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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

JAMEEK J. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2007-GS-10-9497-9500

JAMEEK WILLIAMS,
Plaintiff

VS

STATE OF SOUTH CAROLINA,
Defendant

TRANSCRIPT OF RECORD
SUPPRESSION HEARING

AUGUST 27, 2009
CHARLESTON COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE J. C. NICHOLSON JR., Judge.

Deborah E. Everett
Official Court Reporter

A P P E A R A N C E S

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LEON E. STAVRINAKIS, Attorney at Law
Attorney for the Defendant

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Officer Janicki

BY: Mr. Savage	22		57	
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BY: Mr. Stravinakis		38		
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EXHIBITS

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1 (Whereupon Court began at 9:06 A.M.)

2 THE COURT: Anybody got a copy of the motion?

3 MR. DALE SAVAGE: I submitted one.

4 THE COURT: Thank you. Okay. I'll be happy to
5 hear you. I've briefly looked at the cases you've
6 handed up and referenced the notes. I've looked at the
7 States' motion in opposition and let me ask you a
8 couple of questions. Are you gonna offer testimony?
9 Do you got some affidavits in support of your motion or
10 how are you gonna proceed? Or can we agree as to the
11 facts?

12 MR. LEON STAVRINAKIS: Well, Your Honor, the case
13 law clearly suggests that the burden of proof for
14 warrantless search be justified is on the State. I
15 would assume that they would make some kind of offer of
16 proof.

17 THE COURT: Well, you've got to have some factual
18 basis for your motion.

19 MR. STAVRINAKIS: Yes sir.

20 THE COURT: And that's what I'm asking. Can we
21 agree on the facts -- apparently they were stopped
22 because of tint on the windows; is that correct
23 Solicitor?

24 MR. SAVAGE: Yes, Your Honor.

25 MR. STAVRINAKIS: Suspected window tint.

1 THE COURT: There was a smell of marijuana and
2 they went to secure the defendant and then they drove
3 off and the scuffle ensued. He was ultimately arrested
4 after he stopped and fled on foot. Is that basically
5 the facts?

6 MR. STAVRINAKIS: If you're asking me just to
7 agree that that's an overview of what occurred; yes,
8 sir.

9 THE COURT: That's what I'm trying to get at ---

10 MR. STAVRINAKIS: Yes, sir. I'll agree that
11 that's an overview. I don't necessarily stipulate that
12 those are the facts for -- for purposes of the hearing
13 because I think there's a lot more than that and there
14 is a lot more that's important than that.

15 THE COURT: Pardon me? I didn't hear you.

16 MR. STAVRINAKIS: Well, again Your Honor, it's my
17 position to begin with that the burden is on the State.
18 This is -- I mean, I think they would agree this is a
19 warrantless search and per many, many cases -- most
20 recently is, I think, 2009 Court of Appeals, State
21 versus Dupree. (reading) 'Warrantless search is a per
22 se unreasonable unless an exception is present. Burden
23 is on the State to justify the warrantless search'.

24 An overview of my presentation to Your Honor is
25 that this search was illegal on three different levels

1 and -- and I've submitted several cases to you there.

2 The first thing I would submit to you, Your Honor,
3 is that the officers -- and again, we need to fully
4 flush the facts out -- but the officers stopped this
5 vehicle for a suspected window tint violation. And
6 their conduct thereafter, basically, did nothing to
7 follow-up on that. They didn't even follow-up on the
8 window tint violation. There is no way they have
9 probable cause just by looking at a window at ten o'
10 clock at night to know for sure that there has been a
11 violation of statute or for to know of even probable
12 cause that there's been a violation of that statute.

13 That statute is very specific and it requires a
14 certain percentage of light to be blocked and Your
15 Honor's aware of it. And so, at ten o' clock at night,
16 just looking at a car that drives by, at best, ya' know
17 we are going to give them they have reasonable
18 suspicion to stop a vehicle. There's no way there was
19 probable cause at that point to arrest anybody or to
20 know for sure that a violation has occurred.

21 I'm sure and I see in Mr. Savage's motion that
22 they -- they are going to turn it into, ya' know, when
23 we approached this vehicle we smelled marijuana and
24 again, I would suggest to the Court that at best that's
25 reasonable suspicion of something criminal afoot. It

1 is not probable cause. I don't think that any of us
2 think, ya' know, objectively would say that you could
3 arrest a person for possession of marijuana just
4 because you smell marijuana. I don't think any of us
5 would suggest that that would be a lawful arrest.

6 The only other facts you see in there are that
7 they asked this defendant for his license and
8 insurance. He provided it. That he followed all their
9 commands. That he answered questions. They asked him,
10 specifically, questions about drugs and about anything
11 illegal in the car and he complied. His answers did
12 nothing to arouse further suspicion. There's nothing
13 in Mr. Savages's motion or any incident reports that
14 indicate that any of his answers would have aroused
15 further suspicion.

16 Ummm -- I think at that point, Your Honor, if you
17 look at the case law, they would have certainly had a
18 right to ask him to step out of the vehicle and ask him
19 maybe a few more questions but that's not what they
20 did. They basically tried to arrest him. I handed up
21 the California versus Abdalla Supreme Court case. And
22 I'm sure Your Honor is well aware of the standard of
23 what an arrest is and in Supreme Court's case is
24 consistently arrest is what a reasonable person in the
25 defendant's shoes would think it is. And there are

1 some factors that they talk about in those cases and
2 the main factors are a overt show of authority, an
3 actual touching or grasping of the defendant, whether
4 they are successful in securing into custody or not,
5 but those are the main factors that -- that the Court -
6 - that the Supreme Court has enunciated as being
7 important and, in fact, the substantial factors to
8 consider in determining whether a person is arrested.

9 Clearly, in this case, you have two officers,
10 there's a video, Your Honor which, at some point in
11 this hearing you are going to see. You have two
12 officers and instances behaving fairly aggressively.

13 Clearly, we have a defendant who is detained, who
14 is not free to leave. There is no -- I don't think
15 there's any doubt. I don't know how the State could
16 argue that he was free to leave 'cause when he tried to
17 leave they arrested him. They chased him and arrested
18 him.

19 So, there's really -- I think -- any issue that
20 there was an arrest at the point that Officer Walker
21 tried to handcuff the defendant and I would submit to
22 Your Honor that on this first basis that that would
23 have been an illegal arrest and from that point forward
24 everything that happened was unlawful and should be
25 suppressed. Just smelling marijuana is not enough to

1 arrest somebody if you haven't found anything else.
2 And just seeing, at ten o' clock at night some windows
3 that look kind of dark to you, isn't enough to arrest
4 somebody under the window tint statute.

5 So clearly, at that point, the State did not have
6 enough to arrest but they did, in fact, undertake an
7 illegal arrest by trying to handcuff this defendant and
8 take him into custody.

9 The incident reports -- I'm sure the testimony --
10 testimony will reveal multiple incidents where the
11 officers were engaging the defendant simultaneously. I
12 believe there was even a taser threat before that
13 happened. The officer opened his door, again a show of
14 authority, a show of control over the defendant. She
15 opened the door and tried to -- to a -- effectuate a
16 handcuff on the defendant. And the fact that in an
17 incident report and officer says to a defendant, "I'm
18 not placing you under arrest" is really irrelevant
19 under the case law. The case law says what did the
20 officer do and what would a reasonable person in
21 defendant's shoes -- ummm -- how would a person in the
22 defendant's shoes -- a reasonable person -- perceive
23 that? Would they think they are free to leave? And
24 again, I don't think a reasonable person would have in
25 that circumstance and again, when he tried to, they

1 answered the question. They chased him down and
2 arrested him.

