITH I WROTE EVIDENCE SEALED AND
3 THE DATE THAT I OPENED UP THE PACKAGE ON THE ACTUAL
4 PACKAGE.

5 Q AND YOU RECOGNIZE THE WRITING ON STATE'S EXHIBIT
6 ONE?

7 A YES, I DO.

8 Q ALL RIGHT. SO WHEN YOU RECEIVED A SEALED BAG
9 DID IT LOOK AS THOUGH IT HAD BEEN TAMPERED WITH IN
10 ANY WAY?

11 A NO, SIR.

12 Q AND WHEN YOU GOT IT DID YOU OPEN IT UP?

13 A YES, I DID.

14 Q AND DID YOU ANALYZE THE CONTENTS?

15 A YES, I DID.

16 Q AND I'M GOING TO ASK THIS BE MARKED.

17 (STATE'S EXHIBIT 7 DRUG REPORT
18 MARKED.)

19 Q I'M SHOWING YOU STATE'S EXHIBIT 7 DRUG REPORT.
20 IF YOU'LL HOLD THAT FOR A SECOND. I'M GOING TO ASK
21 YOU A QUESTION. DID YOU PREPARE A WRITTEN REPORT OF
22 THE RESULTS OF YOUR ANALYSIS OF THE CONTENTS OF
23 STATE'S EXHIBIT ONE?

24 A YES, SIR, I DID.

25 Q AND I ASK YOU TO LOOK AT STATE'S EXHIBIT 7 AS

1 MUCH AS YOU LIKE AND TELL US IF THIS IS THE REPORT?

2 A THIS IS MY INITIAL REPORT.

3 Q YES. DOES THE WRITING ON STATE'S EXHIBIT 7

4 CORRESPOND, WRITING DOES IT CORRESPOND WITH STATE'S
5 EXHIBIT ONE THE PACKAGE, ARE THEY RELATED?

6 A YES, THEY ARE RELATED BY THE LAB NUMBER, WHICH
7 IS L-0303991 AND ALSO BY MY INITIALS AND THE PAPER
8 WORK AND ON THE ACTUAL PACKAGE.

9 Q OKAY. AND TELL US WHAT THE RESULTS WERE THAT
10 YOU SAY YOU PUT INTO WRITING. WHEN YOU ANALYZE THE
11 CONTENTS OF THAT BAG WHAT WAS THAT STUFF IN THAT BAG?

12 A THIS IS MY OFFICIAL REPORT THAT WAS DESCRIBED AS
13 ROCK SUBSTANCE AND THE RESULTS WERE THAT COCAINE
14 CRACK WAS FOUND IN THE AMOUNT OF 3.62 GRAMS AND 55.85
15 GRAINS AND IT WAS A SCHEDULE TWO SUBSTANCE.

16 Q ALL RIGHT. IS THAT SCHEDULE TWO CONTROLLED
17 SUBSTANCE?

18 A YES, SIR.

19 Q ALL RIGHT. IF I MAY.

20 MR. SPRINGS: YOUR HONOR, WE OFFER INTO
21 EVIDENCE STATE'S EXHIBIT 7 THE REPORT.

22 THE COURT: WHAT ABOUT THE CHAIN?

23 MR. SPRINGS: WE'LL HOLD OFF ON THAT INTO
24 EVIDENCE AT THIS TIME.

25 THE COURT: I'M GOING TO ASK YOU TO HOLD

- 1 OFF ON IT.
- 2 Q NOW AFTER YOU ANALYZED THE CONTENTS OF THE BAG
- 3 AND YOU MADE YOUR REPORT DID YOU PACKAGE IT BACK UP?
- 4 A YES, I DID.
- 5 Q HOW DID YOU PACKAGE IT BACK UP?
- 6 A WE HAVE PLASTIC KITS AT SLED AND INSTEAD OF
- 7 PUTTING THE EVIDENCE BAG INTO THE SAME BAG THAT IT
- 8 WAS SENT IN, WE PUT IT INTO THIS PLASTIC BAG AND THEN
- 9 WE HEAT SEAL IT, MARKING THE DATE THAT IT WAS SEALED
- 10 BACK.
- 11 Q OKAY. AND IS THAT IN THE SAME CONDITION AS IT
- 12 WAS WHEN YOU SEALED IT ALL BACK UP?
- 13 A YES, SIR.
- 14 Q DOES IT LOOK LIKE IT'S BEEN TAMPERED WITH IN ANY
- 15 WAY?
- 16 A I DON'T SEE ANY INDICATION THAT IT'S BEEN
- 17 TAMPERED WITH.
- 18 Q OKAY. AND YOUR OFFICE ENVIRONMENT THERE AT SLED
- 19 WHERE YOU FIRST RECEIVED THIS, IS THAT A SECURE
- 20 FACILITY?
- 21 A YES, SIR.
- 22 Q WHEN YOU SEALED IT BACK UP AFTER YOU TESTED IT
- 23 AND PUT IT IN THAT BAG AND SEALED IT BACK UP, DID YOU
- 24 PUT IT INTO A SECURE FACILITY THERE FOR PICK UP BY
- 25 THE LAW ENFORCEMENT AGENCY?

1 A YES, I PLACED IT IN THE DRUG LOCKER.

2 Q OKAY. VERY GOOD. IF YOU WOULD LAY THAT RIGHT
3 THERE.

4 MR. SPRINGS: THAT'S ALL WE HAVE FOR MS.
5 SPANN AND WE ASK THAT SHE BE EXCUSED.

6 THE COURT: WE APPRECIATE YOUR TIME. FEEL
7 FREE TO LEAVE. THANK YOU VERY MUCH. CALL YOUR NEXT
8 WITNESS.

9 BRIAN BAILEY, AFTER BEING FIRST
10 DULY SWORN TESTIFIES AS FOLLOWS:

11 DIRECT EXAMINATION BY MR. SPRINGS:

12 Q TELL US YOUR NAME SIR AND SPEAK UP NICE AND
13 LOUD.

14 A MY NAME IS BRIAN BAILEY.

15 Q HOW ARE YOU EMPLOYED?

16 A I'M AN INVESTIGATOR WITH THE CITY OF UNION.

17 Q IS THAT WHAT SOME DEPARTMENTS CALL A DETECTIVE?

18 A YES, SIR.

19 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

20 A I'VE BEEN IN LAW ENFORCEMENT APPROXIMATELY 11
21 YEARS.

22 Q AND YOUR DUTIES BACK IN 2003 AND THIS YEAR ARE
23 YOU A NARCOTICS OFFICER?

24 A YES, I AM.

25 Q WERE YOU IN A NARCOTICS OFFICER BACK IN THE

1 SPRING OF 2003?

2 A YES, I WAS.

3 Q AND WERE YOU INVOLVED IN AN INVESTIGATION OF
4 SOMEONE NAMED CHRISTOPHER PRIDE?

5 A YES, I WAS.

6 Q WHAT DID YOU SUSPECT THAT MR. PRIDE WAS INVOLVED
7 IN?

8 A I SUSPECTED THAT MR. PRIDE WAS DEALING, SELLING
9 CRACK COCAINE.

10 Q AND HOW LONG HAD YOU BEEN -- I'M GETTING READY
11 TO ASK YOU ABOUT APRIL SECOND OF 2003, BEFORE I DO
12 THAT LET ME ASK YOU, HOW LONG HAD YOU BEEN
13 INVESTIGATING MR. PRIDE?

14 A I'VE BEEN INVESTIGATING MR. PRIDE APPROXIMATELY
15 ONE YEAR.

16 Q NOW ON APRIL 2, 2003, DID YOU SERVE A SEARCH
17 WARRANT AS PART OF YOUR INVESTIGATION OF MR. PRIDE?

18 A YES, I DID.

19 Q WERE SOME OTHER OFFICERS WITH YOU?

20 A THEY WERE.

21 Q AND WHAT WAS THE LOCATION OR THE PLACE WHERE YOU
22 TOOK THAT SEARCH WARRANT TO SERVE ON APRIL SECOND
23 2003?

24 A IT 726 RICE AVENUE EXTENSION WHICH IS BUENA
25 VISTA TWO APARTMENT ONE C.

- 1 Q IS THAT IN UNION COUNTY?
- 2 A YES, CITY OF UNION.
- 3 Q OKAY. AND ABOUT WHAT TIME OF DAY OR NIGHT DID
- 4 YOU ON APRIL SECOND 2003 SERVE THAT WARRANT?
- 5 A APPROXIMATELY 10 A.M. IN THE MORNING.
- 6 Q OKAY. DID YOU GO RIGHT UP TO THE DOOR?
- 7 A YES, I DID.
- 8 Q DID YOU KNOCK ON THE DOOR AND ANNOUNCE WHO YOU
- 9 WERE?
- 10 A I DID.
- 11 Q WAS READILY OPEN FOR YOU?
- 12 A NO, IT WAS NOT.
- 13 Q DID YOU GO IN?
- 14 A I DID GO IN.
- 15 Q DID YOU HAVE TO KICK THE DOOR IN OR USE ANY
- 16 VIOLENCE TO GET IN THE HOUSE?
- 17 A I DID NOT.
- 18 Q OKAY. WHEN YOU WENT IN, HOW MANY PEOPLE DID YOU
- 19 ENCOUNTER IN THAT RESIDENCE?
- 20 A I FOUND OUT THAT THE RESIDENCE WAS OCCUPIED BY
- 21 TWO PEOPLE, CHRISTOPHER PRIDE AND A SMALL FEMALE
- 22 CHILD PROBABLY SIX YEARS OF AGE.
- 23 Q OKAY. AND AFTER YOU GOT INTO THE RESIDENCE AND
- 24 ENCOUNTERED MR. CHRISTOPHER PRIDE, DID YOU READ HIM
- 25 HIS RIGHTS ACCORDING TO MIRANDA?

1 A I DID.

2 Q AND WOULD YOU PLEASE READ TO THE JURY EXACTLY
3 THE WAY YOU READ THE MIRANDA RIGHTS TO CHRISTOPHER
4 PRIDE ON APRIL SECOND 2003?

5 A YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING
6 YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT
7 OF LAW. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND
8 HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING
9 QUESTIONED. IF YOU CANNOT AFFORD TO HIRE A LAWYER,
10 ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY
11 QUESTIONING IF YOU WISH. YOU CAN DECIDE AT ANY TIME
12 TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS
13 OR MAKE ANY STATEMENTS. YOU UNDERSTAND EACH OF THOSE
14 RIGHTS THAT I HAVE EXPLAINED TO YOU AND HAVING THESE
15 RIGHTS IN MIND DO YOU WISH TO TALK TO US NOW.

16 Q ALL RIGHT. WHEN YOU READ HIM HIS RIGHTS WAS ANY
17 OTHER POLICE OFFICER, I ASSUME YOU AND THE OTHER
18 OFFICERS HAD GUNS?

19 A YES, WE DO.

20 Q WAS ANYBODY POINTING A GUN AT HIM?

21 A NO.

22 Q WAS ANYBODY THREATENING HIM IN ANY WAY?

23 A NO.

24 Q WHEN YOU ENCOUNTERED HIM THAT MORNING I THINK
25 YOU SAID IT WAS ABOUT TEN O'CLOCK, DID HE APPEAR TO

- 1 BE IN GOOD HEALTH?
- 2 A YES, HE WAS.
- 3 Q DID HE APPEAR TO BE SOBER AND IN HIS RIGHT MIND?
- 4 A YES.
- 5 Q DID HE APPEAR ALERT?
- 6 A YES.
- 7 Q DID HE APPEAR TO BE INJURED OR HURT OR SUFFERING
- 8 IN ANY WAY?
- 9 A NO.
- 10 Q WAS THERE ANY VIOLENCE OR UNPLEASANTNESS BETWEEN
- 11 YOU POLICE OFFICERS AND MR. PRIDE?
- 12 A NO, THERE WAS NOT.
- 13 Q OKAY. GIVING HIM HIS MIRANDA RIGHTS AND ASKING
- 14 HIM IF HE WOULD TALK TO YOU, DID HE INDICATE THAT,
- 15 YES, HE UNDERSTAND HIS RIGHTS?
- 16 A YES, HE DID.
- 17 Q AND DID HE INDICATE THAT, YES, HE'D TALK TO YOU?
- 18 A YES, HE DID.
- 19 Q DID YOU PROMISE HIM ANYTHING AT ALL TO GET HIM
- 20 TO AGREE TO TALK TO YOU?
- 21 A NO.
- 22 Q DID YOU THREATEN HIM IN ANY WAY TO GET HIM TO
- 23 AGREE TO TALK TO YOU?
- 24 A NO.
- 25 Q AND AFTER YOU DID THAT, READ HIM HIS RIGHTS AND

- 1 HE SAID HE'D TALK TO YOU, DID YOU ASK HIM SOMETHING?
- 2 A I DID.
- 3 Q WHAT DID YOU ASK HIM?
- 4 A I ASKED MR. PRIDE IF THERE WERE ANY ILLEGAL
- 5 DRUGS IN THE HOUSE. HE STATED TO ME THAT THERE WERE
- 6 ILLEGAL DRUGS IN THE HOUSE AND THAT THERE WAS A BAG
- 7 OF CRACK COCAINE LOCATED IN HIS BLUE JEANS WHICH WERE
- 8 IN THE MAIN BEDROOM.
- 9 Q OKAY.
- 10 (STATE'S EXHIBITS 2 AND 8 THROUGH 15
- 11 PHOTOGRAPHS MARKED.) :
- 12 Q DID YOU GO INTO THE BEDROOM AND LOOK IN THE
- 13 BEDROOM INTO THE BLUES JEANS HE TOLD YOU ABOUT?
- 14 A YES, I DID.
- 15 Q WHAT DID YOU FIND IN THE BLUE JEANS?
- 16 A A BAG OF CRACK COCAINE AND CASH.
- 17 Q HOW MUCH CASH?
- 18 A \$1875.
- 19 Q ALL RIGHT. YOU ARE GETTING A COLD, AREN'T YOU?
- 20 I CAN TELL BY THE WAY YOU ARE TALKING.
- 21 A YES, I AM.
- 22 Q OKAY. I'M SHOWING YOU WHAT'S BEEN MARKED
- 23 STATE'S EXHIBIT 12, WHAT IS THAT A PICTURE OF?
- 24 A THAT'S A PICTURE OF HIS BLUE JEANS.
- 25 Q IS THAT A TRUE AND ACCURATE PICTURE OF HIS BLUE

1 JEANS THE WAY YOU FOUND THEM IN THE BEDROOM?

2 A I PICKED THEM UP OFF THE FLOOR AND LAID THEM
3 ON TO THE BED AND I TOOK THE PICTURE.

4 Q OTHER THAN THAT IS IT A TRUE AND ACCURATE
5 PICTURE OF HIS BLUE JEANS?

6 A YES.

7 MR. SPRINGS: WE OFFER STATE'S EXHIBIT 12
8 INTO EVIDENCE.

9 THE COURT: BE RECEIVED.

10 (STATE'S EXHIBIT 12 RECEIVED INTO EVIDENCE
11 PHOTO.)

12 Q AND YOU SAID YOU FOUND SOMETHING IN THE BLUE
13 JEANS THAT APPEARED TO BE CRACK COCAINE?

14 A YES.

15 Q I'M SHOWING YOU STATE'S EXHIBIT 14, WHAT IS
16 THAT?

17 A THAT'S A PICTURE OF A SMALL CLEAR BAGGY OF WHAT
18 APPEARS TO BE CRACK COCAINE.

19 Q AND WHERE DID YOU FIND THAT?

20 A IN HIS BLUE JEANS.

21 Q IS THAT A TRUE AND ACCURATE PICTURE OF THE BAGGY
22 OF WHAT YOU SUSPECTED TO BE CRACK COCAINE THAT YOU
23 FOUND IN BLUE JEANS?

24 A YES, IT IS.

25 MR. SPRINGS: WE OFFER STATE'S EXHIBIT 14

1 INTO EVIDENCE, YOUR HONOR.

2 THE COURT: BE RECEIVED.

3 (STATE'S EXHIBIT 14 PHOTO RECEIVED
4 INTO EVIDENCE).

5 Q AND YOU SAID THAT YOU FOUND 1800 AND WAS IT \$75?

6 A YES.

7 Q \$1875. I'M SHOWING YOU WHAT'S BEEN MARKED AS
8 STATE'S EXHIBIT 2 FOR IDENTIFICATION, LOOK AT THAT
9 PLEASE AND TELL US WHAT THAT IS?

10 A IT'S CASH.

11 Q ALL RIGHT. IS THAT THE SAME \$1875 YOU JUST TOLD
12 US ABOUT?

13 A YES.

14 Q I WOULD ASK YOU TO LOOK AT STATE'S EXHIBIT 15
15 AND TELL US WHAT THAT IS?

16 A THAT'S THE SAME CASH JUST LINED UP AND
17 RECOUNTED.

18 Q AND THE PICTURE SHOWS THE CASH LAID OUT ON THE
19 TABLE?

20 A YES.

21 Q AND THE PICTURES STATE'S EXHIBIT TWO AND 15 ARE
22 THEY TRUE AND ACCURATE PICTURES OF THE MONEY THAT
23 CAME OUT OF THE BLUE JEANS?

24 A YES.

25 MR. SPRINGS: WE'D OFFER STATE'S EXHIBIT 2

1 AND 15 INTO EVIDENCE, YOUR HONOR.

2 THE COURT: BE RECEIVED.

3 (STATE'S EXHIBIT 2 & 15 PHOTOS
4 RECEIVED INTO EVIDENCE.)

5 Q I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 6
6 FOR IDENTIFICATION, WHAT IS THAT?

7 A THAT'S A PICTURE OF CHRISTOPHER PRIDE.

8 Q IS THAT A TRUE AND ACCURATE PICTURE OF
9 CHRISTOPHER PRIDE THE WAY HE LOOKED WHEN YOU WERE
10 DEALING WITH HIM ON APRIL THE SECOND 2003?

11 A YES, IT IS.

12 Q WHAT WAS HIS DATE OF BIRTH, DO YOU KNOW?

13 A FEBRUARY 17, 1977.

14 Q DO YOU KNOW HIS SOCIAL NUMBER?

15 A IT IS 248-37-1742.

16 Q ALL RIGHT. AND THIS PICTURE STATE'S EXHIBIT SIX
17 YOU SAID THAT'S A PICTURE OF CHRISTOPHER PRIDE?

18 A YES, IT IS.

19 Q IS THAT THE MAN THAT YOU TALKED TO IN THE HOUSE
20 AND THE MAN WHO TOLD YOU?

21 A YES, IT IS.

22 Q THAT THERE WAS CRACK COCAINE IN THE BLUE JEANS?

23 A YES.

24 MR. SPRINGS: WE OFFER STATE'S EXHIBIT 6,
25 YOUR HONOR.

1 THE COURT: BE RECEIVED.

2 (STATE'S EXHIBIT 6 PHOTO RECEIVED INTO
3 EVIDENCE.)

4 Q AND INVESTIGATOR BAILEY, WHEN YOU FOUND WHAT YOU
5 SUSPECTED WAS CRACK COCAINE IN THE BLUE JEANS DID YOU
6 PACKAGE IT UP IN SOMEWAY?

7 A YES, I DID.

8 Q HOW DID YOU PACKAGE IT UP?

9 A I PUT IT IN A SLED EVIDENCE ENVELOPE WHICH IS
10 CALLED A BEST PACK.

11 Q IS THAT SOME SORT OF SPECIAL BAG?

12 A IT'S TAMPER PROOF, YES, SIR.

13 Q OKAY. DID YOU SEAL IT ALL UP?

14 A YES, I DID.

15 Q I'M SHOWING YOU WHAT'S BEEN MARKED STATE'S
16 EXHIBIT ONE FOR IDENTIFICATION, LOOK AT THAT
17 CAREFULLY, AND TELL THE JURY IF IT'S SOMETHING THAT
18 YOU'VE EVER SEEN BEFORE, HAD ANY DEALINGS WITH?

19 A THIS IS THE SLED EVIDENCE PACKET WHICH CONTAINS
20 WHAT WAS SUSPECTED TO BE CRACK COCAINE AND IT'S GOT
21 MY SIGNATURE ON IT WHERE I SEALED IT UP.

22 Q OKAY. AND THE BAG THAT YOU PUT THE STUFF YOU
23 GOT OUT OF THE BLUE JEANS INTO, IS IT INSIDE THE
24 OUTER BAG THERE?

25 A YES, IT IS.

1 Q AND DID YOU MARK, WHEN YOU PACKAGED IT UP AFTER
2 YOU GOT THE STUFF OUT OF THE BLUE JEANS, WHEN YOU
3 PACKAGED IT UP DID YOU PUT SOME IDENTIFYING WRITING
4 ON IT?

5 A I --

6 Q ON THE BAG WHEN YOU PACKAGED IT?

7 A YES, I SIGNED THE ENVELOPE.

8 Q OKAY. AND AFTER YOU SEALED IT ALL UP WHERE DID
9 YOU TAKE IT AND PUT IT?

10 A I PUT IT IN THE EVIDENCE DROP BOX.

11 Q WHERE IS THAT LOCATED?

12 A IT'S LOCATED AT THE PUBLIC SAFETY HEADQUARTERS.

13 Q IS THAT A SECURE FACILITY THE EVIDENCE DROP BOX?

14 A YES, IT IS.

15 Q AND WAS THE SUBSTANCE YOU GOT OUT OF THE BLUE
16 JEANS THAT YOU PACKAGED UP AND PUT INTO EVIDENCE AT
17 THE -- WHAT DID YOU CALL IT THE DROP BOX?

18 A YES.

19 Q WAS IT IN YOUR CUSTODY AND CONTROL THE WHOLE
20 TIME FROM THE TIME IT CAME OUT OF THE BLUE JEANS
21 UNTIL IT WENT INTO THE DROP BOX?

22 A YES, IT WAS.

23 Q ALL RIGHT. IF YOU'LL JUST LAY THAT BACK ON THE
24 RAIL. NOW DID YOU TAKE MR. PRIDE DOWN TO THE POLICE
25 STATION THAT MORNING?

1 A I DID.

2 Q AND WHEN YOU GOT TO THE POLICE STATION DID YOU
3 HAVE FURTHER CONVERSATION WITH HIM?

4 A I DID.

5 Q AND DID YOU GIVE HIM MIRANDA RIGHTS AGAIN BEFORE
6 YOU TALKED TO HIM?

7 A YES, I DID.

8 Q AND WOULD YOU PLEASE TELL THE JURY EXACTLY THE
9 MIRANDA RIGHTS YOU GAVE TO HIM AGAIN BEFORE YOU HAD
10 FURTHER CONVERSATION WITH HIM. EXCUSE ME. LET ME
11 BEG THE COURT'S INDULGENCE. I'M HANDING YOU STATE'S
12 EXHIBIT FIVE AND I'D ASK YOU TO HOLD ON TO THAT AND
13 I'M GOING TO ASK YOU SOME QUESTIONS IN A MINUTE, BUT
14 LET ME GO BACK TO MY QUESTION, WHAT WAS THE MIRANDA
15 RIGHTS THAT YOU GAVE HIM AT THE POLICE STATION?

16 A PERSON WHO IDENTIFIED HIMSELF AS INVESTIGATE C.
17 BRIAN BAILEY AND D. R. NIX DULY WARNED AND ADVISED
18 ME AND I KNOW AND UNDERSTAND THAT I HAVE THE
19 FOLLOWING RIGHTS: THAT I HAVE THE RIGHT TO REMAIN
20 SILENT AND I DO NOT HAVE TO ANSWER ANY QUESTIONS OR
21 MAKE ANY STATEMENTS AT ALL, THAT ANY STATEMENT I MAKE
22 CAN AND WILL BE USED AGAINST ME IN COURT OR COURTS OF
23 LAWS FOR THE OFFENSE OR OFFENSES CONCERNING WHICH THE
24 FOLLOWING STATEMENT IS HERE AND AFTER MADE. THAT I
25 HAVE THE RIGHT TO CONSULT WITH A LAWYER OF MY OWN

1 CHOICE BEFORE OR AT ANY TIME DURING ANY QUESTIONING
2 OR STATEMENTS I MAKE. THAT IF I CANNOT AFFORD TO
3 HIRE A LAWYER I MAY REQUEST TO HAVE A LAWYER
4 APPOINTED FOR ME BY THE PROPER AUTHORITY BEFORE OR AT
5 ANY TIME DURING ANY QUESTIONING OR STATEMENTS THAT I
6 MAKE WITHOUT COST OR EXPENSE TO ME. THAT I CAN STOP
7 ANSWERING ANY QUESTIONS OR MAKE ANY STATEMENTS AT ANY
8 TIME THAT I CHOOSE AND CALL FOR THE PRESENCE OF A
9 LAWYER TO ADVISE ME BEFORE CONTINUING ANYMORE
10 QUESTIONING OR MAKING ANYMORE STATEMENTS WHETHER OR
11 NOT I HAVE ALREADY ANSWERED SOME QUESTIONS OR MADE
12 SOME STATEMENTS. I DO NOT WANT TO TALK TO A LAWYER
13 AND I HEREBY KNOWINGLY AND PURPOSELY WAIVE MY RIGHT
14 TO REMAIN SILENT AND MY RIGHT TO HAVE A LAWYER
15 PRESENT WHILE I MAKE THE FOLLOWING STATEMENT TO THE
16 AFORESAID PERSON KNOWING THAT I HAVE THE RIGHT AND
17 PRIVILEGE TO TERMINATE ANY INTERVIEW AT ANY TIME
18 HEREAFTER AND HAVE A LAWYER PRESENT WITH ME BEFORE
19 ANY, BEFORE ANSWERING ANYMORE QUESTIONS OR MAKING
20 ANYMORE QUESTIONS IF I CHOOSE TO DO SO.

21 I DECLARE THAT THE FOLLOWING VOLUNTARY
22 STATEMENT IS MADE OF MY OWN FREE WILL WITHOUT PROMISE
23 OR HOPE OF REWARD, WITHOUT FEAR OR THREAT OF PHYSICAL
24 HARM, WITHOUT COERCION, FAVOR, WITHOUT LENIENCY OR
25 OFFER OF LENIENCY BY ANY PERSON OR PERSON WHOMSOEVER.

- 1 Q LET ME STOP YOU THERE. DID YOU AND MR. PRIDE GO
2 OVER THAT?
- 3 A YES, WE DID.
- 4 Q YOU ARE DOWN AT THE POLICE STATION, WAS ANYBODY
5 THREATENING HIM DOWN THERE?
- 6 A NO.
- 7 Q WERE ANY GUNS DRAWN?
- 8 A NO.
- 9 Q WERE YOU PROMISING HIM ANYTHING TO INDUCE HIM TO
10 TALK TO YOU?
- 11 A NO, I WAS NOT.
- 12 Q WAS, DID HE STILL APPEAR TO BE IN GOOD HEALTH
13 AND ALERT?
- 14 A YES.
- 15 Q SOBER?
- 16 A YES.
- 17 Q HOW WOULD YOU CHARACTERIZE ALL YOUR DEALINGS
18 WITH HIM THAT DAY? WAS IT UGLY? WAS IT PLEASANT?
19 HOW WOULD YOU CHARACTERIZE IT?
- 20 A NO, IT WAS PLEASANT. IT WASN'T UGLY.
- 21 Q OKAY. THEN AFTER YOU WENT OVER THE RIGHTS YOU
22 JUST READ DID HE TELL YOU SOME THINGS?
- 23 A YES, HE DID.
- 24 Q AND DID YOU WRITE DOWN WHAT HE TOLD YOU?
- 25 A YES, I DID.

1 Q AND AFTER YOU WROTE DOWN THE THINGS HE TOLD YOU,
2 THE STATEMENT HE GAVE YOU, DID YOU ASK HIM TO LOOK IT
3 OVER?

4 A YES, I DID.

5 Q DID YOU GIVE HIM THE OPPORTUNITY TO CROSS OUT OR
6 CHANGE OR DISPUTE ANY OF THE THINGS THAT YOU WROTE
7 DOWN AS HE WAS TALKING?

8 A YES.

9 Q DID HE CHANGE OR DISPUTE OR QUIBBLE OVER
10 ANYTHING YOU HAD WRITTEN DOWN?

11 A NO, HE DID NOT.

12 Q AND HE SIGN HIS NAME TO THE STATEMENT YOU WROTE
13 DOWN FOR HIM?

14 A YES, HE DID.

15 Q ALL RIGHT. AND IF YOU WOULD READ TO THE JURY
16 THE STATEMENT HE GAVE YOU?

17 A ABOUT FEBRUARY 2003 I STARTED SELLING CRACK
18 COCAINE AGAIN. I WENT TO DEBIRD IN SPARTANBURG. HE
19 MEETS ME IN A DIFFERENT PLACE, BUT MOST OF THE TIME
20 HE MEETS ME AT HOLDEN'S RANCH ON HIGHWAY 295 IN
21 SPARTANBURG. I GET UP TO THREE OUNCES FROM HIM. I
22 PAY \$1650 FOR TWO OUNCES AND \$2200 FOR THREE OUNCES.
23 I REUP TWO TIMES A WEEK. I MOST OF THE TIME SELL
24 HOOK UPS AND GET UP TO \$450 FOR ONE HALF OUNCE. I DO
25 SELL 20 AND 40 PIECES TO CERTAIN PEOPLE. I SELL MOST

1 OF MY CRACK IN JONESVILLE, SOUTH CAROLINA. PEOPLE
2 CALL ME ON MY CELL PHONE 441-4272 AND I WILL MEET
3 THEM OR THEY WILL COME PICK ME UP. I LAST REUPPED ON
4 MONDAY MARCH 31, 2003. I GOT TWO OUNCES FROM DEBIRD
5 FOR \$1650. I MET HIM AT HOLDEN RANCH ON 295. I SELL
6 MY DOPE QUICK BECAUSE I SELL A LOT OF HOOK UPS. MOST
7 OF THE PEOPLE WHO I SELL 20 AND 40 PIECES TO I ONLY
8 KNOW BY FACE, WHITE AND BLACK PEOPLE. SOME PEOPLE I
9 HAVE SOLD HOOK UPS THIS WEEK ARE TERRILL GOOD \$100
10 HOOK UP 12 PIECES SEVERAL TIMES. MICHAEL FOSTER ONE
11 FOURTH OF AN OUNCE SEVEN GRAMS. A BLACK FEMALE I
12 ONLY KNOW AS TEE ONE HALF OUNCE 14 GRAM. ON MONDAY,
13 MARCH 31 I SOLD TWICE TO RONNIE STEVENS. I SOLD A
14 \$50 HOOK UP TO HIM WHILE AT BUENA VISTA TWO AND I
15 SOLD HIM A \$100 HOOK UP WHILE AT LIL CRICKET ON
16 HIGHWAY 176 NORTH. THE MONEY I MAKE SELLING CRACK I
17 PAY BILLS WITH AND I DO NOT KEEP UP WITH EXACTLY HOW
18 MUCH I MAKE.

19 ON APRIL SECOND, 2003, THE POLICE
20 SERVED A SEARCH WARRANT ON MY GIRLFRIEND'S APARTMENT
21 BUENA VISTA TWO APARTMENT ONE C. THEY FOUND A CLEAR
22 BAG OF CRACK COCAINE IN MY PANT POCKET WHICH WAS IN
23 THE BACK BEDROOM. THEY ALSO FOUND MONEY IN MY PANTS
24 POCKET WHICH I MADE FROM SELLING CRACK. THE CRACK
25 COCAINE AND MONEY BELONGS TO ME. MY GIRLFRIEND LISA

1 D. SMITH HAS NOTHING TO DO WITH IT. SHE HAS NO IDEA
2 THAT I WOULD HAVE CRACK COCAINE IN THE APARTMENT.

3 Q ALL RIGHT.

4 MR. SPRINGS: BEG THE COURT'S INDULGENCE
5 FOR ONE SECOND, YOUR HONOR.

6 Q INVESTIGATOR BAILEY, DID YOU TAKE YOUR CAR, YOUR
7 POLICE CAR, AND DRIVE FROM THE RESIDENCE WE'VE BEEN
8 TALKING ABOUT HERE OVER TO BUFFALO ELEMENTARY SCHOOL?

9 A YES, I DID.

10 Q TO DRIVE IN A CAR OBVIOUSLY YOU HAD TO STAY ON
11 THE ROAD?

12 A YES.

13 Q WERE YOU ABLE TO GO STRAIGHT AS THE CROW FLIES
14 FROM THIS LOCATION TO BUFFALO ELEMENTARY?

15 A NO.

16 Q DID YOU PREPARE FROM AN OFFICIAL CITY MAP A
17 BLOWUP THE STREETS THAT YOU DROVE?

18 A YES.

19 Q THERE? COME ON DOWN PLEASE, INVESTIGATOR
20 BAILEY. IS THIS THE BLOWUP OF THE CITY STREET MAP
21 YOU MADE SHOWING THE STREETS THAT YOU DROVE?

22 A YES, IT IS.

23 Q IF YOU WOULD POINT TO THE JURY TO WHERE THIS
24 LOCATION THAT GOT SEARCHED, WHERE THE SUSPECTED CRACK
25 COCAINE WAS FOUND, POINT THAT OUT TO THE JURY?

- 1 A THIS IS THE APARTMENT COMPLEX WHICH IS BUENA
2 VISTA TWO.
- 3 Q OKAY. WHERE IS BUFFALO ELEMENTARY SCHOOL?
- 4 A THIS IS BUFFALO ELEMENTARY SCHOOL.
- 5 Q OKAY. AND WITH THIS POINTER INDICATE WHAT WOULD
6 BE THE STRAIGHT AS THE CROW FLIES ROUTE BETWEEN THE
7 TWO?
- 8 A THE STRAIGHT LINE WOULD BE IN THIS DIRECTION.
- 9 Q OKAY. ALL RIGHT. AND SHOW THE ROUTE BY CAR
10 THAT YOU TOOK TO GET OVER FROM WHERE YOU FOUND THE
11 SUSPECTED CRACK AND MR. PRIDE OVER TO THE SCHOOL?
- 12 A THE ROUTE BY CAR WOULD BE TO TRAVEL NORTH ON
13 INDUSTRIAL PARK ROAD AND THEN MAKE A LEFT ON SOUTH
14 CAROLINA HIGHWAY 215.
- 15 Q TAKE THAT YARDSTICK AND MEASURE THAT IN INCHES
16 THAT ROUTE YOU TOOK?
- 17 A (COMPLIES.) 13-14 INCHES.
- 18 Q AND CONTINUE ON TO THE SCHOOL, CONTINUING ON THE
19 ROUTE THAT YOU TOOK TO GET TO THE SCHOOL?
- 20 A THEN ANOTHER 7 AND A HALF.
- 21 Q OKAY. WHAT WAS THE FIRST?
- 22 A ABOUT 13.
- 23 Q AND THE SECOND WAS?
- 24 A 7 AND A HALF.
- 25 Q DOES THAT MAKE ABOUT 20 AND A HALF?

- 1 A YES.
- 2 Q NOW MEASURE AS THE CROW FLIES, A DIRECT ROUTE?
- 3 A ABOUT 15 INCHES.
- 4 Q ALL RIGHT. NOW WHAT WAS YOUR ODOMETER
- 5 MEASUREMENT WHEN YOU TOOK THE 20 AND A HALF INCHES,
- 6 THE ROAD ROUTE?
- 7 A IT WAS APPROXIMATELY RIGHT AT A ONE-HALF MILE.
- 8 FIVE TENTHS OF A MILE.
- 9 Q ALL RIGHT. THANK YOU. YOU CAN TAKE YOUR SEAT.
- 10 BUFFALO ELEMENTARY SCHOOL IS THAT A PUBLIC SCHOOL
- 11 HERE IN UNION?
- 12 A YES, IT IS.
- 13 Q HOW MANY CRACK COCAINE INVESTIGATIONS WOULD YOU
- 14 SAY YOU'VE DONE?
- 15 A OVER A HUNDRED.
- 16 Q HAVE YOU HAVE BECOME FAMILIAR WITH CRACK
- 17 COCAINES AS PART OF YOUR MANY INVESTIGATIONS?
- 18 A YES.
- 19 Q HAVE YOU BECOME FAMILIAR WITH WHAT THE AVERAGE
- 20 STREET DOSE IS, THE AVERAGE STREET INTOXICATING DOSE?
- 21 A YES.
- 22 Q WHAT'S THE WEIGHT OF THE AVERAGE IN YOUR
- 23 EXPERIENCE STREET INTOXICATING DOSE, WHAT DOES IT
- 24 WEIGH?
- 25 A ONE-TENTH OF A GRAM.

1 Q INDICATE WITH YOUR FINGER ABOUT WHAT THAT WEIGHS
2 IN YOUR EXPERIENCE, WHAT IT LOOKS LIKE?

3 A JUST THE TIP OF YOUR FINGER.

4 Q AND IN YOUR EXPERIENCE WHAT DOES THE AVERAGE
5 STREET INTOXICATING DOSE OF ONE-TENTH OF A GRAM SELL
6 FOR?

7 A \$20.

8 Q THANK YOU, INVESTIGATOR. THAT'S ALL I HAVE FOR
9 YOU.

10 THE COURT: YOU MAY STEP DOWN. THANK YOU.
11 CALL YOUR NEXT WITNESS.

12 MR. SPRINGS: CALL CHIEF OF POLICE, SAM
13 WHITE.

14 SAM WHITE, BEING FIRST DULY
15 SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. SPRINGS:

17 Q TELL US YOUR NAME PLEASE SIR?

18 A MY NAME IS SAM WHITE.

19 Q ARE YOU THE UNION PUBLIC SAFETY CHIEF OF POLICE?

20 A YES, I AM.

21 Q ALL RIGHT. HOW LONG HAVE YOU BEEN IN LAW
22 ENFORCEMENT, CHIEF WHITE?

23 A 22 YEARS.

24 Q AS PART OF THE MANY DUTIES I KNOW YOU HAVE AS
25 CHIEF DO YOU ALSO WORK WITH EVIDENCE OVER AT THE

1 POLICE DEPARTMENT?

2 A YES, SIR, I DO.

3 Q ALL RIGHT. I WANT TO SHOW YOU TWO EXHIBITS,
4 STATE'S EXHIBIT 7 AND STATE'S EXHIBIT 1, AND I WANT
5 TO ASK YOU IF YOU HAVE HAD ANY DEALINGS WITH STATE'S
6 EXHIBIT 1 THAT'S MY FIRST QUESTION?

7 A YES, I HAVE.

8 Q WHERE DID YOU FIRST SEE STATE'S EXHIBIT 1?

9 A ON THE 18 APRIL OF 2003 I OPENED THE UNION
10 PUBLIC SAFETY DEPARTMENT EVIDENCE DROP BOX AND
11 RETRIEVED THE BEST PACK B-149595.

12 Q ALL RIGHT?

13 A THAT WAS FIRST EXPOSURE I HAD TO IT.

14 Q THE EVIDENCE DROP BOX, IS THAT A SECURE
15 FACILITY?

16 A YES, SIR.

17 Q AND WHEN YOU GOT THAT STATE'S EXHIBIT NUMBER ONE
18 OUT, DID IT LOOK LIKE ANYBODY HAD TAMPERED WITH IT IN
19 ANY WAY?

20 A NO, SIR, I INSPECTED IT.

21 Q THE BAG WAS INTACT?

22 A YES, SIR.

23 Q ALL RIGHT. AND WHEN YOU GOT IT OUT WHAT DID YOU
24 DO WITH IT?

25 A I RETRIEVED THE BAG TO TURN IT OVER TO ANOTHER

1 OFFICER WHO WAS EN ROUTE TO GO TO COLUMBIA TO THE
2 SLED FORENSIC UNIT AND I TURNED IT OVER TO HIM.

3 Q OKAY. WHAT WAS THAT OFFICER'S NAME?

4 A TONY GREGORY.

5 Q ALL RIGHT. FROM THE TIME YOU GOT IT OUT OF THAT
6 SECURE LOCKER UNTIL THE TIME YOU GAVE IT TO OFFICER
7 TONY GREGORY WAS IT IN YOUR CUSTODY AND CONTROL?