3 So that's my first basis for suppression, Your
4 Honor. The second -- the second is -- uh -- under the
5 case that I handed up to you, Your Honor, Berkemer --
6 Berkemer versus McCarty has been around a long time and
7 it's withstood a lot of scrutiny. It's been cited, I
8 don't know how many times by the Supreme Court of South
9 Carolina, other State Supreme Courts and United States
10 Supreme Court over the years.

11 I call your attention to page 439, it's labeled on
12 what I handed up to you. I believe I highlighted it
13 for you. And I think, as a lawyer, you don't get this
14 opportunity very often, but I think that in this case
15 the United States Supreme Court, in that paragraph,
16 summarized the law for this -- this situation we have
17 right here. Exactly on point and that's a pretty rare
18 thing.

19 And basically what they say is that traffic stops
20 are more like Terry stops than anything else and I
21 think that that is well known. It's been affirmed by
22 the US Supreme Court and it's adopted by the South
23 Carolina Supreme Court in a number of cases ---

24 THE COURT: Let me ask you this, don't you think
25 this line of case, Berkemer versus McCarty case has

1 been modified somewhat more recently by the State
2 versus Pichardo -- the case where they talk about first
3 detention and second detention? Don't you think it's
4 been sort of -- I don't say modified but it's
5 pertaining to the first detention and second detention?
6 That's a different aspect. You've made one argument,
7 you haven't mentioned the first detention then the
8 second detention ---

9 MR. STAVRINAKIS: Well, I think --- two things to
10 keep in mind, Your Honor, first, I do agree -- hope I
11 did a good job of explaining it to you. I do think
12 that first with the window that I think they had
13 reasonable suspicion to stop him and then later on,
14 smelling the marijuana, I think they had reasonable
15 suspicion to ask him a few questions and if they had
16 asked him to get out of the car, I think that would
17 have been sufficient, too ---

18 THE COURT: So, your problem is when they tried to
19 put the handcuffs on ---

20 MR. STAVRINAKIS: Well, in ---

21 THE COURT: You are saying that was an arrest
22 putting the handcuffs on rather than asking him to step
23 out of the car ---

24 MR. STAVRINAKIS: Well, I won't argue ---

25 THE COURT: Terry Frisk. Is that your argument?

1 MR. STAVRINAKIS: That's one of my arguments. I
2 think -- I think, Your Honor -- the -- the involvement
3 of Berkemer that you are talking about -- I think --
4 the odd thing about Berkemer is it's really a Miranda
5 case. It's really a statement case. And this case we
6 are dealing with today is not a statement case but in
7 Berkemer, the Supreme Court gives a very detailed and
8 exacting description of what police are allowed to do
9 in a reasonable suspicion environment. And I think it
10 applies here even though this is not a Miranda case and
11 even though this is not a statement case, if the US
12 Supreme Court tells the police what they can do in a
13 certain circumstance and we have that circumstance, I
14 believe it applies.

15 THE COURT: I'm -- I'm not gonna argue with you.
16 I agree with you on that -- my point is now we have to
17 look at the first detention, whether it's valid. And
18 then if they have reasonable suspicions -- reasonable
19 suspicion of illegal conduct -- that's the second
20 detention ---

21 MR. STAVRINAKIS: I agree ---

22 THE COURT: --- have to do an investigation of
23 that. Now, in this case smelling marijuana, you don't
24 think gave them a reasonable suspicion to investigate
25 further?

1 MR. STAVRINAKIS: I do ---

2 THE COURT: All right ---

3 MR. STAVRINAKIS: And I think they did that ---

4 THE COURT: Do you think the conduct was wrong in
5 that they tried to handcuff instead without asking him
6 to step out of the car; is that your position?

7 MR. STAVRINAKIS: Yes, sir. They tried to arrest
8 him. I don't think you are allowed to arrest on
9 reasonable suspicion. And -- and part of -- part of
10 the problem here, Your Honor is -- I mean, I think the
11 State needs to make their proffer of proof. I don't
12 want to -- I don't want to lay out all my arguments
13 with an officer who is in the courtroom today go up
14 there and rebut ---

15 THE COURT: I understand that but I still think
16 you are obligated to -- I'm just trying to make sure I
17 understand your argument ---

18 MR. STAVRINAKIS: Yes ---

19 THE COURT: Where you are coming from ---

20 MR. STAVRINAKIS: And yeah, well -- I'll -- again,
21 let me -- let me in Berkemer, the Court says, ya' know,
22 that a reasonable suspicion to stop -- a Terry stop--
23 umm -- they say that an officer lacks probable cause
24 when his observations lead to reasonably suspect that a
25 person has committed, is committing or about to commit

1 a crime, may detain that person, briefly, in order to
2 investigate circumstances that promote suspicion. The
3 stop and inquiry must be reasonably related to the
4 scope of justification of their initiation. Typically
5 -- this is a key part, Your Honor, typically this means
6 the officer may ask the detainee a moderate number of
7 questions -- the officers did that in this case -- they
8 asked him, "Do you have any drugs? Do you have
9 anything illegal in your car?" And he answered those
10 questions. There was nothing about those answers that
11 led to anything -- that should have aroused further
12 suspicion -- nothing about those answers. You will see
13 the video. They are flashing their flashlights in the
14 car. They weren't seeing anything. They don't
15 indicate seeing anything that would allow ---

16 THE COURT: Let me ask you this, under this fact
17 scenario, assuming he did not try to drive off --
18 assume that didn't happen -- and he stepped out of the
19 car, do you think at that time the police had a right
20 to search the vehicle, since they smelled the
21 marijuana? Or at least bring a dog on the scene?

22 MR. STAVRINAKIS: I think it would depend on how
23 long it took. I think it would depend on what they did
24 in their interview, at the time. I think it would
25 depend on a lot of factors, but I don't know that that

1 matters, respectfully Your Honor, that's not what
2 happened ---

3 THE COURT: Well, I understand ---

4 MR. STAVRINAKIS: I mean he -- they tried to cuff
5 him and -- and - and ya' know I'm bound by what
6 happened, they're bound by what happened and how the
7 law applies to those situations. I think, ya' know,
8 the Supreme Court is clear in this case, they say the
9 detainee is not even obligated to respond but he did.
10 And they make it very clear, unless the detainee's
11 answers provide officer with probable cause to arrest -
12 - clearly saying, you don't have drugs and you don't
13 have anything illegal without anything more would not
14 give them probable cause to arrest.

15 THE COURT: They had more -- they had -- two
16 officers smelled marijuana -- they had more. That's my
17 point. That's the point you have to address.

18 MR. STAVRINAKIS: I think -- I think I have, Your
19 Honor. I don't believe that smelling marijuana gives
20 you the right to arrest somebody for possessing
21 marijuana.

22 THE COURT: You don't think it gives them the
23 right to search the vehicle?

24 MR. STAVRINAKIS: I think it might have had they
25 handled things differently. I think it might have, ya'

1 know, but I don't think it gave them the right to
2 arrest him.

3 THE COURT: The only pretext for the arrest that
4 you have is when they tried to cuff him.

5 MR. STAVRINAKIS: Yes, sir.

6 THE COURT: All right. Anything else?

7 MR. STAVRINAKIS: Ummm, I do have a Gant argument.
8 But again I think that -- I think that -- I think that
9 I need the testimony to make it to you.