8 A YES, SIR.

9 Q DID ANYBODY MESS WITH IT WHILE YOU HAD IT?

10 A NO, SIR.

11 Q DID YOU EVER SEE IT AGAIN OR HAVE ANY FURTHER
12 DEALINGS WITH IT AFTER THAT?

13 A NOT UNTIL TODAY WHEN YOU PUT IT IN MY HAND.

14 Q ALL RIGHT. LET ME GET NUMBER SEVEN BACK FROM
15 YOU. THANK YOU, CHIEF. THAT'S ALL.

16 A YES, SIR..

17 THE COURT: STEP DOWN AND BE EXCUSED.

18 A THANK YOU.

19 MR. SPRINGS: OFFICER GREGORY PLEASE.

20 TONY GREGORY, AFTER BEING DULY

21 SWORN TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MR. SPRINGS:

23 Q LIEUTENANT GREGORY, TELL US YOUR NAME?

24 A MY NAME IS TONY GREGORY.

25 Q ALL RIGHT. WHAT DO YOU DO FOR A LIVING?

- 1 A I'M A LIEUTENANT WITH THE CITY OF UNION POLICE
2 DEPARTMENT.
- 3 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT, SIR?
- 4 A 20 YEARS.
- 5 Q ALL RIGHT. AS PART OF YOUR DUTIES WITH THE
6 UNION PUBLIC SAFETY DEPARTMENT, THE POLICE
7 DEPARTMENT, DID YOU WORK WITH EVIDENCE SOMETIMES?
- 8 A I SOMETIMES OCCASIONALLY DO WORK WITH EVIDENCE.
- 9 Q OKAY. I WANT TO SHOW YOU TWO THINGS STATE'S
10 EXHIBIT 7 FOR IDENTIFICATION AND STATE'S EXHIBIT ONE
11 FOR IDENTIFICATION, LOOK AT THOSE AND TELL THE JURY
12 IF YOU EVER HAD ANY DEALINGS OR HANDLED STATE'S
13 EXHIBIT ONE?
- 14 A YES, I HAVE.
- 15 Q WHERE DID YOU FIRST GET IT AND FIRST COME INTO
16 CONTACT WITH IT?
- 17 A ON APRIL 18, 2003 I RECEIVED THE SLED BEST PACK
18 FROM CHIEF SAM WHITE TO DELIVER TO COLUMBIA, SOUTH
19 CAROLINA, TO SLED FOR, TO TURN OVER TO THEM IN THEIR
20 EVIDENCE.
- 21 Q STATE'S EXHIBIT ONE IS IT THE BEST PACK YOU
22 RECEIVED?
- 23 A YES, SIR, IT IS.
- 24 Q WHEN YOU GOT IT FROM CHIEF WHITE WAS IN IT
25 INTACT AND NOT TAMPERED WITH?

1 A IT WAS. IT WAS SEALED AT THE TIME I RECEIVED
2 IT.

3 Q WHERE DID YOU TAKE IT?

4 A AT THAT TIME I LEFT AND WENT TO COLUMBIA, SOUTH
5 CAROLINA, TO BROAD RIVER ROAD, SOUTH CAROLINA, SLED
6 LAW ENFORCEMENT DIVISION TO FORENSIC LAB AND
7 DELIVERED IT THERE.

8 Q DID YOU PUT IT INTO THEIR EVIDENCE FACILITY?

9 A YES, SIR. I LOGGED THE EVIDENCE IN WITH ONE OF
10 THEIR RECEPTIONISTS. ONCE IT WAS LOGGED IN, IT WAS
11 GIVEN BACK TO ME, AND I DROPPED IN THE CONTAINER OR
12 DROP BOX THERE.

13 Q AFTER THAT DID YOU EVER SEE IT AGAIN?

14 A NOT UNTIL YOU JUST HANDED IT TO ME TODAY.

15 Q ALL RIGHT. IF I MAY STATE'S EXHIBIT 7.
16 BEFORE YOU STEP DOWN AND BEFORE I SAY THANK YOU LET
17 ME DO TWO THINGS. LET ME OFFER INTO EVIDENCE STATE'S
18 EXHIBIT 7 AND STATE'S EXHIBIT ONE. STATE'S EXHIBIT
19 7 IS THE SLED REPORT WITH CHAIN OF CUSTODY FORM
20 ATTACHED, I OFFER THAT.

21 THE COURT: ACCEPTED AND IT'S RECEIVED IN
22 EVIDENCE.

23 MR. SPRINGS: AND WE OFFER STATE'S EXHIBIT
24 ONE WHICH IS THE DRUG EVIDENCE.

25 THE COURT: RECEIVED. CALL YOUR NEXT

1 WITNESS.

2 (STATE'S EXHIBITS 1 & 7 DRUGS & REPORT
3 RECEIVED INTO EVIDENCE.)

4 MR. SPRINGS: WE REST OUR CASE.

5 THE COURT: MEMBERS OF THE JURY PANEL, THE
6 STATE IS RESTING, SO YOU HEARD THE STATE'S EVIDENCE.
7 THIS WILL BE A GOOD TIME FOR US TO BREAK FOR LUNCH.
8 IT'S ABOUT 12:30 SO LET'S BREAK UNTIL 1:45, A LITTLE
9 OVER AN HOUR, SO WE'LL SEE YOU BACK IN THE JURY ROOM
10 AT 1:45 AND WHEN WE GET BACK YOU'LL HEAR THE ARGUMENT
11 PRESENTATION BY THE SOLICITOR AND THEN MY CHARGE AND
12 THEN WE'LL HAVE THE CASE IN YOUR HANDS FOR YOUR
13 CONSIDERATION. DON'T START DISCUSSING THE CASE
14 BECAUSE YOU HAVEN'T REACHED THE POINT WHERE YOU ARE
15 IN POSITION TO DO THAT. DON'T LET ANYONE DISCUSS THE
16 CASE WITH YOU OUTSIDE THE COURTROOM. HAVE A PLEASANT
17 LUNCH AND WE'LL SEE YOU BACK AT 1:45

18 (THE JURY EXITS THE COURTROOM AT
19 12:20)

20 THE COURT: THE STATE HAVE ANYTHING
21 REGARDING THE CHARGE?

22 MR. SPRINGS: NO, SIR, JUST YOUR STANDARD.

23 THE COURT: LESSER INCLUDED OF SIMPLE
24 POSSESSION.

25 MR. SPRINGS: YES.

1 THE COURT: ALL RIGHT. WE'LL DO A VERDICT
2 FORM AND WE'LL HAVE THE CHARGE AND WE'LL GET BACK IN
3 COURT AT TWO.

4 MR. SPRINGS: THANK YOU, SIR.

5 THE COURT: THANK YOU.

6 (COURT IS IN RECESS.)

7 (COURT RESUMES.)

8 MR. SPRINGS: ON THE CHARGE WILL YOU
9 CHARGE THE INFERENCE?

10 THE COURT: YES, SIR. I HAVEN'T GOT THE
11 CHARGE YET. WE MAY HAVE TO TAKE A SHORT BREAK.
12 WE'LL TAKE A SHORT LITTLE BREAK BEFORE WE CHARGE.

13 (COURT RESUMES AT 12:55)

14 THE COURT: LET'S BRING IN THE JURY.

15 (THE JURY RETURNS TO THE COURTROOM AT
16 2:55.)

17 THE COURT: MEMBERS OF THE JURY PANEL, THE
18 SOLICITOR WILL MAKE HIS CLOSING ARGUMENTS THEN I WILL
19 CHARGE YOU THE LAW. WE MAY HAVE TO TAKE A SHORT
20 BREAK. WE ARE COMING INTO A NEW AGE AND A DIFFERENT
21 WAY TO PREPARE MY CHARGE AND WE HAVE A LITTLE
22 TECHNICAL PROBLEM WITH IT BUT WE'LL GET ALL THAT
23 STRAIGHT.

24 MR. SPRINGS: MAY IT PLEASE THE COURT.
25 CLOSING STATEMENT BY MR. SPRINGS:

1 LADIES AND GENTLEMEN OF THE JURY, THANK YOU
2 FOR YOUR ATTENTION. YOU'VE BEEN VERY ATTENTIVE. WE
3 APPRECIATE THAT. THE CITIZENS OF THIS COMMUNITY
4 APPRECIATE THAT BECAUSE TRIALS LIKE THIS ARE VERY
5 IMPORTANT. WHAT WE'VE BEEN TALKING ABOUT HERE IS
6 VERY IMPORTANT. THIS IS A DRUG CASE, A DRUG DEALER
7 CASE, AND THOSE CASES ARE LIKE THE MIDDLE OF A RIPPLE
8 ON A POND. WHAT HAPPENS IN DRUG DEALER CASES IT
9 SPREADS OUT AND TOUCHES SO MANY LIVES, NONE OF IT FOR
10 THE GOOD. I'M A BIG FAN OF OLD BLACK AND WHITE
11 MOVIES, AND THERE IS A OLD BLACK AND WHITE MOVIE WITH
12 HUMPHREY BOGART IN IT MALTESE FALCON AND Y'ALL MAY
13 HAVE SEEN IT AND AT THE END THERE IS A STATUTE OF A
14 BIRD AND SAYS WHAT IS THAT AND THIS IS THE STUFF
15 DREAMS ARE MADE OF. WHAT WE WERE TALKING ABOUT IS
16 THE STUFF THAT NIGHTMARES ARE MADE OF, CRACK COCAINE.
17 FORTUNATE ALL OF YOU HAVE NOT HAD TO GET INVOLVED
18 WITH THIS KIND OF WORLD BUT IT IS OUT THERE AND IT IS
19 A PROBLEM. MR. PRIDE IS CHARGED WITH POSSESSING THIS
20 CRACK COCAINE. LOOK AT IT. IT'S OVER 30 DOSES OVER
21 30 DOSES, EACH ONE OF THOSE THINGS IS INTOXICATING
22 DOSE AND THERE IS BIG MONEY IN IT. EACH LITTLE TENTH
23 OF A GRAM IS THREE GRAMS, EACH LITTLE TENTH OF A GRAM
24 IS WORTH \$20. SO IT'S NO WONDER THAT THE POLICE
25 FOUND 18, OVER \$1800 IN HIS POCKET. AND ONE OF THE

1 MORE OUTRAGEOUS THINGS ABOUT THIS CASE IS HIS
2 STATEMENT, I JUST SELL IT TO PAY MY BILLS. WELL, HE
3 MUST HAVE HAVE SOME KIND OF HIGH FALUTING LIFESTYLE
4 IF THAT'S THE KIND OF BILLS HE'S GOT BECAUSE I DON'T
5 KNOW ANYBODY THAT WALKS AROUND WITH \$1800 CASH MONEY
6 IN THEIR POCKET.

7 IT'S A SIMPLE CASE. IT'S AN IMPORTANT
8 CASE. THE CASE IS THE POLICE INVESTIGATED THIS MAN,
9 INVESTIGATED HIM FOR A LONG TIME, THEY GOT A SEARCH
10 WARRANT. THEY WENT TO THE PLACE WHERE HE WAS. THEY
11 ENTERED WITH THEIR SEARCH WARRANT, MET HIM THERE IN
12 THE HOUSE, GAVE HIM HIS MIRANDA RIGHTS BEFORE THEY
13 ASKED HIM ANYTHING, AND SAID, ARE THERE ILLEGAL DRUGS
14 HERE. SURE THERE ARE ILLEGAL DRUGS. THEY ARE BACK
15 IN MY BLUE JEANS AND THEY WENT BACK AND IN HIS BLUE
16 JEANS ARE THE DRUGS AND HIS \$1875. THERE IS A
17 PICTURE OF THE MONEY AND THERE ARE THE DRUGS. THIS
18 IS THE ORIGINAL LITTLE BAGGY IT WAS IN, THE DRUGS.
19 WHEN THEY ARRESTED HIM THEY TOOK HIM BACK TO THE
20 POLICE STATION, GAVE HIM HIS MIRANDA RIGHTS AGAIN,
21 AND HE MADE A STATEMENT AND HERE'S THE STATEMENT, HIS
22 CONFESSION. YOU WILL HAVE THIS PIECE OF PAPER BACK
23 THERE. YOU CAN READ OVER IT AGAIN. YOU READ THE
24 TONE THAT'S ON THIS BUT WHEN YOU READ ABOUT THIS, HOW
25 MUCH HE WAS MOVING AND WHERE HE WAS GETTING IT THEN

1 HE WAS TALKING ABOUT WHAT WAS FOUND IN THE APARTMENT
2 AND THAT'S THE LAST PART OF THE STATEMENT. YOU KNOW,
3 THAT THIS WAS INTENDED TO BE DISTRIBUTED. THAT'S
4 THAT INTENT THAT WE HAVE TO PROVE BECAUSE REMEMBER AT
5 THE BEGINNING I TOLD YOU THE VARIOUS THINGS WE HAVE
6 TO PROVE, WE HAVE TO PROVE THAT HE POSSESSED IT AND
7 HE DID CONSTRUCTIVELY POSSESS IT AND THE POLICE CAME
8 IN IT WASN'T IN HIS HAND, IT WAS BACK IN HIS BLUE
9 JEANS BACK IN THE BED ROOM, HE CONSTRUCTIVELY
10 POSSESSED THAT. HE HAD THE LEGAL FANCY LANGUAGE IS
11 HE HAD THE DOMINION AND CONTROL OVER IT. JUST LIKE
12 WE ALL HAVE DOMINION AND CONTROL OVER THE DISHES IN
13 OUR KITCHEN CABINET AT HOME. WE'RE NOT HOLDING THEM
14 ALL TO OUR BREAST BUT WE STILL POSSESS THOSE THINGS.
15 WE DON'T STOP POSSESSING OUR STUFF WHEN WE LEAVE THE
16 HOUSE. HE DIDN'T STOP POSSESSING THIS WHEN HE WALKED
17 TO THE LIVING ROOM AND THE LEFT THE BAG IN THE
18 BEDROOM, SO HE POSSESSED THAT AND WE GOT TO SHOW HE
19 POSSESSED IT. WE GOT TO SHOW YOU IT WAS CRACK
20 COCAINE. THE NICE LADY THAT WAS THE FIRST WITNESS,
21 MS. SPANN THE CHEMIST, VERIFIED IT WAS CRACK COCAINE.
22 HER REPORT IS RIGHT HERE. SHE SAID YUP, CRACK
23 COCAINE 3.62 GRAMS, WORKS OUT TO 36 DOSES. WE HAVE
24 TO PROVE HE POSSESSED IT. WE HAVE TO PROVE IT WAS
25 CRACK COCAINE. WE HAVE TO PROVE THAT HE INTENDED TO

1 DISTRIBUTE IT. HE'S CONFESSED TO THAT BUT YOU CAN
2 ALSO, THE JUDGE WILL ALSO TELL YOU, THAT YOU CAN
3 INFER AND INFER IS ANOTHER FANCY LEGAL TERM THAT
4 MEANS TO FIGURE OUT, CLUE, YOU CAN INFER THAT IF
5 SOMEBODY HAS OVER ONE GRAM THEY INTEND TO DISTRIBUTE
6 IT. AND YOU CAN SEE THE LOGIC THEY HAD DOWN IN
7 COLUMBIA BECAUSE YOU GET TO A POINT THAT'S TEN DOSES,
8 YOU GET TO A POINT WHERE IT GETS TO BE SILLY THAT IT
9 MIGHT BE FOR YOU, FOR YOUR OWN USE. WHEN YOU GET TO
10 TEN INTOXICATING DOSES, IF YOU CAN ANALOGOUS THAT,
11 YOU CAN COMPARE IT TO A DRUNK WALKING AROUND WITH TEN
12 BOTTLES OF LIQUOR AND THAT DOESN'T HAPPEN UNLESS HE'S
13 GOING TO MEET A LOT OF FRIENDS. SO YOU CAN INFER
14 JUST FROM THE WEIGHT ALONE THAT BECAUSE IT'S OVER ONE
15 GRAM AND IT'S 3.6 THAT HE WAS GOING TO DISTRIBUTE IT.
16 THE DISTRIBUTION CAN BE GIVING IT AWAY, TRADING IT
17 FOR SOMETHING, OR SELLING IT. I THINK YOU CAN FIGURE
18 OUT HERE HE WAS SELLING IT AND HE WAS MAKING DARN
19 GOOD MONEY DOING IT TOO. DARN GOOD MONEY.

20 THE OTHER CHARGE IS THE CHARGE THAT HE
21 WAS WITHIN A HALF MILE OF A SCHOOL OR A PARK. AND
22 THE OFFICER EXPLAINED ON THIS DIAGRAM, HE MEASURED
23 IT, BECAUSE HE COULDN'T GO AS THE CROW FLIES. HE HAD
24 TO COME UP HERE AND TAKE THE LONG WAY AND THE LONG
25 WAY IS .5. THE LONG WAY IS A HALF MILE. TO BE

1 GUILTY OF THAT, IN PROXIMITY OF A SCHOOL OR PARK,
2 IT'S GOT TO BE LESS AND YOU CAN SEE THAT IT IS LESS
3 AS THE CROW FLIES AND THAT'S THE WAY THE GENERAL
4 ASSEMBLY INTENDED IT, AS THE CROW FLIES. DON'T GET
5 NEAR THE SCHOOLS AND PARK TO DRUG DEAL. WHEN
6 MEASURING IT HE SAID IT WAS 20 INCHES, THE LONG WAY
7 AS HE DROVE IT, AND IT WAS MUCH LESS AS THE CROW
8 FLIES.

9 I'M NOT GOING TO WASTE ANYMORE OF YOUR
10 TIME. AGAIN I'LL SAY I APPRECIATE YOUR PATIENCE.
11 PLEASE TAKE THIS VERY SERIOUS. IT IS VERY SERIOUS.
12 THERE IS A LOT OF EVIDENCE HERE. WAY BEYOND A
13 REASONABLE DOUBT. THERE IS NO DOUBT HERE. IF HE HAD
14 NEVER OPENED HIS MOUTH AND SAID ANYTHING TO THE
15 POLICE WE WOULD HAVE BEEN ABLE TO PROVE THIS CASE
16 BEYOND A REASONABLE DOUBT. HE DID CONFESS AND READ
17 IT, I THINK IT'S WORTH SOMEBODY BRAGGING. ALL THESE
18 THINGS WILL BE BACK IN THE JURY ROOM WITH YOU. I ASK
19 YOU PLEASE JUST TO DO WHAT YOU ARE SWORN TO DO, COME
20 IN HERE AND JUDGE THE FACTS, DON'T JUDGE HIS SOUL,
21 THAT'S FOR SOMEBODY ELSE AT A LATER DAY, JUST JUDGE
22 THE FACTS AND HIS ACTS THAT DAY AND PLEASE FIND HIM
23 GUILTY OF THAT.

24 CHARGE BY THE COURT:

25 MEMBERS OF THE JURY PANEL, I'M GOING

1 TO CHARGE YOU THE LAW NOW THAT YOU ARE TO APPLY TO
2 THE FACTS IN THIS CASE. IT IS MY JOB AS THE TRIAL
3 JUDGE IN THIS CASE TO CHARGE YOU THE LAW WHICH YOU
4 ARE TO APPLY AND IT IS YOUR DUTY TO ACCEPT AND APPLY
5 THE LAW AS I CHARGE IT AND THIS IS TRUE EVEN IF YOU
6 THINK I CHARGE YOU THE LAW IN ERROR OR EVEN IF YOU
7 THINK THE LAW SHOULD BE DIFFERENT. YOU MUST TAKE,
8 ACCEPT, AND APPLY THE LAW AS I CHARGE IT TO YOU. NOW
9 IN THE JURY ROOM YOU WILL HAVE THE INDICTMENTS AND
10 THESE INDICTMENTS ARE NOT EVIDENCE. THEY ARE SIMPLY
11 THE PAPERWORK BY WAY OF WHICH THIS CASE IS PROCESSED
12 THROUGH OUR COURT SYSTEM. THE INDICTMENTS CONTAIN
13 THE CHARGES, THE ALLEGATIONS, AGAINST MR. PRIDE BUT
14 THEY ARE NOT EVIDENCE. THEY ARE ALSO WHERE YOU WILL
15 ENROLL THE UNANIMOUS VERDICT OF THE JURY, MADAM
16 FORELADY AND THE OTHER INDICTMENT WILL HAVE A
17 SEPARATE FORM AND I WILL GO OVER THAT WITH YOU AT A
18 LATER TIME.

19 NOW DURING MY INSTRUCTIONS I MAY USE
20 THE WORD DEFENDANT. I WILL TRY TO USE MR. PRIDE'S
21 NAME BUT IF I SAY DEFENDANT I'M TALKING OF COURSE
22 ABOUT MR. PRIDE. TO THESE TWO INDICTMENTS, ONE FOR
23 POSSESSION OF CRACK COCAINE WITH INTENT TO
24 DISTRIBUTE, ONE POSSESSION OF CRACK COCAINE WITH
25 INTENT TO DISTRIBUTE WITHIN PROXIMITY OF A PUBLIC

1 SCHOOL TO EACH OF THESE INDICTMENTS MR. PRIDE HAS
2 ENTERED PLEAS OF NOT GUILTY. HIS PLEAS OF NOT GUILTY
3 PLACE ON THE STATE THE BURDEN OF PROVING HIS GUILT
4 BEYOND A REASONABLE DOUBT. ANYONE CHARGED WITH ANY
5 OFFENSE IN OUR JUDICIAL SYSTEM IS PRESUMED INNOCENT
6 OF THE CHARGE AGAINST HIM AND IS SO PRESUMED UNTIL
7 SUCH TIME AS THE STATE, IF IT CAN, HAS PROVEN THAT
8 PERSON'S GUILT BEYOND A REASONABLE DOUBT. THE
9 PRESUMPTION OF INNOCENCE WHICH INURES TO MR. PRIDE IS
10 NOT JUST A MERE LEGAL THEORY OR A MERE LEGAL PHRASE.
11 IT IS A SUBSTANTIAL RIGHT WHICH INURES TO THE BENEFIT
12 OF ANYONE CHARGED WITH ANY OFFENSE IN OUR SYSTEM.
13 THE PRESUMPTION OF INNOCENCE ATTACHED TO MR. PRIDE
14 AND AGAIN EXISTS IN HIS FAVOR AT THE TIME OF HIS
15 ARREST, PROCEEDS WITH HIM AS THE CASE IS TRIED, AND
16 THE PRESUMPTION OF INNOCENCE EVEN REMAINS WITH HIM
17 AND INURES TO HIS BENEFIT AS YOU DELIBERATE. THE
18 PRESUMPTION OF INNOCENCE IN MR. PRIDE'S FAVOR IS
19 REMOVED IF AND WHEN AND ONLY IF AND WHEN YOU AS THE
20 TRIAL JURY IN THIS CASE DETERMINE THAT THE STATE HAS
21 PROVEN HIS GUILT BEYOND A REASONABLE DOUBT.

22 NOW MR. PRIDE IS ENTITLED TO BENEFIT
23 OF ANY REASONABLE DOUBT ARISING IN THE CASE. IF AS
24 TO ANY ISSUE ESSENTIAL FOR A CONVICTION IN THIS CASE
25 YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE

1 SHOULD BE RESOLVED YOU MUST RESOLVE ANY REASONABLE
2 DOUBT IN MR. PRIDE'S FAVOR. IF YOU HAVE A REASONABLE
3 DOUBT AS TO WHETHER OR NOT HE IS GUILTY YOU MUST
4 RESOLVE THAT IN HIS FAVOR AND FIND HIM NOT GUILTY.

5 PROOF BEYOND A REASONABLE DOUBT IS
6 DESCRIBED AS THE KIND OF DOUBT THAT WOULD CAUSE A
7 REASONABLE PERSON TO HESITATE TO ACT. IT IS PROOF
8 THAT LEAVES YOU FIRMLY CONVINCED OF SOMEONE'S GUILT.
9 THERE ARE VERY FEW THINGS THAT WE CAN KNOW WITH
10 ABSOLUTE CERTAINTY AND THAT IS NOT REQUIRED IN A CASE
11 SUCH AS THIS. IF BASED ON YOUR CONSIDERATION OF THE
12 EVIDENCE YOU ARE FIRMLY CONVINCED THAT MR. PRIDE IS
13 GUILTY OF ONE OR BOTH OF THE CHARGES AGAINST HIM YOU
14 MUST FIND HIM GUILTY. IF ON THE OTHER HAND YOU THINK
15 THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY OF
16 ONE OR BOTH OF THE CHARGES THEN YOU MUST GIVE HIM THE
17 BENEFIT OF THAT DOUBT AND FIND HIM NOT GUILTY.

18 YOUR VERDICT MAYBE BASED ON THE
19 EVIDENCE IN THE CASE OR THE LACK OF EVIDENCE IN THE
20 CASE. NOW YOU ARE THE SOLE JUDGES OF THE FACTS IN
21 THIS CASE. YOU ARE NOT TO INFER FROM ANYTHING I HAVE
22 SAID OR DONE OR ANYTHING I NOW SAY OR DO AS BEING AN
23 INDICATION OF AN OPINION OF MINE ON THE FACTS. A
24 TRIAL JUDGE IS NOT ALLOWED TO FORMULATE OR EXPRESS TO
25 A JURY AN OPINION ON THE FACTS. THAT IS YOUR JOB.

1 IT IS SOLELY UP TO YOU TO EXAMINE THE EVIDENCE, GIVE
2 TO THE EVIDENCE THE EFFECT, THE VALUE, THE WEIGHT,
3 AND THE TRUTH YOU BELIEVE IT SHOULD HAVE. IN DOING
4 THIS YOU MAY BELIEVE ONE WITNESS AS OPPOSED TO
5 SEVERAL, SEVERAL WITNESSES AS OPPOSED TO ONE; YOU
6 MAY BELIEVE ALL, PART, OR NONE OF THE WITNESS'S
7 TESTIMONY. AS JUDGES OF THE FACTS YOU OF NECESSITY
8 MUST JUDGE THE CREDIBILITY OF THE WITNESSES WHO HAVE
9 TESTIFIED, THAT IS, THEIR BELIEVABILITY. YOU CAN USE
10 IN DETERMINING CREDIBILITY THOSE THINGS I HAVE
11 ALREADY TALKED ABOUT, USE THOSE THINGS THAT YOU IN
12 YOUR DAY TO DAY LIFE FIND AS BEING INDICATIVE OF
13 TRUTHFULNESS AND YOU CAN ALSO USE CERTAIN EVALUATORS:
14 HOW A WITNESS ACTS ON THE STAND; THAT IS, THEIR
15 DEMEANOR. WHETHER A WITNESS IS BIASED OR PREJUDICED;
16 THAT IS, WHETHER A WITNESS HAS A REASON TO HELP OR
17 HURT ONE SIDE OR THE OTHER. YOU CAN CONSIDER THE
18 OPPORTUNITY A WITNESS HAD TO ACTUALLY KNOW THOSE
19 THINGS THE WITNESS TESTIFIED TO. AND YOU CAN LOOK AT
20 THE CONSISTENCIES OR THE INCONSISTENCIES IN A
21 WITNESS'S TESTIMONY. CONSIDER ALL OF THESE THINGS,
22 DETERMINE THE TRUE FACTS, APPLY THE LAW, AND YOU'LL
23 BE ABLE TO RETURN A VERDICT THAT IS TRUE.

24 IN THIS CASE WE'VE HAD TESTIMONY FROM
25 SOMEONE WHO WAS QUALIFIED AS BE AN EXPERT, A CHEMIST.

1 GENERALLY ONE CAN ONLY TESTIFY AS TO SOMETHING THEY
2 SENSE WITH ONE OF THEIR SENSES. USUALLY THEY'VE
3 HEARD SOMETHING OR THEY'VE SEEN SOMETHING. BUT A
4 CHEMIST OR AN EXPERT, SOMEONE WHO HAS CERTAIN
5 KNOWLEDGE, TRAINING, OR SKILL CAN TAKE FACTS AND FROM
6 THOSE FACTS RENDER AN OPINION. THAT IS, WITH THESE
7 FACTS I CONCLUDE THIS IS WHAT I SAY IT IS. THE
8 OPINION OF AN EXPERT IS GIVEN TO ASSIST YOU. IT IS
9 NOT BINDING ON YOU. THE OPINION OF AN EXPERT, THEY
10 ARE JUST WITNESSES JUST LIKE OTHER WITNESSES, YOU
11 ARE TO LOOK AT THEIR TESTIMONY JUST LIKE YOU LOOK AT
12 THE TESTIMONY OF ANY WITNESS IN THE CASE, AND AS TO
13 AN EXPERT YOU ALSO LOOK AT THE QUALIFICATIONS OF THAT
14 EXPERT, ARE THEY QUALIFIED TO GIVE THE OPINION, AND
15 LOOK AT THE REASONS THEY GAVE FOR REACHING THE
16 OPINION THEY HAVE PRESENTED TO YOU. YOU CAN ACCEPT
17 OR REJECT IN WHOLE OR IN PART THE EXPERT'S TESTIMONY.
18 AGAIN THEIR TESTIMONY IS GIVEN TO ASSIST YOU. IT'S
19 NOT BINDING ON YOU.

20 NOW MR. PRIDE IS NOT HERE AS I
21 MENTIONED EARLIER. THE FACT THAT HE IS NOT PRESENT
22 IS NOT TO BE HELD AGAINST HIM IN ANYWAY WHATSOEVER.
23 HE'S PRESUMED INNOCENT. I'VE ALREADY TOLD YOU THAT.
24 THE STATE HAS THE BURDEN OF PROVING HIS GUILT BEYOND
25 A REASONABLE DOUBT. I ALREADY TOLD THAT YOU. SO YOU

1 CANNOT DISCUSS IN THE JURY ROOM HIS ABSENCE AND YOU
2 CANNOT USE THAT IN ANY WAY AS A FACTOR IN DETERMINING
3 THE ISSUES IN THIS CASE. HE IS TO BE TREATED JUST AS
4 THOUGH HE WERE PRESENT.

5 HE HAS A RIGHT TO REMAIN SILENT
6 WHETHER HE'S HERE OR NOT. THAT IS, HE HAS A RIGHT TO
7 NOT TESTIFY. THE FACT THAT HE HAS EXERCISED THAT
8 RIGHT, THE FACT THAT HE HAS NOT TESTIFIED, THAT
9 CANNOT BE USED AGAINST HIM EITHER. YOU CANNOT
10 DISCUSS IN THE JURY ROOM THE FACT THAT YOU DID NOT
11 HEAR HIS TESTIMONY. THAT IS, THERE IS NO TESTIMONY
12 FROM HIM, YOU CANNOT DISCUSS THAT IN THE JURY ROOM.
13 YOU CANNOT USE IT IN YOUR OWN DELIBERATIONS TO
14 DETERMINE THE ISSUE OF HIS GUILT OR WHETHER HE'S NOT
15 GUILTY. THE STATE, AS I TOLD YOU, HAS THE BURDEN OF
16 PROVING HIS GUILT BEYOND A REASONABLE DOUBT AND HE IS
17 PRESUMED INNOCENT SO HE HAS NOTHING TO PROVE AND YOU
18 CANNOT USE HIS SILENCE IN ANYWAY IN DETERMINING THE
19 ISSUES BEFORE YOU. IT CANNOT BE HELD AGAINST HIM IN
20 ANY WAY WHATSOEVER.

21 NOW IN THIS CASE THERE HAS BEEN
22 INTRODUCED STATEMENTS OR CONFESSIONS. BEFORE THOSE
23 WERE INTRODUCED I HAD TO MAKE A PRIMARILY RULING AS
24 TO WHETHER OR NOT THEY WERE ADMISSIBLE IN EVIDENCE
25 AND I RULED THEY WERE ADMISSIBLE. IT IS UP TO YOU TO

1 DETERMINE WHETHER OR NOT TO GIVE THOSE, GIVE THAT
2 STATEMENT ANY CONSIDERATION WHATSOEVER. YOU MUST
3 DETERMINE BEFORE YOU CONSIDER THAT STATEMENT IN ANY
4 FASHION WHETHER OR NOT MR. PRIDE IN FACT MADE THE
5 STATEMENT, WAS HE WARNED OF HIS CONSTITUTIONAL
6 RIGHTS, DID HE KNOWINGLY AND INTELLIGENTLY WAIVE
7 THOSE CONSTITUTIONAL RIGHTS, AND WAS HIS STATEMENT
8 GIVEN VOLUNTARILY. ANYONE AGAIN CHARGED WITH AN
9 OFFENSE, INCLUDING MR. PRIDE, MUST BE WARNED OF THEIR
10 CONSTITUTIONAL RIGHTS BEFORE THEY CAN BE
11 INTERROGATED, THAT IS, QUESTIONED BY LAW ENFORCEMENT.
12 THEY MUST BE WARNED THAT THEY HAVE THE RIGHT TO
13 REMAIN SILENT. IF THEY MAKE A STATEMENT IT COULD AND
14 WOULD BE USED AGAINST THEM IN TRIAL. THAT THEY HAVE
15 A RIGHT TO SELECT AN ATTORNEY, BUT IF THEY CANNOT
16 AFFORD ONE ONE WILL BE APPOINTED TO THEM AT NO
17 EXPENSE TO THEM. THEY HAVE THE RIGHT TO CONSULT
18 COUNSEL, AN ATTORNEY, BEFORE ANSWERING ANY QUESTIONS.
19 THAT THEY HAVE THE RIGHT TO HAVE THEIR ATTORNEY
20 PRESENT WITH THEM DURING ALL INTERVIEWS AND
21 INTERROGATIONS. YOU MUST FIRST DETERMINE THAT MR.
22 PRIDE WAS GIVEN THOSE RIGHTS AND IF YOU DETERMINE HE
23 WAS GIVEN THOSE RIGHTS, YOU THEN MUST DETERMINE
24 WHETHER OR NOT HE KNOWINGLY AND INTELLIGENTLY WAIVED
25 THOSE CONSTITUTIONAL RIGHTS. THEREFORE YOU MUST

1 DETERMINE WHETHER OR NOT HE UNDERSTOOD THE RIGHTS AND
2 WHETHER OR NOT HE VOLUNTARILY GAVE THEM UP. THE WORD
3 VOLUNTARY MEANS THAT A STATEMENT IS THE EXPRESSION OF
4 ONE'S OWN FREE WILL, THAT IS, NOT INDUCED BY FORCE,
5 THREAT, PRESSURE, INFLUENCE OR HOPE, OR PROMISE OF
6 BENEFIT OR REWARD. IT IS NOT, A STATEMENT IS NOT
7 VOLUNTARY IF IT'S EXTRACTED BY THREATS, COERCION, OR
8 INTIMIDATION. A STATEMENT IS VOLUNTARY IF IT IS THE
9 PRODUCT OF THE UNCONSTRAINED AND FREE WILL OF THE
10 ONE MAKING IT. THE TRUE TEST TO BE APPLIED IS
11 WHETHER A STATEMENT IS FREELY, VOLUNTARILY, AND
12 UNDERSTANDABLY MADE WITHOUT COMPULSION OR INDUCEMENT.
13 YOU MAY CONSIDER ALL THE EVIDENCE IN THE CASE IN
14 REACHING YOUR DECISION AS TO WHETHER OR NOT YOU
15 DETERMINE THE STATEMENT WAS GIVEN VOLUNTARILY. AND
16 YOU MUST MAKE THAT DETERMINATION BEYOND A REASONABLE
17 DOUBT. ONCE YOU HAVE DETERMINED THAT THE STATEMENT
18 WAS GIVEN VOLUNTARILY, THEN YOU CAN GIVE IT WHATEVER
19 VALUE IF ANY YOU WISH.

20 NOW THIS CASE DEALS WITH A CONTROLLED
21 SUBSTANCE, A SUBSTANCE THAT IS A NARCOTIC SUBSTANCE,
22 IT'S WHAT'S CALLED A SCHEDULE TWO NARCOTIC CONTROLLED
23 SUBSTANCE, AND CRACK COCAINE IS COCAINE THAT HAS BEEN
24 ALTERED CHEMICALLY SO THAT IT IS IN A FORM SUITABLE
25 FOR SMOKING. MR. PRIDE IS CHARGED WITH POSSESSION OF

1 CRACK COCAINE WITH INTENT TO DISTRIBUTE. WHAT THE
2 STATE MUST PROVE IN ORDER FOR YOU TO FIND HIM GUILTY
3 OF THAT OFFENSE IS THAT HE DID POSSESS WITH INTENT TO
4 DISTRIBUTE CRACK COCAINE AT THE TIME AND PLACE AS
5 ALLEGED IN THE INDICTMENT. POSSESSION REQUIRES THAT
6 A PERSON BE IN ACTUAL OR CONSTRUCTIVE POSSESSION OF A
7 CONTROLLED SUBSTANCE WITH ACTUAL KNOWLEDGE OF ITS
8 PRESENCE. ACTUAL POSSESSION OF THE CONTROLLED
9 SUBSTANCE EXISTS WHEN THE CONTROLLED SUBSTANCE IS
10 FOUND IN THE ACTUAL PHYSICAL CUSTODY OF THE PERSON
11 CHARGED WITH POSSESSION.

12 CONSTRUCTIVE POSSESSION OF THE
13 CONTROLLED SUBSTANCE EXISTS WHEN A PERSON ALTHOUGH
14 NOT IN ACTUAL PHYSICAL POSSESSION OF THE CONTROLLED
15 SUBSTANCE EXERCISES DOMINION AND CONTROL OVER THE
16 CONTROLLED SUBSTANCE OR HAS THE RIGHT TO EXERCISE
17 DOMINION AND CONTROL OVER THE CONTROLLED SUBSTANCE.
18 A PERSON HAS POSSESSION OF A CONTROLLED SUBSTANCE
19 WITHIN THE MEANING OF THE LAW WHEN THEY HAVE THE
20 POWER AND INTENT TO CONTROL ITS DISTRIBUTION OR USE.
21 MERE PRESENCE WHERE A CONTROLLED SUBSTANCE IS FOUND
22 ALONE WITHOUT MORE IS NOT SUFFICIENT FOR ONE TO BE
23 FOUND TO HAVE BEEN IN POSSESSION. IT MUST BE SHOWN
24 THAT MR. PRIDE HAD POSSESSION OF THE CONTROLLED
25 SUBSTANCE AND THAT HE HAD KNOWLEDGE OF ITS PRESENCE

1 AND KNOWLEDGE IS DEFINED AS CONSCIOUSLY AND
2 WILLFULLY. THE STATE MUST NOT ONLY PROVE POSSESSION
3 OF THE CONTROL SUBSTANCE, BUT IT MUST ALSO PROVE THAT
4 HE HAD IT IN HIS POSSESSION WITH INTENT TO
5 DISTRIBUTE. THE INTENT TO DISTRIBUTE THE CONTROLLED
6 SUBSTANCE IS AN ESSENTIAL ELEMENT OF THIS OFFENSE.
7 INTENT IS DEFINED AS A PURPOSE OR AIM OR DESIGN AND
8 IN LAW IT IS THE STATE OF A PERSON'S MIND WHICH
9 DIRECTS THEIR ACTIONS TOWARD A SPECIFIC OBJECT. THE
10 SECOND ELEMENT THAT THE STATE MUST PROVE IS THAT THE
11 SUBSTANCE WAS IN FACT CRACK COCAINE WHICH IS A
12 CONTROLLED SUBSTANCE. --

13 NOW ANOTHER SECTION BY OUR LAW STATES
14 THAT POSSESSION OF ONE OR MORE GRAM OF CRACK COCAINE
15 IS AN INFERENCE THAT THE POSSESSION OF THAT CRACK
16 COCAINE WAS WITH THE INTENT TO DISTRIBUTE SAME. NOW
17 THIS IS AN INFERENCE ONLY. THIS INFERENCE IS SIMPLY
18 AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY
19 YOU ALONG WITH THE OTHER EVIDENCE IN THE CASE AND TO
20 BE GIVEN SUCH WEIGHT AND VALUE IF ANY AS YOU DEEM IT
21 SHOULD HAVE. THE STATE MUST PROVE MR. PRIDE'S GUILT
22 OF POSSESSION OF CRACK COCAINE WITH INTENT TO
23 DISTRIBUTE BEYOND A REASONABLE DOUBT.

24 NOW THERE IS BY LAW WHAT WE CALL A
25 LESSER INCLUDE OFFENSE THAT IS NOT SETFORTH IN THE

1 INDICTMENT BUT THAT COULD BE CONSIDERED BY YOU IF YOU
2 DETERMINE THAT THE STATE HAS NOT PROVEN HE POSSESSED
3 THE CRACK COCAINE WITH INTENT TO DISTRIBUTE. YOU MAY
4 CONSIDER WHETHER HE SIMPLY HAD IN HIS POSSESSION,
5 WHAT IS CALLED SIMPLE POSSESSION, THAT IS A LESSER
6 INCLUDED OFFENSE AND EVEN THOUGH IT'S NOT SET FORTH IN
7 THE INDICTMENT THE LAW ALLOWS A JURY TO CONSIDER IT
8 AS A LESSER INCLUDED OFFENSE. THE ELEMENTS OF THIS
9 OFFENSE ARE THAT THE PERSON CHARGED, HERE MR. PRIDE,
10 MUST HAVE KNOWINGLY AND INTENTIONALLY POSSESSED CRACK
11 COCAINE AT THE TIME AND PLACE ALLEGED IN THE
12 INDICTMENT. AND I'VE ALREADY CHARGED TO YOU ACTUAL,
13 CONSTRUCTIVE POSSESSION, AND THE WORD KNOWINGLY AND
14 THOSE DEFINITIONS APPLY EQUALLY TO THIS OFFENSE AS
15 THEY DID TO THE OTHER.

16 THE SECOND ELEMENT THAT MUST BE PROVEN
17 IN ADDITION TO THE POSSESSION IS THAT THE SUBSTANCE
18 WAS IN FACT CRACK COCAINE. THE STATE MUST PROVE THAT
19 TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT BEFORE
20 YOU COULD CONVICT MR. PRIDE AS TO THAT OFFENSE.

21 NOW HE'S ALSO CHARGED WITH POSSESSION
22 OF CRACK COCAINE WITHIN PROXIMITY OF BUFFALO
23 ELEMENTARY SCHOOL. OUR LEGISLATURE HAS MADE IT A
24 SEPARATE OFFENSE FOR ONE TO POSSESS WITH INTENT TO
25 DISTRIBUTE CRACK COCAINE THAT CLOSE TO AN ELEMENTARY

1 SCHOOL. NOW IF YOU FIND HIM NOT GUILTY OF POSSESSING
2 CRACK COCAINE WITH INTENT TO DISTRIBUTE OR IF YOU
3 FIND HIM GUILTY OF THE LESSER INCLUDED SIMPLE
4 POSSESSION OF CRACK COCAINE, UNDER EITHER OF THOSE
5 CIRCUMSTANCES YOU WON'T EVEN NEED TO CONSIDER THIS
6 OTHER CHARGE BECAUSE THE OTHER CHARGE IS ONLY FOR
7 CONSIDERATION IF HE POSSESSED, IF YOU FIND HIM GUILTY
8 OF POSSESSION OF CRACK COCAINE WITH INTENT TO
9 DISTRIBUTE BECAUSE IF HE DIDN'T POSSESS CRACK COCAINE
10 AT ALL OR IF HE DIDN'T POSSESS IT WITH INTENT TO
11 DISTRIBUTE THEN HE CERTAINLY COULD NOT HAVE POSSESSED
12 IT WITH INTENT TO DISTRIBUTE WITHIN ONE HALF MILE OF
13 A SCHOOL OR PARK. BUT IF YOU DETERMINE THAT HE DID
14 IN FACT POSSES CRACK COCAINE WITH INTENT TO
15 DISTRIBUTE THE SAME THEN YOU COULD CONSIDER WHETHER
16 OR NOT THAT OCCURRED WITHIN A ONE HALF MILE OF A
17 PUBLIC SCHOOL. OUR LEGISLATURE HAS MADE THAT A
18 STATUTORY OFFENSE, AND THE ELEMENTS OF THAT ARE VERY
19 SIMPLE: HE MUST HAVE POSSESSED CRACK COCAINE WITH
20 INTENT TO DISTRIBUTE, AND IT MUST BE WITHIN ONE HALF
21 MILE OF A PUBLIC SCHOOL. AND OF COURSE, AS I SAID,
22 THE STATE MUST PROVE THAT BEYOND A REASONABLE DOUBT.
23 NOW AS TO THE CHARGE FOR POSSESSION OF CRACK COCAINE
24 WITH INTENT TO DISTRIBUTE I HAVE TOLD YOU THERE IS A
25 LESSER INCLUDED OFFENSE, SO I HAVE PREPARED A VERDICT

1 FORM, MADAM FORELADY, AS TO THE INDICTMENT OF
2 POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE
3 WITHIN THE PROXIMITY OF BUFFALO ELEMENTARY SCHOOL YOU
4 CAN ENROLL THE VERDICT SIMPLY ON THE INDICTMENT. YOU
5 WILL SEE ON THE BACK THE WORD VERDICT, UNDER IT FOUR
6 LINES, THE BOTTOM LINE IS FOR YOU TO SIGN AND PLACE
7 THE DATE, TODAY IS THE 13TH OF OCTOBER. AS TO THAT
8 INDICTMENT IF THE STATE HAS FAILED TO PROVE MR. PRIDE
9 GUILTY OF POSSESSION OF CRACK COCAINE WITH INTENT TO
10 DISTRIBUTE WITHIN THE PROXIMITY OF BUFFALO ELEMENTARY
11 SCHOOL YOUR VERDICT WOULD BE SIMPLY TWO WORDS NOT
12 GUILTY AND YOU WRITE THAT IN ONE OF THOSE LINES ABOVE
13 YOUR NAME. IF ON THE OTHER HAND AS TO THAT OFFENSE
14 THE STATE HAS PROVEN HIS GUILT BEYOND A REASONABLE
15 DOUBT YOUR VERDICT WOULD BE ONE WORD GUILTY. AS TO
16 THE OTHER INDICTMENT YOU HAVE THREE CHOICES. IF YOU
17 FIND THAT THE STATE HAS PROVEN HIM GUILTY AS CHARGED
18 YOU WOULD USE THE FIRST LINE THAT SAYS WE FIND THE
19 DEFENDANT GUILTY OF POSSESSION OF CRACK COCAINE WITH
20 INTENT TO DISTRIBUTE AS CHARGED AND SIMPLY PUT AN "X"
21 IN FRONT OF THAT. IF YOU FIND THE STATE HAS FAILED
22 TO PROVE THAT BEYOND A REASONABLE DOUBT AS PROVING
23 HIM GUILTY OF THE LESSER INCLUDED OFFENSE OF SIMPLE
24 POSSESSION OF CRACK COCAINE YOU WOULD USE THE SECOND
25 LINE THAT SIMPLY SAYS THAT. IF YOU FIND THE STATE

1 HAS FAILED TO PROVE HIS GUILT BEYOND A REASONABLE
2 DOUBT AS TO ANY OFFENSE UNDER THAT INDICTMENT YOU
3 WOULD SIMPLY MARK WE FIND THE DEFENDANT NOT GUILTY
4 AND THERE IS A PLACE FOR YOU TO SIGN.

5 NOW IF YOU WANT TO HAVE TESTIMONY
6 REPLAYED LET ME KNOW. IF YOU WANT ME TO GO OVER ANY
7 PART OR ALL OF MY CHARGE, LET ME KNOW. I DO NOT HAVE
8 MY CHARGE IN A WRITTEN FORM TO SEND IN TO YOU, BUT I
9 CAN BRING YOU BACK IN AND RECHARGE YOU ANY PART OR
10 ALL OF THE LAW.

11 WHEN YOU FIRST GO INTO THE JURY ROOM DO
12 NOT START YOUR DELIBERATION BECAUSE I HAVE TO GO OVER
13 MY CHARGE WITH THE STATE AND MAKE A DETERMINATION AS
14 TO WHETHER I MADE ANY ERROR. IF I MADE ANY ERROR
15 I'LL HAVE TO BRING YOU BACK IN AND CORRECT IT. IF
16 NOT I WILL SEND IN TO YOU THE EXHIBITS, THE VERDICT
17 FORM, AND THE BAILIFF WILL TELL YOU TO START YOUR
18 DELIBERATIONS. IF YOU HAVE ANY QUESTIONS DURING YOUR
19 DELIBERATIONS WRITE THEM DOWN, MADAM FORELADY, AND
20 SEND THEM OUT BY WAY OF THE BAILIFF AND I WILL
21 RESPOND. IT MAYBE THAT I CAN WRITE AN ANSWER TO YOUR
22 QUESTIONS ON THE NOTE ITSELF OR I MAY HAVE TO BRING
23 YOU BACK IN HERE AND CORRECT IT, BUT DON'T START YOUR
24 DELIBERATION UNTIL YOU HEAR FROM ME. MRS. LAWING,
25 YOU'LL REMAIN WITH US HERE IN THE COURTROOM SINCE WE

1 WON'T BE USING THE ALTERNATE IN THE DELIBERATION.

2 YOUR VERDICT IS NOT TO BE BASED ON
3 PASSION, PREJUDICE, PUBLIC OPINION, SYMPATHY OR
4 MATTERS OUTSIDE OF THE RECORD. NOW I WILL LET YOU GO
5 TO THE JURY ROOM BUT DON'T START DELIBERATING YET.

6 (THE JURY EXITS THE COURTROOM AT
7 2:25.)

8 THE COURT: ANY EXCEPTIONS?

9 MR. SPRINGS: NO, SIR.

10 THE COURT: CHECK THE EXHIBITS AND THE
11 VERDICT FORMS AND THE INDICTMENT AND WE WILL SEND
12 THEM BACK.

13 (THE ALTERNATE JUROR IS EXCUSED AND
14 THE JURY BEGINS DELIBERATIONS AT 2:25.)

15 THE COURT: I UNDERSTAND WE HAVE A
16 VERDICT. BRING IN THE JURY.

17 (THE JURY RETURNS TO THE COURTROOM AT
18 2:50)

19 THE COURT: I UNDERSTAND THE JURY HAS
20 REACHED VERDICTS. IF YOU'LL HAND THEM UP.

21 THE CLERK: DOCKET 2003-523 THE STATE
22 VERSUS CHRISTOPHER LEE PRIDE INDICTMENT FOR
23 POSSESSION OF CRACK COCAINE WITHIN INTENT TO
24 DISTRIBUTE THE VERDICT WE FIND THE DEFENDANT GUILTY
25 OF POSSESSION OF CRACK COCAINE WITH INTENT TO

1 DISTRIBUTE AS CHARGED, DALE GOFF FORELADY.

2 2003-519 THE STATE VERSUS CHRISTOPHER
3 LEE PRIDE INDICTMENT FOR POSSESSION OF CRACK COCAINE
4 WITH INTENT TO DISTRIBUTE VERDICT GUILTY DALE GOFF
5 FORELADY.

6 IF THIS IS YOUR VERDICT PLEASE RAISE
7 YOUR RIGHT HAND. ALL RAISED IN THE AFFIRMATIVE.

8 THE COURT: THANK YOU.

9 (THE JURY IS EXCUSED.)

10 THE COURT: TELL ME HIS PRIOR RECORD.

11 MR. SPRINGS: MR. PRIDE'S PRIOR RECORD IS
12 A LYNCHING CONVICTION IN 1994. A DISTRIBUTION OF
13 CRACK COCAINE IN 1997. A PUBLIC DISORDERLY CONDUCT
14 IN 2000. A FAILURE TO STOP FOR A BLUE LIGHT AND
15 SIREN THE YEAR 2000. AND ABUSE OF VULNERABLE ADULT
16 IN 2002. THAT'S HIS PRIOR. OF COURSE, THIS PRIOR
17 DRUG OFFENSE MAKING THIS A SECOND OFFENSE. WE WOULD
18 ASK FOR A BENCH WARRANT.

19 THE COURT: PLEASE, A BENCH WARRANT WILL
20 BE ISSUED.

21 MR. SPRINGS: OUR CLERK MRS. MILLER SAYS
22 THAT'S ALL GOING TO BE DONE THROUGH HER OFFICE AND
23 WILL BE TAKEN CARE OF.

24 THE COURT: ALL RIGHT.

25 (END OF PROCEEDINGS.)

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I, JANET RICH, OFFICIAL COURT REPORTER FOR THE SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FORGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE 13TH DAY OF OCTOBER 2004.

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


JANET M. RICH

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF UNION) IN THE COURT OF GENERAL SESSIONS

3
 4 The State,)
 5 -vs-) TRANSCRIPT OF RECORD
 6 Christopher Lee Pride,) 2003-GS-44-519;523
 7 Defendant.) January 18, 2005
 8) Union, South Carolina
 9

10 B E F O R E:

11 HONORABLE G. THOMAS COOPER, JR., JUDGE
 12
 13

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

15 E. B. SPRINGS, IV, ESQUIRE
 16 Attorney for the State

17 WILLIAM DONALD ALL, II, ESQUIRE.
 18 Attorney for the Defendant
 19
 20
 21
 22

23 Linda D. Moffitt
 24 Circuit Court Reporter
 25

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Sentence -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Do you have a lawyer, Mr. Pride?

2 THE DEFENDANT: Sir?

3 THE COURT: Do you have a lawyer?

4 THE DEFENDANT: No, sir.

5 THE COURT: Mr. Springs.

6 MR. SPRINGS: Your Honor, if I may, we will speak to
7 that. We have an interesting situation here.

8 Mr. Christopher Lee Pride who stands before you was
9 appointed a public defender, Mr. William All, who sits
10 here. And Mr. All is going to interrupt me if I misspeak.

11 As we got ready to go into the trial of this case in
12 October here in the Union Court of General Sessions,
13 calling for trial, his P. W. I. D. crack cocaine and P. W.
14 I. D. crack cocaine within proximity of school or park,
15 Mr. All spoke with Judge John C. Hayes, III, about the
16 question of representation.

17 Mr. Pride wasn't here at the call of the case on
18 October the 13th of 2004, and Mr. All indicated to Judge
19 Hayes that Mr. Pride had told Public Defender Bill All that
20 Mr. All wasn't his lawyer. He was getting Fletcher Smith.
21 Is that --

22 MR. ALL: Your Honor, I think Mr. Springs is
23 remembering it a little bit wrong.

24 Your Honor, what happened, we had a term of court, and
25 Fletcher Smith was actually here representing Mr. Pride,

1 and Fletcher Smith got relieved by the Court.

2 At that term of court before he left Mr. Smith had the
3 clerk see if Mr. Pride qualified for the public defender's
4 office and Mr. Pride did qualify for the public defender's
5 office. Mr. Pride never came and spoke to me whatsoever
6 after that point in regards to his case. The case was
7 brought up for trial.

8 THE COURT: Same term?

9 MR. ALL: The next term, Your Honor.

10 THE COURT: Next term.

11 MR. ALL: The next term, Your Honor.

12 And Judge Hayes therein asked about representation,
13 and I indicated what I just indicated to you that I had not
14 had the opportunity to talk to Mr. Pride, and Judge Hayes
15 relieved me as counsel, the public defender's office as
16 counsel, at that time.

17 Your Honor, actually Fletcher Smith was on the case,
18 was relieved, Mr. Pride qualified for the public defender's
19 office, did not come talk to me at the public defender's
20 office.

21 I am not sure what happened. He obviously failed to
22 appear at court, and then they tried him in his absence,
23 Your Honor.

24 THE COURT: Was proper notice given?

25 MR. SPRINGS: Yes, sir. Judge John C. Hayes did rule

1 that proper notices was given for a trial in his absence.

2 Just to round out the scene, Judge Hayes felt like
3 that what he was hearing that Mr. Pride had indicated he
4 didn't want Mr. All. Mr. All was ready to go ahead and
5 represent him at the trial. Judge Hayes said, and I think
6 I quote, kind of darned if we do and darned if we don't,
7 because I am hearing Mr. Pride said he doesn't want
8 Mr. All, he had rather have Mr. Fletcher Smith, although
9 Mr. Fletcher Smith called that morning and indicated he
10 wasn't on the case.

11 THE COURT: Had Mr. Fletcher Smith been appointed?

12 MR. SPRINGS: No.

13 THE COURT: He had been privately retained by the
14 defendant?

15 MR. SPRINGS: There had been talk about him being
16 retained. He called and said no, he was not retained and
17 does not represent Mr. Pride.

18 So Judge Hayes at that point talking to Mr. All said
19 I'm uncomfortable. I'm paraphrasing. I'm uncomfortable
20 with you representing him because Mr. Pride has
21 constructively said you're not my lawyer, Fletcher Smith is
22 my lawyer, but Fletcher Smith said he's not his lawyer. So
23 Judge Hayes --

24 THE COURT: Well, he should have had one or the other.

25 MR. SPRINGS: Well, Judge Hayes said at that point he

1 didn't have a lawyer, and Judge Hayes felt like if he let
2 Mr. All step in Mr. Pride could have come back later and
3 said I didn't want --

4 THE COURT: Well, did Mr. Pride take part in his own
5 trial?

6 MR. SPRINGS: No, sir. He was not here.

7 THE COURT: So just, he left?

8 MR. SPRINGS: He did not appear for court.

9 THE COURT: He did not appear.

10 MR. SPRINGS: He did not appear in court.

11 THE COURT: And he was on bond.

12 MR. SPRINGS: He was on bond and was out on bond at
13 the time.

14 THE COURT: All right.

15 MR. SPRINGS: The trial proceeded.

16 THE COURT: I am going to let you talk.

17 Is Mr. Pride in custody now?

18 MR. SPRINGS: He's in custody now.

19 At this point maybe he wants representation for
20 purposes of sentencing since this is a critical part of his
21 prosecution.

22 THE COURT: Yes, sir, Mr. Pride. I will hear from
23 you.

24 THE DEFENDANT: Yes, sir. See, what had happened,
25 see, Fletcher, I had called Fletcher and he was going to

1 represent me, but he was waiting. He was waiting to get
2 the money. But when I had sent the money, he was saying he
3 never, he never received the money order I had sent him. ✓
4 Therefore that's why when the Court time come he was saying
5 that he wasn't representing me, but he -- but about three
6 days after I had been sentenced he said he had just got the
7 money order. He was just waiting on the money. ✓

8 THE COURT: Three days after what?

9 THE DEFENDANT: After the sentencing, after I had been
10 sentenced.

11 THE COURT: After your trial.

12 THE DEFENDANT: Yes, sir. ✓

13 THE COURT: You had been tried already.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Well, did you tell Fletcher Smith to come
16 down here today?

17 THE DEFENDANT: He's gone. He's in a senator's
18 meeting or something.

19 THE COURT: I know where he is.

20 MR. ALL: Your Honor, if I may just for one moment.

21 THE COURT: Yes, sir.

22 MR. SPRINGS: What Mr. Pride didn't actually recall, I
23 actually had conversations with Fletcher Smith's office.
24 And after he had been relieved there was some contact from
25 their office indicating that they would be representing

1 him, that he was bringing money in, and then they hadn't
2 brought enough money in and stuff like that. So there was
3 some of that ongoing.

4 THE COURT: This is all prior to trial.

5 MR. ALL: Prior to trial after Mr. Smith was relieved.

6 THE COURT: All right, sir. Solicitor, what do you,
7 what's your pleasure?

8 MR. SPRINGS: Your Honor, at this time my request, and
9 I don't want to step on Mr. Pride's toes, if Mr. Pride is
10 ready to go forward and be sentenced pro se and does not
11 request appointed counsel for sentencing, then I would ask
12 the sealed sentence be opened. If he wants appointed
13 counsel for the purpose of standing with him and advising
14 him and being with him at sentencing, we could put this off
15 if that's his desire.

16 THE COURT: Let me ask you this. Did Judge Hayes
17 impose a sentence as a result of the trial? Was he found
18 guilty?

19 MR. SPRINGS: He was found guilty and Judge Hayes said
20 I am passing sentence and I am sealing it up.

21 THE COURT: All right. So he did issue a sentence at
22 that time.

23 MR. SPRINGS: Yes, sir. I believe you are holding it
24 in your hand.

25 THE COURT: Okay. Mr. Pride, what I have in my hand

1 is the record of your trial and probably what's called a
2 sentencing sheet and your indictments.

3 Judge Hayes tried you in your absence. Judge Hayes
4 found, or at least a jury found, you guilty. And Judge
5 Hayes imposed a sentence, in other words, announced what
6 his sentence would be.

7 Now, about all I can do for you now is have one of the
8 public defenders stand with you while I read this sentence
9 unless you have got some other desire or some other way to
10 deal with this.

11 You have already been convicted; you have already been
12 sentenced. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you prepared for me to read the
15 sentence?

16 THE DEFENDANT: Sir?

17 THE COURT: I said are you prepared for me to read the
18 sentence.

19 THE DEFENDANT: Could I talk to Mr. All?

20 THE COURT: Yes, sir.

21 (Pause.)

22 THE COURT: Mr. All.

23 MR. ALL: Your Honor, may it please the Court.

24 I have spoken to Mr. Pride, and if the Court please,
25 correct me if I advised him improperly. I advised him that

1 there is really nothing I can do with regards to the
2 sentence that the Court is getting ready to read at this
3 time since another judge has issued that sentence.

4 I told him however that I thought I could if I was
5 appointed at least perfect an appeal for him if he wants to
6 raise the issue of whether or not he shouldn't have been
7 tried in his absence. I would be immediately relieved by
8 appellate defense, but basically I would take the notice --

9 THE COURT: At least file the notice.

10 MR. ALL: File a notice on his behalf, Your Honor.
11 I'm not sure if there's anything else I really can do at
12 this time.

13 THE COURT: Well, I was going to -- I don't even
14 think, because he wasn't here, there's not much even in
15 mitigation that you can do at this point.

16 MR. ALL: Yes. I don't think there is anything for me
17 to say unless you are going to be inclined to change
18 another judge's sentence.

19 THE COURT: That's highly unlikely --

20 MR. ALL: That's what I had assumed, Your Honor.

21 THE COURT: -- unless there is some obvious error,
22 which I doubt that I will find.

23 MR. ALL: Statutorily it was an illegal sentence or
24 something like that.

25 THE COURT: Something like that.

1 Well, nevertheless, Mr. All, if you will just stand
2 with Mr. Pride, I will read the sentence.

3 MR. ALL: Yes, sir.

4 (Pause.)

5 THE COURT: All right. Mr. Pride, the Grand Jury of
6 Richland -- I'm sorry -- of Union County indicted you on
7 two counts at the June term of 2003, first with possession
8 with intent to distribute crack cocaine second offense and
9 possession with intent to distribute crack cocaine in
10 proximity of a school, two different charges.

11 A jury having found you guilty on each charge, Judge
12 Hayes, John C. Hayes has sentenced you as follows: On the
13 possession with intent to distribute crack cocaine
14 proximity of a school, Sentence of the Court is you be
15 committed to the State Department of Corrections for a
16 period of 15 years and pay a fine of \$10,000.

17 On your possession with intent to distribute crack
18 cocaine second offense, Sentence of the Court is you be
19 committed to the State Department of Corrections for a
20 period of 25 years and pay a fine of \$50,000.

21 Now, the -- I will tell you that the sentencing sheet
22 does not indicate whether those sentences are to run
23 consecutively or concurrently.

24 So I believe, Mr. Solicitor, that the -- don't have a
25 case to cite, but I would believe that in the absence of a

1 consecutive sentence that the Court -- that the law would
2 provide that the sentences run concurrent. I am not sure
3 of that.

4 MR. SPRINGS: That is my understanding, Your Honor.

5 MR. ALL: Your Honor, that is my understanding also.

6 THE COURT: So the sentences, sir, are to run
7 concurrent. That means they both run at the same -- both
8 run at the same time. Twenty-five years. Good luck to
9 you, sir.

10 END OF REQUESTED TRANSCRIPT OF RECORD

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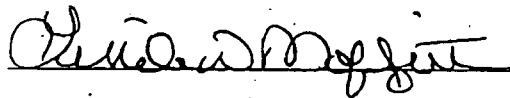
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 trial of the captioned cause, relative to appeal, in the Court of General Sessions for Union County, South Carolina, on the 18th day of January 2005.

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

March 2, 2005



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on June 5, 2003, the Grand Jurors of Union County present upon their oath:

**POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE
WITHIN PROXIMITY OF A SCHOOL, PUBLIC PARK
OR PUBLIC PLAYGROUND**

That Christopher Lee Pride did in Union County on or about April 02, 2003, Possess with Intent to Distribute a controlled substance, to wit: Crack Cocaine, within a one-half mile radius of a school, public park, or public playground, to wit: Buffalo Elementary School, such Possession with Intent to Distribute not having been authorized by law, in violation of Section 44-53-445, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

61

WITNESSES

Bailey/UPSD

DOCKET NO. 2003 44-523

The State of South Carolina

County of Union

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

JUNE 9, TERM 2003

COURT OF GENERAL SESSIONS

THE STATE

vs.

CHRISTOPHER LEE PRIDE

Witness:

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

ARREST WARRANT NUMBER

F953662

ACTION OF GRAND JURY

TRUE BILL

Donald H. Womack Sr.

Foreperson of Grand Jury JUN 05 2003

VERDICT

guilty

Indictment for
POSSESSION OF CRACK COCAINE
WITH INTENT TO DISTRIBUTE
WITHIN PROXIMITY OF A SCHOOL, PUBLIC
PARK, OR PUBLIC PLAYGROUND

SC Code: 44-53-445

CDR Code: 108

Foreperson of Petit Jury
Date:

[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on June 5, 2003, the Grand Jurors of Union County present upon their oath:

POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE

That Christopher Lee Pride did in Union County, South Carolina, on or about April 02, 2003, possess with intent to distribute a quantity of Crack Cocaine, a controlled substance under provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina (1976, as amended), such Possession with Intent to Distribute not having been authorized by law and such Possession not being the first offense. All in violation of §44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

WITNESSES

Bailey/UPSD

The State of South Carolina

County of Union

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

Defendant

COURT OF GENERAL SESSIONS

JUNE 9, TERM 2003

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

THE STATE

Defendant

VS.

Witness:

CHRISTOPHER LEE PRIDE

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

ARREST WARRANT NUMBER

F953661

ACTION OF GRAND JURY

TRUE BILL

Donald J. Warner Sr.

Foreperson of Grand Jury
Date:

VERDICT

guilty

Foreperson of Petit Jury
Date:

INDICTMENT FOR
POSSESSION OF CRACK COCAINE
WITH INTENT TO DISTRIBUTE

Indictment for

SC Code: 44-53-375
CDR Code: 0113

STATE OF SOUTH CAROLINA
COUNTY OF Union
STATE OF SOUTH CAROLINA

Ticket or Warrant No.: F953661 F953662 F953663 12
IN THE (X) COURT OF GENERAL SESSIONS
() MAGISTRATE'S COURT
() MUNICIPAL COURT OF Union

v. Chris Lee Priddy
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: (2) Dist Crack 1/2 ml of ash (2) Dist Crack Cocaine (2) Poss w/intent dist Crack gun or
At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- The release of the defendant on recognizance will not reasonably assure his appearance as required.
 - The release of the defendant on recognizance will result in an unreasonable danger to the community.
- This determination was based upon the following findings of fact:



(Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.)

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$ _____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being \$ _____. The defendant will be obligated to the State in the full amount of \$ _____ such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$10,000.

3. That the defendant shall appear at (check one):

the term of the court of general sessions beginning on (Date) June 9, 2003 at (Time) 8:30 o'clock, AM, at (Place) Union County Courthouse and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

the session of magistrate/municipal (circle one) court beginning on (Date) _____ at (Time) _____ o'clock, _____ M., at (Place) _____ If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant C.P.

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Wade Hough
Signature of Judge
5/18/03
Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.
I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.
It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.
I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

Address _____
City/State/Zip _____
Social Security Number/Telephone No. _____

Chris Priddy
Signature of Defendant
5/18/03
Date

Attorney Representing Accused (if known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original copy for the Trial Court - Copy for the Defendant
FORM CONTINUES ON BACK

SPECIAL CONDITIONS OF RELEASE

- a. Placement in custody. The defendant is placed in the custody of: _____
 Name of person or organization

 Address _____ City _____ State/Zip _____ Telephone _____
 who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

 Signature of Custodian (If Appointed) _____ Date _____
- b. Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

- c. Part-time Release. The defendant will be released from custody from _____ o'clock _____ M. to _____ o'clock _____ M. on _____ on condition that he return to the custody of _____ at _____ as designated.
- d. Other Conditions. The defendant will comply with the following other conditions of release:

 Must appear at initial appearance hearing
 3, June 2003

APPEARANCE RECOGNIZANCE WITH SURETY

On the 18 day of May, 2003, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted in the State of South Carolina, in the sum of \$ 10,000 such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

Anderson's Bail Bondsmen
 Name of Surety _____
 1909 Lockhart Highway
 Union, SC 29379
 Address of Surety _____
 Office: 864-427-3828
 Call: 864-426-4348
 City/State/Zip _____
 Pager: 1-877-998-2108

Danny D. Carter
 Signature of Surety _____
Wade H. [unclear]
 Signature of Judge _____
 Date 5/18/03

Form Approved by
S.C. Attorney General
Section 17-15-40
March 4, 2000

VOLUNTARY STATEMENT

STATE OF SOUTH CAROLINA

COUNTY OF Union

PERSONALLY appeared before me JIM C. BRIAN BAILEY JIM D. R. NIX who states:

"My name is Chris Paule My address is [redacted]

Date of Birth 02-17-77 Social Security Number: [redacted] Phone Number [redacted]

I completed the 11th grade in school, and I can not read and write."

Before answering any questions or making any statements a person who identified himself as JIM C. BRIAN BAILEY JIM D. R. NIX

duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, without leniency or offer of leniency, by any person or persons whomsoever.

I got out of prison on Jan. 05 2003. I served 9 months for distribution of crack cocaine. About Feb of 2003 I started selling crack cocaine again. I went to D. Byrd in Spartanburg. He meets me in different places, but most of the time he meets me at Holdens Ranch on Hwy 295 in Spartanburg. I get up to 3oz from him. I pay \$1650 for 2oz and \$2000 for 3oz. I re-up-up to 2 times a week. I most of the time sell hookups and get up to \$450 for 1/2 oz. I do sell 20-40 pieces to certain people. I sell most of my crack in Jonesville S.C. People call me on my cell phone (441-4272) and I will meet them or they will come pick me up. I last re-uped on Monday March 31 2003. I got 2oz from D. Byrd for \$1650. I met him at Holdens Ranch on 295.

I have read each page of this statement consisting of [redacted] page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 1145 AM. on the 2 day of April 2003.

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS DAY OF

[Signature] Signature of person giving voluntary statement

NOTARY PUBLIC FOR SOUTH CAROLINA

WITNESS: [Signature] WITNESS: [Signature]

My Commission Expires:

I certify that I have been given a copy of this statement consisting of [redacted] pages.

VOLUNTARY STATEMENT
SUPPLEMENTAL

Chris Pride

Statement of, Continued.

I sell my dope quick because I sell alot of
Hook-ups. Most of the people who I sell 20-40
pieces to I only know by face, white & black people.
Some people I have sold Hook-ups to this week are
Terrelle Board \$100 Hook-up (12 pieces) several times,
Michael Foster 1/4 oz (7gms), A Black female I
only know as "I" 1/2 oz (14gms). On Monday March 31
I sold twice to Ronnie Stevens. I sold 50th Hook-up
to him while at Buena Vista II and I sold him a
\$100th hook up while at Lil-Cricket on Hwy 170 Hwy.
The money I make selling crack I pay bills with
and I do not keep up with exactly how much I
make.

ON April 2, 2003 the police served A search
warrant on my girlfriends apartment, Buena Vista II
apartment 1C. They found A clear bag of CRACK COCAINE
in my pant pockets, which was in the back bedroom.
They also found money in my pant pocket which I made
from selling crack. The CRACK COCAINE and money
belong to me. My Girlfriend Lisa D. Smith has nothing
to do with it. She has no idea that I would
have CRACK COCAINE in the apartment.

Person giving statement to place initials behind
last word of statement as appears on last page.

CBB
Chris Pride

X Chris Pride
Signature of person giving voluntary statement

VOLUNTARY STATEMENT

STATE OF SOUTH CAROLINA

COUNTY OF Union

PERSONALLY appeared before me Inoc Brian Bailey Inoc D.R. Nix who states

"My name is Chris Frick My address is [redacted]

Date of Birth 02-17-77 Social Security Number: [redacted] Phone Number [redacted]

I completed the 11th grade in school, and I can not read and write."

Before answering any questions or making any statements

a person who identified himself as Inoc Brian Bailey Inoc D.R. Nix

duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority before or at anytime during any questioning or statements that I make, without cost or expense to me that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, without leniency or offer of leniency, by any person or persons whomsoever.

[redacted]

About Feb of 2003 I started selling Crack cocaine again. I went to D. Byrd in Spartanburg. He meets me in different places, but most of the time he meets me at Holdens Ranch on Hwy 295 in Spartanburg. I get up to 3oz from him. I pay \$1650.00 for 2oz and \$2200.00 for 3oz. I re-up to 2 times a week. I most of the time sell Hookups and get up to \$450.00 for 1/2 oz. I do sell 20-40 pieces to certain people. I sell most of my crack in Jonesville S.C. People call me on my cell phone (441-4277) and I will meet them or they will come pick me up. I last re-upped on Monday March 31 2003. I got 2oz from D-Byrd for \$1650.00. I met him at Holdens Ranch on 295.

I have read each page of this statement consisting of [redacted] page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 1145 AM. on the 2 day of April 2003.

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS DAY OF [redacted]

X Chris Frick Signature of person giving voluntary statement

NOTARY PUBLIC FOR SOUTH CAROLINA

WITNESS: [Signature]

My Commission Expires: [redacted]

WITNESS: [Signature]

I certify that I have been given a copy of this statement consisting of [redacted] pages.

VOLUNTARY STATEMENT
SUPPLEMENTAL

Chris Pride

Statement of, Continued.

I sell my dope quick because I sell alot of hook-ups. Most of the people who I sell 20's & 40 pieces to I only know by face, white & black people. Some people I have sold hook-ups to this week are Terrell Good \$100 Hook-up (12 pieces) several times, Michael Foster 1/4 oz (7gms), A Black female I only know as "T" 1/2 oz (14gm). On Monday March 31 I sold twice to Ronnie Stevens. I sold \$50 Hook-up to Him while at Buena Vista II and I sold him a \$100 Hook-up while at Lil-Cricket on Hunt 170 Hunt. The money I make selling crack I pay bills with and I do not keep up with exactly how much I make.

On April 2, 2003 the police served a search warrant on my girlfriends apartment Buena Vista II apartment 1C. They found a clear bag of crack cocaine in my pant pockets, which was in the back bedroom. They also found money in my pant pocket which I made from selling crack. The crack cocaine and money belong to me. My girlfriend Lisa D. Smith has nothing to do with it. She has no idea that I would have crack cocaine in the apartment.

Person giving statement to place initials behind last word of statement as appears on last page.

CBB

X
Signature of person giving voluntary statement

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

119

MARK SANFORD
Governor

ROBERT M. STEWART
Chief



DRUG ANALYSIS DEPARTMENT

Investigator Brian Bailey
Union Department of Public Safety
215 Thompson Blvd.
Union, SC 29379

April 25, 2003
SLED Lab No: L03-03991
Your Case No: 0403000479
Incident Date: 04/02/03
(S) Pride, Chris Lee



This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 1: Rock substance

RESULTS:

Cocaine (Crack) found 3.62 grams (55.85 grains), C-II



I am a chemist employed and certified by the South Carolina State Law Enforcement Division (SLED) to perform chemical and physical examination(s) on evidence submitted by law enforcement agencies in criminal cases, and have been qualified in courts of record in the state of South Carolina to testify on such examination(s).

On APRIL 22, 2003, SLED Drug Box submitted the above item(s) to me for examination(s) in SLED DRUG ANALYSIS SECURITY ENVELOPE(S), Control Number(s) B149595. I tested this (these) item(s) submitted to me using accepted reliable forensic procedures approved by SLED and the above results reflect my conclusions based on my examination(s).

Chemical Test
Infrared Spectroscopy

Sworn to me this 30 day of

April, 20 03

Jandra D...
Notary Public

Chemical Analyst(s)

Keriah M. Spann
Keriah M. Spann

30 April 2003
Date

My commission expires 10-16-2011

SLED
Location

KMS

Cc: Union County Solicitor's Office



Form A

REPORT OF ANALYSIS FOR CONTROLLED DANGEROUS SUBSTANCES (Substance Found)

I, Keilah M. Spann, am a Chemical Analyst employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a chemist or analyst qualified to perform testing and analyses for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 2 years and 1 months experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than 5 times. I have received the following training as a chemical analyst:

- Completed Graduate coursework in Organic Chemistry, University of South Carolina, 2000
B.S. in Chemistry, South Carolina State University, 2000
Training in Forensic Chemistry at S.C. Law Enforcement Division
Graduate of the S.C. Criminal Justice Academy, June, 2001
Certified Marijuana Analyst, S.C. Law Enforcement Division, 2001

On 22nd April 2003 SLED DRUG BOX submitted the following items to me for testing or analysis:

LO 3- 03991

I tested this (these) item(s) using the following legally reliable forensic laboratory procedures Approved by SLED:

- Chemical Test
Microscopic Test
Infrared Spectroscopy
Ultraviolet Spectroscopy

- Gas Chromatography
Mass Spectroscopy
Liquid Chromatography
Other

am of the opinion the item(s) contain(s) the controlled substance(s):

See LO 3- 03991 (Substance Found and amount or Proportion)

Sworn before me this 30 day of April 2003

Notary Public for South Carolina

Keilah M. Spann Chemical Analyst

SLED

My Commission expires: 10-16-2011

30 April 2003 (Date)

STATE OF SOUTH CAROLINA

IN THE COURT GENERAL SESSIONS

COUNTY OF UNION
STATE VS.

INDICTMENT/CASE#:

Christopher Lee Pride

2003 GS-44-519

AKA:

AW #: F953661

Race: B Sex: M Age: [REDACTED]

Date of Offense: 04/02/2003

DOB: [REDACTED] SS#: [REDACTED]

S.C. Code §: 44-53-375

Address: [REDACTED]

CDR Code: 113

City, State, Zip: Jonesville, SC 29353

CASE RESTORED SENTENCE

DL [REDACTED] SID# [REDACTED]

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Possession With Intent to Distribute Crack Cocaine, 2nd offense in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0111113
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 50,000; 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.

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

SPECIAL CONDITIONS:

PTUP _____ 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: _____

Recipient: _____	*Fine: \$ 50,000
	\$ 53,750
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Surcharge)	\$ 100.00
§14-1-211(A)(2) (Surcharge)	\$ _____
§56-5-2995 (DUI Assessment)	\$ _____
3% to County (if paid in installments)	\$ 3,119.25
§73.3, 1B TP (Law Enforce. Funding)	\$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	\$ 100.00
§50-21-114(BUI Breath Test Fee)	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$ _____
TOTAL	\$ 107,094.25

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____

PRESIDING JUDGE [Signature]
Judge Code: 18419
Sentence Date: 10/13/04

Clerk _____ Corrections _____

Christopher Lee Pride

AKA:

Race: [redacted] Sex: [redacted] Age: [redacted]

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL [redacted] SID# [redacted]

AW #: F953662

Date of Offense: 04/02/2003

S.C. Code §: 44-53-445

CDR Code 108

CASE RESTORED SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Possession With Intent to Distribute Crack Cocaine in Proximity of School in violation of §44-53-445 of the S.C. Code of Laws, bearing CDR Code # 0111018
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

J B Spang
Solicitor

Defendant

Attorney for Defendant

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 \$ 10,000.00; 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.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

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

Payment Terms:

set by SCDPPPS _____

PTUP

_____ 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: _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%)	\$ 10,000.00
§14-1-211(A)(1) (Surcharge)	\$ 10,000.00
§14-1-211(A)(2) (Surcharge)	\$ 1,500.00
§56-5-2995 (DUI Assessment)	\$ _____
3% to County (if paid in installments)	\$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$ 85.00
§33.7, 1B TP (Drug Court Surcharge)	\$ 100.00
§50-21-114(BUI Breath Test Fee)	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$ _____
TOTAL	\$ 21,685.00

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE John C. Hargis

Judge Code: _____

Sentence Date: 11/13/04

Clerk of Court/ Deputy Clerk
Court Reporter: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Union County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER LEE PRIDE,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

FLETCHER N. SMITH, JR.

Law Office of Fletcher Smith
112 Wakefield Street
Greenville, SC 29601
(864) 232-6541

Attorneys for Appellant

TABLE OF AUTHORITIES

CASES

<u>Batson v. Kentucky</u> , 476 U.S. 79, 106 S.Ct. 1712 (1986).....	11
<u>Chapman v. California</u> , 386 U.S. 18, 87 S.Ct. 824 (1967).....	9
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<u>Gideon v. Wainwright</u> , 372 U.S. 335, 83 S.Ct. 792 (1963).....	9
<u>Johnson v. Cerbst</u> , 304 U.S. 458, 58 S.Ct. 1019 (1938).....	10
<u>Pennsylvania v. Ford</u> , 715 Atl.2d 1141 (1998).....	9, 11
<u>Pitts v. North Carolina</u> , 395 Fd.2d 182 (4 th Cir. 1968).....	10
<u>State v. Boykin</u> , 324 S.C. 552, 478 S.E.2d 689 (Ct. App. 1996).....	9
<u>State v. Sanders (pending)</u>	8
<u>State v. Colf</u> , 327 S.C. 622, 525 S.E.2d 246 (2000).....	10
<u>State v. Lyle</u> , 125 S.C. 406, 118 S.E.2d 803 (1923).....	10
<u>State v. Manning</u> , 305 S.C. 413, 409 S.E.2d 372 (1991).....	10
<u>State v. Thompson</u> , 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003).....	8, 9, 11
<u>Strickland v. Washington</u> , 466 U.S. 668, 104 S.Ct. 2052 (1984).....	9
<u>United State v. Goldberg</u> , 67 Fd.3 rd 1092 (3 rd Cir. 1995).....	10

RULES

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CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. VI 9
U.S. Const. Amend. XIV 9

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by relieving appellant's appointed counsel immediately before appellant's jury trial in his absence began since not "sufficiently cooperating" did not justify this drastic step, and the judge's ruling that appellant waived his right to counsel by his conduct was an abuse of discretion?