10 THE COURT: Okay. I'll be glad to hear from you.

11 MR. DALE SAVAGE: Thank you, Your Honor. I guess
12 we don't agree on several issues here. First of all,
13 this isn't a warrantless search. Ummm, what's happened
14 is basically they had reasonable suspicion or probable
15 cause to make the traffic stop for window tint. They
16 did that. Officer Janicki got out of the car. Walked
17 up to the passenger side window. The window wound
18 down. As soon as that window wound down, he smelled
19 the marijuana. There's your second detention -- second
20 basis for the stop ---

21 THE COURT: Do you think the second detention
22 gives them the right to cuff him? Apparently that's
23 the North Charleston Police Department's policy. But
24 does that give them the right to cuff him or does that
25 give them the right remove him from the car for a Terry

1 frisk and then look at the vehicle, either by dog or
2 some other form of search?

3 MR. SAVAGE: They have a right to detain him and
4 that's what they were doing ---

5 THE COURT: That -- that detainment is one thing
6 but cuffing him, according to the Supreme Court cases,
7 would be an arrest -- tantamount to an arrest.

8 MR. SAVAGE: I don't think it is. I believe what
9 they were doing, they were detaining him because it was
10 marijuana.

11 THE COURT: You think handcuffing is ---

12 MR. SAVAGE: I believe ---

13 THE COURT: --- Is okay to detain?

14 MR. SAVAGE: I believe, yes because we are talking
15 about the smell of drugs. We are not talking about the
16 other cases that were mentioned in the defense brief --
17 talks about the smell of alcohol and the Court clearly
18 has stated that when you have drugs involved you have
19 an indisputable nexus between guns and drugs. What the
20 issue is here as soon as they smelled ---

21 THE COURT: You're talking about Butler and Banda
22 cases; right?

23 MR. SAVAGE: Yes, Your Honor.

24 THE COURT: I understand that but all those cases
25 are about entitled to a frisk, not an arrest.

1 MR. SAVAGE: Well, it's -- it's a frisk but it's
2 also a detention -- it's a form of a seizure --
3 detention, i.e. seizure. And this is what the police
4 tried to do. They were in the process of detaining the
5 defendant given the fact that they smelled drugs and
6 the dangers of drugs and guns. It was officer safety
7 and I believe that they were entitled to detain him, to
8 place him in handcuffs and inside that vehicle ---

9 THE COURT: Let me ask you --let's assume for
10 purposes of this question that arresting -- excuse me,
11 arrest and putting handcuffs behind your back is an
12 arrest; what does that do to your argument about Butler
13 and Banda?

14 MR. SAVAGE: If it was an arrest?

15 THE COURT: Yes.

16 MR. SAVAGE: At the moment they had a reasonable
17 suspicion to believe that there were drugs in there. I
18 don't believe at that point it would have risen to
19 perform an arrest because they hadn't found the drugs
20 at that point.

21 THE COURT: You don't think handcuffing is arrest
22 under the laws of South Carolina -- excuse me, US
23 Supreme Court Case ---

24 MR. SAVAGE: I think it's fact specific, Your
25 Honor. I don't think it's just a carte blanche if you

1 put someone in handcuffs they are automatically under
2 arrest. I believe in this case they were detaining the
3 defendant and because of the situation and the smell of
4 drugs ---

5 THE COURT: There's no reasonable man standard
6 under criminal law but under civil law, I think a
7 reasonable man standard being handcuffed with your
8 hands behind you, most people would think they are
9 under arrest. You don't agree with that?

10 MR. SAVAGE: Ummm, again, most people may. At
11 this time -- it's in the reports, they told him, you're
12 not under arrest. We are going to detain you to
13 investigate further. And the issue here is officer
14 safety.

15 THE COURT: Is what?

16 MR. SAVAGE: Officer safety.

17 THE COURT: I agree with you. So the question
18 under officer safety does that give them the right to
19 handcuff or does that give them the right to remove
20 them out of the car and frisk him and the other officer
21 watching and then look at the car, either with drug
22 sniffing dogs or themselves?

23 MR. SAVAGE: I believe in this case, with drugs
24 involved, it does give them the right to handcuff him,
25 Your Honor. For officer safety, to be able to detain

1 him, get him out of the car safely and for their safety
2 as well as his own. They get him out there and further
3 investigate the situation.

4 THE COURT: Okay. I didn't mean to interrupt you
5 asking you questions. Go ahead with your argument.
6 What do you want to do? Are you going to offer any
7 testimony or what ya' gonna do?

8 MR. SAVAGE: Ummmm, I can place the officer ---

9 THE COURT: That's up to you. I'm not saying ---

10 MR. SAVAGE: No, that's okay. I'll call Officer
11 Janicki to the stand, Your Honor.

12 THE COURT: Solicitor, is that the North
13 Charleston's standardized procedure to handcuff?

14 MR. SAVAGE: He's going to testify to that and
15 answer that question for you, Your Honor. In certain
16 situations -- yes ---

17 THE COURT: That's the police department's ---

18 MR. SAVAGE: I didn't know whether it's the police
19 standard procedure, Your Honor but this officer is
20 going to testify that in these situations they handcuff
21 inside the vehicle to prevent further -- it's easier
22 for them to do that to get control of the situation.
23 Once the person gets outside of the car and they try to
24 handcuff them from there, it's their experience that it
25 gives the person that is stopped or that they are

1 talking to a greater opportunity to fight them.
2 Therefore, that was the reason for the traffic
3 detaining inside the vehicle as opposed to having them
4 step out and then try to affect -- to detain them then.

5 THE COURT: Okay. Go ahead.

6 DIRECT EXAMINATION

7 First being duly sworn, **WILLIAM**
8 **JANICKI**, testified as follows:

9 BY MR. SAVAGE:

10 Q If you will state your full name and spell your
11 last name for the record, please.

12 A William Janicki. J-A-N-I-C-K-I.

13 Q Good morning, Officer Janicki. Where do you work?

14 A North Charleston Police Department.

15 Q And how long have you worked there for?

16 A Approximately four years.

17 Q Could you please explain your duties at the North
18 Charleston Police Department?

19 A I'm assigned to the Central Patrol Division.
20 Mainly go out and answer calls and handle traffic
21 accidents and disputes.

22 Q Did you become involved in this case on April 6,
23 2007?

24 A I did.

25 Q And was that the -- where did this occur?

- 1 A It occurred down on the south end of the city.
- 2 Q Was that on Spruell Avenue?
- 3 A Yes.
- 4 Q And is that in Charleston County?
- 5 A Yes.
- 6 Q And what was the basis for the -- for stopping the
7 vehicle that you saw on that night?
- 8 A The basis for the stop was window tint citation.
- 9 Q And what is it specific about a window tint
10 citation that you were stopping?
- 11 A The vehicle appeared, through my experience and
12 Corporal Walkers experience, to have less than
13 twenty-seven percent window tint.
- 14 Q And have you stopped vehicles before for window
15 tint violations?
- 16 A Multiple times.
- 17 Q And so you've done this before?
- 18 A Yes, sir.
- 19 Q And could you see inside that vehicle when --
20 while it was on the roadway?
- 21 A No.
- 22 Q So could you tell whether the driver was a male or
23 female, what race they were?
- 24 A Not at all.
- 25 Q Once you -- once you -- did you stop that vehicle?

1 A Yes.

2 Q And when you stopped that vehicle, what happened
3 next?

4 A Corporal Walker and I issued a traffic stop on the
5 vehicle. The vehicle had come to a stop right on
6 Spruell Avenue at MacMillan. And both officers
7 exited the vehicle and approached.

8 Q And did you approach the drivers' side --
9 passengers' side window of that vehicle?

10 A I approached the passengers' side.

11 Q And when you approached the passengers's side of
12 the vehicle did the --did the defendant roll down
13 his window?