STATEMENT OF THE CASE

Appellant was indicted by the Union County grand jury for the offenses of possession of crack cocaine with intent to distribute and possession of crack cocaine with intent to distribute within the proximity of a school. R. 108 - 111. R. 3 - 18. Appellant's case was called to trial on October 13, 2004 before the Honorable John C. Hayes, III, and a jury. William All, the Union County Public Defender, was appellant's attorney when the case was called to trial. The solicitor was E.B. Springs, IV. R. 1; R. 5, ll. 15 - 17.

Appellant was tried in his absence -- without counsel -- when the judge relieved All just before the jury trial began. R. 11, l. 15 - 12, l. 7.

At the conclusion of the trial the jury found appellant guilty. R. 91, l. 21 - 92, l. 5. The sentence was sealed.

On January 18, 2005 appellant appeared before the Honorable G. Thomas Cooper, Jr. for sentencing. William All appeared on behalf of appellant. R. 95. Counsel All told the judge that Judge Hayes had relieved him but that he would file an appeal for appellant. R. 103, l. 23 - 104, l. 18. The judge said, "Well, nevertheless, Mr. All, if you will just stand with Mr. Pride, I will read the sentence." R. 103, l. 3 - 105, l. 4. Judge Cooper then imposed Judge Hayes' sentence of twenty-five years imprisonment for possession with intent to distribute crack cocaine, second offense, and fifteen years imprisonment for possession with intent to distribute crack cocaine within the proximity of a school. R. 105, l. 5 - 106 l. 9.

This appeal follows.

ARGUMENT

The judge failed to properly differentiate between the right to try appellant in his absence and the waiver of his right to counsel. Appellant was represented by the Public Defender at the time his case was called to trial. Appointed counsel's complaint that appellant had missed two scheduled appointments, and that he had been unable to reach him on the day of trial was insufficient to show appellant waived his right to counsel at a trial in his absence. The Public Defender acknowledged he had the state's discovery, which included appellant's statement, and the judge abused his discretion by relieving appointed counsel immediately before the trial.

Relevant Facts

Prior to trial, on October 13, 2004, the solicitor told the judge that the public defender's office was appointed to represent appellant on September 13, 2004. The solicitor also offered: "we understand this is going to be a jury trial and a plea of not guilty. We are prepared to pick a jury." R. 4, ll. 4 – 19.

Defense counsel All then told the judge that he had gone outside the courthouse and that he could not find appellant. Counsel All also said that no one answered the telephone at appellant's house when he called him. All acknowledged that the solicitor was correct in stating that he had been appointed to represent appellant on September 13, 2004. All also offered that this case was originally scheduled to go to court at that time. R. 4, l. 23 – 5, l. 9.

All also offered that Fletcher Smith was apparently appellant's prior attorney. However, Judge Maddox relieved Smith and told appellant "to have an attorney in some time frame." R. 5, ll. 5 – 11.

Defense counsel All said that appellant was then qualified for the public defender's office. Appellant then made an appointment to see All the week after All was appointed. All said appellant had someone telephone him and cancel that appointment. The reason was that appellant had to work, and presumably he did not feel comfortable seeking to be excused from work to meet with his attorney on a pending drug charge. R. 5, ll. 14 - 23. However, appellant made another appointment to meet with All on October 1, 2004 "and he failed to appear for that appointment." R. 5, ll. 14 - 25. "Once again [he] indicated that he was working and couldn't make it." R. 5, l. 23 - 6, l. 1.

All said he wrote appellant a letter on October 1, 2004. The letter "did not come back." All said he wrote appellant that he could not be prepared to "adequately represent him if he did not meet with him and discuss his case." R. 6, ll. 7 - 14. At that point, appellant rescheduled an appointment for October 7, 2004. All said appellant did not show up for that appointment. R. 6, ll. 14 - 17.

All also told the judge that two days before, on October 11, 2004, which was a Monday - presumably for roll call -- appellant "came to the Union County Courthouse and was arrested in the parking lot for a DUS." Appellant was released from the jail that night. R. 6, ll. 17 - 24.

All offered that the sheriff's office brought appellant over to his office at the time of his arrest, and that appellant told All that Fletcher Smith was representing him. Appellant said he had retained Smith for \$5,0000.00. All said that he had seen appellant the day before - October 12, 2004 -- "after he reported [for] roll call . . . yesterday morning he showed up I guess around 9:30 or so, I saw him, . . . and I indicated to Mr. Pride that he needed to get Mr. Smith up here because I was getting handed papers [a memorandum of

the law from the solicitor on the admissibility of prior drug sales] that Mr. Smith needed to see and he indicated to me that Mr. Smith would be here yesterday." R. 6, l. 22 – 7, l. 11.

All said that he called Fletcher Smith's office and talked to one of the secretaries. The secretary indicated she would call appellant and tell him to bring the \$5,000.00 fee he described to All. However, "I never received a phone call back from her [the secretary] so I don't know if she ever was able to reach Mr. Smith or not." R. 7, ll. 11 – 22.

All also said the solicitor's office told him that Smith had called the solicitor and informed him that he was not representing appellant, and "they were not sure what Mr. Pride was trying to pull . . ." R. 7, l. 20 – 8, l. 2.

All admitted he had been given "some discovery, maybe all discovery, in regards to the case. [However], I have not had an opportunity to discuss this particular case with Mr. Pride." R. 8, ll. 3 – 6.

The solicitor then said he agreed with All's representations about the case, and he moved to try appellant in his absence. R. 8, l. 22 – 9, l. 16.

The judge then said:

The Court: [B]efore I make a ruling on that, Mr. All, where do you stand. Do you wish to be, do you feel, I feel that by his conduct you certainly have a right to move to be relieved because he has not cooperated with you in any way whatsoever and as has happened in other cases it appears that he's sort of playing the attorney game so to speak and saying somebody represents him and they say they don't; in any event, **I certainly feel very comfortable making a finding he's waived his right to counsel by his conduct** and I am certainly not going to put you in a position of sitting there trying a case unprepared, particularly trying a case in someone's absence when you are, have not had adequate conversation with your client due to his conduct. So do you wish to, I know that's an awful position for you to be in, but.

Mr. All: That is an awful position, Your Honor. I was sitting here trying, sitting here the last 30 minutes running through my mind what to ask the court because I feel an obligation to Mr. Pride even though he's failed to fulfill anything in regards to the assistance and cooperation with our office, Your Honor.

The Court: Well, let me interject and put this in your thinking, he has pretty much indicated he doesn't want you to represent him because he's continued to say that he has retained and either gone by their office and tried to pay another lawyer yesterday, so I think you may need to factor in the fact that if you sort of, I hate to say this kind of language in court but you are sort of damned if you do and damned if you don't because if you go forward then he'll be saying he was represented by an attorney he didn't want. If you don't go forward he's going to say he didn't have an attorney at all.

Mr. All: Well, Your Honor, I do make a motion to be relieved as counsel. Your Honor, I would ask that before the court starts the case with Mr. Pride that they have the sheriff or the bailiff or someone call his name.

The Court: We'll do that.

Mr. All: I will be staying basically on stand by in case they find Mr. Pride and once they find him if he indicates that he wants an attorney, if the court feels fit to appoint one, I will be here. I'm not going to disappear.

The Court: All right. Well, I'm going to relieve you as counsel. I think it would be egregious for the court to require someone in this context who not only has not, who has made a valiant attempt to get prepared and by his client's conduct [has] been unable to do what he needs to do to be ready for trial and to put you in that spot would certainly not be fair. And it's his conduct that has created the, he has sort of been hoisted on his own petard, he is a victim of his own conduct. Victim might not be the right word, but the results of his conduct puts him in the situation in which we now find him, so I'm going to relieve you of counsel.

Now if I could have one of the bailiffs or one of the sheriff officers go in the hallway and on the front steps and call for

Mr. Christopher Lee Pride three times each place and then come back and report to me.

R. 9, l. 18 – 12, l. 7.

After this colloquy All said he had been told by one of the other defendants in the courtroom that appellant was actually outside the courthouse at the time. All said he asked that defendant to see if he could get appellant to come into the courtroom. R. 12, ll. 10 – 15.

The bailiff was then put under oath. The bailiff testified that he called appellant's name three times in the hall and on the front steps of the courthouse. The bailiff also offered "one gentleman came up and said he [appellant] was out there earlier but he wasn't out there then." R. 13, ll. 8 – 13.

The judge then ruled that appellant had received notice of his right to be present and that the trial would proceed in his absence. The judge ruled "I'm going to allow the state to go forward and try him [in his] absence." R. 13, l. 20 – 14, l. 10.

The judge then told the members of the jury that "I first want to tell you that at the defense table you will not see Mr. Pride and you will not see an attorney . . ." R. 16, l. 7 – 17, l. 5.

After a jury was chosen a Jackson v. Denno hearing was held wherein it was revealed that appellant had confessed that he had crack cocaine inside his blue jeans when the police served a search warrant at his apartment on April 2, 2003. R. 24, l. 5 – 33, l. 23. The judge ruled appellant confession was admissible. The solicitor then said he wanted to introduce appellant's admissions to numerous prior drug deals by admitting a copy of appellant's statement. The judge noted that he had ruled appellant's statement was

admissible, and he then ruled that the probative value of the evidence of prior "drug distribution activities" outweighed its prejudicial effect. R. 34, l. 14 – 35, l. 5.

During the trial appellant's redacted statement, which removed a line stating he "was released from jail," was admitted before the jury. The statement began "about February 20, 2003 I started selling crack cocaine again." The statement details extensively how appellant sold crack cocaine, to whom, and for how much money. R. 60, l. 15 – 62, l. 2. The statement ends with appellant stating his girlfriend did not know anything about the crack cocaine in their apartment.

The SLED chemist, Keila Spann testified that the substance seized from appellant's home was 3.62 grams of crack cocaine. R. 44, ll. 3 – 15. Even though Spann testified the judge also allowed the admission of Spann's drug report into evidence at the state's behest.¹ R. 69, l. 23 – 70, l. 3.

In charging the jury on a reasonable doubt the judge said

Proof beyond a reasonable doubt is described as the kind of doubt that would cause a reasonable person to hesitate to act. It is proof that leaves you firmly convinced of someone's guilt. There are very few things that we can know with absolute certainty and that is not required in a case such as this.

R. 79, ll. 5 – 11.

There being no counsel, there was no objection to any of this.

¹ State v. Calvin Sanders, another drug case, is also pending before this Court. This Court can therefore take judicial notice that in the Sanders case SLED chemist Keila Spann admitted she had been counseled by Director Wells of the SLED laboratory about not properly testing and maintaining equipment. The accuracy of her paperwork was also an issue. State v. Calvin Sanders, Tr. 115 – 119. The solicitor in this case, for whatever reason, felt the necessity of bolstering Spann's testimony with an official report.

Discussion

This Court in State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003) held that a defendant's failure to appear for trial did not effect a valid waiver of his right to counsel, and that the failure to appear at trial did not warrant forfeiture of Thompson's right to counsel. The facts of this case are much stronger -- on the waiver of right to counsel issue -- than those in State v. Thompson.

In State v. Thompson, Thompson applied through the Clerk of Court's Office for representation by the Public Defender's Office. Thompson said he was told he was not indigent and therefore that he did not qualify for a public defender. Thompson attempted to explain that his child support arrearage virtually consumed his salary. However, the trial judge apparently refuted Thompson's assertion that the court would not appoint an attorney for him, stating an attorney would have been appointed for Thompson if he did not have one.

Here, it is undisputed that Union County Public Defender William All had been appointed to represent appellant on September 13, 2004. Public Defender All told the judge that appellant had failed to appear for three appointments with him. Appellant either called or had someone call for him during two of those appointments stating that he was working, and that he could not keep the appointment. Appellant made the final appointment when All wrote to him about wanting to discuss the case.

In State v. Thompson this Court differentiated between the right to try a defendant in his absence under Rule 16, SCRCrimP and the right to try a defendant without counsel. As this Court observed the right to try "a defendant without counsel is a completely different

matter.” Citing Pennsylvania v. Ford, 715 Atl.2d 1141, 1143 (1998), citing Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792 (1963).

This Court noted that the Sixth and Fourteenth Amendments to the United States Constitution guarantee the right to counsel in any state or federal court. The Court noted that Faretta v. California, 422 U.S. 806, 807, 95 S.Ct. 2525, 2527 (1974) provided the procedure for a waiver of that right to counsel.

The denial of a defendant’s fundamental right to the assistance of counsel is reversible error without any need for the showing of prejudice. State v. Boykin, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct. App. 1996), citing Chapman v. California, 386 U.S. 18, 23, n.8, 87 S.Ct. 824, 828, n.8 (1967). The actual or constructive denial of the assistance of counsel is legally presumed to result in prejudice. Strickland v. Washington, 466 U.S. 668, 692, 104 S.Ct. 2052, 2067 (1984).

In discussing waiver in State v. Thompson, this Court noted that a waiver is an intentional and voluntary relinquishment of a known right. In United State v. Goldberg, 67 Fd.3rd 1092, 1099 (3rd Cir. 1995) the Court held that courts will indulge every reasonable presumption against the waiver of a fundamental constitutional right, and that court’s do not presume acquiescence in the loss of a fundamental right. See Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023 (1938); Pitts v. North Carolina, 395 Fd.2d 182, 188 (4th Cir. 1968).

Here there is not an issue of an affirmative waiver. It is undisputed that William All represented appellant when his case was called to trial. It is also undisputed that All had the discovery that the state provided to him. It is apparent All would have been more comfortable if appellant had not cancelled appointments – two of them due to work – and if

he had met with appellant. However, brief, and often difficult interactions between a defendant and his Public Defender are more a fact of life than an aberration.

Respectfully, although appellant can be held responsible for being tried in his absence, he cannot, or at least should not, be held to understand he was also waiving his right to counsel if he did not personally appear at this trial. The waiver of presence at trial, and the waiver of the right to counsel, as courts have held, are very different matters. Appellant may have decided – and not altogether unreasonably – that All could represent him just as well without him being there.

Moreover, although appellant does not have to prove prejudice from the denial of his right to counsel, appellant has highlighted above several issues which All could have preserved for appellant if he had not moved to be relieved as counsel as suggested by the trial judge. The judge admitted evidence of appellant's prior drug dealings even though they constituted very similar crimes to the one for which appellant was on trial - - distributing crack cocaine or intending to distribute crack cocaine. However, our courts have long noted the extreme prejudice of allowing such similar prior crimes evidence under either a State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923) standard, or as impeachment evidence. See State v. Colf, 327 S.C. 622, 525 S.E.2d 246 (2000).

In addition, SLED chemist Spann's drug report was hearsay, and it only bolstered her testimony. Finally, the judge's reasonable doubt instruction as shown above was not only confusing, it turned State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991) on his head.

Here, it should be apparent that appellant never waived his right to counsel. It should also be clear that appellant's failure to appear for his trial did not rise to the level of

him waiving the services of his appointed attorney. See Pennsylvania v. Ford, 715 Atl.2d 1141, 1144 (Pa. Supra. Ct. 1998). He missed appointments, however, he was not disruptive or even rude. Appellant had appeared in court several times for roll call and defense counsel All said appellant was apparently released by the solicitor or assistant solicitor after he showed up for roll calls.

Appellant made various appointments with All, but failed to keep them. Although appellant's excuse of having to work may not be met with sympathy given the present procedural posture of this case, it was understandable.

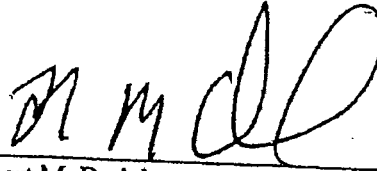
Appellant by his conduct did not waive his right to All continuing to represent him. Appellant was not being manipulative or disruptive, certainly not manipulative to the point that a finding could or should be made that it deprived him of his right to appointed counsel. If appellant did not testify, his presence at trial probably would have not added much for counsel All anyway since All had the discovery and therefore understood the state's case against appellant.

As in State v. Thomson, supra, appellant respectfully maintains that he did not waive his right to appointed counsel, particularly where twenty-five years in prison, which appellant is now serving, was at stake. This is a case about fundamental fairness.

CONCLUSION

By reason of the foregoing argument, appellant's convictions should be reversed, and this case remanded to the Union County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Appellate Defender

Fletcher N. Smith, Jr., Esquire

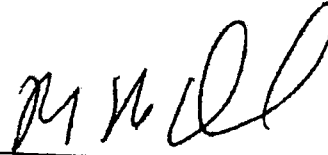
ATTORNSYS FOR APPELLANT.

September 8, 2006

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Union County
Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

v.

CHRISTOPHER LEE PRIDE,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's conduct forfeited his right to counsel.

STATEMENT OF THE CASE

Appellant was charged with possession of crack cocaine with intent to distribute (2003-GS-44-519) and possession of crack cocaine with intent to distribute within proximity of an elementary school (2003-GS-44-523). The Honorable John C. Hayes, III, Judge, and a jury tried Appellant in his absence on October 13, 2004. The Court relieved Appellant's counsel before trial, but counsel remained on stand by. (R. p. 11). The jury found Appellant guilty. The state offered Appellant's prior criminal record that included offenses of a distribution of crack cocaine, a blue light violation, and an abuse of a vulnerable adult. The Court issued a bench warrant. (R. p. 92). On January 18, 2005, the Honorable G. Thomas Cooper, Jr. asked the public defender to stand with Appellant and file a notice of appeal while the Court read the concurrent sentences of 25 and 15 years imprisonment and fines of fifty thousand and ten thousand dollars. (R. pp. 103-106).

ARGUMENT

Appellant's conduct forfeited his right to counsel.

Appellant says the court found that he was not "sufficiently cooperating" with appointed counsel and relieved counsel immediately before he was tried in his absence. Appellant feels that his not "sufficiently cooperating" with counsel did not justify the "drastic step" of leaving him without counsel. Appellant asks if the court erred and abused its discretion by finding that Appellant's conduct had waived his right to counsel. (Appellant's Statement of Issue on Appeal).

At the call of the case, the assistant solicitor said that the public defender was appointed about a month earlier. The public defender William D. All (All) said that Appellant was not present.¹ All did not see Appellant outside, and All had not been able to contact Appellant by telephone. All was originally appointed to represent Appellant, but All only talked to Appellant about two other drug charges. After that, Appellant never talked to him [about criminal charges]. Attorney Fletcher Smith (Smith) began representing Appellant when Appellant was arrested on a bench warrant, and was representing Appellant at the month earlier term of court when the case was scheduled to go to trial. At that earlier term of court, the trial judge relieved Smith. Smith ensured that Appellant was qualified for representation by the public defender. That week, Appellant made an appointment to see All the following week. Appellant failed to keep that appointment; someone else called and said Appellant was working. Appellant had another appointment for October 1. Appellant failed to keep that second appointment; again, Appellant was

¹ Shortly before the trial in absence, public defender All learned from another defendant that Appellant was outside the courtroom. All asked him to get Appellant. (R. p. 12, line 11 - p. 13, line 13). A person sighting Appellant at the courthouse before the trial in absence observed an employee identification tag. All telephoned the corresponding employer's human resource office and learned that Appellant had left work that morning - purportedly to take care of something for his daughter. All left a message for Appellant to report to the courthouse. (R. p. 15).

supposedly working. All wrote Appellant October 1, 2004, and told him he was scheduled for trial the week of October 11 and that it was necessary to meet and to discuss the case. This letter was not returned, and All assumed that it was received at the address his office had for Appellant. Appellant scheduled another - his third - appointment for October 7. Again, Appellant failed to keep that appointment. This time, no explanation was offered for Appellant's missing his third appointment. (R. p. 1; p. 4 - p. 6, line 17; p. 8, lines 4-16). On October 11, Appellant came to the courthouse, and All talked to Appellant. (At that time Appellant had been arrested for driving under suspension. The sheriff's office brought Appellant to All before Appellant regained his freedom.) At this fortuitous meeting, Appellant said that Smith was representing him. Appellant sent Smith money "last week," and he had five thousand dollars to give to Smith on Monday at roll call. (R. p. 6, line 17- p. 7, line 3). On October 12, All saw Appellant at roll call and told Appellant that he needed to get Smith since All was getting papers that Smith needed to see. Appellant told All that Smith would be there October 12. All contacted Smith's office, and Smith's office did not confirm representation. On October 13, the solicitor's office told All that Smith was not representing Appellant. All did not discuss the present case and any possible defenses with Appellant. (R. p. 7, line 4 - p. 8, line 9).

The court found that Appellant, through his conduct, waived his right to counsel. Appellant gamed his purported representation by private counsel and offered no cooperation with public defender All. Appellant had indicated he did not want All. If All represented Appellant, Appellant could complain of having counsel forced upon him. If All did not represent him, Appellant could complain of having no counsel. (R. p. 9, line 18 - p. 11, line 3; p. 11, line 15 - p. 12, line 2).

Public defender All advised the court that he would remain in the courtroom on stand-by in the event that Appellant appeared. (R. p. 11, lines 10-14).

Officer Bailey investigated Appellant for about a year and served a search warrant on April 2, 2003 at Buena Vista Two Apartment One C. (R. pp. 46-47). He found Appellant and a little girl about six years of age. Appellant received Miranda rights, understood his rights, waived his right to remain silent and told the officers about a bag of crack cocaine in his blue jeans in the main bedroom.² Officers found a bag of 3.62 grams of crack cocaine, State's Exhibit No. 1, and \$1875 cash. The crack cocaine constituted some thirty doses, and each dose was worth twenty dollars. Later, at the police station that morning, Appellant described, with apparent pride, his drug business. (R. pp. 43-44; pp. 49-51; pp. 55-65).

Months later at the imposition of sentence by a different trial judge, public defender All said that [before trial] private attorney Smith was representing Appellant, and the court relieved Smith. Appellant qualified for the public defender, but Appellant "never came and spoke to [public defender All] whatsoever after that point in regards to his case." The case came up for trial the next term, and the trial judge relieved All. (R. p. 96 - p. 98, line 16). According to the assistant solicitor the trial judge understood that Appellant did not want to be represented by All. Rather, Appellant wanted Smith. The assistant solicitor had talked to Smith's office, and Smith's office denied that it was retained. (R. p. 99; p. 101, line 22 - p. 102, line 3). Appellant himself explained that Smith had been waiting to get the money and got it about three days after the trial. When the trial judge asked if Appellant told Smith "to come down here today," Appellant allowed that Smith was in a "senator's meeting or something." (R. p. 100, line 24 - p. 101, line 19).

Appellant argues that the trial judge's relieving his attorney immediately before his trial in absence was a "drastic step" amounting to an abuse of discretion. (Appellant's

² The trial court conducted an in camera hearing and found the testimony admissible before the testimony was heard by the jury. (R. pp. 24-33).

Statement of Issue on Appeal). Before Appellant's trial, the court relieved public defender All. When Appellant came before the court for imposition of sentence, Appellant did not complain, or urge as a ground for new trial, that the trial judge had relieved All. This purported "drastic step" was not raised to the trial judge. Matters not raised in the circuit court are waived and should not be considered by the appellate court for the first time on appeal. E.g., State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991); State v. Newton, 274 S.C. 287, 262 S.E.2d 906 (1980). The present complaint should not be considered further.

Next, assume for argument that the appellate court may consider the substance of Appellant's complaint. Appellant did not want to go to trial with his appointed counsel. Appellant was not willing to go to trial with his appointed counsel. Rather, Appellant said he had private counsel and, by his conduct, waived appointed counsel. [1] Appellant declined to keep three scheduled appointments with appointed counsel. [2] After Appellant was arrested for another offense two days before trial, Appellant told appointed counsel that private counsel represented him. [3] The day before trial Appellant told appointed counsel that his private counsel would be there that day. Appointed counsel tried unsuccessfully to confirm that Appellant was represented by private counsel. [4] The day of trial the solicitor's office apprised appointed counsel that private counsel was not representing Appellant. [5] Appellant avoided discussing his case with appointed counsel and avoided allowing appointed counsel to prepare any defense. [6] Shortly after the call of the case and before the swearing of the jury, appointed counsel told the court that "apparently [the defendant] is on the premises at this time." (R. p. 4; p. 12, lines 10-15; p. 23, line 12). [6] When the court imposed sentence, Appellant claimed he had paid private counsel - although Appellant did not directly answer the court's question about telling paid counsel of the court date. In sum, Appellant claimed he had private counsel before his trial and, when the court imposed sentence, voiced no objection to the

court's relieving appointed counsel. Appointed counsel plagued Appellant with requests to meet and to prepare for trial while Appellant avoided appointed counsel and told appointed counsel that he [Appellant] had private counsel - on both of the last two days before his trial in absence.

"[A] waiver of the right to counsel can be inferred from a defendant's actions." State v. Cain, 277 S.C. 210, 284 S.E.2d 779 (1981)(defendant tried in absence and without counsel after failing to fulfill conditions of appearance bond and neglecting to keep contact with his attorney when he knew his trial was imminent). While giving up one's right to counsel requires more than mere absence from trial, State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct.App. 2003), or fleeing the court's jurisdiction after retaining counsel, Commonwealth v. Ford, 715 A.2d 1141 (Pa.Super. 1998), cases that require evidence of misconduct to establish waiver by conduct are wrong. United States v. Oreve, 263 F.3d 669 (7th Cir. 2001), citing United States v. Goldberg, 67 F.3d 1092 (3rd Cir. 1995). "The question of waiver is one of inference from the facts." United States v. Oreve, at 670. An indigent loses the right to appointed counsel when he chooses to proceed with private counsel and loses the right to counsel of his choice by perverting that right to a weapon in an attempt to delay or obstruct his trial. State v. Montgomery, 530 S.E.2d 66 (N.C.App. 2000). Appellant maintained he had private counsel, avoided preparing for trial with his appointed counsel, and avoided his trial. Appellant disregarded the trial court and the legal system and forfeited his right to counsel.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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August 10, 2006

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Union County
Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

v.

CHRISTOPHER LEE PRIDE,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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August 10, 2006

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Christopher Lee Pride, Appellant.

Opinion No. 4208

Withdrawn, Substituted, and Refiled as Unpublished Opinion No. 2007-UP-544

AFFIRMED

Appellate Defender Robert M. Dudek, of
Columbia, Fletcher N. Smith, Jr., of
Greenville, for Appellant.

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Chief Deputy Attorney General John W.
McIntosh, Assistant Deputy Attorney General
Salley W. Elliott, Senior Assistant Attorney
General Harold M. Coombs, Jr., all of
Columbia; and Solicitor Thomas E. Pope, of
Rock Hill, for Respondent.

BEATTY, J.: Christopher Lee Pride was tried in absentia and without counsel for the charges of possession of crack cocaine with intent to distribute and possession of crack cocaine with intent to distribute within the proximity of a school. After the jury convicted Pride of both offenses, the circuit court judge issued a sealed sentence. Pride appeals, arguing the circuit court judge erred in finding he waived his right to counsel. We affirm.[1]

FACTS

As a result of an on-going narcotics investigation, detectives with the Union Police Department identified Pride as a crack cocaine dealer. On the morning of April 2, 2003, detectives went to Pride's residence and served him with a search warrant. Upon entering the residence, Detective Brian Bailey read Pride his Miranda[2] rights. Bailey then questioned Pride as to whether there were any illegal drugs in the house. According to Bailey, Pride admitted there were illegal drugs in the house and there was a bag of crack cocaine in his blue jeans which were located in his bedroom. While conducting a search of the area identified by Pride, the detectives found \$1,875 in cash and a bag containing 3.62 grams of crack cocaine. Detectives then placed Pride under arrest and transported him to the police station. Pride gave a written statement in which he confessed to dealing crack

cocaine and acknowledged the result of the detectives' search of his residence. Subsequently, a Union County grand jury indicted Pride for possession of crack cocaine with intent to distribute (PWID) and PWID within proximity of a school.

On October 13, 2004, Pride's case was called for trial. Although Pride was not present, William All, the public defender assigned to his case, appeared in court. When the circuit court judge inquired about Pride's absence All outlined the history of his representation of Pride. All explained that he was appointed to represent Pride on September 13, 2004, the first day of the term of court for which Pride was originally scheduled to go to trial. On that day, Pride was represented by Fletcher Smith, a private attorney. The circuit court judge, however, granted Smith's motion to be relieved and informed Pride that he needed to retain an attorney. Because Pride qualified for the public defender's office, All was appointed to his case.

Pride failed to appear for two scheduled appointments with All. Each time, Pride informed All that he could not attend the appointments because of his work schedule. After the two missed appointments, All sent Pride a letter on October 1, 2004, indicating that his trial was scheduled for the week of October 11, 2004, and that he could not adequately represent him without speaking with him. Additionally, All asked Pride to advise him if he had retained private counsel. In response, Pride scheduled another appointment for October 7th. Pride again failed to appear for this appointment and offered no explanation.

On October 11th, Pride went to the Union County courthouse to report for roll call and was arrested for a driving under suspension charge. When officers searched Pride's person, they discovered \$5,000 in his pocket. While in custody, law enforcement transported Pride to the courthouse so that he could speak with All. At that time, Pride told All that Smith was again representing him and he had intended to give Smith the \$5,000 after he reported for roll call. Later that evening, Pride was released from custody. The next morning at the courthouse, All told Pride that Smith needed to come to the courthouse to review the pre-trial motions that the solicitor intended to use during his case. According to All, Pride indicated that Smith would come to the courthouse. All then contacted Smith's office in the afternoon and discussed the matter with Smith's administrative assistant. The administrative assistant informed All that Pride had attempted to pay \$250 for Smith's representation. In response, All stated that Pride had indicated to him that he had \$5,000 for Smith. Although Smith's administrative assistant stated that she would contact Pride about payment and then call All back, she did not contact All and there is no evidence in the record of an agreement by Smith to represent Pride. On the morning of trial, the solicitor contacted All and told him that Smith's office had informed him that Smith did not represent Pride.

Upon hearing this factual recitation, the solicitor moved to have Pride tried in his absence. The circuit court judge then inquired whether All wished to make a motion to be relieved as counsel. Although All was hesitant to make the motion out of an ethical obligation to his client, he made the motion which was granted by the judge. In so ruling, the judge specifically found that Pride waived his right to counsel by his conduct. Pride was then tried and convicted for the drug offenses. After the jury returned a verdict, the judge issued a

sealed sentence.

On January 18, 2005, Pride appeared in court to be sentenced. Pride admitted that he did not have an attorney for the sentencing hearing. All appeared at the hearing and again explained his history of representing Pride. He indicated that he could "perfect an appeal for [Pride] if he wants to raise the issue of whether or not he shouldn't have been tried in his absence." All indicated that he would move for appellate defense to represent Pride in his appeal. The judge then asked All to stand with Pride as he imposed the sentence. The judge sentenced Pride to twenty-five years imprisonment and a \$50,000 fine for PWID and fifteen years imprisonment and a \$10,000 fine for PWID within proximity of a school. The sentences were to be served concurrently. This appeal followed.

DISCUSSION

Pride argues the circuit court judge erred in relieving All as his counsel and proceeding with the trial in his absence. He contends his conduct was not sufficient to establish that he waived his right to counsel.[3]

As a threshold matter, we initially question whether Pride adequately preserved this issue for our review. Although Pride's lack of trial representation was discussed at his sentencing hearing, Pride never moved for a new trial on the ground that he did not knowingly waive his right to counsel. Moreover, as we read the record, All offered to perfect an appeal for Pride only on the issue of whether a trial in his absence was appropriate. See State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991)(holding defendant, who was tried and convicted in his absence without counsel, failed to preserve issue of whether he waived his right to trial counsel where neither he nor his sentencing attorney raised this issue to the circuit court); cf. State v. White, 305 S.C. 455, 456, 409 S.E.2d 397, 397 (1991) (finding defendant, who was tried and convicted in his absence without counsel and appeared pro se at the sentencing hearing, could raise the issue of whether he waived his right to trial counsel because defendant's first opportunity to raise the issue was on appeal).

Assuming the general discussion during the sentencing hearing was sufficient to preserve this issue, we find the circuit court judge correctly found Pride waived his right to counsel by his conduct.

"The Sixth Amendment guarantees criminal defendants a right to counsel. This right may be waived." State v. Gill, 355 S.C. 234, 243, 584 S.E.2d 432, 437 (Ct. App. 2003)(citations omitted). This court has explained that "[a] defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture." State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003).

In support of his argument, Pride appropriately relies on our decision in State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003). However, as will be more fully discussed, neither Thompson nor our more recent case of State v. Roberson, No. 4172, 2006 WL 3066198 (S.C. Ct. App. Oct. 30, 2006), require reversal of Pride's convictions and sentences.

In Thompson, the defendant was tried in absentia and without counsel for the offenses of discharging a firearm into a dwelling and malicious injury to personal property over \$1,000 but less than \$5,000. After the jury convicted Thompson, the judge issued a sealed sentence. At sentencing, Thompson's counsel moved for a new trial because he was denied the right to counsel. Counsel claimed that Thompson had appeared at four or five roll calls after his arrest. Additionally, counsel alleged that Thompson, despite his request, had been turned down for a public defender because he did not meet the financial requirements to qualify. In terms of Thompson's failure to appear at trial, his counsel informed the court that Thompson was not given adequate notice of the trial date. Id. at 260, 584 S.E.2d at 133. The court denied Thompson's motion for a new trial. Id. at 260, 584 S.E.2d at 134. On appeal, this court reversed the decision of the circuit court. We held that Thompson's failure to appear at trial did not rise to the level of waiver. Id. at 266, 584 S.E.2d at 136. Our decision was based on the following factors: (1) Thompson had not been advised of the dangers and disadvantages of self-representation under Faretta; (2) there was no inference in the record that Thompson understood the dangers and disadvantages of self-representation; and (3) Thompson did not have a prior record which would have familiarized him with the criminal court system. Id. at 267, 584 S.E.2d at 137.

Recently, this court had the opportunity to apply Thompson in reaching its decision in State v. Roberson, No. 4172, 2006 WL 3066198 (S.C. Ct. App. Oct. 30, 2006). In Roberson, the defendant was arrested and then released on bond for failing to register as a sex offender. The terms of the bond required the defendant to appear for roll call at the term of general sessions court in Dorchester County beginning on November 29, 1999. By signing the bond, the defendant acknowledged that he would be tried in his absence if he failed to appear in court. The Dorchester County Solicitor's office mailed to the defendant's last known address two notices of appearances for the terms of court scheduled for November 29, 1999, and January 10, 2000. On February 16, 2000, the defendant was tried in his absence without counsel. After the jury convicted the defendant, the circuit court judge issued a sealed sentence.

Approximately three years later, the defendant, who was represented by counsel, appeared before the circuit court to be sentenced. During this hearing, the defendant's counsel moved for a new trial on the grounds the defendant did not knowingly and voluntarily fail to appear for his trial and he was denied his right to be represented by counsel at trial. Because it was unclear whether the defendant had been represented at trial, the judge continued the motion until a trial transcript could be located. At the final hearing, the defendant's counsel moved to vacate the defendant's conviction and sentence primarily on the ground that he was not represented by counsel at trial. In response, the solicitor asserted the defendant waived his right to counsel by failing to appear and that he was apprised of his right to counsel at the bond hearing. The judge denied the motion for a new trial finding the defendant waived his right to counsel because the terms of his bond indicated that he would be tried in his absence if he failed to appear and he had been informed of his right to counsel at the bond hearing. Roberson, 2006 WL 3066198, at *1.

On appeal, we reversed the circuit court judge's decision and remanded for a new trial. Id. at *2. Applying Thompson, we found the defendant's failure to appear at trial did not

constitute an affirmative waiver of his right to counsel. Moreover, because the defendant was never advised of proceeding without representation, we declined to infer that the defendant's conduct, *i.e.*, his failure to appear at trial, constituted a waiver of his right to counsel. *Id.* at *3.

Although a cursory reading of above-outlined cases would appear to warrant a reversal of Pride's convictions and sentences, upon closer review we find a crucial difference between the facts in Pride's case and those of Thompson and Roberson. Significantly, unlike Pride, the defendants in Thompson and Roberson were not represented by counsel until the sentencing hearing. Thus, the finding that the defendants in Thompson and Roberson waived their right to trial counsel was based solely on their failure to appear for trial. Here, Pride not only failed to appear for trial but he also failed to cooperate with his appointed counsel. Pride was represented by appointed counsel and given additional time to prepare for trial after his private attorney was relieved. Pride repeatedly failed to appear for his scheduled appointments with the public defender or offer any assistance in preparation for his defense. Pride also gave assurances to his appointed counsel up to the day before trial that a private attorney would represent him. Pride, however, was aware this private attorney had been relieved as counsel when the case was initially scheduled to be tried. Despite the knowledge of his trial date, Pride failed to cooperate with his appointed counsel and failed to retain a private attorney by the date of the scheduled trial. Based on the foregoing, we find Pride's deliberate and dilatory conduct was sufficient to waive his right to counsel.

We believe our decision is consistent with case law in this State where our appellate courts found the defendant's conduct constituted a waiver of his right to counsel. *See State v. Cain*, 277 S.C. 210, 210-11, 284 S.E.2d 779, 779 (1981) (inferring waiver of counsel and affirming defendant's conviction and sentence where defendant, who was tried in absentia and without counsel for third-offense driving under the influence, failed to fulfill the conditions of his appearance bond and neglected to keep in contact with his attorney despite knowing the trial was imminent); *see also State v. Jacobs*, 271 S.C. 126, 126-28, 245 S.E.2d 606, 607-08 (1978) (inferring defendant waived his right to counsel where: (1) trial court allowed defendant, a non-indigent, reasonable time to retain counsel; (2) trial court urged defendant on several occasions to retain counsel and provided defendant access to a telephone and additional time to make the arrangements; (3) defendant on the day of trial did not name his attorney; and (4) defendant failed to make a sufficient showing of reasons for his failure to have counsel present at trial); *State v. Gill*, 355 S.C. 234, 245, 584 S.E.2d 432, 437-38 (Ct. App. 2003) (inferring defendant waived his right to counsel where defendant failed to retain counsel for trial despite his repeated assurances to the court that he intended to hire private counsel and did not require the appointment of a public defender).

Accordingly, Pride's convictions and sentences are

AFFIRMED.

ANDERSON and HUFF, JJ., concur.

[1] Because oral argument would not aid the court in resolving the issues on appeal, we

decide this case without oral argument pursuant to Rule 215, SCACR.

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

[3] Although Pride was tried in his absence and without counsel, we believe Pride only challenges the waiver of his right to counsel. Accordingly, we confine our analysis to this limited issue.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Christopher Lee Pride

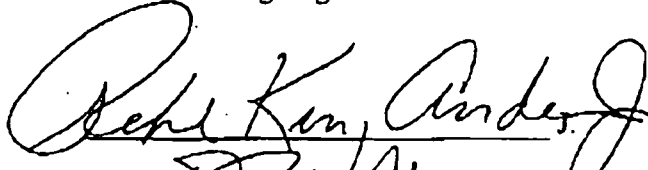
Appellant.

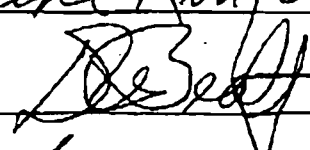
The Honorable John C. Hayes, III, Circuit Court Judge
Union County
Trial Court Case No. 2003-GS-44-519
2003-GS-44-523

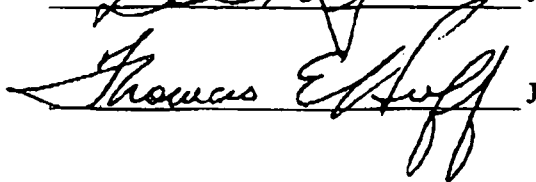
ORDER GRANTING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court has decided to grant the petition.

It is, therefore, ordered that the Petition for Rehearing be granted.






_____ J.

Columbia, South Carolina

Date July 2, 2007

A60

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Christopher Lee Pride, Appellant.

Appeal From Union County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2007-UP-544
Heard August 24, 2007 – Filed December 5, 2007
Formerly Opinion No. 4208
Submitted January 1, 2007 – Filed February 20, 2007
Withdrawn, Substituted, and Refiled December 5, 2007

AFFIRMED

Appellate Defender Robert M. Dudek, of
Columbia, Fletcher N. Smith, Jr., of Greenville,
for Appellant.

Attorney General Henry Dargan McMaster,
Chief Deputy Attorney General John W.
McIntosh, Assistant Deputy Attorney General
Salley W. Elliott, Senior Assistant Attorney
General Harold M. Coombs, Jr., all of
Columbia; and Solicitor Thomas E. Pope, of
Rock Hill, for Respondent.

BEATTY, J.: Christopher Lee Pride was tried in absentia and without counsel for the charges of possession of crack cocaine with intent to distribute and possession of crack cocaine with intent to distribute within the proximity of a school. After the jury convicted Pride of both offenses, the circuit court judge issued a sealed sentence. Pride appeals, arguing the circuit court judge erred in finding he waived his right to counsel. We affirm.