14 A The defendant did roll down his window; yes.

15 Q And once the window was wound down, what happened
16 then?

17 A I could -- I spoke to the defendant and I could
18 smell the odor of marijuana emanating from the
19 vehicle.

20 Q What did you ask the defendant at this point?

21 A His license, registration and proof of insurance.

22 Q And did he provide that for you?

23 A He did.

24 Q And once you got those items what did you do with
25 them?

1 A I proceeded to our records channel by standard
2 policy and began to run his information to make
3 sure his license was valid.

4 Q And where did you do that from?

5 A I stepped back from the vehicle -- about the rear
6 bumper of the vehicle.

7 Q Okay. And did you run those checks through the
8 radio in your patrol car?

9 A I used my portable.

10 Q Okay. Umm, at this point what was -- who were you
11 with at the time?

12 A Corporal Walker.

13 Q And what was Corporal Walker doing at this time?

14 A Corporal Walker was approaching the vehicle on the
15 passengers' side as well. For safety reasons,
16 because he had stopped in the roadway, she did not
17 want to get struck by an oncoming vehicle from the
18 lane. She began to speak with the defendant.

19 Q And when she spoke to the defendant did she notice
20 anything from inside the car?

21 MR. STAVRINAKIS: I'm going to object, Your Honor,
22 at this point. I don't mind him testifying to what he
23 said or did ---

24 THE COURT: For this purpose I'm going to
25 overrule.

1 BY MR. SAVAGE:

2 Q Please answer the question.

3 A Could you repeat the question?

4 Q Did Corporal Walker notice anything inside the
5 vehicle?

6 A She had mentioned the odor for marijuana, as well.

7 Q Okay. And at this point, once you -- did you
8 effect the window tint citation at this point?

9 A We had not at the time due to the nature of the
10 burning marijuana, we wanted to further
11 investigate.

12 Q And in further of that investigation, what did you
13 do?

14 A I went back over to the passengers' side of the
15 vehicle and began to speak with the defendant a
16 little more while Corporal Walker walked to the
17 drivers' side.

18 Q Okay. At some point did you attempt to detain the
19 defendant?

20 A We advised the defendant that due to the odor of
21 burnt marijuana in the vehicle that he was gonna
22 be detained. That's when Corporal Walker
23 attempted to detain him at that time.

24 Q Did you ask the defendant whether there was
25 anything illegal or any drugs inside the vehicle?

1 A I believe Corporal Walker did; yes.

2 Q And what -- how did the defendant respond to that
3 question; if you do know?

4 A Ummm, from my recollection he stated no.

5 Q No. Okay. And so how did you go about detaining
6 the defendant at this point?

7 A Corporal Walker had opened his drivers' door.
8 Asked him to shut the vehicle off. Leaned forward
9 and place his hands behind his back. He complied
10 at placing his hands behind his back. Once he saw
11 handcuffs he started to get extremely nervous and
12 grabbed the ignition keys again and when he
13 started to do that I reached into the vehicle in
14 an attempt to keep him on scene.

15 Q And what happened then?

16 A He decided to throw the shifter down into drive
17 and stomp the gas pedal.

18 Q Okay. Before we go any further, why did you
19 attempt to detain him inside the vehicle or were
20 you trying to get him outside of the car; what was
21 going on there?

22 A Corporal Walker's intention to detain him inside
23 the vehicle was, again, for officer safety
24 reasons. We were on Spruell Avenue, late at night
25 in a high level crime area. It would be a lot

1 safer for us and for the defendant to keep him in
2 the vehicle, detain him with handcuffs in the
3 vehicle than to bring him back to the patrol car
4 and further talk to him there.

5 Q Now you mention a little while ago that the
6 defendant started the vehicle and put it in drive
7 and then took off. Prior to that happening, at
8 any point, had you or Corporal Walker searched
9 that vehicle at all?

10 A No.

11 Q Ummm, and once that vehicle took off, what
12 happened next?

13 A Once the vehicle began to speed off my entire
14 upper torso, from my belt to my head, was already
15 in the vehicle and I had to make a split decision
16 whether I was going to get drug by the car, run
17 over, or enter the vehicle and I chose to enter
18 the vehicle.

19 Q And so, does that mean you took off with the
20 defendant inside the car?

21 A I was in the passenger's seat while he was
22 driving; yes.

23 Q And how far did you drive -- how far did the
24 defendant drive before all that ended?

25 A Maybe a maximum of a hundred yards.

1 Q And how did that end?

2 A It ended with the defendant attempting to get out
3 of the vehicle because the vehicle was placed in
4 PARK. The vehicle actually had -- had a single
5 car accident on the railroad tracks down by
6 Spruell Avenue.

7 Q Okay. Did you place the vehicle in PARK or did
8 the defendant?

9 A I place the vehicle in PARK from my seat.

10 Q And once that occurred, what did the defendant do
11 then?

12 A The defendant attempted to open the door and run
13 from the vehicle.

14 Q And did he run from the vehicle?

15 A He managed to get out of the vehicle while the
16 vehicle was still mobile and began to run on foot.

17 Q Did you follow him at that point?

18 A I waited til the car stopped for safety reasons
19 then I exited the vehicle and gave chase on foot.

20 Q And what happened during -- as you were giving
21 chase?

22 A Officer Walker had called back into our central
23 dispatch, letting them know -- advising them of
24 the situation and she began following in her
25 patrol car. Umm, she maintained a visual of the

1 subject while I was exiting the vehicle and I
2 caught up with him and there was a confrontation
3 that took ---

4 Q Okay, well tell us about the confrontation. Once
5 you caught up with the defendant, at this point,
6 was he informed that he was under arrest?

7 A At that point, yes. I explained several times,
8 "You're under arrest and to stop resisting". The
9 defendant refused the commands and kept going on
10 foot. I was able to catch up with the defendant
11 in a vacant lot a fight ensued.

12 Q Okay. When you say a fight ensued, how did that
13 begin?

14 A I had attempted to grab a hold of his arms to
15 detain him and he swung around swinging. At that
16 time I attempted to fight back. It took myself
17 and Corporal Walker several minutes of fighting to
18 actually get him into custody.

19 Q Now, when you say he was swinging, was he swinging
20 to get your arms off of him or was he throwing
21 punches at you?

22 A He was throwing punches.

23 Q Were those punches with a closed fist?

24 A Yes it was.

25 Q And did he at any point punch you or make

1 connection with you?

2 A He made connection with my torso. Never with my
3 face but I'm not sure if he struck Corporal Walker
4 or not.

5 Q Okay, and so at this point how long did you fight
6 -- was he placed under arrest at that point?

7 A At that point, yes, he was placed under arrest for
8 several violations. We managed to get him
9 detained with help -- with help from a third
10 officer that had come on scene.

11 Q Okay. Just to back track a little bit, if you
12 know, when the defendant fled in the vehicle, was
13 he followed by Corporal Walker in her cruiser?

14 A She began to follow; yes.

15 Q Okay. Were the lights or sirens activated upon
16 that police cruiser?

17 A Yes.

18 Q Ummm, and so at the point of arrest, what was the
19 defendant initially placed under arrest for?

20 A The defendant initially was placed under arrest
21 for possession of marijuana.

22 Q At some point was there a warrant issued for
23 possession of marijuana?

24 A I'm not sure.

25 Q Was there a search of the vehicle?

1 A There was a search of the vehicle due to the
2 reasons that vehicle was going to be towed.

3 Q Okay. So is that an inventory search -- what you
4 would call an inventory search?

5 A We were informed that, as far as the whole police
6 department, that subjects in custody, you have to
7 do a total inventory of the vehicle.