The panel of this Court affirmed Pride's convictions in a published opinion. State v. Pride, 372 S.C. 443, 641 S.E.2d 921 (Ct. App. 2007). Subsequently, the panel granted Pride's petition for rehearing and request for oral argument. We now withdraw our previous opinion and substitute the attached opinion.

FACTS

As a result of an on-going narcotics investigation, detectives with the Union Police Department identified Pride as a crack cocaine dealer. On the morning of April 2, 2003, detectives went to Pride's residence and served him with a search warrant. Upon entering the residence, Detective Brian Bailey read Pride his Miranda[1] rights. Bailey then questioned Pride as to whether there were any illegal drugs in the house. According to Bailey, Pride admitted there were illegal drugs in the house and there was a bag of crack cocaine in his blue jeans which were located in his bedroom. While conducting a search of the area identified by Pride, the detectives found \$1,875 in cash and a bag containing 3.62 grams of crack cocaine. Detectives then placed Pride under arrest and transported him to the police station. Pride gave a written statement in which he confessed to dealing crack cocaine and acknowledged the result of the detectives' search of his residence. Subsequently, a Union County grand jury indicted Pride for possession of crack cocaine with intent to distribute (PWID) and PWID within proximity of a school.

On October 13, 2004, Pride's case was called for trial. Although Pride was not present, William All, the public defender assigned to his case, appeared in court. When the circuit court judge inquired about Pride's absence All outlined the history of his representation of Pride. All was initially appointed to represent Pride on two other drug charges. After Pride was arrested on a bench warrant, he retained Fletcher Smith, a private attorney. All explained that he was again appointed to represent Pride on September 13, 2004, the first day of the term of court for which Pride was originally scheduled to go to trial. On that day, Pride was still represented by Smith. The circuit court judge, however, granted Smith's motion to be relieved and informed Pride that he needed to retain an attorney. Because Pride qualified for the public defender's office, All was again appointed to his case.

Pride failed to appear for two scheduled appointments with All. Each time, Pride informed All that he could not attend the appointments because of his work schedule. After the two missed appointments, All sent Pride a letter on October 1, 2004, indicating that his trial was scheduled for the week of October 11, 2004, and that he could not adequately represent him without speaking with him. Additionally, All asked Pride to advise him if he had retained private counsel. In response, Pride scheduled another appointment for October 7th. Pride again failed to appear for this appointment and offered no explanation.

On October 11th, Pride went to the Union County courthouse to report for roll call and was arrested for a driving under suspension charge. When officers searched Pride's person, they discovered \$5,000 in his pocket. While in custody, law enforcement transported Pride to the courthouse so that he could speak with All. At that time, Pride told All that Smith was again representing him and that he had sent some money to Smith. Pride also claimed that he had intended to give Smith the \$5,000 after he reported for roll call. Later that evening, Pride was

released from custody. The next morning at the courthouse, All told Pride that Smith needed to come to the courthouse to review the pre-trial motions that the solicitor intended to use during his case. According to All, Pride indicated that Smith would come to the courthouse. All then contacted Smith's office in the afternoon and discussed the matter with Smith's administrative assistant. The administrative assistant informed All that Pride had attempted to pay \$250 for Smith's representation. In response, All stated that Pride had indicated to him that he had \$5,000 for Smith. Although Smith's administrative assistant stated that she would contact Pride about payment and then call All back, she did not contact All and there is no evidence in the record of an agreement by Smith to represent Pride. On the morning of trial, the solicitor contacted All and told him that Smith's office had informed him that Smith did not represent Pride.

Upon hearing this factual recitation, the solicitor moved to have Pride tried in his absence. The circuit court judge then inquired whether All wished to make a motion to be relieved as counsel. Although All was hesitant to make the motion out of an ethical obligation to his client, he made the motion which was granted by the judge. In so ruling, the judge found that Pride waived his right to counsel by his conduct. In explaining his ruling, the judge believed that Pride was "sort of playing the attorney game so to speak and saying somebody represents him and they say they don't." Pride was then tried and convicted for the drug offenses. After the jury returned a verdict, the judge issued a sealed sentence.

On January 18, 2005, Pride appeared in court to be sentenced. Pride admitted that he did not have an attorney for the sentencing hearing. All appeared at the hearing and again explained his history of representing Pride. He indicated that he could "perfect an appeal for [Pride] if he wants to raise the issue of whether or not he shouldn't have been tried in his absence." All indicated that he would move for appellate defense to represent Pride in his appeal. The judge then asked All to stand with Pride as he imposed the sentence. The judge sentenced Pride to twenty-five years imprisonment and a \$50,000 fine for PWID and fifteen years imprisonment and a \$10,000 fine for PWID within proximity of a school. The sentences were to be served concurrently. This appeal followed.

DISCUSSION

Pride argues the circuit court judge erred in relieving All as his counsel and proceeding with the trial in his absence. He contends his conduct was not sufficient to establish that he waived his right to counsel.[2]

As a threshold matter, we initially question whether Pride adequately preserved this issue for our review. Although Pride's lack of trial representation was discussed at his sentencing hearing, Pride never moved for a new trial on the ground that he did not knowingly waive his right to counsel. See State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) (holding defendant, who was tried and convicted in his absence without counsel, failed to preserve issue of whether he waived his right to trial counsel where neither he nor his sentencing attorney raised this issue to the circuit court); cf. State v. White, 305 S.C. 455, 456, 409 S.E.2d 397, 397 (1991) (finding defendant, who was tried and convicted in his absence without counsel and appeared pro se at the sentencing hearing, could raise the

issue of whether he waived his right to trial counsel because defendant's first opportunity to raise the issue was on appeal).

Assuming the general discussion during the sentencing hearing was sufficient to preserve this issue, we find the circuit court judge correctly found Pride waived his right to counsel by his conduct.

"The Sixth Amendment guarantees criminal defendants a right to counsel. This right may be waived." State v. Gill, 355 S.C. 234, 243, 584 S.E.2d 432, 437 (Ct. App. 2003)(citations omitted). This court has explained that "[a] defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture." State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003).

In support of his argument, Pride appropriately relies on our decision in State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003). However, as will be more fully discussed, neither Thompson nor our more recent case of State v. Roberson, 371 S.C. 334, 638 S.E.2d 93 (Ct. App. 2006), cert. granted (Oct. 19, 2007), require reversal of Pride's convictions and sentences.

In Thompson, the defendant was tried in absentia and without counsel for the offenses of discharging a firearm into a dwelling and malicious injury to personal property over \$1,000 but less than \$5,000. After the jury convicted Thompson, the judge issued a sealed sentence. At sentencing, Thompson's counsel moved for a new trial because he was denied the right to counsel. Counsel claimed that Thompson had appeared at four or five roll calls after his arrest. Additionally, counsel alleged that Thompson, despite his request, had been turned down for a public defender because he did not meet the financial requirements to qualify. In terms of Thompson's failure to appear at trial, his counsel informed the court that Thompson was not given adequate notice of the trial date. Thompson, 355 S.C. at 260, 584 S.E.2d at 133. The court denied Thompson's motion for a new trial. Id. at 260, 584 S.E.2d at 134. On appeal, this court reversed the decision of the circuit court. We held that Thompson's failure to appear at trial did not rise to the level of waiver. Id. at 266, 584 S.E.2d at 136. Our decision was based on the following factors: (1) Thompson had not been advised of the dangers and disadvantages of self-representation under Faretta; (2) there was no inference in the record that Thompson understood the dangers and disadvantages of self-representation; and (3) Thompson did not have a prior record which would have familiarized him with the criminal court system. Id. at 267, 584 S.E.2d at 137.

Recently, this court had the opportunity to apply Thompson in reaching its decision in State v. Roberson, 371 S.C. 334, 638 S.E.2d 93 (Ct. App. 2006), cert. granted (Oct. 19, 2007). In Roberson, the defendant was arrested and then released on bond for failing to register as a sex offender. The terms of the bond required the defendant to appear for roll call at the term of general sessions court in Dorchester County beginning on November 29, 1999. By signing the bond, the defendant acknowledged that he would be tried in his absence if he failed to appear in court. The Dorchester County Solicitor's office mailed to the defendant's last known address two notices of appearances for the terms of court scheduled for November 29, 1999, and January 10, 2000. On February 16, 2000, the defendant was tried in his

absence without counsel. After the jury convicted the defendant, the circuit court judge issued a sealed sentence.

Approximately three years later, the defendant, who was represented by counsel, appeared before the circuit court to be sentenced. During this hearing, the defendant's counsel moved for a new trial on the grounds the defendant did not knowingly and voluntarily fail to appear for his trial and he was denied his right to be represented by counsel at trial. Because it was unclear whether the defendant had been represented at trial, the judge continued the motion until a trial transcript could be located. At the final hearing, the defendant's counsel moved to vacate the defendant's conviction and sentence primarily on the ground that he was not represented by counsel at trial. In response, the solicitor asserted the defendant waived his right to counsel by failing to appear and that he was apprised of his right to counsel at the bond hearing. The judge denied the motion for a new trial finding the defendant waived his right to counsel because the terms of his bond indicated that he would be tried in his absence if he failed to appear and he had been informed of his right to counsel at the bond hearing. Roberson, 371 S.C. at 337, 638 S.E.2d at 94.

On appeal, we reversed the circuit court judge's decision and remanded for a new trial. Roberson, 371 S.C. at 339, 638 S.E.2d at 96. Applying Thompson, we found the defendant's failure to appear at trial did not constitute an affirmative waiver of his right to counsel. Moreover, because the defendant was never advised of proceeding without representation, we declined to infer that the defendant's conduct, *i.e.*, his failure to appear at trial, constituted a waiver of his right to counsel. *Id.* at 339, 638 S.E.2d at 95.

Although a cursory reading of above-outlined cases would appear to warrant a reversal of Pride's convictions and sentences, upon closer review we find a crucial difference between the facts in Pride's case and those of Thompson and Roberson. Significantly, unlike Pride, the defendants in Thompson and Roberson were not represented by counsel until the sentencing hearing. Thus, the finding that the defendants in Thompson and Roberson waived their right to trial counsel was based solely on their failure to appear for trial. Here, Pride not only failed to appear for trial but he also failed to cooperate with his appointed counsel and knowingly attempted to manipulate the court system. Pride was represented by appointed counsel and given additional time to prepare for trial after his private attorney was relieved. Pride repeatedly failed to appear for his scheduled appointments with the public defender or offer any assistance in preparation for his defense. Pride essentially "fired" his appointed attorney by assuring him up to the day before trial that Smith was representing him and he had sent Smith money to retain him as counsel. Pride, however, was aware that Smith had not agreed to represent him. Despite this knowledge and his awareness of the trial date, Pride failed to cooperate with his appointed counsel and failed to retain a private attorney by the date of the scheduled trial. Furthermore, there is evidence in the record that someone had seen Pride in the courthouse shortly before the case was called for trial. Yet, Pride refused to show up for trial apparently because he was represented by appointed counsel rather than counsel of his own choosing. Based on the foregoing, we find Pride's deliberate, dilatory, and manipulative conduct was sufficient to waive his right to counsel.

Additionally, we reject Pride's contention that his convictions should be reversed because the

trial judge failed to admonish him regarding the dangers and disadvantages of self-representation pursuant to Faretta v. California, 422 U.S. 806 (1975). In Faretta, the United States Supreme Court ruled that a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so. Faretta, 422 U.S. at 835. Faretta, however, is inapposite to the facts of the instant case. At no point did Pride indicate that he wanted to represent himself. Instead, he consistently communicated to the court and his court-appointed attorney that he wanted to retain a private attorney. See, e.g., Robards v. Rees, 789 F.2d 379, 383 (6th Cir. 1986) (noting exception to application of Faretta where "prosecution makes an affirmative showing that the defendant's request for self-representation is merely a tactic to secure a delay in the proceeding"); State v. Jones, 546 P.2d 45, 51 (Ariz. Ct. App. 1976) (finding Faretta was not controlling where defendant did not request that he be permitted to represent himself but, instead, requested on the day of trial that his present attorney be fired and that a new one be appointed); State v. Shumaker, 914 So. 2d 1156, 1162 (La. Ct. App. 2005) (holding defendant's reliance on Faretta, was misplaced and stating "defendant never expressly asked that he be allowed self-representation. He simply indicated that he wanted to fire his counsel. That statement certainly does not reach a clear and unequivocal expression requesting the right to represent oneself as required by Faretta.").

We find support for our decision in a recent case issued by the Indiana Supreme Court. Jackson v. State, 868 N.E.2d 494 (Ind. 2007). In Jackson, the defendant was charged with possession of cocaine with intent to deliver and possession of a handgun without a license. An attorney admitted in Indiana filed Jackson's preliminary motions. At subsequent hearings, the defendant appeared with counsel who was admitted to the state pro hac vice. At a final pre-trial conference, the defendant appeared without an attorney. Because the defense had not complied with the State's pre-trial discovery requests, the trial judge revoked Jackson's attorney's pro hac vice status. The initial Indiana attorney remained Jackson's attorney of record. Approximately one week before trial, Jackson and his attorney appeared for a hearing and informed the trial judge that Jackson intended to retain new counsel. Based on this information, the trial judge granted Jackson's motion to continue his trial for several months. Neither Jackson nor any defense attorney appeared for two pretrial conferences. After a bench warrant was issued for Jackson's arrest, the State moved to proceed with the trial in Jackson's absence. Ultimately, Jackson was tried and convicted in absentia and without counsel. On appeal, the Indiana Court of Appeals reversed Jackson's convictions and remanded for a new trial. The Indiana Supreme Court affirmed the trial judge, stating:

Of course, the constitutional rights of Jackson and every other accused must be strictly enforced. But a defendant cannot be permitted to manipulate the system simply by refusing to show up for trial. Jackson has not established on this record that any of his constitutional rights have been violated. To the contrary, we conclude that this record fully supports the trial court's finding that Jackson willfully and knowingly refused to appear at trial and waived his right to counsel and his right to be present at trial. We also conclude that, under these circumstances, the trial court did not have a duty to readvise Jackson of the right to counsel or the perils of self-representation when it revoked Jackson's attorney's pro hac vice status because there was no indication that Jackson intended to proceed pro se

or could not hire another attorney.

Id. at 497-98. The Court concluded by stating, “[w]e cannot expect a trial court to hunt down a defendant to admonish him about the dangers and disadvantages of self-representation if the defendant has made no indication to the trial court that he intends to proceed pro se and then subsequently does not show up for trial.” Id. at 501.

We believe our decision is also consistent with case law in this state where our appellate courts have found a defendant’s conduct constituted a waiver of his right to counsel. See State v. Cain, 277 S.C. 210, 210-11, 284 S.E.2d 779, 779 (1981) (inferring waiver of counsel and affirming defendant’s conviction and sentence where defendant, who was tried in absentia and without counsel for third-offense driving under the influence, failed to fulfill the conditions of his appearance bond and neglected to keep in contact with his attorney despite knowing the trial was imminent); see also State v. Jacobs, 271 S.C. 126, 126-28, 245 S.E.2d 606, 607-08 (1978) (inferring defendant waived his right to counsel where: (1) trial court allowed defendant, a non-indigent, reasonable time to retain counsel; (2) trial court urged defendant on several occasions to retain counsel and provided defendant access to a telephone and additional time to make the arrangements; (3) defendant on the day of trial did not name his attorney; and (4) defendant failed to make a sufficient showing of reasons for his failure to have counsel present at trial); State v. Gill, 355 S.C. 234, 245, 584 S.E.2d 432, 437-38 (Ct. App. 2003) (inferring defendant waived his right to counsel where defendant failed to retain counsel for trial despite his repeated assurances to the court that he intended to hire private counsel and did not require the appointment of a public defender). [3]

Pride attempts to distinguish the above-referenced cases on the basis that the defendants in those cases were non-indigent. We find this distinction to be unavailing. Similar to the non-indigent defendants, Pride attempted to “play the system” in: (1) refusing to retain counsel by the scheduled trial date; (2) giving repeated assurances to his court-appointed counsel and the prosecution up until the day of trial that he had retained a private attorney; and (3) failing to cooperate with his court-appointed counsel. The fact that Pride may not have had the financial means to hire counsel has no bearing on our determination that Pride’s conduct was sufficient to constitute a waiver of the right to counsel. Pride was appointed counsel, but voluntarily chose not to utilize assigned counsel despite his knowledge that he had not retained another attorney. Cf. State v. Clay, 11 S.W.3d 706, 713 (Mo. Ct. App. 1999) (holding indigent defendant tried in absentia and without counsel impliedly waived his right to counsel and, therefore, the statutory requirement for a written waiver of right to counsel was not required).

We emphasize that our decision is limited to the specific facts of this case. Here, the constitutional mandates regarding a defendant’s right to the assistance of counsel were satisfied in that Pride was in fact appointed counsel. Pride, however, willingly chose to disregard this appointment in an attempt to procure counsel of his own choosing up until the day of trial. Because we cannot overturn our state’s prior precedent that a waiver of a right to counsel may be inferred by a defendant’s conduct, we reluctantly hold Pride’s conduct was sufficient to try him in absentia and without counsel.

Despite our holding, we take this opportunity to express our displeasure with the policy of permitting a defendant to be tried in absentia and without counsel.[4] Because the right to counsel is such a fundamental right, we believe the more prudent policy would be for a trial judge to decline to relieve counsel immediately prior to trial if a defendant is being tried in absentia.

Accordingly, Pride's convictions and sentences are

AFFIRMED.

HUFF, J., concurs.

ANDERSON, J., dissents in a separate opinion.

ANDERSON, J., dissenting in a separate opinion

The majority concludes that Pride's conduct was sufficient to waive his right to counsel. I **DISAGREE** and **VOTE** to **REVERSE AND REMAND**.

FACTUAL/PROCEDURAL BACKGROUND

Pride was indicted for possession of crack cocaine with intent to distribute (PWID) and PWID within proximity of a school. When his case was called for trial on October 13, 2004, Pride was absent.

Fletcher Smith, a private attorney, represented Pride on September 13, 2004, the first day of the term of court in which Pride's case was originally scheduled for trial. Smith moved to be relieved and the trial judge granted his motion. Pride qualified for representation by the public defender, and William All was appointed.

On October 11, 2004, Pride reported for roll call at the Union County courthouse, where he was arrested on another charge. At that time he informed All that Smith would again represent him. Pride allegedly intended to deliver \$5000 to Smith after roll call.

Pride was released from custody later that evening. The next day All advised Pride that Smith needed to review the pre-trial motions the solicitor intended to make. Pride told All that Smith would, in fact, appear at the courthouse. Later All learned from Smith's office that Pride had attempted to retain Smith but had not tendered the full \$5000 payment. On the morning of trial, All discovered through the solicitor's office that Smith did not represent Pride.

The solicitor moved to try Pride in his absence. The trial judge asked All if he would like to move to be relieved as counsel. All hesitated because of his ethical obligation to Pride, but he eventually made the motion for relief. The trial judge found Pride waived his right to counsel by his conduct and granted All's motion. The trial proceeded in Pride's absence, without counsel, and the jury convicted Pride of both charges.

LAW/ANALYSIS

Pride contends the trial judge erred in concluding he waived his Sixth Amendment right to¹⁶⁸ counsel by his conduct. I agree.

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422 U.S. 806, 807 (1975). "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronin, 466 U.S. 648, 654 (1984). The courts indulge every reasonable presumption against waiver of fundamental constitutional rights and do not presume acquiescence in the loss of fundamental rights. Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

A criminal defendant may waive his Sixth Amendment right to counsel. See e.g., State v. Thompson 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003); State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996). A waiver is an intentional and voluntary relinquishment of a known right. Thompson 355 S.C. at 262, 584 S.E.2d at 134 (citing United States v. Goldberg, 67 F.3d 1092, 1099 (3d Cir. 1995)). The waiver of the right to counsel must be the product of a knowing, voluntary, and intelligent decision. State v. Cabrera-Pena, 350 S.C. 517, 535, 567 S.E.2d 472, 482 (Ct. App. 2002). "When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits." State v. McLauren, 349 S.C. 488, 493, 563 S.E.2d 346, 348 (Ct. App. 2002) (quoting Faretta, 422 U.S. at 835).

Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'

Id. (citing Adams v. U.S. ex rel. McCann, 317 U.S. 269, 279 (1942)) (emphasis supplied). In order to effectuate a valid waiver of the right to counsel, the two-pronged Faretta test must be met in which the defendant is (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. Thompson 355 S.C. at 262, 584 S.E.2d at 134 (citing Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990)).

Although waiver is most commonly understood as an affirmative verbal request, the intentional and voluntary relinquishment of the right to counsel may be inferred from a defendant's conduct. See United States v. Goldberg, 67 F.3d 1092, 1099 (3d Cir. 1995); State v. Roberson, 371 S.C. 334, 339, 638 S.E.2d 93, 95 (Ct. App. 2006); Thompson, 355 S.C. at 262, 584 S.E.2d at 134; State v. Gill, 355 S.C. 234, 245, 584 S.E.2d 432, 438 (Ct. App. 2003); State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996).

A defendant's failure to appear at trial, however, is not, by itself, sufficient to sustain the

inference that he intentionally and voluntarily relinquished his right to counsel. See State v. Roberson, 371 S.C. 334, 339, 638 S.E.2d 93, 95 (Ct. App. 2006). Most courts have held the defendant must first be warned about conduct that may subsequently be treated as a waiver of counsel. Boykin, 324 S.C. at 556, 478 S.E.2d at 691. Moreover, "to the extent that the defendant's [conduct is] examined under the doctrine of 'waiver,' there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings." Goldberg, 67 F.3d at 1100 (citing United States v. Bauer, 956 F.2d 693 (7th Cir. 1992; United States v. Allen, 895 F.2d 1577 (10th Cir. 1990)).

"The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." Reed v. Ozmint, 374 S.C. 19, 28, 647 S.E.2d 209, 214 (2007) (quoting Zerbst, 304 U.S. at 464). The trial judge is responsible for ensuring that the accused is informed of the dangers and disadvantages of self-representation and makes a knowing and intelligent waiver of the right to counsel. State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997); Cabrera-Pena, 350 S.C. at 531, 567 S.E.2d at 480-81.

In the absence of specific inquiry on the dangers of proceeding without counsel, the requirements of a voluntary waiver will be satisfied if the record demonstrates the defendant's decision to waive counsel was made with an understanding of the risks of self-representation. Watts v. State, 347 S.C. 399, 402, 556 S.E.2d 368, 370 (2001). However, where the record fails to demonstrate the defendant made an informed choice to proceed pro se, with "eyes open," then a knowing and voluntary waiver of counsel is not effectuated and the case should be remanded for a new trial. Id. at 402-03, 556 S.E.2s at 370.

In Thompson and Roberson, this court declined to infer the defendants' conduct constituted waiver of counsel because the court had not advised either defendant of the dangers of proceeding without representation. 355 S.C. 255, 584 S.E.2d 131; 371 S.C. 334, 638 S.E.2d 93. In Thompson, the defendant failed to appear for trial, although he appeared for roll call a number of times after his arrest. 355 S.C. at 260, 584 S.E.2d at 133. He was tried in his absence, without counsel. At sentencing, Thompson moved for a new trial because he was denied the right to counsel. Thompson had not qualified financially for representation by the public defender, but he averred extenuating circumstances prevented his retaining private counsel. In addition, he alleged inadequate notice of the trial date. We reversed the trial judge's denial of Thompson's motion, finding his failure to appear was insufficient to infer a valid waiver of his right to counsel. Id. at 260, 584 S.E.2d at 134. We premised our conclusion on the fact that Thompson had not been advised, under Faretta, of the dangers of proceeding without representation of counsel. Moreover, the evidentiary record did not indicate that Thompson understood the dangers of self-representation.

Similarly, the defendant in Roberson was tried in his absence, without counsel, and convicted. 371 S.C. at 336, 638 S.E.2d at 94. At sentencing he moved for a new trial on grounds he did not knowingly and voluntarily fail to appear for trial and he was denied his right to counsel. Id. The sentencing judge denied Roberson's motion for new trial on the ground he was deprived of representation of counsel. Id. at 337, 638 S.E.2d at 94. We reversed

and remanded for a new trial. Because Roberson was not warned of the dangers of proceeding without counsel, the inference that his failure to appear constituted the intentional and voluntary relinquishment of his right to counsel was inappropriate. Id. at 340, 638 S.E.2d at 96.

The majority attempts to distinguish Thompson and Roberson from the case at bar, noting Thompson and Roberson were "pro se" defendants, while Pride was represented by appointed counsel. The gist and gravamen of my dissonance with the majority is that Pride became a "pro se" in his absence without any notice whatsoever when the trial judge relieved Pride's appointed counsel immediately before trial. The trial judge prompted Pride's attorney to make a motion to be relieved as counsel. The attorney had obvious concernment in regard to his ethical obligations to Pride and voiced that position with some degree of certitude:

Court: All Right . . . Mr. All, where do you stand. Do you wish to be, do you feel, I feel that by his conduct you certainly have a right to move to be relieved because he has not cooperated with you in any way whatsoever and as has happened in other cases it appears that he's sort of playing the attorney game so to speak and saying somebody represents him and they say they don't; in any event, I certainly feel very comfortable making a finding he's waived his right to counsel by his conduct and I am certainly not going to put you in a position of sitting there trying a case unprepared, particularly trying a case in someone's absence when you are, have not had adequate conversation with your client due to his conduct. So do you wish to, I know that's an awful position for you to be in, but.

All: That is an awful position, Your Honor. I was sitting here trying, sitting here the last 30 minutes running through my mind what to ask the Court because I feel an obligation in some manner to Mr. Pride even though he's failed to fulfill anything in regards to the assistance and cooperation with our office, Your Honor.

Court: Well, let me interject and put this in your thinking. He has pretty much indicated he doesn't want you to represent him because he's continued to say that he has retained and either gone by their office and tried to pay another lawyer yesterday, so I think you may need to factor in the fact that if you sort of, I hate to say this kind of language in court but you are sort of damned if you do and damned if you don't because if you go forward then he'll be saying he was represented by an attorney he didn't want. If you don't go forward he's going to say he didn't have an attorney at all.

All: Well, Your Honor, I do make a motion to be relieved as counsel. Your Honor, I would ask that before the Court starts the case with Mr. Pride that they have the Sheriff or the Bailiff or someone call his name.

Court: We'll do that.

All: I will be staying basically on stand by in case they find Mr. Pride and once they find him if he indicates that he wants an attorney, if the Court feels fit to appoint one, I will be here. I'm not going to disappear.

Court: All right. Well, I'm going to relieve you of counsel. I think it would be egregious for the Court to require someone in this context who not only has not, who has made a valiant attempt to get prepared and by his client's conduct been unable to do what he needs to do to be ready for trial and to put you in that spot would certainly not be fair. And it's his conduct that has created the, he has sort of hoisted on his own petard, he is a victim of his own conduct. . . .

The ruling of the trial judge judicially converted Pride from a represented defendant to a pro se defendant. Irrefutably, the evidentiary record reveals that Pride desired representation by counsel. Any ambivalence or equivocation by Pride related to the identity of his attorney, i.e. a hired attorney or the public defender. Pride never indicated directly or indirectly that he desired to proceed pro se.

Factually and legally the deprivation of an important constitutional right at this stage of the trial is troublesome and is infected with expository difficulty. The judicial imprimatur and approbation placed by the majority upon the denial of this basic constitutional right at this temporal point in the trial is an improper circumspection of a defendant's right to counsel as guaranteed by the South Carolina and United States Constitutions.

I hold the rule of law we applied in Thompson and Roberson is equally applicable here. Under Faretta and its progeny, a defendant must be apprised of his right to representation and cautioned about the dangers of proceeding without representation before being convicted and imprisoned. A valid waiver of counsel, either by affirmative, verbal request or by conduct, requires compliance with Faretta. In re Christopher H., 359 S.C. 161, 166-67, 596 S.E.2d 500, 503 (Ct. App. 2004). The evidentiary record here is devoid of any indication the trial judge apprised Pride of his right to counsel, warned him of the dangers of proceeding without representation, determined he understood the dangers of self-representation, or cautioned him that his conduct may be treated as a waiver of counsel.

Accordingly, I **VOTE** to **REVERSE** and **REMAND** for new trial.

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

[2] Although Pride was tried in his absence and without counsel, we believe Pride only challenges the waiver of his right to counsel. Accordingly, we confine our analysis to this

limited issue.

[3] Interestingly, the Indiana Supreme Court referenced Cain and Gill in its decision. The Court, however, found that Jackson's case was different in that "[n]one of the cases involved a defendant who appeared with a lawyer but then disappeared for trial, a clear finding by the trial court that the defendant willfully and voluntarily missed his own trial, and no suggestion that the defendant would not hire his own attorney." Jackson, 868 N.E.2d at 500-01. We agree with this assessment and also find that Pride's willful conduct surpassed the conduct in our state's cases which was sufficient to constitute an implied waiver of the right to counsel.

[4] We note that our research reveals very few published decisions where a trial court permits a defendant to be tried in absentia and without counsel. Significantly, the majority of the cases which present this factual scenario arise out of proceedings in this state's trial courts. See State v. White, 305 S.C. 455, 409 S.E.2d 397 (1991); State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991); State v. Cain, 277 S.C. 210, 284 S.E.2d 779 (1981); State v. Fairey, 374 S.C. 92, 646 S.E.2d 445 (Ct. App. 2007); State v. Roberson, 371 S.C. 334, 638 S.E.2d 93 (Ct. App. 2006); City of Aiken v. Koontz, 368 S.C. 542, 629 S.E.2d 686 (Ct. App. 2006); State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003); see also People v. McCombs, 866 N.E.2d 1200 (Ill. App. Ct. 2007); People v. Gargani, 863 N.E.2d 762 (Ill. App. Ct. 2007); Jackson v. State, 868 N.E.2d 494 (Ind. 2007); State v. Clay, 11 S.W.3d 706 (Mo. Ct. App. 1999); Commonwealth v. Ford, 715 A.2d 1141 (Pa. Super. Ct. 1998). In light of the limited case law, we question whether our Supreme Court should, if given the appropriate factual circumstances, reconsider the policy apparently adopted at the trial court level.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Christopher Lee Pride,

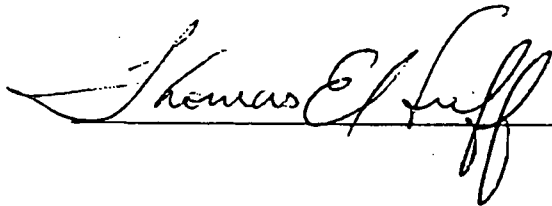
Appellant.

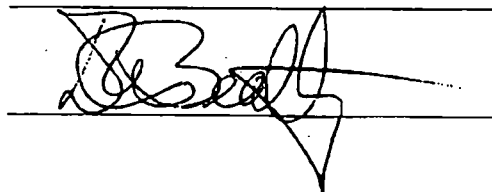
The Honorable John C. Hayes, III, Circuit Court Judge
Union County
Trial Court Case No. 2003-GS-44-519
2003-GS-44-523

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

 J.

 J.

Columbia, South Carolina

Date April 15, 2008

A61

*I adhere to my dissent
and I vote to grant the
petition. This case cries out
for review. Rob King Anderson*

The South Carolina Court of Appeals

The State,

Respondent,

v.

Christopher Lee Pride,

Appellant.

The Honorable John C. Hayes, III, Circuit Court Judge
Union County
Trial Court Case No. 2003-GS-44-519
2003-GS-44-523

ORDER DENYING PETITION FOR REHEARING EN BANC

PER CURIAM: After a careful consideration of the Petition for Rehearing En Banc, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing En Banc be denied.

C.J.

Thomas E. Huff J.
Paul S. Shortt J.
[Signature] J.

A62

_____ J.

_____ J.

_____ J.

_____ J.

[Handwritten signature]
_____ J.

Columbia, South Carolina

Date April 15, 2008

I adhere to my original
dissent. I vote to grant
the petition. This case comes
out for review.

Repe King Anderson

I would Grant:

11 Green Wren

Paul H. [unclear]

Daniel P. [unclear]

Jasper M. [unclear]

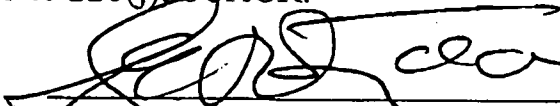
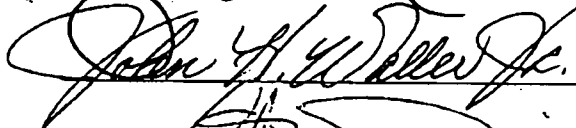
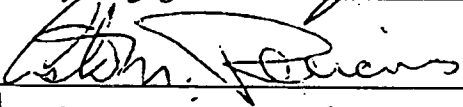
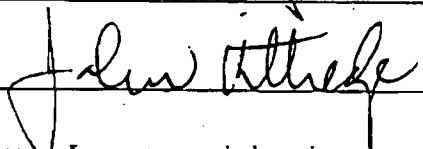
A63

The Supreme Court of South Carolina

The State, Respondent,
 v.
 Christopher Lee Pride, Petitioner.

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in State v. Pride, Op. No. 2007-UP-544 (S.C. Ct. App. filed Dec. 5, 2007). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 226(j), SCACR.

 C.J.
 J.
 J.
 J.
 Beatty, J., not participating.

Columbia, South Carolina

February 19, 2009

A64

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Christopher Lee Pride, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Union County
John C. Hayes, III, Circuit Court Judge

Memorandum Opinion No. 2009-MO-064
Heard December 1, 2009 – Filed December 14, 2009

DISMISSED AS IMPROVIDENTLY GRANTED

Acting Chief Appellate Defender Robert M. Dudek, of South Carolina Commission on Indigent Defense, of Columbia, and Fletcher Smith, Jr., of Greenville, for Petitioner.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Senior Assistant Attorney General Harold M. Coombs, Jr., of Columbia, and Solicitor Kevin Scott Brackett, of York, for Respondent.

PER CURIAM: We granted certiorari to review the Court of Appeals' opinion in State v. Pride, Op. No. 2007-UP-544 (S.C. Ct. App. filed Dec. 5, 2007). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

TOAL, C.J., WALLER, PLEICONES, KITTREDGE, JJ., and Acting Justice James E. Moore, concur.



RECEIVED

DEC 31 2009 A

ATTORNEY GENERALS
OFFICE

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX: (803) 734-1499

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

December 30, 2009

The Honorable Freddie Gault
210 W. Main Street
PO Box 703
Union, SC 29379

Re: The State v. Pride, Christopher Lee – 2003-GS-44-00519
2003- GS-44-00523

Dear Mrs. Gault:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court and a copy of the opinion of the Court of Appeals is enclosed.

Sincerely yours,

Brenda F. Shealy
CHIEF DEPUTY CLERK

DES/jjp

Enclosure

cc: (without enclosure)
Acting Chief Appellate Defender Robert M. Dudek
Fletcher Smith, Jr., Esquire
~~Senior Assistant Attorney General Harold M. Coombs, Jr.~~
Solicitor Kevin Scott Brackett

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

June 21, 2010

Mr. Harold M. Coombs, Jr.
SC Attorney General
P.O. Box 11549
Columbia, SC 29211

RECEIVED

JUN 23 2010 #

ATTORNEY GENERALS
OFFICE

Re: Christopher Lee Pride
v. South Carolina
No. 09-9706

Dear Mr. Coombs:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



William K. Suter, Clerk

FORM 5

2011 ~~CP-44~~ 331

STATE OF SOUTH CAROLINA

COUNTY OF

Full name and prison number (if any) of Applicant.
Christopher Pride # 281240

v.

State of South Carolina

FILE FOR RECORD

2011 AUG 23 PM 1:49 IN THE COURT OF COMMON PLEAS

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

CLOCK IN TIME
CANCELLED

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE Correctional Inst. 990 Wisnoky Highway, Bishop S.C.
2. Name and location of Court which imposed sentence Union County
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) OCT 13, 2004, 25 YEARS
 - (b) _____

A TRUE COPY

AUG 23 2011

Revised 3/2003
W.F. Gault
CLERK OF COURT

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____ **TRIED IN ABSENCE**
 - (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. _____ **S.C. COURT OF APPEAL**
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____ **DISMISSAL**
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____ **UNKNOWN**
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____ **UNKNOWN**
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____
 - (c) _____
- 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) VIOLATION OF S.C. CONST. ARTICLE I, SECTION 3, AND U.S. CONST. 11
- (c) _____

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

- (a) COUNSEL FAILED TO COMMUNICATE WITH CLIENT UPON ORAT
- (b) OF COURT. ETC. TO BE TRIED IN HIS ABSCENCE
- (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?
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief?
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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. UNKNOWN
- ii. _____
- iii. _____
- iv. _____

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. _____ UNKNOWN

ii. _____

iii. _____

iv. _____

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

i. _____ UNKNOWN

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. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

Fletcher Smith, Esq

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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. _____ FLETCHER N. SMITH, JR.
- ii. _____ 112 WAKEFIELD STREET
- iii. _____ GREENVILLE, S.C. 29601

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

- i. _____ ROBERT M. DUDER
- ii. _____ S.C. COMM'N ON INDIGENT DEFENSE
- iii. _____ DIVISION OF APPELLATE DEFENSE
P.O. Box 11589
Columbia, S.C. 29211-1589

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

_____ MOTION FOR RECONSIDERATION + MODIFIED SENTENCE "OR" VACATE

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

NO

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

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

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

Chao Prida

Applicant

SWORN or affirmed to and subscribed before me this

28 day of July, 2011.

J. Bruce Smith

Notary Public

My Commission Expires: 5-16-11

STATE OF SOUTH CAROLINA)

COUNTY OF UNION)

Christopher Pride #281240)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-44-0331

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Christopher Pride, 281240, Bar No. Address: 990 Wisacky Highway Bishopville, SC 29010 phone: fax: e-mail: other:	Defendant's Attorney: J. Rutledge Johnson, Bar No. 78871 Address: PO Box 11549 Columbia, SC 29211-1549 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
---	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

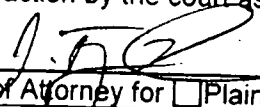
Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

December 19, 2011
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT: Rule to Show Cause in Child or Spousal Support (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
 COUNTY OF UNION)
)
)
)
 Christopher Pride, #281240)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2011-CP-44-0331

RETURN AND MOTION TO DISMISS

The Respondent, making its Return to the Application for Post-Conviction Relief filed August 23, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County Clerk of Court. The Applicant was indicted at the June 2003 term of the Union County Court of General Sessions for Possession of Crack Cocaine with Intent to Distribute (2003-GS-44-0519). He was represented by Fletcher Smith, Esq. On October 13, 2004, the Applicant was tried by a jury *in absentia* and convicted of Possession of Crack Cocaine with Intent to Distribute, 2nd offense. The Honorable John C. Hayes, III sentenced Applicant to confinement for 25 years.

Thereafter, the Applicant appealed his conviction and sentence. After full briefing, the South Carolina Court of Appeals affirmed his conviction. State v. Pride, 2007-UP-544 (filed December 4, 2009). The Remittitur was issued on December 20, 2009.

The Applicant subsequently appealed to the United States Supreme Court. The Supreme Court denied his petition for writ of certiorari on June 21, 2010.

Attached herewith and incorporated herein by reference are the records of the Union County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections and the appellate records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
2. "Violation of S.C. Const. Article 1, Section 3 and US Const. 14"

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on October 13, 2004. The Remittitur from his unsuccessful appeal was sent

on December 20, 2009. The Applicant was therefore required to file his application before December 21, 2010. This Application was filed on August 23, 2011 which was beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired. In the alternative, Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Staff Attorney

By: J. R. Johnson
ATTORNEYS FOR RESPONDENT

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

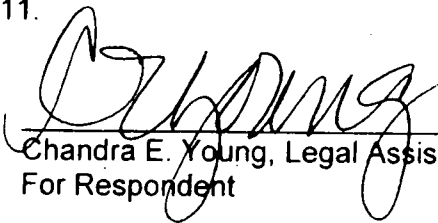
December 19, 2011

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION)	
)	
)	2011-CP-44-0331
)	
CHRISTOPHER PRIDE,)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Christopher Pride, 281240
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

DATED this 19TH day of December, 2011.



Chandra E. Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF UNION

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Christopher Pride, #281240

2011-CP-44-0331

Applicant.

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief filed August 23, 2011.

PROCEDURAL HISTORY

In its Return, Respondent requests that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County Clerk of Court. The Applicant was indicted at the June 2003 term of the Union County Court of General Sessions for Possession of Crack Cocaine with Intent to Distribute (2003-GS-44-0519). He was represented by Fletcher Smith, Esq. On October 13, 2004, the Applicant was tried by a jury *in absentia* and convicted of Possession of Crack Cocaine with Intent to Distribute, 2nd offense. The Honorable John C. Hayes, III sentenced Applicant to confinement for 25 years.