8 Q Was the defendant, at some point, also arrested
9 for failure to stop for a blue light?

10 A He was.

11 Q And was that in relation to when you were in the
12 car and Corporal Walker was behind?

13 A Yes.

14 Q And as the result of that inventory search, what
15 was recovered from that vehicle -- from the
16 defendants vehicle, if you know?

17 A I personally located a substantial amount of
18 Heroine that was located inside the vehicle.

19 Q Okay. Were there any other items inside the car?

20 A There was several items in the trunk. There was a
21 box of bullets, black ski masks, a led metal pipe,
22 case of gloves.

23 Q Was there any marijuana recovered from the
24 vehicle?

25 A There was a small amount of marijuana that was

1 located inside a cigar tube and half a smoked
2 blunt that had already been gone through and that
3 was located in the passenger compartment of the
4 vehicle.

5 Q Whereabouts in the passenger compartment?

6 A From my recollection the actual smoked portion of
7 it was in the cigarette tray on the dashboard.

8 Q The cigarette tray on the dashboard?

9 A Yes.

10 MR. SAVAGE: I have no further -- ya' know what?

11 Can we have a projector?

12 THE COURT: You have something to play?

13 MR. SAVAGE: I'm going to play the video, Your
14 Honor and just have him go through it.

15 BY MR. SAVAGE:

16 Q Officer Janicki ---

17 THE COURT: Is this the video of the chase?

18 MR. SAVAGE: The stop and the chase, Your Honor.
19 The initial stop.

20 THE COURT: The initial stop?

21 MR. SAVAGE: The initial stop and when they
22 approached and when Officer Janicki first approached
23 the passenger side window and what transpires from
24 there.

25 BY MR. SAVAGE:

1 Q Officer Janicki, if you want, maybe step down --

2 MR. SAVAGE: Do you want me to mark this for
3 identification for purposes of this hearing?

4 THE COURT: I -- I don't need to see the video to
5 make my decision.

6 MR. SAVAGE: All right.

7 THE COURT: Unless you just want me to see it.

8 MR. STAVRINAKIS: There's some things in there
9 that I think are for you to see.

10 THE COURT: All right. Go ahead.

11 MR. STAVRINAKIS: It's not long.

12 THE COURT: Okay.

13 (Whereupon playing of video started)

14 BY MR. SAVAGE:

15 Q Who's that walking along the right-hand side of
16 the vehicle there?

17 A That's me.

18 Q Now, you have your flashlight out, right?

19 A I do.

20 Q Why do you have your flashlight out?

21 A It is extremely dark outside.

22 Q I also noticed you have something on your hands.
23 What's on your hands?

24 A I have black search gloves. And those are -- we
25 were on a special assignment that night. We were

1 constantly getting in and out of the vehicle and
2 every time that I frisked a subject, for my
3 safety, I didn't want to get cut by needles or
4 knives, I wear my gloves.

5 Q So those gloves were not specific to this stop?

6 A No. Those gloves were on all night.

7 Q At this point in the video can you smell the
8 marijuana or not?

9 A As soon as he rolled down the window, yes, I could
10 smell the odor of marijuana; yes.

11 Q And who is that?

12 A Corporal Walker.

13 Q And what are you asking the defendant at this
14 stage?

15 A License, registration and proof of insurance and I
16 believe he's looking for it at that time.

17 Q I can see the flashing lights there. Is that the
18 police cruiser's lights there?

19 A That is the police cruiser's lights; yes.

20 Q Now is that Officer Walker ---

21 A Officer Walker; yes, she's talking to the
22 defendant now.

23 Q Now when you sort of stepped out of the picture
24 there, is that when you are checking ---

25 A I'm conducting a license check through our

1 registration.

2 Q Now at this point I know he's stopped for a
3 traffic violation but are you also concerned about
4 what's inside that vehicle with the smell of
5 marijuana?

6 A Absolutely. (video continuing to play) As far as
7 the other question was asked about using our
8 flashlights, as soon as we smelled the odor of
9 burning marijuana we attempt to locate visually if
10 it's in plain view. That's why we needed our
11 flashlights.

12 Q Is that part of North Charleston Police standard
13 procedure?

14 A Yes, yes.

15 Q Now is this -- what's going on here? I see that
16 Corporal Walker is on the driver's side ---

17 A Corporal Walker comes around to the driver's side
18 and advises that he's gonna be detained at the
19 time. She advised me that we were going to detain
20 him and that's why I stepped back up to the
21 vehicle. (Still viewing video) I secured his
22 information, his license, insurance and
23 registration in my waistbelt like I normally do,
24 in case I need my hands to be free.

25 Q Now what's going on inside his vehicle; how is he

1 acting at this point?

2 A At this point, Officer Walker is giving him
3 commands to shut the vehicle off, lean forward,
4 place your hands behind your back, you are being
5 detained. He -- he was acting extremely nervous.

6 Q Is he complying with those orders at this point?

7 A He is complying at that -- and that's why our
8 positions have not changed at all. (still viewing
9 video) This is where he starts, "You are not
10 detaining me" ---

11 Q Now, you jumped into the vehicle there, why did
12 you jump -- when you leaned into the vehicle what
13 triggered you to lean into the vehicle?

14 A I leaned into the vehicle when he turned his --
15 when he started to reach for the shift.

16 Q So he started the car up at that point and
17 attempted to drive off?

18 A Yes.

19 Q And this is where he veers off the road ---

20 A He veers off the road, crashes ---

21 Q And who was that that just ran in front of the
22 car?

23 A That is the defendant.

24 Q Okay.

25 A That's the vacant lot that I mentioned earlier.

1 (Whereupon the video ended)

2 MR. SAVAGE: And that's pretty much all we have,
3 Your Honor.

4 THE COURT: You wanna bring that and mark it as
5 Court's Exhibit number one?

6 MR. SAVAGE: Yes, Your Honor.

7 THE COURT: Anything else from the State for this
8 witness?

9 MR. SAVAGE: Not at this point, no.

10 THE COURT: Cross-examination?

11 MR. STAVRINAKIS: May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 MR. STAVRINAKIS: May I proceed, Your Honor?

14 THE COURT: Yes, sir.

15 MR. STAVRINAKIS: Thank you.

16 CROSS EXAMINATION

17 BY MR. STAVRINAKIS:

18 Q Officer Janicki, you mentioned that you were on
19 some kind of special assignment that night?

20 A It was considered an intelligence lead policing
21 overtime.

22 Q What does that mean?

23 A It's a program that the city was using for high-
24 crime neighborhoods.

25 Q Who does it involve ya'll doing?

- 1 A It involves all pro-active police officers to go
2 out in the community and have police presence,
3 conduct traffic stops, field interviews. Kind of
4 have more officers in high-crime neighborhoods.
- 5 Q Looking for drugs, basically?
- 6 A Right.
- 7 Q Looking for crime?
- 8 A Looking for crime.
- 9 Q Okay. Not just patrolling?
- 10 A Not just patrolling.
- 11 Q Okay. And you said you were wearing your gloves
12 because of that?
- 13 A Yes.
- 14 Q And Officer Walker was doing the same thing but
15 she wasn't wearing her gloves; why not?
- 16 A I was the one that was primarily conducting all
17 the searches.
- 18 Q But that wasn't what was going on in this case.
19 She was the one that was trying to conduct the
20 interview on her side of the car.
- 21 A She was the one trying to cuff him; correct.
- 22 Q You were on the other side of the car?
- 23 A Correct.
- 24 Q Ummm, and you are telling this Court that you wore
25 those gloves all night long or you had them on ---

1 A Until the incident was concluded; yes. Once the
2 incident was completed I took them off.

3 Q When you said to Mr. Savage that -- well, let me
4 ask you this -- I mean there's no question in this
5 case that you guys were trying to handcuff him?