Thereafter, the Applicant appealed his conviction and sentence. After full briefing, the South Carolina Court of Appeals affirmed his conviction. State v. Pride, 2007-UP-544 (filed December 4, 2009). The Remittitur was issued on December 20, 2009.

#1
2011

The Applicant subsequently appealed to the United States Supreme Court. The Supreme Court denied his petition for writ of certiorari on June 21, 2010

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

1. "Ineffective Assistance of Counsel"
2. "Violation of S.C. Const. Article 1, Section 3 and US Const. 14"

Incorporated herein are the Clerk of Court records, the South Carolina Department of Corrections' records and the prior appeal records by reference. The Respondent reserves the right to amend this information upon receipt of any relevant materials.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on October 13, 2004. The Remittitur from his unsuccessful appeal was sent on December 20, 2009. The Applicant was therefore required to file his application before December 21, 2010. This Application was filed on August 23, 2011 which was beyond the time that the statutory filing period had expired.

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2010

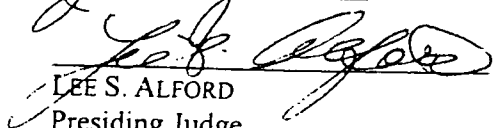
A motion for summary judgement may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Union County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 4th day of January, 2012.


LEE S. ALFORD
Presiding Judge
Sixteenth Judicial Circuit

Joel, South Carolina

H 3
2012

STATE OF SOUTH CAROLINA
COUNTY OF UNION

FILE FOR RECORD IN THE COURT OF GENERAL SESSIONS
2012 FEB -7 PM 2:13 SIXTEENTH JUDICIAL CIRCUIT

Christopher Pride [#281240],

WILLIAM F. LAULT
CLERK OF COURT
UNION, SC

C/A No. 2011-CP-44-0331

Applicant

vs.

The State of South Carolina,

Respondent

**REPLY TO
RETURN AND MOTION TO DISMISS**

In reply to Respondent's Return and Motion to Dismiss, Applicant would respond as follows.

In June, 2011, Applicant received a letter from his trial attorney dated May 31, 2011. In relevant part, that letter stated the following:

Pursuant to our conversation I am herewith enclosing a Post Conviction Relief form for your review and action. You have a year to file this matter. You need to contact Mr. Dudek who handled your appeal to see when the U.S. Supreme Court ruled against you.

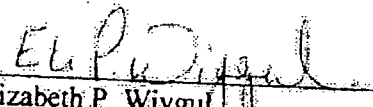
A copy of the letter referenced above is attached to this Reply as "Attachment A".

Applicant, being unfamiliar with the time constraints placed on a Post Conviction Relief action, interpreted that letter to mean that he had a year from the date of the letter. He did not understand that he only had a year from his date on which his conviction was upheld. The Supreme Court denied Applicant's petition for writ of certiorari on June 21, 2010. Applicant filed his application on or about August 12, 2011.

1
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For the reasons stated above, Applicant asks that his action not be dismissed and that an evidentiary hearing be scheduled in this matter.

Respectfully submitted,


Elizabeth P. Wiygul
Attorney for Applicant
101 Whitsett Street
Greenville, South Carolina 29601
(864) 608-1059
(864) 235-0200 facsimile
eli.wiygul@gmail.com

January 31, 2012

Greenville, South Carolina

FLETCHER N. SMITH, LLC

ATTORNEY AT LAW

P.O. BOX 10400, E.S. GREENVILLE, SOUTH CAROLINA 29603
112 WAKEFIELD STREET GREENVILLE, SOUTH CAROLINA 29601
(864) 232-0541 FAX (864) 232-6750

May 31, 2011

Christopher Pride
S.C. Department of Corrections
990 Wisacky
Bishopville, SC 29010

In Re: v.
C.A. No.:

Dear Mr. Pride:

Pursuant to our conversation I am herewith enclosing a Post Conviction Relief form for your review and action. You have a year to file this matter. You need to contact Mr. Dudek who handled your appeal to see when the U.S. Supreme Court ruled against you.

If you need representation on this matter, please feel free to contact the lawyer of your choice or consult with my firm.

Sincerely,



Fletcher N. Smith, Jr., Esq.

cc:

FNS/fns

- Attachment A -

STATE OF SOUTH CAROLINA

COUNTY OF UNION

FILE FOR RECORD

IN THE COURT OF COMMON PLEAS

Christopher L. Pride, #281240

Plaintiff

2012 DEC -3 PM 1:25

CASE NO.

2011-CP-44-0331

v. WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina

Defendant.

Plaintiff's Attorney:

Tricia A. Blanchette, Bar No. 74904.
Address:
PO Box 12725
Columbia, SC 29211
phone: 803-988-0008 fax: 8030988-8070
e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:

J. Rutledge Johnson, Bar No.
Address:
PO Box 11549
Columbia, SC 29211
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

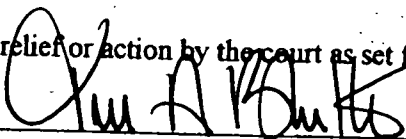
Nature of Motion: Amendment to PCR

Estimated Time Needed: 2 hours Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff / Defendant

November 29, 2012

Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:

- EXEMPT:
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- MOTION FEE COLLECTED: _____
- CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
 COUNTY OF UNION)
 Christopher L. Pride, #281240,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2011-CP-44-0311

**Amendment to Application for
 Post Conviction Relief**

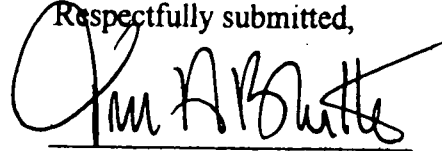
2012 DEC - 3 PM 1:25
 WILLIAM F. GAULT
 CLERK OF COURT
 COUNTY OF UNION
 FILE FOR RECORD

Applicant, by and through his Attorney, Tricia A. Blanchette, Esquire, would amend his Application for Post Conviction Relief filed on August 23, 2011, by adding William All, II, Esquire, PO Box 731, Union, SC 29379 to question 18(a) and by adding the following specific allegations to his original allegation of ineffective assistance of counsel:

1. As to representation rendered by William All, Esquire:
 - a. Ineffective assistance of counsel for failure to effectively argue against trial in absence.
 - b. Ineffective assistance of counsel for failure to protect client's right to counsel during trial in absence.
 - c. Ineffective assistance of counsel for failure to file a Motion pursuant to Rule 29(a), SCRCrimP, following his reappointment during Applicant's sentencing hearing.
2. At to representation rendered by Fletcher Smith, Esquire:
 - a. Ineffective assistance of counsel for failure to act on guilty plea offer communicated to Applicant.

- b. Ineffective assistance of counsel for failure to appear in court at trial or sentencing to address the existence of an attorney/client relationship with Applicant.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

November 29, 2012
Columbia, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF UNION)
)
 Christopher L. Pride, #281240,)
 Applicant,)
 v.)
)
 State of South Carolina,)
 Respondent.)

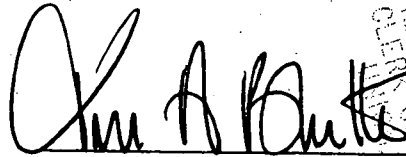
IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2011-CP-44-0331

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney at Law, hereby certify that I placed in the mail this 29th day of November 2012, a copy of an Amendment to Application for Post Conviction Relief, to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General
 ATT: J. Rutledge Johnson, Ast. AG
 PO Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008

WILLIAM E. PAULT
 CLERK OF COURT
 2012 DEC -3 PM 1:27
 FILE FOR RECORD

November 29, 2012

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS

3

4 CHRISTOPHER PRIDE)
5 APPLICANT,) TRANSCRIPT OF RECORD
6 -vs-) 2011-CP-44-00331
7 STATE OF SOUTH) YORK, SOUTH CAROLINA
8 CAROLINA,) FEBRUARY 8, 2013
9 RESPONDENT.

10

11

B E F O R E :

12

THE HONORABLE LEE S. ALFORD, JUDGE.

13

14

15

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

16

TRICIA A. BLANCHETTE, ATTORNEY AT LAW
ATTORNEY FOR THE APPLICANT

17

18

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE RESPONDENT

19

20

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

21

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NO. DESCRIPTION ID. EV.

(NO EXHIBITS MARKED)

1 (PROCEEDINGS, FEBRUARY 8, 2013).

2 MR. JOHNSON: Good morning.

3 May it please the court?

4 THE COURT: Yes, sir.

5 MR. JOHNSON: This is the case of Christopher
6 Pride versus the State of South Carolina, Case Number
7 2011-CP-44-0331.

8 If I may give a procedural history of this case?

9 THE COURT: Yes, sir.

10 MR. JOHNSON: Mr. Pride was scheduled for trial on
11 September 13th, 2004. He was represented at that time by
12 Fletcher Smith. However, Judge Maddox relieved Mr. Smith of
13 counsel and gave Mr. Pride time to hire a new attorney.

14 Mr. Pride applied to the Public Defender's Office
15 and was appointed to counsel Bill All.

16 He missed two meetings with -- or scheduled and
17 missed two meetings with Mr. All.

18 Mr. All also wrote the applicant a letter on
19 October 1st of 2004, indicating he needed to meet with Mr.
20 Pride. The letter also stated he was set for trial the week
21 of October 11th, 2004.

22 Mr. Pride rescheduled an appointment for October
23 11th, but never showed or called to give an explanation of
24 why he did not or was not able to make that meeting.

25 He showed up for roll call the day before trial

1 and stated he needed to talk to Fletcher Smith.

2 Mr. All called Mr. Smith's office about Mr.
3 Smith's representation.

4 And also the solicitor in the case, E.B. Springs,
5 informed Mr. All that Mr. Smith's office stated that Mr.
6 Smith did not represent Mr. Pride.

7 The solicitor introduced a bond form at the
8 hearing that informs Mr. Pride that if he failed to show up
9 for trial, he would be tried in his absence, and Mr. Pride
10 apparently signed this form.

11 The case went forward to trial and Judge -- the
12 Honorable John C. Hayes, III relieved Mr. All as counsel and
13 he granted the State's motion to try Mr. Pride in his
14 absence.

15 The bailiff actually called for Mr. Pride's name
16 three times in the hallway and on the front steps of the
17 courthouse, to which he got no response.

18 He was tried in his absence on October 13th, 2004,
19 and convicted of possession with intent to distribute crack
20 cocaine, second offense, and possession with intent to
21 distribute crack cocaine within proximity of a school.
22 Judge Hayes sealed his sentence.

23 Mr. Pride was then located on January 18th, 2005.
24 The sentence was unsealed by the Honorable G. Thomas Cooper,
25 Jr..

1 Mr. All was thereafter appointed for sentencing
2 only and to file appeal on Mr. Pride's behalf.

3 Mr. Pride received twenty-five years for
4 possession with intent to distribute crack cocaine, second
5 offense, and fifteen years concurrent for the proximity
6 charge.

7 A notice of appeal was filed on his behalf and an
8 appeal was perfected.

9 The South Carolina Court of Appeals affirmed his
10 conviction and sentence on December 4th, 2007.

11 Remittitur was thereafter issued on December 20th,
12 2007.

13 He thereafter appealed to the United States
14 Supreme Court.

15 The Supreme Court denied certiorari on June the
16 21st, 2010.

17 He filed a PCR application on August 23rd, 2011.

18 The State filed its return of motion to dismiss
19 for failure to file within the Statute of Limitations on
20 December 19th, 2011.

21 A conditional order of dismissal was issued on
22 January 4th, 2012.

23 Mr. Pride filed a reply on January 31st, 2012,
24 stating that Mr. Smith had informed him by letter dated May
25 the 31st of 2011 that he had one year to file a PCR

1 application.

2 The State, thereafter, agreed to give him a
3 hearing in this case.

4 The case was scheduled for a hearing on October
5 8th, 2012, where counsel Elizabeth Weigel was relieved and
6 Mr. Pride was given thirty days to retain Ms. Blanchette.
7 Obviously he has retained her, because she represents him
8 today.

9 However, the State would like to conform its
10 motion -- actually its return to conform to the pleadings
11 and we would like to move to dismiss this case for failure
12 to state a claim upon which relief can be granted, as both
13 Counsel Smith and Counsel All were relieved by the court.

14 The relief of counsel was the sole issue on appeal
15 and has already been decided and deemed proper by the Court
16 of Appeals; obviously denied cert by the United States
17 Supreme Court.

18 Furthermore, the State would move for summary
19 judgment under Rule 56(b) and 56(c). As the defending
20 party, we can move at any time, as there is no genuine issue
21 of material fact in this case and we are entitled to
22 judgment as a matter of law, because as stated previously,
23 counsel was relieved by the trial court and, therefore,
24 there is no ineffective assistance of counsel.

25 THE COURT: Is that the only ground raised?

1 MR. JOHNSON: Yes, sir. Well, both Mr. Smith and
2 Mr. All.

3 THE COURT: Yes.

4 MS. BLANCHETTE: Your Honor, my name is Patricia
5 Blanchette and I represent Christopher Pride.

6 I would like to point out -- and I assume the
7 court has a copy of our amendment that was filed December
8 3rd, 2012?

9 THE COURT: I don't know if I have that. Just a
10 minute.

11 MS. BLANCHETTE: And I would argue that the State
12 has misinterpreted the claims that are asserted there.

13 MR. JOHNSON: I'm not sure that was in the packet,
14 Your Honor.

15 THE COURT: I don't think it is.

16 MR. JOHNSON: I will give you a copy of that.
17 Thank you, Your Honor.

18 MS. BLANCHETTE: Your Honor, if I may proceed, I
19 would first object to the State's verbal amendment.

20 This amendment was filed on December 3rd, 2012.
21 That gave them sufficient time to amend to their return in
22 writing. I did not receive that, but I did receive notice
23 that the State would object to any verbal amendments on my
24 behalf this morning.

25 So on behalf of my client, I would object to the

1 verbal amendment of the return, since the State has had our
2 amendment since the beginning of December of 2012, and
3 failed to make any amendment to their return.

4 Also, as stated in this amendment, we are not
5 simply alleging ineffective assistance of counsel at trial.
6 We are alleging ineffective assistance against Mr. All for
7 failure to object or argue against the trial in absence,
8 which would include failing to ask for a continuance.

9 THE COURT: He no longer represented him when the
10 court went forward on the trial in absence. How could he
11 object when he no longer represented him and he had been
12 relieved by the court?

13 MS. BLANCHETTE: There was a motion at the
14 beginning, Your Honor.

15 THE COURT: Okay, he no longer represented him.

16 MS. BLANCHETTE: We would like to address that
17 motion and his failure to move for a continuance as part of
18 that motion.

19 Also he was reappointed by the Honorable Judge
20 Cooper at the sentencing proceeding, and we have an
21 allegation that he was ineffective for failing to file a
22 motion pursuant to Rule 29(a).

23 Once he was reappointed as counsel, he accepted
24 that reappointment and Judge Cooper and the State both said
25 that it was a critical stage, and, therefore, he was being

1 reappointed.

2 THE COURT: Well, what motion should he have
3 filed?

4 MS. BLANCHETTE: He should have filed a motion for
5 a new trial.

6 And specifically I plan to get into this in the
7 case, but in the Appellate Court decision they distinguished
8 his case from both Roberson and Thompson. And in those
9 cases at the sentencing proceeding the attorney filed a
10 motion for a new trial, and here Mr. All failed to do that.
11 So we have an allegation that he was ineffective in that
12 regard.

13 And then regarding Fletcher Smith, he was Mr.
14 Pride's counsel before he was relieved, and we have a claim
15 of failing to act on a guilty plea offer and an issue of
16 miscommunication and failure to appear in court when he was
17 tried in his absence and at the sentencing proceeding, and
18 I'm prepared to call Mr. Fletcher Smith on those allegations
19 today, as well as my client Mr. Pride.

20 So my position is --

21 THE COURT: Did he ever -- did he ever represent
22 him? Did Mr. Smith ever represent him, actually represent
23 him?

24 MS. BLANCHETTE: He did. He was relieved on
25 October --

1 THE COURT: Because I thought he said that he
2 informed them that he didn't represent him.

3 MS. BLANCHETTE: He represented him until he was
4 relieved on September 13th, 2004, which was less than --

5 THE COURT: How --

6 MS. BLANCHETTE: -- fifteen days.

7 THE COURT: Well, how do we know that?

8 MS. BLANCHETTE: It's in the record. They did
9 speak of it. On page 7 in the transcript and of the
10 original statement in the procedural history that he was
11 relieved of counsel, so we do have an allegation that goes
12 to his failure to act on a guilty plea that occurred before
13 he was relieved.

14 And, Your Honor, that's all I have prepared in
15 response, because I was not aware of the State's motion
16 until it was given this morning.

17 THE COURT: Was Mr. Smith formally relieved of
18 counsel? I don't know if he ever was counsel, but was he
19 formally relieved as counsel prior to the trial?

20 MS. BLANCHETTE: He was --

21 THE COURT: Go ahead.

22 MS. BLANCHETTE: I'm sorry.

23 THE COURT: Go ahead.

24 MS. BLANCHETTE: He was formerly relieved pursuant
25 to the transcript on September 13th, 2004, which was one

1 month before the trial.

2 THE COURT: Okay.

3 MS. BLANCHETTE: So he represented --

4 THE COURT: So he --

5 MS. BLANCHETTE: -- him up until that point.

6 THE COURT: So your allegations of ineffective
7 assistance for failure to appear at court or trial to
8 address the existence of attorney-client relationship with
9 an applicant?

10 MS. BLANCHETTE: That's going to come from the
11 testimony of my client that he still believes that Fletcher
12 Smith was his attorney, despite --

13 THE COURT: Whether he believes it -- did he
14 represent him or not? I don't care what he believed.

15 What evidence do you have that he represented him?
16 I'm a little confused here.

17 MS. BLANCHETTE: I will have the testimony of my
18 client. And there are some facts --

19 THE COURT: I'm asking you, counsel --

20 MS. BLANCHETTE: Right.

21 THE COURT: -- before I waste time taking
22 testimony from your client about it.

23 MS. BLANCHETTE: Your Honor, I can promise you
24 this will be a very brief case, because our allegations are
25 very limited because of the nature of this case, but there

1 is testimony in the record, or it is in the record, that Mr.
2 Pride was arrested the day before his case and he had \$5,000
3 in his pocket, which he indicated he was going to pay to
4 Fletcher Smith to -- to retain his services.

5 THE COURT: What does that mean? You got \$5,000
6 in your pocket, you plan to hire somebody, but you don't
7 hire them and you don't take them that \$5,000. I mean, what
8 difference does it make, counsel? That makes no sense
9 whatsoever.

10 MS. BLANCHETTE: Well, Your Honor, without the
11 testimony of Mr. Pride when the judge was determining if he
12 was going to be tried without an attorney, without that
13 testimony to consider at the appeal, the facts are as they
14 are in the record. That's why I need to submit the
15 testimony of Mr. Pride, because we are stuck with the facts
16 as they are on the record at this point.

17 If there would have been a motion to reconsider
18 filed by Mr. All, Mr. Pride would have had the chance to
19 testify and give information as to why he believed that
20 Fletcher Smith was his attorney, why there was a
21 misunderstanding. So that's also why we are alleging that
22 Mr. All was ineffective in not making that motion in front
23 of Judge Cooper.

24 THE COURT: You don't really think that motion
25 would have been granted, do you?

1 MS. BLANCHETTE: I --

2 THE COURT: And if it wouldn't have been granted,
3 there is no prejudice to him.

4 MS. BLANCHETTE: Your Honor -- go ahead, I'm
5 sorry. I was going to respond to your question.

6 THE COURT: And secondly, isn't that an issue for
7 direct appeal?

8 MS. BLANCHETTE: Your Honor --

9 THE COURT: If those were raised on direct appeal
10 and denied by the Appellate Court?

11 MS. BLANCHETTE: To answer both those questions,
12 first, do I think that argument would have had any merit in
13 from of Judge Cooper? Yes, because he says on the record
14 Mr. Pride should have been tried with one attorney or
15 another. So he actually shared an opinion that he believed
16 Mr. Pride should have had an attorney present at the trial.

17 So, yes, I think that motion could have had some
18 merit with Judge cooper.

19 Secondly --

20 THE COURT: But it was -- but it went up on appeal
21 and the Appellate Court didn't agree with him. So --

22 MS. BLANCHETTE: Actually --

23 THE COURT: If he made that statement, the
24 Appellate Court didn't agree, and so -- they affirmed it.
25 Couldn't they have granted him a new trial if they thought

1 he should have had a --

2 MS. BLANCHETTE: They could have, Your Honor, and
3 if you have a chance to review the appellate decision, which
4 I'm not sure you have a copy.

5 THE COURT: I have not yet.

6 MS. BLANCHETTE: I have got a copy here for you.

7 THE COURT: I have it.

8 MS. BLANCHETTE: If you review the comments made
9 by the court, they were very close.

10 And they also took the opportunity to give
11 instructions to the state courts in South Carolina that the
12 procedure followed here in this case should no longer be
13 followed and when there is an explanation of how South
14 Carolina is the only state that tries people in their
15 absence under these --

16 THE COURT: Okay.

17 MS. BLANCHETTE: -- circumstances.

18 THE COURT: But they denied it in his case.

19 I mean, they may have said in the future it's
20 probably a better procedure to have a standby counsel, or
21 have a counsel there even in trial in absence, to protect
22 his rights. They made that advice, but they didn't reverse
23 his, did they?

24 MS. BLANCHETTE: They did not reverse on the issue
25 of failure to have counsel.

1 THE COURT: And it went up to the Supreme Court,
2 the United States Supreme Court, and they denied cert on
3 that issue, didn't they?

4 MS. BLANCHETTE: They did, Your Honor, but if I
5 could explain one thing. The issue of failure to move for a
6 continuance and the actual trial in his absence was not
7 raised; only the issue of failure to have an attorney, the
8 waiver of his right to attorney.

9 So both issues were not raised on appeal, so the
10 one issue that I would like to present to the court today
11 that I have been talking about was not heard and ruled upon
12 by the Court of Appeals; only the issue of whether or not he
13 by his actions waived his right to an attorney.

14 THE COURT: I'm trying to ferret this out. I'm
15 trying to streamline this and I don't want to take the time
16 with something that I don't consider a ground and that's
17 what I'm trying to think it through and ask you these
18 questions.

19 It's hard for me to understand when your client
20 absolutely refused to pay or cooperate with any attorney all
21 the way through and get tried in his absence after he was
22 warned of that, and how he now says somebody should have
23 been there representing him and he refused to apparently
24 even go to Mr. All's office to even meet with him one time.
25 Apparently he didn't want Mr. All to represent him, because

1 he never met with him. How in the world is Mr. All going to
2 prepare a case to represent him at trial when he doesn't
3 know anything about it from your client's standpoint? I
4 mean --

5 MS. BLANCHETTE: Your Honor --

6 THE COURT: He was appointed -- he was appointed
7 apparently just for the sentencing and to file a notice of
8 appeal on his behalf, to make sure that there was a notice
9 of appeal filed, apparently, and that was done. An appeal
10 was taken and those issues were addressed on appeal and
11 denied relief on it on direct appeal, correct?

12 MS. BLANCHETTE: Your Honor, if I may, this is a
13 very brief case, because the issues are very streamlined
14 because of the unique procedural history in this case.

15 The facts as you have it or the record as it was
16 developed without any testimony from Mr. Pride, I think
17 that's essential that we get his testimony.

18 And even if the court decides to grant the State's
19 motion, of which I had no notice, I would ask that I could
20 proffer the testimony. It was my understanding that this
21 was scheduled for an evidentiary hearing where the State
22 subpoenaed witnesses here today. So I would ask that I be
23 allowed to proffer that testimony, if the court decides to
24 rule in the State's favor.

25 And in reviewing the amendment, I have tried my

1 best to streamline it just to those very specific areas
2 where there could be claims of ineffective assistance of
3 counsel; most importantly at the very beginning of trial
4 when Mr. All failed to object or ask for a continuance; and
5 then when he was reappointed at sentencing and he failed to
6 file a motion under Rule 29(a), which the rule states he can
7 file that within ten days of the sentence being levied.

8 And then as to Fletcher Smith, just on the issue
9 of whether or not there was a guilty plea offer that he
10 failed to pursue prior to his representation and to simply
11 go into why he did not appear in court that day.

12 I plan to be very brief, Your Honor, if I could
13 just elicit that testimony.

14 Furthermore, I think it's interesting that the
15 State agreed to allow Mr. -- they originally filed a motion
16 saying that this was untimely, but then they agreed to allow
17 us to go forward. So I find some inconsistency in that, in
18 the fact that I was only noticed for an evidentiary hearing,
19 no amended return, no motion to dismiss up until this
20 morning.

21 MR. JOHNSON: Your Honor, just in response, under
22 Rule 56(b) it says that I may move for summary judgment at
23 any time. So that is our argument, Your Honor. I could
24 move that, you know, in paper form or I could do it as an
25 oral motion.

1 THE COURT: And recite to me again the basis of
2 your motion.

3 MR. JOHNSON: The motion for summary judgment is
4 that as a defending party, under Rule 56(b), any party
5 against whom a claim is sought may at any time move with or
6 without supporting affidavits from the judgment in favor.

7 Our motion is under actually 56(c), which states
8 that if no genuine issue of material fact exists.

9 He was not represented. Both counsels were
10 relieved, and, therefore, there could be no ineffective
11 assistance of counsel claim.

12 THE COURT: Well, that's what I understood to be
13 the basis of your motion.

14 MS. BLANCHETTE: Your Honor, if it persuades the
15 court at all, I have a copy, and I have already provided
16 this to the State with notice of your making this claim, of
17 Morris v. State. There the South Carolina Supreme Court
18 granted relief on the issue of failure to ask for a
19 continuance prior to a trial in absence, which is an issue
20 that I'm raising today. I have provided this citation to
21 the State. And, Your Honor, I have a copy for you in
22 support of our claim against Mr. All.

23 THE COURT: This is a little bit different,
24 wouldn't you agree, factually? I mean, it's easily
25 distinguishable from the present case, because in that case

1 he signed up to plead guilty and he left the courthouse and
 2 he was going to plead guilty and his lawyer was there and
 3 they decided that he had left. He said he left because his
 4 attorney had told him he could leave. He had every
 5 intention of pleading guilty, but he left the courthouse.
 6 So when he wasn't there to take the plea, they went ahead
 7 with the trial in absence, and then he -- they say his
 8 attorney who was actually representing him actually talked
 9 to him, actually signed up the sentencing sheet. Actually
 10 apparently got -- was representing him, was either paid or
 11 appointed, and was there and present and they said he should
 12 have made a motion for a continuance.

13 That's a little bit different here when he refused
 14 to cooperate with his attorney or have an attorney there and
 15 the attorneys were relieved. You would agree with that,
 16 wouldn't you?

17 MS. BLANCHETTE: Your Honor, I would agree that
 18 the facts are distinguishable, as they are in most cases,
 19 but it is on point to the issue that --

20 THE COURT: Big time.

21 MS. BLANCHETTE: -- were raised.

22 THE COURT: Big time distinguishable.

23 MS. BLANCHETTE: And here I feel that the record
 24 actually shows that Mr. All was his attorney until he was
 25 relieved, which happened a number of pages into the

1 transcript. He was his attorney when the case was called.

2 He was not relieved until on the judge's own
3 motion, essentially, there was a motion for trial in his
4 absence for the attorney to be relieved.

5 Mr. All went along with the proddings of the judge
6 and he failed to make any objections, and he was his
7 attorney at that point. And so we are alleging that he was
8 ineffective for not objecting when he was still his attorney
9 when the case was called.

10 THE COURT: Well, was the case called first or was
11 he relieved first? That's the question.

12 MS. BLANCHETTE: Your Honor, if I could just have
13 one moment to review the transcript here briefly because I
14 want to make sure I'm accurate.

15 (Off the record)

16 (Back on the record)

17 MS. BLANCHETTE: It appears on page four, Your
18 Honor, that his case was called by the solicitor.

19 THE COURT: I'm going to deny your motion on
20 behalf of the State.

21 We will proceed.

22 MS. BLANCHETTE: Thank you, Your Honor.

23 Would you like for me to call my first witness?

24 THE COURT: Please.

25 MS. BLANCHETTE: I would call Fletcher Smith to

1 the stand, please.

2 FLETCHER SMITH, JR., ESQUIRE, having been first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MS. BLANCHETTE:

5 Q. Can you please state your name for the record?

6 A. Fletcher Nathaniel Smith, Jr..

7 Q. Okay. And Mr. Smith, how are you currently employed?

8 A. I'm a licensed lawyer here in the State of South
9 Carolina, practicing in Greenville, South Carolina.

10 Q. And what's the primary focus or where do you -- what
11 areas do you primarily practice in?

12 A. I do personal injury, worker's comp, criminal, and some
13 domestic.

14 Q. Okay. And Mr. Smith, we are here about an incident
15 that took place on April 2nd, 2003, involving Christopher
16 Pride. Do you recall if you were retained to handle that
17 matter for him?

18 A. I think I was -- yes, I was retained.

19 Q. Okay. And once you were retained, do you remember
20 what, if anything, you did on his behalf?

21 A. Yes, I think we had a bond hearing.

22 And then at some point I communicated with the
23 solicitor's office about his case.

24 And then at a certain point we had a disagreement and
25 he fired me and we went to court and got an order from Judge

1 Maddox and I was dismissed out of the case.

2 Q. Okay. And up and to that point had he paid for your
3 services?

4 A. Yes, he had paid some on the fee.

5 Q. Okay. And at any time do you remember a plea offer
6 being communicated to you by the State?

7 A. No, ma'am, I don't recall the plea offer. It could
8 have been, but I don't recall it.

9 Q. Okay. And did you have an opportunity to review your
10 file in preparation for today?

11 A. Yes.

12 Q. Okay. And did you find any record of a plea offer in
13 that file?

14 A. No, I didn't.

15 Q. Okay. Did you have any contents of that file that you
16 were able to provide to me in preparation for Mr. Pride's
17 PCR today?

18 A. No.

19 Q. Okay. Did you have a copy of any type of retainer
20 agreement or any written agreements that you entered into
21 with Mr. Pride?

22 A. No.

23 Q. Okay. When you represented Mr. Pride, did he ever not
24 cooperate with you?

25 A. Yes.

1 Q. Okay. Did he attend roll call as needed?

2 A. He attended roll call.

3 Q. Okay. And if you told him he needed to be in court,
4 was he there?

5 A. Yes.

6 Q. Okay.

7 A. But I told him he needed to be in court when he was
8 calling me about the \$5,000 stuff too.

9 Q. Okay. Would you like to explain what happened there?

10 A. I assumed he showed up at court.

11 Q. Okay. And when you said he was calling you about the
12 \$5,000 stuff, what did you mean by that?

13 A. Well, we were going to charge him, you know, the \$5,000
14 to represent him, but he never retained me. So, therefore,
15 I think I sent him to the Public Defender's office.

16 And I think he went to the Public Defender's office and
17 got appointed, so he wasn't just left high and dry. I told
18 him if he didn't have any money, he could be appointed a
19 public defender, and he was appointed a public defender.

20 Q. But after you were relieved, you were willing to come
21 back on his case if he was able to pay you?

22 A. Yes.

23 Q. Okay. Now, at a different point in time did you
24 actually begin working on his case again?

25 A. Yes, on the appeal.

1 Q. Okay. And you were retained to handle the appeal, is
2 that correct?

3 A. Correct.

4 Q. And you did that in conjunction with the Office of
5 Appellate Defense?

6 A. Yes, ma'am.

7 MR. JOHNSON: Objection, Your Honor. It's
8 irrelevant. It's not in the application. Anything he did
9 on appeal is not at issue here today.

10 THE COURT: I'll allow it. She's talking about
11 the record.

12 Go ahead.

13 BY MS. BLANCHETTE:

14 Q. And you had an opportunity to review the briefs that
15 were submitted and the Appellate Court decisions, is that
16 correct?

17 A. Yes, ma'am, today.

18 Q. And on that appeal, the issue that was raised was
19 whether or not it was proper for Mr. Pride to be tried
20 without an attorney, is that correct?

21 MR. JOHNSON: Objection, leading. It's her direct
22 examination, Your Honor.

23 THE COURT: It's irrelevant anyway. The appeal
24 speaks for itself.

25 Move on.

1 BY MS. BLANCHETTE:

2 Q. Were you able to raise the issue or did you raise the
3 issue of the actual trial in his absence?

4 MR. JOHNSON: Your Honor, once again it's
5 irrelevant to what anything he did on the appeal. It's not
6 in the application. It's not part of this PCR. So what he
7 did or did not raise at appeal is irrelevant.

8 THE COURT: Well, I would agree that's after the
9 fact.

10 You are alleging he was ineffective, rendered
11 ineffective assistance prior to the trial, so I would agree
12 with that.

13 Let's move on.

14 MS. BLANCHETTE: Your Honor, if I may respond?

15 THE COURT: Yes.

16 MS. BLANCHETTE: Your Honor, we are required not
17 only to show ineffective assistance, but also prejudice.

18 I'm alleging that Mr. All was ineffective for
19 failing to make two motions on Mr. Pride's behalf, so I'm
20 asking his appellate attorney about whether or not he was
21 able to raise those issues, so I would argue that it's not
22 irrelevant.

23 I'm going to ask him whether or not he was limited
24 in his appeal based upon Mr. All's failure to make those
25 motions. So it goes directly to the issues we are alleging

1 in our --

2 THE COURT: Go ahead. Go ahead.

3 BY MS. BLANCHETTE:

4 Q. Now, in the appeal did you raise the issue of Mr. Pride
5 being tried in his absence?

6 A. Yes.

7 Q. Did you have an opportunity to review the appellate --

8 A. Whatever the --

9 Q. -- decision?

10 A. Yeah, whatever the -- whatever the brief -- I think
11 there is brief. Whatever the issue on appeal was that we
12 raised in the brief. I can't recall all of that stuff,
13 but --

14 MS. BLANCHETTE: Your Honor, if I could just beg
15 the court's indulgence one moment, I can hand him a copy of
16 both.

17 (Off the record)

18 (Back on the record)

19 MS. BLANCHETTE: And just for the record, Your
20 Honor, I'm handing him a copy of the final brief of
21 appellant.

22 A. Okay, thank you.

23 BY MS. BLANCHETTE:

24 Q. Mr. Smith, on the appeal did you only raise the issue
25 of whether or not Mr. Pride waived his right to an attorney

1 at trial?

2 A. Let's see. Waiver of his right to counsel, yeah.

3 Q. Okay. And in that appeal the issue of him being tried
4 in his absence was not raised, is that correct?

5 A. Correct.

6 Q. If Mr. All would have objected or made a motion to
7 continue the case, would you have been able to raise that
8 then on appeal?

9 A. We -- yeah, theoretically we could have.

10 Q. Okay. And also Mr. All was reappointed during the
11 sentencing proceeding and at that time he did not make a
12 motion to reconsider or file a Rule 29(a) motion within ten
13 days.

14 If he would have filed that motion and made an argument
15 to the court, as well as utilizing Mr. Pride's testimony,
16 would you have been able to raise that issue on appeal?

17 A. Yes, probably.

18 Q. And what was -- you handled the appeal all the way up
19 to the United States Supreme Court, is that correct?

20 A. Yes, me and Mr. Dudek.

21 Q. Okay. In handling the appeal, did you feel that the
22 court was close in reaching a decision in your favor?

23 A. Well --

24 THE COURT: That's -- no, move on.

25 MS. BLANCHETTE: Okay.

1 THE COURT: Sheer speculation. What, are you
2 going to speak for the Supreme Court now, Ms. Blanchette?

3 Go ahead. Move on. We only got so much time,
4 okay?

5 MS. BLANCHETTE: If I could beg the court's
6 indulgence one moment.

7 (Off the record)

8 (Back on the record)

9 MS. BLANCHETTE: Your Honor, I have no further
10 questions of this witness.

11 MR. JOHNSON: Just briefly, Your Honor.

12 CROSS EXAMINATION BY MR. JOHNSON:

13 Q. Mr. Smith, you don't recall the solicitor ever giving
14 you a plea offer when you were on this case, do you?

15 A. No. No, sir.

16 Q. As a matter of fact, Judge Maddox relieved you as his
17 counsel, didn't he?

18 A. Yes, sir.

19 Q. And that case was called for trial?

20 A. Yes, sir.

21 Q. Because Mr. Pride never paid you your retainer fee?

22 A. Correct.

23 MR. JOHNSON: No further questions, Your Honor.

24 THE COURT: Yes.

25 MS. BLANCHETTE: I have nothing in redirect, Your

1 Honor.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Thank you, Your Honor.

4 MS. BLANCHETTE: Your Honor, I believe Mr. Smith
5 is here under the State's subpoena, but I would ask that he
6 be released to return to Greenville.

7 THE COURT: No objection to this witness being
8 excused?

9 MR. JOHNSON: None, Your Honor.

10 THE COURT: Thank you, sir, for coming. You may
11 be excused at this time.

12 THE WITNESS: Thank you, Your Honor.

13 MS. BLANCHETTE: Your Honor, I would call
14 Christopher Pride to the stand.

15 CHRISTOPHER PRIDE, having been first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION BY MS. BLANCHETTE:

18 Q. Could you please state your name for the record?

19 A. Chris Pride.

20 Q. And Mr. Pride, are you currently incarcerated?

21 A. Yes.

22 Q. And you have filed the application docketed at
23 2011-CP-44-033 -- I'm sorry, 0311 (sic), is that correct?

24 A. Yes.

25 Q. Okay. And what is it that you are asking the court for

1 today? What is the relief that you are asking for?

2 A. Excuse me?

3 Q. What is the relief that you are asking for in your
4 application? What do you want the court to give you?

5 A. A new trial.

6 Q. Okay. And we have had an opportunity several times and
7 we have discussed the fact that by asking for a new trial,
8 you would be put back in the position that you were after
9 you were indicted, which means that you could essentially
10 get up to the maximum sentence for your charges. Knowing
11 that, do you still want to go forward today?

12 A. Yes.

13 Q. Okay. Now, Mr. Pride, you were arrested on April 2nd,
14 2003 in this case, is that correct?

15 A. Yes.

16 Q. And did you originally retain an attorney to assist
17 you?

18 A. Yes.

19 Q. And who was that?

20 A. Fletcher Smith.

21 Q. Okay. And you agree he was relieved by the court one
22 month prior to your trial date?

23 A. Yes.

24 Q. Prior to him being relieved, was there an issue
25 regarding a plea offer that came up?

1 A. Yes.

2 Q. Could you please explain that?

3 A. The solicitor, they gave me a plea offer of ten years.

4 Q. Okay. And what happened once that plea offer was given
5 to you?

6 A. Excuse me?

7 Q. What happened once you were told about that plea offer?

8 A. I don't -- I can't -- I can't recall. Me and Fletcher,
9 he just -- he just said something about somebody is going to
10 testify against me and I need -- I needed to relieve him as
11 counsel. We had a disagreement about something.

12 Q. Okay. Were you wanting or willing to take that ten
13 year plea offer?

14 A. Yes.

15 Q. Okay. But you weren't able to do that, is that
16 correct?

17 A. No.

18 Q. And as a result you were actually sentenced to
19 twenty-five years in this case?

20 A. Yes.

21 Q. Okay. Now, Mr. Smith was relieved on September 13th,
22 2004. And then when your case was called to trial on
23 October 13th, 2004, Mr. All was representing you.

24 Was it your understanding that Mr. Smith was still
25 representing you at that time? And, if so, why did you

1 think that?

2 A. Yes, because of when -- when he said -- when he said
3 that I would be appointed a public defender, I -- prior
4 to -- after that right there I went and met with Fletcher
5 Smith.

6 Q. So you continued to meet with Mr. Smith?

7 A. Yes.

8 Q. Okay. And he said today that he told you about your
9 court date. So was it your understanding that he was still
10 in some way acting as your attorney?

11 A. Yes.

12 Q. Now, the State has already put some facts into the
13 record that were given at the beginning of your trial, but
14 just to clarify.

15 At page eight, Mr. All said that you only met one time
16 and you never reviewed the discovery. Is that correct?

17 A. Yes.

18 Q. He also said that you cancelled a number of meetings.
19 Why -- if you did cancel those meetings, why did you do
20 that?

21 A. I was -- I was working trying to pay Fletcher Smith.

22 Q. Okay. Were you in any way trying to not be cooperative
23 with Mr. All?

24 A. No, ma'am.

25 Q. Okay. In your case from the beginning up until your

1 trial date, had you always attended roll call?

2 A. Yes.

3 Q. Had you ever got in trouble for not appearing in court?

4 A. No, ma'am.

5 Q. And if Mr. Smith had told you that you needed to be in
6 court, did you know that you had to go?

7 A. Yes.

8 Q. So why didn't go the morning of your trial?

9 A. He -- he -- when I called -- when I called his office
10 they say he was in court in Anderson. They told me I didn't
11 have to be in court.