6 A Correct.

7 Q And there's no question he was not free to leave
8 at that point?

9 A Correct. We detained him.

10 Q And there's no question that you guys physically
11 used force -- you physically tried to detain him.
12 This wasn't you just asking him to get out and go
13 sit in your vehicle. Ya'll physically, with your
14 hands, tried to cuff him, restrain him and detain
15 him?

16 A Correct. A high-crime neighborhood with the time
17 of night it was ---

18 Q I understand all that. My question was no
19 question that he was not free to leave ---

20 A No, he was not free to leave.

21 Q And you physically restrained him?

22 A Yes, we physically detained him.

23 Q Okay. At that point, when you attempted to cuff
24 him, ya'll had stopped him for window tint
25 violation and say that you smelled marijuana;

1 right?

2 A Yes.

3 Q You had asked him a number of questions; correct?

4 A Correct.

5 Q There was nothing incriminating about any of his
6 answers; correct?

7 A Correct.

8 Q You had flashed your flashlights in his car and
9 you hadn't seen any evidence of any criminal
10 activity with your flashlights; correct?

11 A Correct.

12 Q And your incident reports indicate -- there's
13 nothing in there to indicate that he said anything
14 incriminating, that he behaved in an incriminating
15 way, or that you saw anything incriminating?

16 A Correct.

17 Q Okay. And so we are clear, all you have at the
18 point you are trying to cuff him is what you
19 thought were some dark windows and what you
20 thought was the smell of, I think you said, of
21 burnt marijuana?

22 A Correct. There was the smell of burnt marijuana
23 emanating.

24 Q So you felt like you had to look for more?

25 A Absolutely.

1 Q Okay. And you obviously felt like, at that
2 moment, you did not have enough to arrest him?

3 A At that time, no.

4 Q Okay.

5 A That's why we detained him, not arrest him.

6 Q You told the Prosecutor that after this chase,
7 after this fight that you described, that you
8 placed him under arrest for possession of
9 marijuana, is what you told the Prosecutor.

10 A Due to the inventory of the vehicle when we towed
11 it.

12 Q That's not what he asked you. You told him that
13 ya'll eventually subdued him and you told him,
14 even before you caught him, "You are under arrest.
15 Stop".

16 A Correct, because he was fleeing.

17 Q And you told the prosecutor, at that point, that
18 what you arrested him for -- you are saying he's
19 under arrest and you told him what you were
20 arresting him for was possession of marijuana?

21 A Along with several other charges; correct.

22 Q Now, that's not what you said to the prosecutor
23 but you told him you arrested him for possession
24 of marijuana?

25 A Yes.

1 Q And you hadn't found any marijuana, at that point
2 when ya'll arrested him when you yelled at him,
3 "You're under arrest, Stop"?

4 A When I yelled at him he was under arrest. Stop
5 resisting that he was under arrest. There were
6 multiple charges.

7 Q Okay, but here's my question, you hadn't found any
8 marijuana at that point?

9 A At that point in time, no.

10 Q Okay.

11 A So at that point and time he was under arrest for
12 failure to stop for blue lights, resisting and to
13 keep going through all the charges.

14 Q Okay, but that's not what you told the prosecutor
15 before I asked you this line of questioning. You
16 told ---

17 THE COURT: He said other charges, Okay? Move on.
18 But you are right, he did say marijuana. But he did
19 say "and other charges". He added that.

20 MR. STAVRINAKIS: I don't think it's a big deal.
21 I think it is what it is, either way, Your Honor, but
22 what he said initially was, "he was under arrest for --
23 -

24 THE COURT: Let's move on.

25 BY STAVRINAKIS:

1 Q Did uh, did you and Officer Walker ask this
2 defendant if he was Stanley Green?

3 A No. I can't testify to what Officer Walker did.

4 Q Well, you did earlier.

5 A That's what she told me.

6 Q Did you ask him if he was Stanley Green?

7 A No.

8 Q And you are saying you don't know if she asked him
9 that or she didn't ask him that?

10 A Well, she was standing away from me and I was
11 operating the records channel. I have no idea.

12 Q Okay. So you don't know if she did or not?

13 A Correct.

14 Q Ummm, When you -- when you attempted -- when
15 Officer Walker attempted to cuff the defendant,
16 several things happened immediately after that.
17 Some of it's on the video, some of it you can't
18 see. But basically, ya'll approached him, she
19 opened the door, she asked him to lean forward and
20 put his hands on the steering wheel?

21 A Correct.

22 Q And he did it that?

23 A Correct.

24 Q She then asked him to put his hands behind his
25 back and he did that as well; right?

1 A Correct.

2 Q Okay. Did you hear her threaten to tase him if he
3 didn't allow to be handcuffed?

4 A No.

5 Q Let's go back to the window tint. Ya'll didn't
6 measure the window tint?

7 A I believe at the end of the traffic stop, when
8 everything was done, I believe Officer Walker
9 utilized her window tint meter on the vehicle.

10 Q You didn't measure it before you tried to handcuff
11 him; is that correct?

12 A Correct.

13 Q And you didn't measure it before you searched that
14 vehicle?

15 A No, I did not.

16 Q Ummm, it was dark outside. You said that in your
17 testimony. It was very dark; right?

18 A It was after eight o' clock at night.

19 Q What do you think it would be harder to do in the
20 dark; would it be harder to tell what color the
21 car is or to tell if a car had twenty-seven
22 percent window tint in compliance with the law?

23 A Which would be harder to do?

24 Q Yeah.

25 A It's very easy to tell the color of a vehicle.

- 1 Q It should be; shouldn't it? You signed this
2 report; didn't you?
- 3 A That's not my signature.
- 4 Q This right here is not your signature?
- 5 A No.
- 6 Q That's not your name written there?
- 7 A Not my signature.
- 8 Q Do you recognize that?
- 9 A That's the tow sheet.
- 10 Q Can you tell us where the tow sheet is from?
- 11 A This is a tow sheet from the incident in question
12 of a Ford. It was towed by Herbie's Towing.
- 13 Q What color does it say the vehicle was?
- 14 A Grey.
- 15 Q What color does the incident report say it was?
- 16 A I haven't viewed the incident report.
- 17 Q Would it surprise you to know it said it was a
18 gold vehicle?
- 19 A Like I said I would have to review the incident
20 report.
- 21 Q Do you have your report with you?
- 22 A No, I do not. I was notified at the last minute
23 of this hearing.
- 24 Q Do you recognize that?
- 25 A This is the incident report.

- 1 Q What color does it say the vehicle is?
- 2 A Gold.
- 3 Q Do you recognize this?
- 4 A It's the citation that was issued; Failure to Stop
- 5 for Blue Lights.
- 6 Q And on there there is a note about the color of
- 7 the vehicle; what color does it say the vehicle
- 8 is? I highlighted it for you.
- 9 A Looks like it says beige.
- 10 Q Who wrote that ticket?
- 11 A Officer Walker.
- 12 Q Where does it say arresting officer?
- 13 A It has my name. She filled out the citation.
- 14 Q And do you recognize that?
- 15 A It's an affidavit for the truck.
- 16 Q And what color does it say the vehicle is?
- 17 A Golden color.
- 18 Q So you want Judge Nicholson to believe that, in
- 19 the dark, at ten o' clock at night, a car driving
- 20 by, that in that video we can see taillights down
- 21 the road through the windows, we can see
- 22 headlights down the road through the vehicle, you
- 23 want his Honor to believe that you can tell that
- 24 in the twenty-seven percent requirement of the
- 25 law, but you couldn't even tell what color the

1 vehicle was?

2 MR. SAVAGE: Objection. Argumentative.

3 THE COURT: Overruled.

4 BY MR. STAVRINAKIS:

5 A Well, absolutely. When the vehicle is so black
6 that you cannot see inside it's an extreme officer
7 safety issue.

8 Q All right, that wasn't the question. The question
9 was you testified, for the prosecutor, that the
10 vehicle was in violation?

11 A Correct.

12 Q You also testified a minute ago that it would be
13 much easier to tell what color a car is than to
14 tell if it had a window tint violation at ten o'
15 clock at night ---

16 A Correct ---

17 THE COURT: Now it's argumentative. Okay.

18 Rephrase it.

19 BY MR. STAVRINAKIS:

20 Q Did you not testify that the vehicle was in
21 violation of the window tint statute just by
22 visual site ---

23 A Just by visual site.

24 Q And did you not also testify, just a minute ago,
25 that it would be much easier to figure out, at ten

- 1 o' clock at night, what color a car is rather
2 than there's window tint?
- 3 A Yes.
- 4 Q And did we not just establish that you couldn't
5 tell what color the car was ---
- 6 A Right. If I had done all the paperwork everything
7 would have been the same thing.
- 8 Q Meaning you would have written gold on everything?
- 9 A It would have read the original color of the
10 vehicle; yes.
- 11 Q The tow sheet -- you are not saying the car was
12 gold are you?
- 13 A What I'm saying is you are showing me paperwork
14 that has three different colors of the vehicle.
15 That whether it's turned out it's gold, beige, or
16 any other color, the vehicle in question is the
17 vehicle in question. You can verify it through
18 the South Carolina Department of Motor Vehicle tag
19 ---
- 20 Q I know I can do that. I'm asking you, you're not
21 saying the vehicle is gold or beige are you?
- 22 A Am I saying is the vehicle gold or beige?
- 23 Q Yeah.
- 24 A What I'm saying is what I wrote on the affidavit
25 it's gold.

1 Q You believe the vehicle is gold?

2 A (No answer)

3 Q Ummm, now as to marijuana, I think we covered some
4 of those, but you acknowledge all you have is
5 smell, nothing else; you haven't seen any
6 marijuana?

7 A Correct.

8 Q We're talking about at the point of handcuffing?

9 A Correct.

10 Q And the chase ensued. You didn't see -- there's
11 nothing in the incident report to indicate that
12 you saw any smoke coming out of the vehicle,
13 correct?

14 A Correct.

15 Q There's nothing in the vehicle that would indicate
16 that the defendant was driving erratically, like
17 he might have been high or under the influence;
18 correct?

19 A Correct. We had not followed him but maybe ten
20 feet ---

21 Q And there's nothing in the incident report
22 indicating that he had bloodshot eyes, there
23 wasn't anything in the incident report to indicate
24 that he was under the influence or some other
25 factor indicating the presence of marijuana?

1 A Correct.

2 Q So you relied on a burnt smell?

3 A We relied on training that we received in the
4 academy; yes.

5 MR. STAVRINAKIS: Beg the Court's indulgence, Your
6 Honor?

7 THE COURT: That's fine.

8 BY MR. STAVRINAKIS:

9 Q Let's umm -- let's go back to after this chase
10 ends -- who ultimately physically subdued the
11 defendant and gets him quote, unquote, under
12 control?

13 A I did.

14 Q You did, okay. And who was there with you when
15 you did that?

16 A Corporal Walker and one of the patrol officers.

17 Q Where did that happen?

18 A That happened at the vacant lot off of Spruell.

19 Q Say it again, I'm sorry?

20 A The vacant lot off of Spruell.

21 Q Okay.

22 A Spruell and MacMillan.

23 Q And the vehicle wasn't where the arrest was?

24 A No, it was across the street.

25 Q Okay. It was on the other side of the street?

1 A Correct.

2 Q Was anybody over at the vehicle when you arrested
3 him or was it over there by itself?

4 A The vehicle was over there by itself.

5 Q Ummm, and once he's handcuffed, what is done with
6 him?

7 A He's placed in back of the marked cruiser.

8 Q And that happened immediately ---

9 A Yes ---

10 Q You handcuffed him, put him in the vehicle
11 immediately?

12 A Yes.

13 Q Did he ever get back out of that vehicle?

14 A No.

15 Q Did he ever, at any point after that, pose a
16 danger to any officer on that scene?

17 A No.

18 Q Okay. Ummm, Do you agree with me now, at that
19 point, you didn't have any additional evidence of
20 marijuana, is that true; you didn't have probable
21 cause to arrest him for marijuana at that point?
22 Maybe you did for other things. Do you agree with
23 me you didn't have probable cause to arrest him
24 for marijuana?

25 A Correct. Not until inventory ---

- 1 Q Til after the search; right?
- 2 A Until after the inventory review.
- 3 Q Did ya'll ever write him a ticket for marijuana?
- 4 A I am not sure.
- 5 Q Did ya'll ever write him a ticket for window tint?
- 6 A I'm not sure.
- 7 Q Have you ever seen a ticket?
- 8 A No.
- 9 Q Did you ever go to court for any tickets; for
- 10 either of those?
- 11 A No.
- 12 Q And you mentioned to the Prosecutor that this was
- 13 what you called an Inventory Search?
- 14 A Correct.
- 15 Q Do you recognize this document?
- 16 A It's a Chain of Custody.
- 17 Q And who filled that document out?
- 18 A I did.
- 19 Q Is your signature on it?
- 20 A Yes.
- 21 Q And it requires for you to certify some things.
- 22 Basically you are giving a statement of chain of
- 23 custody and some other items in that kind of form;
- 24 correct?
- 25 A Correct.

1 Q And in that form you indicated that this was --
2 this evidence was seized as a search incident to
3 lawful arrest; didn't you?

4 A Correct.

5 Q You didn't say it was an inventory search when you
6 filled out that form.

7 A Correct.

8 Q When did you fill that form out?

9 A After the entire incident was over. When we were
10 processing all the evidence.

11 Q So this would have been the same night?

12 A Yes, it was later on that night. Guesstimate
13 would be eleven or twelve o' clock.

14 Q Not now after you met with the Prosecutor? You
15 filled that out that night and that night you
16 called it a search incident to lawful arrest;
17 correct?

18 A Correct.

19 Q Okay, thank you. Is it fair to say that this
20 defendant didn't give ya'll a difficult time or do
21 anything out of the ordinary until ya'll tried to
22 handcuff him?

23 A Until we tried to detain him.

24 Q Yeah, she was gonna handcuff him; right?

25 A Right.

1 Q Okay. He was fine until that? Complied with
2 everything you asked him to do?

3 A Yes.

4 Q Nothing out of the ordinary.

5 A From him?

6 Q Yes.

7 A No.

8 Q Which officer transported him; do you know?

9 A It was -- it wasn't me or Officer Walker. I don't
10 really know.

11 Q Umm, I showed you earlier what you identified as
12 an inventory of North Charleston Police Department
13 Inventory Tow Sheet. Under -- under personal
14 property retrieved, what items do you have listed
15 there?