12 Q. Why did you not think you had to be in court?

13 A. Because Fletcher Smith was in court in Anderson.

14 Q. Okay. Were you -- did you have some confusion about
15 who was actually representing you that day?

16 A. No, ma'am.

17 Q. Okay. Who did you believe was representing you that
18 day?

19 A. Fletcher Smith.

20 Q. Okay. But, in fact, Mr. All showed up in court and
21 represented you, is that correct?

22 A. Yes.

23 Q. Okay. And -- do you have a copy of your transcript
24 there with you?

25 A. I got --

1 Q. Okay.

2 MS. BLANCHETTE: Your Honor, may I provide him a
3 copy of the transcript?

4 THE COURT: Yes.

5 MS. BLANCHETTE: And I apologize for the record.
6 It's actually the record on appeal.

7 BY MS. BLANCHETTE:

8 Q. Now, if you could look there in the transcript.

9 On pages 10 and 11 there is a discussion of whether or
10 not Mr. Smith is your attorney, and the court finds that you
11 have waived your right to an attorney by your conduct, and
12 he actually ruled on page 11, line 15.

13 Prior to Mr. All being relieved there on page 11, line
14 15, did he ever ask for a continuance for additional time to
15 meet with you and to prepare for your case?

16 A. No, ma'am.

17 Q. Did he ever object to the court and the State moving to
18 try you without you there or try you in your absence?

19 A. No.

20 Q. And essentially here when the State makes the
21 indication that he should be relieved, does he object and
22 say that he wants to stand in as your counsel to protect
23 your right to an attorney?

24 MR. JOHNSON: Your Honor, I think the record
25 speaks for itself.

1 THE COURT: It does.

2 Counsel, you can address those to the court, if
3 you want to. I can read as well as Mr. Pride.

4 MS. BLANCHETTE: Okay. Your Honor, I was just
5 trying to make sure we get our allegations in the record
6 before this court.

7 BY MS. BLANCHETTE:

8 Q. What is your allegation regarding Mr. Pride's failure
9 to make those motions or object?

10 What are you alleging to the court, as far as Mr.
11 Pride's (sic) effectiveness -- I'm sorry, Mr. -- thank you.
12 That's why everybody is looking at me strangely.

13 Mr. Pride, what are you alleging as far as Mr. All's
14 failure to make a motion or to object to you being tried in
15 your absence?

16 A. What am I alleging?

17 Q. What are you asking this court to find?

18 A. I feel that my trial would have went differently.

19 Q. Okay. Now, let's briefly look at your trial.

20 As to the prejudice that you are alleging that you
21 suffered, it's actually detailed in the brief submitted by
22 your appellate attorneys, is that correct?

23 A. Correct.

24 MS. BLANCHETTE: And so we would ask the court to
25 take judicial notice of the arguments set forth in there.

1 And if the court doesn't mind, I would like to
2 just briefly touch on a couple of points with Mr. Pride?

3 THE COURT: Well, if it raised to the Appellate
4 Court and they denied it, is there any use in me looking at
5 it at all?

6 MS. BLANCHETTE: Well, Your Honor, you were
7 talking about prejudice that he suffered as the result of
8 his failure to object or move to continue, so it would be a
9 different analysis.

10 THE COURT: Is there an issue -- are you saying it
11 was not raised because his attorney didn't make the motions
12 at the time of the trial?

13 MS. BLANCHETTE: Well, this is the prejudice
14 offered because his attorney failed to move to continue and
15 failed to object.

16 I just have four quick points with Mr. Pride.

17 THE COURT: Well, you are just losing me --

18 MS. BLANCHETTE: Okay.

19 THE COURT: -- because what could have been raised
20 on direct appeal --

21 Now, if this --

22 I'll be glad to look at anything that you want me
23 to look at, insofar as the record on appeal is concerned,
24 but if it's a direct appeal issue that was dealt with by
25 that court, I'm not going to consider it, because that is

1 the law of the case. You can't raise it again.

2 You can raise ineffective assistance of counsel
3 for not raising objection, making an objection, motion, or
4 whatever, but you can't raise a ground that's a direct
5 appeal ground. You know that. I can't consider those.

6 MS. BLANCHETTE: I understand that.

7 THE COURT: All right.

8 MS. BLANCHETTE: I think I may have misstated my
9 purpose, and, therefore, I probably did confuse the court.

10 As far as the prejudice suffered as a result of
11 our PCR allegation, in the brief of appellant they point out
12 some errors that occurred during the trial.

13 Now, in the Appellate Court decision they did not
14 do a prejudice analysis. They just determined whether or
15 not he had waived his right to counsel by his conduct, and
16 they did that analysis based upon Thompson and Roberson and
17 that is what they reviewed.

18 I was just pointing to the brief of appellant, so
19 I didn't go through and give you every page citation and
20 show you where all the prejudicial -- where everything that
21 prejudice occurred. I was just going to touch on those very
22 quickly and then ask the court to review the brief of
23 appellant.

24 THE COURT: All right, proceed.

25 BY MS. BLANCHETTE:

1 Q. Now, Mr. Pride, at the beginning on page 21 through 23,
2 and this is raised in the brief of appellant, there were two
3 jurors that were actually sat that had connections to the
4 State, is that correct?

5 A. Yes.

6 Q. And there was another juror -- on page 22, Tommy Hill
7 hill. Did you have some information regarding Mr. Hill?

8 A. Yes.

9 Q. And he was accepted as a juror, and what was your
10 concern there?

11 A. He was -- he was a police officer.

12 Q. Okay. And none of that was objected to, because you
13 did not have an attorney there acting on your behalf, is
14 that correct?

15 A. Yes.

16 Q. Okay. There was a Jackson v. Denno hearing held and no
17 one testified on your behalf, is that correct?

18 MR. JOHNSON: Objection. The record speaks for
19 itself, Your Honor.

20 THE COURT: I'll allow it.

21 Go ahead. Proceed.

22 BY MS. BLANCHETTE:

23 Q. You can answer.

24 A. Yes.

25 Q. And Ryan Bailey testified on behalf of the State, is

1 that correct?

2 A. Yes.

3 Q. If you could turn to his direct testimony on page 47.

4 And this issue is not raised on your appeal, but there
5 he states that you had been -- you had been involved in a
6 long investigation.

7 And he goes back and he said "it had been going on for
8 nearly a year."

9 What was wrong with that statement?

10 A. From the -- from -- from the investigation I was
11 incarcerated.

12 Q. And so that statement was inaccurate, as far as you
13 know?

14 A. No, ma'am.

15 Q. And no one was there to raise that on your behalf, is
16 that correct?

17 A. No.

18 MR. JOHNSON: Your Honor, counsel was relieved.
19 Of course nobody is going to be there to object on his
20 behalf.

21 This is irrelevant and this was not raised in the
22 application.

23 THE COURT: She's trying to show prejudice from
24 failing to protect his rights, insofar as an attorney is
25 concerned, and trying -- being tried in his absence. And

1 she's saying that counsel was ineffective for failing to
2 move for a continuance or move for a new trial on that
3 ground, and so I'm going to allow her to make the record.

4 So go ahead.

5 BY MS. BLANCHETTE:

6 Q. And as a result of that, the Jackson v. Denno Hearing,
7 the court allowed in a redacted statement, but it said in
8 that statement, on pages 60 through 62, "about February of
9 2003 I started selling crack again." And no one was there
10 to object or no objection was made, so the jury being told
11 that "about 2003 I started selling crack again," referring
12 to yourself, and then it goes into the details of whom you
13 sold crack to.

14 A. No, ma'am.

15 Q. Now, on page 46 the State called the chemist to testify
16 about the drug evidence, and there then the State moved to
17 admit that evidence, but the judge had to say "hold off
18 because you haven't made a complete chain of custody," but
19 was an attorney there for you to make sure that the chain of
20 custody was properly established?

21 THE COURT: Well, did the court make sure it was?
22 If so, that makes no difference. He can't be prejudiced if
23 the court protected his rights in that regard.

24 MS. BLANCHETTE: My next question I think will tie
25 into that, Your Honor, if you would allow.

1 THE COURT: All right.

2 BY MS. BLANCHETTE:

3 Q. Did anybody make those objections to the chain of
4 custody on your behalf?

5 A. No.

6 Q. And then Keela Spann was also allowed to testify and
7 her report was introduced. And was anyone there to either
8 question or object to her qualifications or object to her
9 report being hearsay?

10 A. No.

11 Q. And then, finally, on page 79, lines 11 through 15, the
12 court give --

13 THE COURT: Hold it, counsel. Let me -- let me
14 follow with you. Let me interrupt just a minute.

15 MS. BLANCHETTE: Uh-huh.

16 THE COURT: What difference does it make? Are you
17 saying -- are you going to put the chemist up now and
18 question their --

19 MS. BLANCHETTE: There is a detailed argument in
20 the brief of appellant. I can go into, if you would like,
21 but I just ask that the court review that.

22 THE COURT: I'm just trying to figure out. You
23 have got to show some prejudice.

24 MS. BLANCHETTE: Right, Your Honor.

25 THE COURT: If the chemist would have been found

1 competent to testify, and there is no real problem with the
2 report, it would have come in anyway. So, I mean, I would
3 like for you to stick to the real prejudice in this case, if
4 you have real prejudice --

5 MS. BLANCHETTE: Yes, Your Honor, and that --

6 THE COURT: -- instead of going into something
7 that would not be found to be prejudicial in any event.

8 MS. BLANCHETTE: And, Your Honor, I took that
9 directly from the brief of appellant.

10 THE COURT: I don't care what they said on appeal.
11 I don't know what they said on appeal, counsel.

12 I'm just telling you, you got to make your record
13 here, but you have also got to prove ineffective assistance
14 of counsel and prejudice. And I don't care if somebody
15 argued on appeal that this would be prejudice. You are
16 talking to this court, not that court. That court ruled
17 against you.

18 MS. BLANCHETTE: Your Honor --

19 THE COURT: And I know you are going at a
20 different tack here.

21 MS. BLANCHETTE: Uh-huh.

22 THE COURT: But, nevertheless, if you are saying
23 it was prejudice, you know the prejudice prong of the PCR
24 requirements ineffective assistance of counsel requires you
25 to show prejudice. And just to say well, it was a chemist

1 that nobody questioned their expertise and they were allowed
2 to testify as an expert, unless you are going to put up
3 something to show that she was not qualified, you can't show
4 prejudice. Do you understand what I'm saying?

5 MS. BLANCHETTE: I completely understand, Your
6 Honor.

7 THE COURT: That's an allegation you can't
8 substantiate, so there's no sense going there.

9 All right, move on.

10 Well, I got enough to look at without this just
11 making a record on irrelevant matters.

12 MS. BLANCHETTE: I appreciate it. I have one more
13 question regarding the trial.

14 BY MS. BLANCHETTE:

15 Q. The reasonable doubt instruction on page 79, lines 11
16 through 15, was there any objection made to that instruction
17 pursuant to State v. Manning?

18 A. No.

19 Q. Okay. Let's turn to your sentencing that occurred in
20 front of Judge Cooper on January 18th, 2005, and I believe
21 that starts on page around 97 of the record on appeal.

22 There the judge inquires as to whether or not you have
23 an attorney, and he's informed no. And, as a result, Mr.
24 All was appointed to assist you, is that correct?

25 A. Yes.

1 Q. And if you could look at page 99, specifically, please.

2 There the solicitor gives an explanation about what
3 happened before your attorney was relieved and the court
4 makes a comment.

5 What does he say there on line 24? You can read that,
6 please.

7 A. "Well, he should have one or the other."

8 Q. Okay. And that was after the State explained about
9 your attorney having been relieved, is that correct?

10 A. Yes.

11 THE COURT: Listen, counsel, you are starting to
12 bend my patience just a little bit.

13 MS. BLANCHETTE: Okay.

14 THE COURT: I have already told you that that's
15 not relevant in the case and you are having this witness
16 testify to a legal matter that you are raising to the court
17 that I have already told you doesn't matter, because -- and
18 you just keep on.

19 Now, it's one thing to make a record. It's
20 another one to make a record on something that I have
21 already against you on and it's already on the record.

22 Just because he said "you ought to have one or the
23 other," blah, blah, blah, it makes no difference. The court
24 has already ruled on that. The appellate court said -- they
25 denied the appellate grounds on that issue. Okay? And

1 so --

2 MS. BLANCHETTE: Yes.

3 THE COURT: -- you have already addressed that,
4 and I have addressed it, and now you are addressing it with
5 this witness. Now you are having him read from a brief that
6 went up on appeal and we are addressing it again.

7 MS. BLANCHETTE: I'm not trying to try your
8 patience, Your Honor.

9 THE COURT: Well --

10 MS. BLANCHETTE: I understand.

11 I was trying to tie it into my next question about
12 counsel's failure to make a motion to reconsider in front of
13 Judge Cooper.

14 THE COURT: You have already made that and said to
15 the court.

16 This witness is not expert in the law and he's not
17 the one that's going to have to rule on this. So if you are
18 saying that, you know, the attorney should have made a
19 motion, that's fine, you can make that argument. That's a
20 legal argument.

21 MS. BLANCHETTE: Okay.

22 THE COURT: Okay.

23 MS. BLANCHETTE: As long as I'm protected in the
24 record, I'll be happy to move on, Your Honor.

25 I didn't understand that when I said that as part

1 of the initial motion that you didn't want me to address it
2 with this witness. I can move on.

3 THE COURT: I'm letting you make a record, but you
4 are going back over the same thing already.

5 This witness -- what's this witness going to be
6 able to testify to that you hadn't already said to the
7 court, counsel?

8 BY MS. BLANCHETTE:

9 Q. After Mr. All was reappointed because all the parties
10 agreed it was a critical stage, did he make a motion to
11 reconsider on your behalf?

12 A. No, ma'am.

13 Q. Okay. And is that something that you would have wanted
14 him to do?

15 A. Yes.

16 MS. BLANCHETTE: Your Honor, briefly if I could
17 have him respond to just some of the points that are made
18 about him in the Appellate Court decision regarding his
19 actions, or I can make that as a legal argument, but I just
20 have two questions, really, about his actions that I would
21 like to ask him.

22 THE COURT: Go ahead.

23 BY MS. BLANCHETTE:

24 Q. In the Appellate Court decision it states that you knew
25 Fletcher Smith did not represent you. Was that your

1 knowledge at the time of your trial?

2 A. No.

3 Q. It also states that you intentionally failed to
4 cooperate with your appointed attorney. Were you
5 intentionally failing to cooperate?

6 A. No.

7 Q. It also goes into a great analysis about you waived
8 your right to an attorney because you were manipulating or
9 trying to play the system. Is that what you were trying to
10 do, Mr. Pride?

11 A. No, ma'am.

12 Q. Okay, fine.

13 Did you want counsel at your trial?

14 A. Yes.

15 Q. Mr. Pride, we met a number of times and we have gone
16 over your case, and it is a unique case, but is there
17 anything that I have failed to ask you about that you would
18 like to tell the court in support of your application today?

19 A. No, ma'am.

20 MS. BLANCHETTE: Your Honor, I have no further
21 questions.

22 CROSS EXMINATION BY MR. JOHNSON:

23 Q. Mr. Pride, your testimony is that you wanted counsel at
24 your trial, isn't that correct?

25 A. Yes.

1 Q. In fact, you actually had counsel at your trial, didn't
2 you, but he was relieved by the court because you failed to
3 show up?

4 A. Yes.

5 Q. And you failed to communicate with him whatsoever, and
6 you said that Mr. Smith was your attorney?

7 A. Yes, Mr. Fletcher was my attorney.

8 Q. However, he was relieved a month before this, was he
9 not?

10 A. Yes.

11 Q. You also state that your trial would have been
12 different if Mr. All would have objected to certain issues.
13 Isn't that your testimony on direct examination?

14 A. Yes.

15 Q. Wouldn't it be different if you would have showed up
16 for your trial?

17 A. Sir?

18 Q. Wouldn't it be different if actually showed up for your
19 trial?

20 MS. BLANCHETTE: Your Honor, I object. That's
21 argumentative.

22 THE COURT: Overruled.

23 You may answer.

24 BY MR. JOHNSON:

25 Q. Wouldn't it have been different had you shown up for

1 your trial?

2 A. If my lawyer would have informed me of my trial, I
3 would have been there.

4 Q. Sir, didn't you sign a bond form the day before?

5 A. A bond --

6 Q. Didn't you show up for roll call and sign a bond form
7 the day before your case was called to trial?

8 A. No, sir.

9 MR. JOHNSON: Your Honor, in the record, I believe
10 it's page 11 -- it may not be that.

11 Page 9, Your Honor, taking judicial notice that
12 there was a bond form signed by Mr. Pride that stated that
13 should he fail to attend the court -- to attend court, the
14 trial would proceed in his absence.

15 BY MR. JOHNSON:

16 Q. You also state that the State offered you ten years in
17 a plea offer, isn't that correct?

18 A. Yes.

19 Q. Do you have any proof of that?

20 A. No, sir.

21 Q. Mr. All attempted to inform you that he was
22 representing you, didn't he, because you applied for the
23 Public Defender's Office?

24 A. Yes, I did.

25 Q. But you said -- you told Mr. All that Mr. Smith was

1 representing you, right?

2 A. Yes, I told him I was seeking to hire private counsel.

3 Q. However, he was already relieved at that point, was he
4 not, Mr. Smith?

5 A. Yes.

6 MR. JOHNSON: That's all I have, Your Honor.

7 MS. BLANCHETTE: I have nothing on redirect, Your
8 Honor.

9 THE COURT: Mr. Pride, in a sense I don't think
10 you -- I'm not saying that you were gaming the system. I'm
11 not asking you if you were gaming the system, but the fact
12 of the matter is you neglected your own rights in this case,
13 insofar as an attorney is concerned, didn't you?

14 You got a copy of the order. You knew Mr.
15 Fletcher had been relieved by the court, by Judge Maddox,
16 from representing you, correct?

17 THE WITNESS: Yes, sir.

18 THE COURT: And Mr. Smith, you heard his testimony
19 today. He said y'all couldn't agree. You had some kind of
20 disagreement and you fired him.

21 THE WITNESS: He asked me --

22 THE COURT: You heard his testimony?

23 He said that you fired him, correct?

24 THE WITNESS: He asked me to do that, though.

25 THE COURT: Did you fire him?

1 THE WITNESS: Yes.

2 THE COURT: Okay. So he was relieved. You got a
3 copy of the order relieving him. So you knew he was not
4 representing you any more on this case, correct?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay. And so you -- upon advice from
7 Mr. Smith, you went and applied and got the Public Defender
8 to represent you, who was Mr. All, is that correct?

9 THE WITNESS: Yes, sir. I also went and met Mr.
10 All when Mr. --

11 THE COURT: Just answer my question and then I'll
12 let you -- you can follow it up, if you want to, if you need
13 to complete your answer, but you applied for and got
14 appointed Mr. All as your attorney, did you not, the Public
15 Defender?

16 THE WITNESS: Yes.

17 THE COURT: Correct?

18 THE WITNESS: Yes.

19 THE COURT: Okay. But you didn't return any of
20 his phone calls or his letters that he sent to you to come
21 in to try to prepare and get ready for your case, did you?

22 THE WITNESS: No, sir.

23 THE COURT: And you didn't do that, because you
24 planned all the time to have Mr. Smith represent you,
25 Fletcher Smith, correct?

1 THE WITNESS: Yes.

2 THE COURT: So you ignored Mr. All, correct?

3 THE WITNESS: I --

4 THE COURT: You had no intention of Mr. All
5 representing you, did you?

6 THE WITNESS: No, sir. I told him that.

7 THE COURT: Right.

8 You told Mr. Smith that and you told Mr. All that,
9 didn't you?

10 THE WITNESS: No, I didn't tell Mr. Smith that. I
11 was meeting with Mr. Smith. I was going to see him.

12 THE COURT: But you told Mr. All Mr. Smith is
13 going to represent you?

14 THE WITNESS: The day that I --

15 THE COURT: That you were going to have a private
16 attorney, a paid attorney, instead of him?

17 THE WITNESS: Yes.

18 THE COURT: And you didn't go to his office and
19 help prepare your case and get it ready for trial, or
20 anything, even though it was coming up, did you?

21 THE WITNESS: No.

22 THE COURT: Okay. Now, you say that you continued
23 to meet with Mr. Smith?

24 THE WITNESS: Yes.

25 THE COURT: And -- but Mr. Smith was not

1 representing you and he was not the one who was dealing with
2 the solicitor, if he was not representing you, do you
3 understand that?

4 THE WITNESS: Yes.

5 THE COURT: Okay. So the solicitor would not have
6 been calling Mr. Smith to tell him your case is set for
7 trial.

8 He would have been calling Mr. All, because Mr.
9 All was your attorney, correct, according to the court
10 records?

11 THE WITNESS: Yes.

12 THE COURT: Okay. But you didn't cooperate with
13 Mr. All, didn't return his phone calls, respond to his
14 letters, correct?

15 THE WITNESS: No, sir.

16 THE COURT: Because you planned all along to have
17 Mr. Smith represent you at the trial, correct?

18 THE WITNESS: Yes.

19 THE COURT: But you never actually got Mr. Smith
20 reinstated as your attorney. The court records were that
21 Mr. All was your attorney, correct?

22 THE WITNESS: I didn't -- I didn't know that,
23 though.

24 THE COURT: Well, I mean, you understand he was
25 appointed and -- he was appointed to represent you and he

1 was your attorney of record. Mr. Smith was not your
2 attorney of record. He had been relieved, but you
3 considered Mr. Smith your attorney, not Mr. All, correct?

4 THE WITNESS: Yes.

5 THE COURT: All right. I think that's all the
6 questions that I have.

7 I always allow attorneys to follow up with any
8 questions that I ask, if you want to ask any additional
9 questions.

10 MS. BLANCHETTE: Your Honor, I understand you have
11 a copy of the record. I just ask the record reflect that he
12 did meet with Mr. All the night before the trial, that he
13 met with him on one other occasion. That's in the record,
14 so I won't ask any questions on that.

15 MR. JOHNSON: Just one followup, Your Honor.

16 RE-CROSS EXAMINATION BY MR. JOHNSON:

17 Q. Mr. Pride, you actually have previous convictions, do
18 you not? You have five previous convictions?

19 A. Five?

20 Q. You have a 1994 lynching; a '97 distribution of crack;
21 a 2000 public disorderly conduct; a 2000 failure to stop for
22 a blue light; and a 2002 abuse of a vulnerable adult?

23 A. Yes, sir.

24 Q. So this ain't your first rodeo in the Criminal Justice
25 System, is it?

1 A. No, sir.

2 MR. JOHNSON: No further questions.

3 MS. BLANCHETTE: Your Honor, if I may in response?

4 THE COURT: Yes.

5 REDIRECT EXAMINATION BY MS. BLANCHETTE:

6 Q. Mr. Pride, in all those prior charges that the State
7 has raised, were you ever tried in your absence?

8 A. No, ma'am.

9 Q. And were you ever -- was there ever anything put on the
10 record to waive your right to counsel because you were not
11 cooperative?

12 A. No, ma'am.

13 MS. BLANCHETTE: Your Honor, I have no further
14 questions.

15 THE COURT: It doesn't matter, counsel. That's
16 frivolous.

17 All right, stand down, please.

18 MS. BLANCHETTE: Your Honor, if the court would
19 like, I do have a copy of both Roberson and Thompson that
20 are referred to in the Appellate Court decision, if you
21 would like a copy of those.

22 THE COURT: I will be glad to look at them. I
23 don't think they are going to be relevant for my decision,
24 but if you want to hand them up, I'll be glad to look at
25 them.

1 MS. BLANCHETTE: And I would just like to point
2 out that in both of these cases, as is pointed out by the
3 Court of Appeals, it wasn't an issue of the attorney being
4 relieved. There was not on attorney in both of those cases
5 when the case was called.

6 Your Honor, if I could just consult with my client
7 for one moment?

8 (Off the record)

9 (Back on the record)

10 MS. BLANCHETTE: Your Honor, I have no further
11 witnesses.

12 MR. JOHNSON: I call Mr. All to the stand.

13 WILLIAM ALL, ESQUIRE, having been first duly
14 sworn, testified as follows:

15 THE WITNESS: I so affirm.

16 DIRECT EXAMINATION BY MR. JOHNSON:

17 Q. Good morning, Mr. All.

18 Can you explain how you became involved in this case?

19 A. In this particular case?

20 Q. Yes, sir, real quick.

21 A. I was appointed by the -- probably the Clerk of Court's
22 office, I believe it was, after Mr. Fletcher Smith had been
23 removed as counsel. He asked the Clerk of Court, if I
24 recall correctly, to have me appointed and I was appointed.

25 Q. And about what date was that?

1 You say it was after October, I think, 13th of 2004?

2 A. No, I think it's going to be at least September 16th.

3 Q. Excuse me, September. Excuse me.

4 A. Because I -- and I have an e-mail from me to Dan King
5 of the solicitor's office September 16th, 2004, saying "I
6 have been appointed to represent Chris Pride on regards to
7 his drug charges. Please advise me as to what his offer
8 is."

9 Q. Did you receive any response?

10 A. Yes, I did.

11 Q. And what was that response?

12 A. He's offered ten years for his charges, for the charges
13 to run concurrent, and that he would get me a trial
14 notification letter.

15 And after that the offer of ten years was withdrawn,
16 and I was told that E.B. Springs had the case and the offer
17 was not there, and I never had an opportunity to talk to Mr.
18 Pride about the offer.

19 Q. Is that because the offer was already withdrawn, or is
20 that because -- did you try to contact Mr. Pride?

21 A. Yes, sir.

22 Q. Concerning the offer?

23 A. Well, concerning the whole representation of him.

24 Q. And did he try to contact you back?

25 A. He made two appointments to the office and he failed to

1 appear at both appointments. And both appointments, as he
2 indicated, he was working is the reason that he gave that he
3 had failed to appear.

4 Q. Did you ever send a letter to him?

5 A. Yes, sir. It's the letter that's outlined in the
6 transcript.

7 Q. That's about October the 1st?

8 A. If that's what the transcript says. I would have to
9 pull the --

10 Q. Okay.

11 A. But I did send him a letter, yes, sir.

12 Q. And can you, I guess, explain to the court what all you
13 would have put in that letter or what is in that letter?

14 THE WITNESS: Excuse me, Your Honor.

15 THE COURT: Sure, take your time.

16 (Off the record)

17 (Back on the record)

18 A. I read the letter --

19 BY MR. JOHNSON:

20 Q. Okay.

21 A. -- at the hearing.

22 MR. JOHNSON: Well, if it's already in the
23 transcript, I don't need for him to read it, Your Honor.

24 A. Thank you.

25 MR. JOHNSON: I'll just take judicial notice.

1 It's on page six.

2 BY MR. JOHNSON:

3 Q. And in that letter you advised that you needed to talk
4 to Mr. Pride and discuss the case and you could get prepared
5 for trial?

6 A. Yes, sir.

7 Q. And that you already had a notification for trial?

8 A. I believe I was told it was going to be tried the next
9 term.

10 Q. And did you ever meet with Mr. Pride after that?

11 A. Yes, sir.

12 Q. And when was that?

13 A. And I -- and I may be getting these days slightly
14 wrong, but it seems like Monday he was reporting to roll
15 call of the week that the trial was and he got picked up for
16 a driving under suspension and that's when he had the \$5,000
17 in his pocket that he said he was going to try to hire
18 Fletcher Smith with. I found out about that and I can't
19 recall if I actually met him at the jail or if I met him at
20 the courthouse, but I talked to him about representing him
21 and he indicated that he had the money, he was hiring Mr.
22 Smith to represent him.

23 And I contacted Mr. Smith's office and I did not get to
24 talk to Mr. Smith, but I got to talk to one of his
25 assistants and told her the information and she was going to

1 try to get in touch with Mr. Smith.

2 Q. And did you later find out that Mr. Smith did not
3 represent Mr. Pride?

4 A. Mr. Smith never showed up to court.

5 And the next I heard about Mr. Smith was at the
6 sentencing hearing where Mr. Pride indicated that Mr. Smith
7 was representing him and that he was in the -- General
8 Assembly was going on and he was up there at some sort of
9 meeting.

10 I never got ahold of Fletcher. I just kept missing him
11 every time I would call him.

12 Q. And the court did, in fact, relieve you as counsel at
13 Mr. Pride's trial?

14 A. At the very beginning we were talking about Mr. Pride's
15 absence and why he was absent and how he felt Mr. Smith was
16 representing him. At that point I was relieved, yes, sir.

17 Q. And did you stick around for the rest of the trial?

18 A. No, sir. I went and talked to other Public Defender
19 clients.

20 I was in the courthouse. So, you know, if Chris had
21 shown up, you know, and needed me to represent him, I would
22 have been there, but I told the court that, that I would be
23 there, if needed.

24 Q. But he didn't, in fact, show up for his trial?

25 A. That is my understanding, yes, sir.

1 Q. Let's skip ahead to the sentencing hearing.

2 You were appointed as counsel for a sentencing hearing
3 and to file an appeal on his behalf, or for the purpose of
4 doing those two things?

5 A. Yes, sir, I offered to stand up there so we could file
6 an appeal on his behalf, yes, sir.

7 Q. And you did, in fact, file that appeal?

8 A. Yes, sir.

9 Q. Now, counsel I'm sure is going to get into this, but
10 you did not make a motion under Rule 29(a) within ten days
11 for a new trial?

12 A. That is correct.

13 Q. Have you ever filed those motions?

14 A. I can't recall if I have or not.

15 Q. But you are familiar with that motion?

16 A. Yes, sir.

17 Q. Have you ever heard of that motion being successful, or
18 do you know of any cases that that 29 motion --

19 A. I'm not --

20 Q. -- would be successful?

21 A. I'm not sure.

22 MS. BLANCHETTE: Your Honor, I would object. That
23 would be pure speculation.

24 THE COURT: It's not if he knows, counsel. Does
25 he know of any, that's what he asked him, not that are there

1 any.

2 A. Yeah, I don't remember.

3 BY MR. JOHNSON:

4 Q. You don't remember or you don't know of any cases?

5 A. I can't remember any right now. If you quizzed me
6 enough you might come up with one and say yeah, I know of
7 that, but right now I do not remember any.

8 Q. To get back to the trial, did you argue for or argue
9 against Mr. Pride being tried in his absence?

10 A. We were in discussion of why he was not present when it
11 was put to me that based on the facts that were relayed to
12 the court, it was apparent that Mr. Pride considered Mr.
13 Smith his attorney and not me and suggested I make a motion
14 to be relieved.

15 Q. But before that you didn't make any motion against
16 trying Mr. Pride in his absence?

17 A. No, that was just at the very start.

18 If that had not happened, we were going to make a --
19 you know, we were going to request that. We would request a
20 continuance. We would request a Jackson v. Denno. We would
21 have had a suppression hearing.

22 Q. And you were prepared to do that, had you not been
23 relieved of counsel?

24 A. I mean, I can always make a Jackson v. Denno and
25 suppression hearing, yes, sir.

1 I mean, I was not prepared on this case, because I
2 hadn't really met with him, but, I mean, I could have made
3 it and I would have made it. I would have put the burden on
4 them to --

5 Q. And you were not prepared because Mr. Pride didn't show
6 up to explain the case to you?

7 A. I was not prepared until Mr. Pride told me that he was
8 hiring Fletcher Smith and Fletcher was going to be
9 representing him.

10 I handed him a memorandum of law that they handed me
11 on -- well, I don't think I handed him. I can't remember if
12 I handed him or told him -- I believe I handed it to him a
13 copy that Fletcher Smith needed to have, because they were
14 making a motion and if Fletcher was going to be prepared, he
15 needed to have it.

16 MR. JOHNSON: Court's indulgence, Your Honor.

17 (Off the record)

18 (Back on the record)

19 MR. JOHNSON: No further questions.

20 Thank you, Mr. All.

21 THE COURT: Yes.

22 MS. BLANCHETTE: Very briefly, Your Honor.

23 CROSS EXAMINATION BY MS. BLANCHETTE:

24 Q. Do you have a copy of the record on appeal, Mr. All?

25 A. Yes, sir -- ma'am, I'm sorry.

1 Q. That's fine.

2 If you could look at page 8, line 25.

3 There does the State actually move to try Mr. Pride in
4 his absence before you are relieved as counsel?

5 That's page 8, line 25.

6 A. Immediately upon him doing that, the next person that
7 speaks is the judge basically asking me to be relieved. I
8 did not have an opportunity to address that, ma'am.

9 Q. Okay. So you are saying you did have an opportunity?
10 That's why you didn't object or move for a continuance?

11 A. The very next thing that happened was the dialogue
12 between the court and me about being relieved of counsel. I
13 mean, there was -- that was the very first thing that
14 happened.

15 Q. And did you ever indicate to the court that you needed
16 the opportunity to make an objection or to put anything on
17 the record for your client -- for Mr. Pride who was still
18 your client at that time?

19 A. I did not put anything on the record.

20 THE COURT: Counsel, let me interrupt you just a
21 second and say I'm reading the transcript at page 9.

22 MS. BLANCHETTE: Uh-huh.

23 THE COURT: It says "all right, but --

24 This is the court. "All right. But before I make
25 a ruling on that, Mr. All" --

1 This is on a motion by the State to go forward
2 with the trial in his absence. "Before I rule on that, Mr.
3 All, where do you stand? Do you wish to be -- do you feel
4 that by his conduct you certainly have a right to move to be
5 relieved because he has not cooperated."

6 So the court is taking that up before it gets into
7 these motions for to go forward with the trial, or trial in
8 absence.

9 So what he's saying is I was relieved before I had
10 an opportunity to make any motion for a continuance or not
11 to try him in his absence, so -- and that's what he's
12 saying.

13 MS. BLANCHETTE: That's why I wasn't going to ask
14 him any further questions, because I acknowledge what's in
15 the record, Your Honor.

16 THE COURT: All right.

17 MS. BLANCHETTE: And I have no further questions.

18 MR. JOHNSON: Nothing from the State, Your Honor.

19 THE COURT: Thank you, sir.

20 THE WITNESS: Thank you, Your Honor.

21 MR. JOHNSON: We would ask that Mr. All be
22 excused.

23 THE COURT: Any objection?

24 MS. BLANCHETTE: No objection, Your Honor.

25 THE COURT: Thank you for coming, sir. You may be

1 excused.

2 THE WITNESS: Thank you.

3 THE COURT: Anything else from the State?

4 MR. JOHNSON: No, Your Honor, the State rests.

5 THE COURT: Anything in reply?

6 MS. BLANCHETTE: Your Honor, I believe that I made
7 my legal arguments at the beginning.

8 If this court would like to hear more from me, I
9 would be happy to rehash those, but I believe you have
10 thoroughly heard my arguments at the beginning as to why we
11 are raising these issues, and also throughout the testimony
12 why I was trying to go into the prejudice. So I believe the
13 court has thoroughly heard me on those issues and arguments,
14 but if you had any further questions, I would be happy to
15 answer those.

16 THE COURT: No, I think I understand your position
17 completely.

18 What concern I had is trying to get into direct
19 appeal issues, because I don't want to get into those, but I
20 think I understand your ground and your arguments. I will
21 look at it.

22 Do you wish to be heard further?

23 MR. JOHNSON: No, Your Honor, we just put on the
24 record that we believe that there is no ineffective
25 assistance of counsel, as counsel was relieved and Mr. Pride

1 has failed to prove any prejudice therefrom.

2 THE COURT: Okay. That may very well be right. I
3 just -- I'm going to have to look at. I am going to study
4 it a little bit more before I make a decision on it.

5 Of course, Mr. Pride himself, he is reason he went
6 to trial without a lawyer. No question about that. And I
7 don't think he was -- I think the court thought he was just
8 kind of delaying everything, as some defendants do, in
9 trying to work things around, fire an attorney, trying to
10 delay the whole thing and that. I don't think that was the
11 case here. I think Mr. Pride just really wanted Mr. Smith
12 to represent him, and -- but he totally ignored the fact his
13 case was being called for trial and Mr. Smith was not
14 representing him. Mr. All represented him, but he wouldn't
15 let Mr. All represent him, and so the whole question is, you
16 know, whether --

17 If you asking the question then whether Mr. All
18 should have been relieved or not, the Appellate Court had
19 problems with that procedure, but they certainly didn't
20 reverse it on that ground, so you can't go there.

21 And so then the question comes down to what Mr.
22 All maybe should or shouldn't have done when he was
23 reappointed for the purposes of filing a notice of appeal
24 and representing him at the sentencing hearing when the
25 sealed sentence was opened. And I guess that's pretty much

1 where we are on this.

2 But, at any rate, I'll look at it and take it
3 under advisement.

4 Thank you.

5 MR. JOHNSON: Thank you, Your Honor.

6 MS. BLANCHETTE: Thank you, Your Honor.

7 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for YORK County, South Carolina, on the 8TH day of FEBRUARY, 2013.

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

September 22, 2013

Michael R. Watts

Michael R. Watts
Circuit Court Reporter



LAW OFFICE OF TRICIA A. BLANCHETTE

March 6, 2013

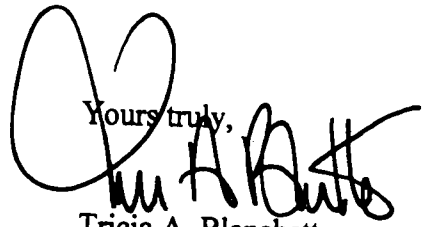
Honorable Lee S. Alford
Judge, 16th Circuit
1675-1J York Hwy.
York, SC 29745

RE: Christopher L. Pride v. State; Case No.2011-CP-44-0331

Dear Judge Alford:

Today, I received a reviewed the State's proposed Order in the above referenced PCR case. I am contacting you because I was highly concerned that the Order fails to make findings of fact and conclusions of law for three of the claims listed in the Amendment, offered at the evidentiary hearing, and listed on page 4/14 of the Order. The claims are listed as 1 (a) & (b) and 2 (b). I understand that I can address this matter through a Rule 59(e), SCRCPP, Motion after the Order is signed, but I thought it would be best to bring it to your attention immediately.

Thank you for your attention to this matter. Please contact me if any additional information is needed.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: J. Rutledge Johnson, Assistant Attorney General
Christopher L. Pride

PO Box 12725 | Columbia SC 29211

p: 803.988.0008 | f: 803.988.8070 | e: blanchettelaw@gmail.com

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK)

Christopher Pride, #281240)

2011-CP-44-0331

Applicant,
vs.)

ORDER OF DISMISSAL

State of South Carolina)

Respondent.)

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

2013 APR 2 PM 4 01

FILED FOR RECORD

This matter comes before the Court by way of an Application for Post Conviction Relief filed August 23, 2011. The Respondent made its Return and Motion to Dismiss on December 19, 2011. This Court signed a Conditional Order of Dismissal on the grounds of failure to file with the statute of limitations on January 4, 2011. The Applicant filed a response alleging Fletcher Smith (Counsel Smith) advised him he had one year from the denial of certiorari from the United States Supreme Court to file his application. The Respondent agreed with the Applicant's prior PCR Counsel, Elizabeth Wiygul, to allow the Applicant an evidentiary hearing. The Applicant subsequently hired Tricia Blanchette as PCR Counsel. The applicant, through Counsel, filed an amended PCR application on November 29, 2012. An evidentiary hearing into the matter was convened on February 8, 2013, at the Moss Justice Center in York, S.C. Tricia Blanchette, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Fletcher Smith, Esquire, and Bill All, Esquire, also testified. This Court had before it a copy of the records of the

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York County Clerk of Court, records from the South Carolina Department of Corrections, and the trial and sentencing transcripts.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections Pursuant to orders of commitment of the Union County Clerk of Court. The Applicant was indicted at the June 2003 term of the Union County Court of General Sessions for Possession of Crack Cocaine with Intent to Distribute (PWID) (2003-GS-44-0519) and PWID Crack Cocaine within proximity of a school (2003-GS-44-0523). He was originally represented by Fletcher Smith, Esquire. On September 13, 2004, the Honorable J. Cordell Maddox, Jr. relieved Counsel Smith from representation. The Applicant subsequently applied to the 16th Circuit Public Defender's Office, and Bill All (Counsel All) was appointed to represent the Applicant.

According to the trial transcript, the Applicant was scheduled to meet with Counsel All on two occasions, but failed to show up due to work obligations. On October 1, 2004, Counsel wrote the Applicant a letter, stressing the importance of meeting with him to discuss the case and prepare for trial, which was scheduled for the week of October 11, 2004. The Applicant rescheduled an appointment for October 7, 2004, but failed to show and/or call Counsel All's office. The day before the scheduled trial, the Applicant appeared for roll call, met with Counsel All and stated he needed to meet with Counsel Smith. Counsel All then attempted to contact Counsel Smith concerning representation. The solicitor informed Counsel All that Counsel Smith's office had contacted the solicitor and stated Counsel Smith did not represent the Applicant.

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On October 13, 2004, the case proceeded to trial. During pre-trial discussions and motions, the solicitor introduced a bond form, signed by the Applicant, that informed the Applicant that if he failed to show for trial, he would be tried in his absence. The State then moved to try the Applicant in his absence. Immediately following this motion, there was a discussion about Counsel All's representation of the Applicant, and the Honorable John C. Hayes, III relieved Counsel All from representation. The Applicant, *pro se*, was tried by a jury *in absentia* and convicted of PWID Crack Cocaine, 2nd offense, and PWID Crack Cocaine with proximity of a school. The sentence was sealed until the Applicant was located.

On January 18, 2005, the Applicant appeared for a sentencing hearing before the Honorable G. Thomas Cooper, Jr. Counsel All was reappointed for sentencing and for the primary purpose of filing an appeal. Judge Cooper unsealed the sentence by which Judge Hayes sentenced the Applicant to confinement for twenty-five (25) years for PWID Crack Cocaine, 2nd offense, and fifteen (15) years, concurrent, for the proximity charge.

Thereafter, the Applicant appealed his conviction and sentence. After full briefing, the South Carolina Court of Appeals affirmed his conviction. State v. Pride, 2007-UP-544 (S.C. Ct. App. filed December 5, 2007). The Applicant then appealed to the South Carolina Supreme Court who granted certiorari. Subsequently, the S. C. Supreme Court dismissed the Applicant's appeal as improvidently granted. State v. Pride, Op. No. 2009-MO-064 (S.C. filed December 14, 2009). The Remittitur was issued on December 30, 2009.

The Applicant then appealed to the United States Supreme Court. The Supreme Court denied his petition for writ of certiorari on June 21, 2010.

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

1. "Ineffective Assistance of Counsel"
2. "Violation of S. C. Const. Article 1, Section 3 and U.S. Const. 14"

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

1. "As to representation by William All, Esquire:"
 - a. "Ineffective assistance of counsel for failure to effectively argue against trial in absence."
 - b. "Ineffective assistance of counsel for failure to protect client's right to counsel during trial in absence."
 - c. "Ineffective assistance of counsel for failure to file a Motion pursuant to Rule 29 (a), SCRCrimP, following his reappointment during Applicant's sentencing hearing."
2. "As to representation rendered by Fletcher Smith, Esquire:"
 - a. "Ineffective assistance of counsel for failure to act on guilty plea offer communicated to Applicant."
 - b. "Ineffective assistance of counsel for failure to appear in court at trial or sentencing to address the existence if an attorney/client relationship with Applicant."

SUMMARY OF TESTIMONY

Counsel Smith testified he was retained to represent the Applicant in this matter. Counsel stated he attended a bond hearing in the Applicant's behalf and met with the solicitor about the case. Counsel testified he had a disagreement with the Applicant and that the Applicant had not paid the entire retainer fee. Subsequently, the Applicant fired Counsel, and Judge Maddox relieved Counsel. Counsel also testified he did not recall a

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plea offer from the State, and there was no record in his file concerning a plea offer.

Additionally, Counsel stated the Applicant would not cooperate with him, but did attend roll call. After being relieved, Counsel sent the Applicant to apply for the public defender's office. Counsel further testified he was retained by the Applicant on the appeal and raised the issue of issue of waiver of right to counsel. Counsel lastly testified that theoretically he could have raised the trial in absence issue and the Rule 29 SCRCrimP issue had Counsel All made objections at the trial and sentencing.

The Applicant testified he wanted a new trial and understood he could get the maximum sentence which would be forty (40) years. He testified he was arrested on April 3, 2003 and retained Counsel Smith, who was later relieved by the court. He asserted there was a ten-year plea offer from the State, and he wanted to accept the plea offer, but was unable to do so. The Applicant again admitted Counsel Smith was relieved by the court on September 13, 2004, although he claimed he still thought Counsel Smith was his counsel because he continued to meet with Counsel Smith. He then testified he only had one meeting with Counsel All and had to cancel the other meetings because he was working to be able to pay Counsel Smith. During this meeting, the Applicant testified he and Counsel All did not discuss the discovery. He also stated he always showed up to roll call, but did not attend court the morning of his trial because Counsel Smith allegedly told the Applicant he was in court in Anderson.

The Applicant additionally testified that prior to Counsel being relived, there was no objection to a trial in absence or request for a continuance. He also testified to a plethora of reasons he felt he was prejudiced, including: no objection made to two jurors who

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allegedly had connections with the State, no defense witnesses called at the Jackson v. Denno¹ hearing, no objection to a redacted statement which included the Applicant's admission that "[Applicant] started selling crack again," no objection to the chain of custody, no questioning of the chemist's qualifications and no objection to the reasonable doubt jury charge. In addition, the Applicant asserted when Counsel All was reappointed for the sentencing hearing that he failed to move to reconsider the sentence. He once again testified he thought Counsel Smith represented him and that he was not "trying to play the system," but that he wanted counsel at trial.

On cross-examination, the Applicant admitted he knew Counsel Smith had been relieved by the court one month before his trial and that he was appointed Counsel All. He also admitted his trial would have been different had he shown up to it, but was not informed by Counsel All of the trial date. However, Counsel All stated on the record that someone in the courtroom had seen the Applicant in the parking lot that day. When the bailiff called the Applicant's name three times on the courthouse steps and in the hall of the courthouse, there was no answer. The Applicant admitted he had no proof of the ten-year offer from the state.

This Court questioned the Applicant and he admitted that he fired Counsel Smith and knew Counsel Smith did not represent him. He also admitted he did not meet with Counsel All because he wanted Counsel Smith to represent him. He further admitted he did not cooperate with Counsel All even though the court records show Counsel All was the attorney of record.

¹ 378 U.S. 368 (1964).

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The Applicant lastly admitted he had five prior convictions and that this was "not his first rodeo" with the criminal justice system.

Counsel All testified he was appointed to this case after Counsel Smith was relieved. While he was aware of an offer from the State, Counsel stated the State had withdrawn the offer before he could present it to Applicant. Applicant failed to get in touch with him when requested. He received trial notification for the week of October 11, 2004. Counsel All testified he attempted to contact the Applicant, but was unable to do so. He sent a letter to the Applicant explaining that he needed to meet with the Applicant and discuss this case in preparation for trial. In this letter, Counsel All also apprised the Applicant that his trial was set for the week of October 11, 2004. Counsel All testified he actually met with the Applicant at roll call when the Applicant was arrested on October 11, 2004 for Driving under Suspension at the Union County Courthouse. At that time, the Applicant apparently told Counsel All that Counsel Smith represented him, so Counsel All tried to contact Counsel Smith's office. Counsel All testified the Applicant did not show up to his trial, and Counsel All was relieved after a discussion on the record of the Applicant's absence and Counsel All's attempts to locate him. He also stated if the Applicant would have shown up, he would have represented the Applicant. Counsel further stated had he not been relieved, he would have sought a continuance, conducted a Jackson v. Denno, *supra*, and filed a suppression motion.

Counsel All further testified there was a discussion about the Applicant's absence, and based on the facts of the case, the trial judge suggested that he would relieve Counsel All due to the Applicant's conduct. Counsel lastly asserted he would have requested a

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continuance but did not have a chance to do so as the trial court relieved him immediately after the State moved to try the Applicant in his absence.

It is clear from the record that the trial court concluded Applicant was seeking to prevent his case from being heard. The trial court granted the State's motion for trial *in absentia*. Upon learning that Applicant had refused to cooperate with Counsel All and would not assist him in preparation for trial, the trial judge relieved Counsel All from representation of Applicant. Once he was relieved as counsel, he had no duty or right to make any motions on behalf of Applicant. It would have been patently obvious that even if he had been able to do so, the trial judge was going forward with the trial that day and such motions would have been denied. Counsel All did not render ineffective assistance in not making such motions.

Additionally, Counsel All testified he was reappointed to the Applicant's case during the sentencing hearing and for the purpose of filing a Notice of Appeal. Counsel also stated, although he is familiar with a Rule 29 SCR CrimP motion for a new trial, he could not remember any successful Rule 29 motions. The only grounds for a new trial which had any merit would have been Applicant's trial *in absentia* without an attorney and without a Faretta warning. These issues were heard on direct appeal and denied. Applicant was not prejudiced because those issues were heard and denied by the S. C. Court of Appeals.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court had the opportunity to observe the witnesses on the witness stand and hear their testimony. The Court also has read the trial transcript and the sentencing transcript, all of which assists the Court in judging their credibility. The court finds the

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testimony of the Applicant's testimony concerning ineffective assistance of counsel not credible while finding the testimony of Counsel Smith and Counsel All credible.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S. C. Code Ann. §17-27-28 (2003).

Facts at Trial

The following facts were on the record:

The Applicant was released from prison on January 5, 2003, after serving a nine (9) month sentence for distribution of crack cocaine. In February 2003, he started selling crack cocaine again. He purchased crack cocaine two times a week from the same person in the amount of two or three ounces each time. The Applicant paid \$1,650.00 for two ounces and \$2,200.00 for three ounces. He then sold the crack cocaine in various amounts from \$20.00 to \$450.00 per sale.

On April 2, 2003, law enforcement served a search warrant on the Applicant's girlfriend's apartment. After service of the search warrant and after being advised of his Miranda² rights, the Applicant admitted to officer's he had crack cocaine in his pants pockets in the bedroom. Law enforcement then checked his pants pockets and found a clear bag of crack cocaine. They also found \$1,850.00 in his pants pockets which he admitted was from the sale of crack cocaine. The apartment search was located within one-half mile of Buffalo elementary School. The Applicant took full responsibility for the drugs and the money. He advised law enforcement that his girlfriend had nothing to do with the drugs or the money. The Applicant was arrested and taken to the police station

² Miranda v. Arizona, 384 U.S. 436 (1966).

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where he was again advised of his Miranda rights. He then signed a written statement which admitted the drug dealing.

A Jackson v. Denno hearing was held pre-trial. The trial court found that the oral and written statements were made by the Applicant freely and voluntarily after he was advised of his fifth and sixth amendment constitutional rights. The solicitor agreed, voluntarily, to redact that part of the Applicant's statement which talked about getting out of prison after serving a nine (9) month sentence on another distribution of crack cocaine charge. The trial court admitted the statement into evidence and properly instructed the jury on the State's burden of proving the statement was made freely and voluntarily after being advised of his constitutional rights beyond a reasonable doubt before they could consider it.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the

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exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Plea offer

The Applicant alleged Counsel Smith was ineffective for failing to act on a plea offer from the State. This allegation is without merit.

The Applicant initially engaged Counsel Smith to represent him. There was a disagreement between Counsel Smith and the Applicant, resulting in Counsel Smith being fired by the Applicant, and Counsel Smith was relieved of his representation by Court order. Counsel Smith had not been paid as promised, and Counsel Smith did not believe the Applicant had the financial ability to retain an attorney to represent him. He advised the Applicant to apply for the public defender. The Applicant applied, and Counsel All was appointed to represent him.

The solicitor handling the case thereafter directed his communications about the case to Counsel All, the attorney of record. The Applicant would not communicate with Counsel All. He did not show up for several appointments, did not return some phone calls, and did not cooperate with Counsel All in any way to prepare for his upcoming trial of which the Applicant was aware. A plea bargain offer was made to Counsel All, but due to

the Applicant's refusal to communicate, the offer was withdrawn by the new solicitor on the case before Counsel All could discuss it with the Applicant.

The Applicant alleges that a plea bargain offer was made to Counsel Smith and that Counsel Smith did not tell him about it. In his testimony at the PCR hearing, Counsel Smith did not remember any plea offer from the State. The Applicant provided no proof other than his naked allegation and did not testify as to how he learned of such an offer from Smith. It is more likely that the offer was made to his attorney, Counsel All, by the solicitor, but that the offer was withdrawn before it could be communicated to him by Counsel All. It is clear from the applicant's testimony that he never considered Counsel All his attorney, even though up to the day before his trial, Counsel Smith's office informed the solicitor he did not represent the Applicant. The Applicant further admitted he knew Counsel Smith was relieved by a Court order the month before his trial.

The Applicant would have had an opportunity to accept a plea bargain if he had communicated and been cooperative with his attorney, Counsel All. Unless he accepted a plea bargain offer, he would almost certainly have been convicted by a jury, even with the representation of an attorney at trial.

This Court finds there is no credible evidence that Counsel Smith received a plea bargain offer from the solicitor and failed to communicate the offer to the Applicant. Counsel Smith testified he did not remember any offer from the State. The Court does not find the Applicant's self-serving testimony credible on this issue. The Applicant has failed to prove that Counsel Smith rendered ineffective assistance and accordingly, this allegation is denied.

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Motion for a new trial

The Applicant also alleged Counsel All rendered ineffective assistance in failing to make a motion for a new trial at the Applicant's sentencing hearing before the Honorable G. Thomas Cooper, Jr., who was not the trial judge that issued the sealed sentences.

This Court observed from the record of the sentencing hearing that Counsel all volunteered to be reappointed as counsel for the Applicant during the sentencing hearing for the primary purpose of filing a Notice of Appeal so Indigent Defense could perfect an appeal on the Applicant's behalf.

This Court finds a motion for a new trial would not have been granted and would not have preserved any issues which were not addressed in the direct appeal. A trial *in absentia* without an attorney (*pro se*) and without Faretta³ warnings was addressed by the S. C. Court of appeals and is the law of the case. Counsel Smith was retained by the Applicant to help with the appeal.

Neither Judge Cooper nor Counsel All had a trial transcript at the sentencing hearing. The Applicant could have testified concerning the voluntary statement, but he did not testify at the PCR hearing as to anything that would make his statement inadmissible. He has a substantial criminal record and has had previous experience with the criminal justice system.

Additionally, there was overwhelming evidence of the Applicant's guilt. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be

³ Faretta v. California, 422 U.S. 806 (1975).

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prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); see also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). Additionally, had the Applicant taken the stand in his own defense, he could have and most likely would have been impeached with his prior convictions.

This Court finds Counsel All was not ineffective for not making a motion for a new trial as Counsel All's main purpose during the sentencing hearing was to file a Notice of Appeal. Further, a motion for a new trial would not have been successful as Judge Cooper was not the trial judge and was not going to overturn another circuit judge's sentence. The Applicant has failed to meet his burden of proving Counsel All was ineffective or that he was prejudiced in this case as there was overwhelming evidence of his guilt. Accordingly, this allegation is denied.

CONCLUSION

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

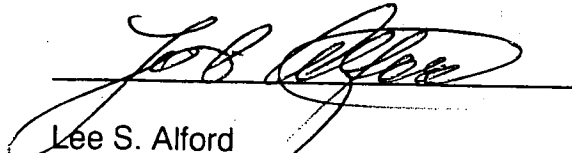
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has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

Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

IT IS SO ORDERED.


Lee S. Alford
Resident Judge
of the Sixteenth Judicial Circuit

York, South Carolina

March 25, 2013

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STATE OF SOUTH CAROLINA

COUNTY OF UNION

IN THE COURT OF COMMON PLEAS

FILED FOR RECORD

Christopher L. Pride, #281240

Plaintiff

APR 11 AM 9 51

CASE NO.

2011-CP-44-0331

**WILLIAM F. GAULT
CLERK OF COURT
UNION, SC**

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina

Defendant.

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904
Address:
PO Box 12725
Columbia, SC 29211
phone: 803-988-0008 fax: 8030988-8070
e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:
J. Rutledge Johnson, Bar No.
Address:
PO Box 11549
Columbia, SC 29211
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

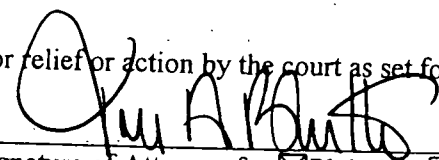
- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider
Estimated Time Needed: 1/2 hour Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff / Defendant April 8, 2013
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT:
- EXEMPT:
 - Rule to Show Cause in Child or Spousal Support
 - (check reason) Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
 - Name of Court Reporter:
 - Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE _____
CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- MOTION FEE COLLECTED: _____
- CONTESTED - AMOUNT DUE: _____

COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION)
)
 Christopher Pride, #281240,)
 Applicant,)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-44-0331

MOTION FOR REHEARING
 PURSUANT TO RULE 59(a), SCRC
 AND/OR MOTION TO ALTER
 AMEND PURSUANT TO
 RULE 59(e), SCRCP

FILED FOR RECORD
2013 APR 11 AM 9 51
WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

PLEASE TAKE NOTICE that Applicant, through his undersigned attorney, will move before the Honorable Lee S. Alford to direct an entry of a new judgment and/or alter or amend the judgment signed on March 25, 2013, which was filed on April 2, 2013. A copy of the filed Order was received by undersigned counsel from the Union County Clerk of Court's Office on April 5, 2013.

COMES NOW Applicant, through his undersigned attorney, and requests that this Court direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order, pursuant to Rule 59(e), SCRCP.

This matter comes before this Court pursuant to an Application for Post Conviction Relief filed on August 23, 2011. The State submitted a Return and Motion to Dismiss, along with a proposed Conditional Order of Dismissal on December 19, 2011. A Conditional Order of Dismissal was signed on January 4, 2012. After Applicant filed a response, the State agreed that Applicant should be allowed to proceed to an evidentiary hearing. Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief on December 3, 2012, which added the following allegations to Applicant's original allegation of ineffective assistance of counsel:

1. As to representation rendered by William All, Esquire:
 - a. Ineffective assistance of counsel for failure to effectively argue against trial in absence.
 - b. Ineffective assistance of counsel for failure to protect client's right to counsel during trial in absence.
 - c. Ineffective assistance of counsel for failure to file a Motion pursuant to Rule 29(a), SCRCrimP, following his reappointment during Applicant's sentencing hearing.
2. As to representation rendered by Fletcher Smith, Esquire:
 - a. Ineffective assistance of counsel for failure to act on guilty plea offer communicated to Applicant.
 - b. Ineffective assistance of counsel for failure to appear in court at trial or sentencing to address the existence of an attorney/client relationship with Applicant.

An evidentiary hearing was held in front of the Honorable Lee S. Alford on February 8, 2013, at the Moss Justice Center. Applicant was present and was represented by Tricia A. Blanchette, Esquire. The State was represented by J. Rutledge Johnson, Assistant Attorney General. During the course of the hearing, Applicant, Fletcher Smith, Esquire, and William All, testified and both parties presented argument. At the conclusion of the evidentiary hearing, this Court took the matter under advisement and later advised the State to submit a proposed Order. Upon receipt of the State's proposed Order, Applicant's counsel sent a letter to the Honorable Lee S. Alford addressing the omission of findings of fact and conclusions of law on the issues listed above as 1(a), 1(b), and 2(b)¹. The Order of Dismissal was signed on March 25, 2013 and filed on April 2, 2013, from which this Motion follows.

¹ Receipt of this letter was acknowledged by the law clerk to the Honorable Lee S. Alford.

Applicant respectfully submits the following grounds in support of the instant Motion:

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered on each issue and that the testimony of each witness is properly addressed. Furthermore, Applicant would respectfully request that this Court carefully review the records, exhibits, and if needed the transcript from the evidentiary hearing and reconsider the findings of facts and conclusion of law set forth in the standing Order of Dismissal. Specifically, Applicant requests that this Court fully address and/or reconsider the following:

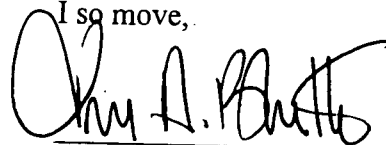
1. In the Order of Dismissal, the case caption and several references are made to York County when Applicant's case is out of Union County. Applicant acknowledges that this appears to be a typographical error or a result of the hearing taking place in York County. Nevertheless, Applicant requests that the case caption and references to York County be amended to reflect Union County.
2. In the Order of Dismissal, issue 1(a): "Ineffective assistance of counsel for failure to argue against trial in absence" is cited from the Amendment, is referenced in the summary of testimony but no findings of facts or conclusions of law are made on this issue. Pursuant to Marlar, Applicant

- would respectfully request that this Court amend the standing Order of Dismissal to properly address this issue and/or reconsider the dismissal and grant relief on this issue, which was properly raised at the evidentiary hearing.
3. In the Order of Dismissal, issue 1(b): “Ineffective assistance of counsel for failure to protect client’s right to counsel during trial in absence” is cited from the Amendment, is referenced in the summary of testimony but no findings of facts or conclusions of law are made on this issue. Pursuant to Marlar, Applicant would respectfully request that this Court amend the standing Order of Dismissal to properly address this issue and/or reconsider the dismissal and grant relief on this issue, which was properly raised at the evidentiary hearing.
 4. In the Order of Dismissal, issue 2(b): “Ineffective assistance of counsel for failure to appear in court at trial or sentencing to address the existence of an attorney/client relationship with Applicant” is cited from the Amendment, is referenced in the summary of testimony but no findings of facts or conclusions of law are made on this issue. Pursuant to Marlar, Applicant would respectfully request that this Court amend the standing Order of Dismissal to properly address this issue and/or reconsider the dismissal and grant relief on this issue, which was properly raised at the evidentiary hearing.
 5. In the Order of Dismissal, this Court made findings under the heading that “Motion for a new trial”, and held that “a motion for new trial would not have been successful as Judge Cooper was not the trial judge and was not going to overturn another circuit judge’s sentence.” Applicant asks this Court to reconsider this finding, which is not supported by any testimony or evidence

in the record. Furthermore, Applicant directs this Court's attention to Judge Cooper's comments on the record regarding Fletcher Smith, Esquire, or William All, Esquire representing Applicant at trial that Applicant "should have had one or the other." Record on Appeal p. 99, ln. 24.

For the above stated reasons, Applicant would respectfully request that this Court hold a motion hearing to ensure that all the testimony and arguments are fully addressed by this Court prior to appeal. The Applicant would also move before this Court to direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCF.

I so move,



Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211
(803) 988-0008

April 8, 2013
Columbia, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF UNION)
)
 Christopher L. Pride, #281240,)
 Applicant,)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2011-CP-44-0331

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 8th day of April 2013, a copy of an Motion Pursuant to Rule 59(a) & (e), SCRCP, to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General
 ATT: J. Rutledge Johnson, Ast. AG
 PO Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008

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 FILED FOR RECORD
 WILLIAM F. GAULT
 CLERK OF COURT
 UNION, SC

April 8, 2013

FILED FOR RECORD

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2013 APR 25 PM 1:20) FOR THE SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF UNION

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

Christopher Pride, #281240

2011-CP-44-0331

Applicant,
vs.

AMENDED ORDER OF DISMISSAL

State of South Carolina

Respondent.

This matter comes before the Court by way of an Application for Post Conviction Relief filed August 23, 2011. The Respondent made its Return and Motion to Dismiss on December 19, 2011. This Court signed a Conditional Order of Dismissal on the grounds of failure to file with the statute of limitations on January 4, 2011. The Applicant filed a response alleging Fletcher Smith (Counsel Smith) advised him he had one year from the denial of certiorari from the United States Supreme Court to file his application. The Respondent agreed with the Applicant's prior PCR Counsel, Elizabeth Wiygul, to allow the Applicant an evidentiary hearing. The Applicant subsequently hired Tricia Blanchette as PCR Counsel. The applicant, through Counsel, filed an amended PCR application on November 29, 2012. An evidentiary hearing into the matter was convened on February 8, 2013, at the Moss Justice Center in York, S.C. Tricia Blanchette, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Fletcher Smith, Esquire, and Bill All, Esquire, also testified. This Court had before it a copy of the records of the uk

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Union County Clerk of Court, records from the South Carolina Department of Corrections, and the trial and sentencing transcripts.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections Pursuant to orders of commitment of the Union County Clerk of Court. The Applicant was indicted at the June 2003 term of the Union County Court of General Sessions for Possession of Crack Cocaine with Intent to Distribute (PWID) (2003-GS-44-0519) and PWID Crack Cocaine within proximity of a school (2003-GS-44-0523). He was originally represented by Fletcher Smith, Esquire. On September 13, 2004, the Honorable J. Cordell Maddox, Jr. relieved Counsel Smith from representation. The Applicant subsequently applied to the 16th Circuit Public Defender's Office, and Bill All (Counsel All) was appointed to represent the Applicant.

According to the trial transcript, the Applicant was scheduled to meet with Counsel All on two occasions, but failed to show up due to work obligations. On October 1, 2004, Counsel wrote the Applicant a letter, stressing the importance of meeting with him to discuss the case and prepare for trial, which was scheduled for the week of October 11, 2004. The Applicant rescheduled an appointment for October 7, 2004, but failed to show and/or call Counsel All's office. The day before the scheduled trial, the Applicant appeared for roll call, met with Counsel All and stated he needed to meet with Counsel Smith. Counsel All then attempted to contact Counsel Smith concerning representation. The solicitor informed Counsel All that Counsel Smith's office had contacted the solicitor and stated Counsel Smith did not represent the Applicant.

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On October 13, 2004, the case proceeded to trial. During pre-trial discussions and motions, the solicitor introduced a bond form, signed by the Applicant, that informed the Applicant that if he failed to show for trial, he would be tried in his absence. The State then moved to try the Applicant in his absence. Immediately following this motion, there was a discussion about Counsel All's representation of the Applicant, and the Honorable John C. Hayes, III relieved Counsel All from representation. The Applicant, *pro se*, was tried by a jury *in absentia* and convicted of PWID Crack Cocaine, 2nd offense, and PWID Crack Cocaine with proximity of a school. The sentence was sealed until the Applicant was located.

On January 18, 2005, the Applicant appeared for a sentencing hearing before the Honorable G. Thomas Cooper, Jr. Counsel All was reappointed for sentencing and for the primary purpose of filing an appeal. Judge Cooper unsealed the sentence by which Judge Hayes sentenced the Applicant to confinement for twenty-five (25) years for PWID Crack Cocaine, 2nd offense, and fifteen (15) years, concurrent, for the proximity charge.

Thereafter, the Applicant appealed his conviction and sentence. After full briefing, the South Carolina Court of Appeals affirmed his conviction. State v. Pride, 2007-UP-544 (S.C. Ct. App. filed December 5, 2007). The Applicant then appealed to the South Carolina Supreme Court who granted certiorari. Subsequently, the S. C. Supreme Court dismissed the Applicant's appeal as improvidently granted. State v. Pride, Op. No. 2009-MO-064 (S.C. filed December 14, 2009). The Remittitur was issued on December 30, 2009.

The Applicant then appealed to the United States Supreme Court. The Supreme Court denied his petition for writ of certiorari on June 21, 2010.

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

1. "Ineffective Assistance of Counsel"
2. "Violation of S. C. Const. Article 1, Section 3 and U.S. Const. 14"

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

1. "As to representation by William All, Esquire:"
 - a. "Ineffective assistance of counsel for failure to effectively argue against trial in absence."
 - b. "Ineffective assistance of counsel for failure to protect client's right to counsel during trial in absence."
 - c. "Ineffective assistance of counsel for failure to file a Motion pursuant to Rule 29 (a), SCRCrimP, following his reappointment during Applicant's sentencing hearing."
2. "As to representation rendered by Fletcher Smith, Esquire:"
 - a. "Ineffective assistance of counsel for failure to act on guilty plea offer communicated to Applicant."
 - b. "Ineffective assistance of counsel for failure to appear in court at trial or sentencing to address the existence of an attorney/client relationship with Applicant."

SUMMARY OF TESTIMONY

Counsel Smith testified he was retained to represent the Applicant in this matter. Counsel stated he attended a bond hearing in the Applicant's behalf and met with the solicitor about the case. Counsel testified he had a disagreement with the Applicant and that the Applicant had not paid the entire retainer fee. Subsequently, the Applicant fired Counsel, and Judge Maddox relieved Counsel. Counsel also testified he did not recall a

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plea offer from the State, and there was no record in his file concerning a plea offer.

Additionally, Counsel stated the Applicant would not cooperate with him, but did attend roll call. After being relieved, Counsel sent the Applicant to apply for the public defender's office. Counsel further testified he was retained by the Applicant on the appeal and raised the issue of issue of waiver of right to counsel. Counsel lastly testified that theoretically he could have raised the trial in absence issue and the Rule 29 SCRCrimP issue had Counsel All made objections at the trial and sentencing.

The Applicant testified he wanted a new trial and understood he could get the maximum sentence which would be forty (40) years. He testified he was arrested on April 3, 2003 and retained Counsel Smith, who was later relieved by the court. He asserted there was a ten-year plea offer from the State, and he wanted to accept the plea offer, but was unable to do so. The Applicant again admitted Counsel Smith was relieved by the court on September 13, 2004, although he claimed he still thought Counsel Smith was his counsel because he continued to meet with Counsel Smith. He then testified he only had one meeting with Counsel All and had to cancel the other meetings because he was working to be able to pay Counsel Smith. During this meeting, the Applicant testified he and Counsel All did not discuss the discovery. He also stated he always showed up to roll call, but did not attend court the morning of his trial because Counsel Smith allegedly told the Applicant he was in court in Anderson.

The Applicant additionally testified that prior to Counsel being relived, there was no objection to a trial in absence or request for a continuance. He also testified to a plethora of reasons he felt he was prejudiced, including: no objection made to two jurors who

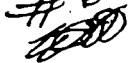
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allegedly had connections with the State, no defense witnesses called at the Jackson v. Denno¹ hearing, no objection to a redacted statement which included the Applicant's admission that "[Applicant] started selling crack again," no objection to the chain of custody, no questioning of the chemist's qualifications and no objection to the reasonable doubt jury charge. In addition, the Applicant asserted when Counsel All was reappointed for the sentencing hearing that he failed to move to reconsider the sentence. He once again testified he thought Counsel Smith represented him and that he was not "trying to play the system," but that he wanted counsel at trial.

On cross-examination, the Applicant admitted he knew Counsel Smith had been relieved by the court one month before his trial and that he was appointed Counsel All. He also admitted his trial would have been different had he shown up to it, but was not informed by Counsel All of the trial date. However, Counsel All stated on the record that someone in the courtroom had seen the Applicant in the parking lot that day. When the bailiff called the Applicant's name three times on the courthouse steps and in the hall of the courthouse, there was no answer. The Applicant admitted he had no proof of the ten-year offer from the state.

This Court questioned the Applicant and he admitted that he fired Counsel Smith and knew Counsel Smith did not represent him. He also admitted he did not meet with Counsel All because he wanted Counsel Smith to represent him. He further admitted he did not cooperate with Counsel All even though the court records show Counsel All was the attorney of record.

¹ 378 U.S. 368 (1964).

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The Applicant lastly admitted he had five prior convictions and that this was "not his first rodeo" with the criminal justice system.

Counsel All testified he was appointed to this case after Counsel Smith was relieved. While he was aware of an offer from the State, Counsel stated the State had withdrawn the offer before he could present it to Applicant. Applicant failed to get in touch with him when requested. He received trial notification for the week of October 11, 2004. Counsel All testified he attempted to contact the Applicant, but was unable to do so. He sent a letter to the Applicant explaining that he needed to meet with the Applicant and discuss this case in preparation for trial. In this letter, Counsel All also apprised the Applicant that his trial was set for the week of October 11, 2004. Counsel All testified he actually met with the Applicant at roll call when the Applicant was arrested on October 11, 2004 for Driving under Suspension at the Union County Courthouse. At that time, the Applicant apparently told Counsel All that Counsel Smith represented him, so Counsel All tried to contact Counsel Smith's office. Counsel All testified the Applicant did not show up to his trial, and Counsel All was relieved after a discussion on the record of the Applicant's absence and Counsel All's attempts to locate him. He also stated if the Applicant would have shown up, he would have represented the Applicant. Counsel further stated had he not been relieved, he would have sought a continuance, conducted a Jackson v. Denno, *supra*, and filed a suppression motion.

Counsel All further testified there was a discussion about the Applicant's absence, and based on the facts of the case, the trial judge suggested that he would relieve Counsel All due to the Applicant's conduct. Counsel lastly asserted he would have requested a

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continuance but did not have a chance to do so as the trial court relieved him immediately after the State moved to try the Applicant in his absence.

It is clear from the record that the trial court concluded Applicant was seeking to prevent his case from being heard. The trial court granted the State's motion for trial *in absentia*. Upon learning that Applicant had refused to cooperate with Counsel All and would not assist him in preparation for trial, the trial judge relieved Counsel All from representation of Applicant. The undersigned has served in the same judicial circuit with the trial judge for 15 years and takes judicial notice that it was his policy at that time to relieve a defense attorney before a trial in absence when the defendant was totally uncooperative and refused to cooperate with preparation for trial. Counsel All, the Public Defender, would have been aware of this policy. Once he was relieved as counsel, he had no duty or right to make any motions on behalf of Applicant. It would have been patently obvious that even if he had been able to do so, the trial judge was going forward with the trial that day and such motions would have been denied. Counsel All did not render ineffective assistance in not making such motions.

Additionally, Counsel All testified he was reappointed to the Applicant's case during the sentencing hearing and for the purpose of filing a Notice of Appeal. Counsel also stated, although he is familiar with a Rule 29 SCR CrimP motion for a new trial, he could not remember any successful Rule 29 motions. The only grounds for a new trial which had any merit would have been Applicant's trial *in absentia* without an attorney and without a Faretta warning. These issues were heard on direct appeal and denied. Applicant was not prejudiced because those issues were heard and denied by the S. C. Court of Appeals.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court had the opportunity to observe the witnesses on the witness stand and hear their testimony. The Court also has read the trial transcript and the sentencing transcript, all of which assists the Court in judging their credibility. The court finds the testimony of the Applicant's testimony concerning ineffective assistance of counsel not credible while finding the testimony of Counsel Smith and Counsel All credible.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S. C. Code Ann. §17-27-28 (2003).

Facts at Trial

The following facts were on the record:

The Applicant was released from prison on January 5, 2003, after serving a nine (9) month sentence for distribution of crack cocaine. In February 2003, he started selling crack cocaine again. He purchased crack cocaine two times a week from the same person in the amount of two or three ounces each time. The Applicant paid \$1,650.00 for two ounces and \$2,200.00 for three ounces. He then sold the crack cocaine in various amounts from \$20.00 to \$450.00 per sale.

On April 2, 2003, law enforcement served a search warrant on the Applicant's girlfriend's apartment. After service of the search warrant and after being advised of his Miranda² rights, the Applicant admitted to officer's he had crack cocaine in his pants pockets in the bedroom. Law enforcement then checked his pants pockets and found a clear bag of crack cocaine. They also found \$1,850.00 in his pants pockets which he admitted was from the sale of crack cocaine. The apartment search was located within

² Miranda v. Arizona, 384 U.S. 436 (1966).

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one-half mile of Buffalo elementary School. The Applicant took full responsibility for the drugs and the money. He advised law enforcement that his girlfriend had nothing to do with the drugs or the money. The Applicant was arrested and taken to the police station where he was again advised of his Miranda rights. He then signed a written statement which admitted the drug dealing.

A Jackson v. Denno hearing was held pre-trial. The trial court found that the oral and written statements were made by the Applicant freely and voluntarily after he was advised of his fifth and sixth amendment constitutional rights. The solicitor agreed, voluntarily, to redact that part of the Applicant's statement which talked about getting out of prison after serving a nine (9) month sentence on another distribution of crack cocaine charge. The trial court admitted the statement into evidence and properly instructed the jury on the State's burden of proving the statement was made freely and voluntarily after being advised of his constitutional rights beyond a reasonable doubt before they could consider it.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Plea offer

The Applicant alleged Counsel Smith was ineffective for failing to act on a plea offer from the State. This allegation is without merit.

The Applicant initially engaged Counsel Smith to represent him. There was a disagreement between Counsel Smith and the Applicant, resulting in Counsel Smith being fired by the Applicant, and Counsel Smith was relieved of his representation by Court order. Counsel Smith had not been paid as promised, and Counsel Smith did not believe the Applicant had the financial ability to retain an attorney to represent him. He advised the Applicant to apply for the public defender. The Applicant applied, and Counsel All was appointed to represent him.

The solicitor handling the case thereafter directed his communications about the case to Counsel All, the attorney of record. The Applicant would not communicate with

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Counsel All. He did not show up for several appointments, did not return some phone calls, and did not cooperate with Counsel All in any way to prepare for his upcoming trial of which the Applicant was aware. A plea bargain offer was made to Counsel All, but due to the Applicant's refusal to communicate, the offer was withdrawn by the new solicitor on the case before Counsel All could discuss it with the Applicant.

The Applicant alleges that a plea bargain offer was made to Counsel Smith and that Counsel Smith did not tell him about it. In his testimony at the PCR hearing, Counsel Smith did not remember any plea offer from the State. The Applicant provided no proof other than his naked allegation and did not testify as to how he learned of such an offer from Smith. It is more likely that the offer was made to his attorney, Counsel All, by the solicitor, but that the offer was withdrawn before it could be communicated to him by Counsel All. It is clear from the applicant's testimony that he never considered Counsel All his attorney, even though up to the day before his trial, Counsel Smith's office informed the solicitor he did not represent the Applicant. The Applicant further admitted he knew Counsel Smith was relieved by a Court order the month before his trial.

The Applicant would have had an opportunity to accept a plea bargain if he had communicated and been cooperative with his attorney, Counsel All. Unless he accepted a plea bargain offer, he would almost certainly have been convicted by a jury, even with the representation of an attorney at trial.

This Court finds there is no credible evidence that Counsel Smith received a plea bargain offer from the solicitor and failed to communicate the offer to the Applicant. Counsel Smith testified he did not remember any offer from the State. The Court does not find the Applicant's self-serving testimony credible on this issue. The Applicant has failed

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to prove that Counsel Smith rendered ineffective assistance and accordingly, this allegation is denied.

Motion for a new trial

The Applicant also alleged Counsel All rendered ineffective assistance in failing to make a motion for a new trial at the Applicant's sentencing hearing before the Honorable G. Thomas Cooper, Jr., who was not the trial judge that issued the sealed sentences.

This Court observed from the record of the sentencing hearing that Counsel all volunteered to be reappointed as counsel for the Applicant during the sentencing hearing for the primary purpose of filing a Notice of Appeal so Indigent Defense could perfect an appeal on the Applicant's behalf.

This Court finds a motion for a new trial would not have been granted and would not have preserved any issues which were not addressed in the direct appeal. A trial *in absentia* without an attorney (*pro se*) and without Faretta³ warnings was addressed by the S. C. Court of appeals and is the law of the case. Counsel Smith was retained by the Applicant to help with the appeal.

Neither Judge Cooper nor Counsel All had a trial transcript at the sentencing hearing. The Applicant could have testified concerning the voluntary statement, but he did not testify at the PCR hearing as to anything that would make his statement inadmissible. He has a substantial criminal record and has had previous experience with the criminal justice system.

Additionally, there was overwhelming evidence of the Applicant's guilt. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be

³ Faretta v. California, 422 U.S. 806 (1975).

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prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); *see also* Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). Additionally, had the Applicant taken the stand in his own defense, he could have and most likely would have been impeached with his prior convictions.

This Court finds Counsel All was not ineffective for not making a motion for a new trial as Counsel All's main purpose during the sentencing hearing was to file a Notice of Appeal. Further, a motion for a new trial would not have been successful as Judge Cooper was not the trial judge and was not going to overturn another circuit judge's sentence. The Applicant has failed to meet his burden of proving Counsel All was ineffective or that he was prejudiced in this case as there was overwhelming evidence of his guilt. Accordingly, this allegation is denied.

CONCLUSION

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

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

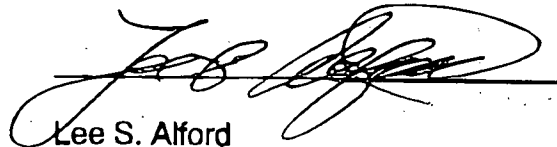
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for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

IT IS SO ORDERED.



Lee S. Alford
Resident Judge
of the Sixteenth Judicial Circuit

York, South Carolina

April 22, 2013

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF UNION)

Christopher Pride, #281240)

2011-CP-44-0331

Applicant,)

vs.)

ORDER

State of South Carolina)

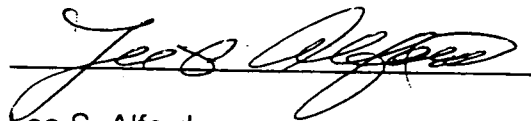
Respondent.)

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WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

This matter is before the Court on a Rule 59, SCRPC, Motion filed by Applicant. The Court has amended its Order, dated March 25, 2013, in the above entitled matter to further address the issues raised in the Motion. The Court finds that the Amended Order, dated April 22, 2013, adequately addresses the grounds raised in the Post Conviction Relief Application and the issues raised in the Rule 59 Motion.

The Court therefore declines to further amend the Order in response to the Rule 59 Motion. The Court finds that the issues are adequately addressed in the Amended Order, dated April 22, 2013.

IT IS SO ORDERED.



Lee S. Alford
Resident Judge
of the Sixteenth Judicial Circuit

York, South Carolina

April 22, 2013