16 A There's no items listed there.

17 Q Nothing listed there?

18 A Correct.

19 Q You do have items listed on these documents. Do
20 you recognize those?

21 A Chain of Custody sheets; yes.

22 Q So those are the Chain of Custody sheets that
23 correspond back to this form that we already
24 identified you filled out saying the search
25 incident for the lawful arrest?

1 A That's part of the arrest kit.

2 Q But it's the same chain of custody we are talking
3 about; the same thing?

4 A Yes.

5 Q And you would fill those out, basically, at the
6 same time; right?

7 A Yes.

8 Q So the Chain of Custody forms that say lawful
9 arrest -- search incident of lawful arrest have
10 all the items that you took. The inventory tow
11 sheet has nothing on it; correct?

12 A Correct, because I did not fill out the inventory
13 tow sheet.

14 Q What police officer would have signed this?

15 A I have no idea.

16 Q Who searched the vehicle?

17 A Us.

18 Q Well, why would anybody else sign it?

19 A Because we always have more than one officer go
20 through the vehicle.

21 MR. STAVRINAKIS: Beg the Court's indulgence, Your
22 Honor. (Pause) Nothing further, Your Honor.

23 THE COURT: Any re-direct?

24 MR. SAVAGE: Briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. SAVAGE:

2 Q Officer Janicki, just so that we are clear, at the
3 initial point of where you were going to place the
4 defendant -- or going to detain the defendant --
5 that's part of police procedure -- standard
6 procedure -- that you do it in these types cases -
7 - potential drug cases -- isn't that right?

8 A Absolutely.

9 Q The defense attorney also mentioned that or asked
10 you a question about did the defendant do anything
11 to indicate that he was under the influence of
12 anything -- he did take off and flea from the
13 scene; didn't he?

14 A He did.

15 Q And he did that with you inside the vehicle?

16 A He did.

17 Q And then he fled that vehicle?

18 A Yes.

19 Q And then he fled from you?

20 A Correct, on foot.

21 Q And then he turned and took a fighting stance with
22 you?

23 A Yes, he did.

24 Q And he threw a clenched fist at you?

25 A Yes.

1 Q And resisted arrest?

2 A Yes.

3 MR. SAVAGE: I have no further questions at this
4 point, Your Honor.

5 THE COURT: Okay. (To the witness): Where was
6 this search conducted where the inventory tow sheet was
7 filled out?

8 A Your Honor, the search was conducted -- we had
9 backed the vehicle off of the railroad tracks and
10 then it was done right on the scene.

11 THE COURT: Okay. Any questions pursuant to the
12 question I just asked?

13 MR. SAVAGE: No, sir.

14 MR. STAVRINAKIS: No, sir.

15 THE COURT: All right, you may step down.
16 Anything else from the State?

17 MR. SAVAGE: No, Your Honor.

18 THE COURT: Anything else, very briefly?

19 MR. STAVRINAKIS: Yes sir, Your Honor. Did you
20 just ask for argument now, Your Honor?

21 THE COURT: Unless you want to offer some
22 testimony.

23 MR. STAVRINAKIS: No sir, we don't.

24 THE COURT: Okay.

25 MR. STAVRINAKIS: Thank you, Your Honor. If it

1 please the Court.

2 Your Honor, what we have here, I think you hit
3 on very succinctly at the beginning, we have,
4 potentially a situation where you have reasonable
5 suspicion to believe a traffic offense might have
6 occurred. The police stop this vehicle. Unfortunately
7 for them, they do nothing, absolutely nothing to follow
8 up on that potential violation. They don't measure the
9 tint. They don't do anything to follow up and see if a
10 violation did in fact occur. We heard no testimony
11 from the stand to indicate that they were charging this
12 defendant with that violation.

13 If they had found violation, they probably could
14 have arrested him while he was in the vehicle and done
15 some things that the law allows. They didn't. They
16 didn't do anything. They just stopped him, supposedly
17 for that reason.

18 THE COURT: But they never had the opportunity.
19 They tried to secure -- whether the handcuffs was an
20 arrest or whether it was right or wrong, they tried to
21 secure him so they never had the opportunity to do the
22 test.

23 MR. STAVRINAKIS: Well sure they did, Your Honor.
24 I mean you saw the video. They walked up to ---

25 THE COURT: They were trying to secure the

1 individual for their own safety ---

2 MR. STAVRINAKIS: No, I'm talking about before
3 that, Your Honor. Before that ever happens. They
4 walked up to the vehicle, they have time to ask him
5 questions, they have time to flash the flashlight to
6 the car, they have time to go back to their car and
7 talk to each other and look at his ID. They have time
8 to go back to the vehicle -- they have plenty of time
9 to pull out that little device and check the window to
10 see if it's tinted too much. They didn't do anything.

11 So then, they smell marijuana. And what do they
12 do. Berkemer says they can briefly detain him to ask
13 him a few questions and maybe step -- ask him to step
14 outside the vehicle. They don't do that. They do ask
15 him a few questions. There's nothing elicited during
16 those questions that would allow further suspicion.
17 The officer admitted, "We didn't see anything in that
18 vehicle". He answered the questions, "We didn't have
19 any suspicion about his answers. He didn't do anything
20 until the time we tried to cuff him to give us any
21 suspicion on what he was doing".

22 And in that instance, Berkemer is very clear.
23 Berkemer says, "Unless the defendant's provide answers
24 -- unless the defendant's answers provide the officer
25 with probable cause to arrest, he must be released at

1 that point". The Supreme Court of the United States
2 has said, if his answers or actions do nothing to
3 arouse further suspicion that he must be released.

4 What do they do? They do the opposite. They
5 break out the handcuffs to arrest him. Not release
6 him. Not get him out of the vehicle. I think at that
7 point it's even debatable whether they can get him out
8 of the vehicle and talk to him. They don't even try to
9 do those reasonable things. Instead, they try to
10 handcuff the man and place him under arrest, and you
11 heard the testimony, there's no question he was not
12 free to leave. You saw the video. When he tried to
13 leave, they chased him down and arrested him. You
14 heard the testimony, no question, it was physical
15 restraint involved. So clearly, this was an arrest.

16 If you read -- if you read Hadarre the elements of
17 arrest are clear. You can't arrest on reasonable
18 suspicion, Your Honor. You and I both know that.
19 Prosecutor knows that. You have to have probable cause
20 and he said, from the stand, he didn't have probable
21 cause to arrest him at that point. He said it on the
22 stand. That he didn't get probable cause until after.

23 And I will submit to you that the law in South
24 Carolina is clear, a defendant can resist arrest when
25 it's illegal and in this case, by the officer's own

1 words, he did not have probable cause to arrest. That
2 is an illegal attempt to arrest and in this state, you
3 know what a defendant can do, I don't even want to say
4 it in court but you know what a defendant can do, if
5 they need to, to resist an unlawful -- unlawful arrest.

6 Your Honor, we also have to look at the other
7 circumstances. Berkemer tells you to look at the
8 circumstances and they got the color of the car wrong,
9 Judge -- the color of the car wrong and they want you
10 to believe that they can see the window tint was in
11 violation at ten o' clock at night. No measurement.
12 The only thing they have was the smell of burnt
13 marijuana. I would submit to you, I've been in a
14 restaurant before and smelled something and thought
15 maybe somebody was burning one. I didn't know for sure
16 what it was. You can smell burnt things and mistake
17 them. That's why you don't arrest people just because
18 you smelled something. They didn't see any smoke.
19 They didn't see any bad driving. They didn't see any
20 bloodshot eyes. They didn't see any marijuana. They
21 didn't see anything up to the point they tried to
22 handcuff this man and place him under arrest.

23 In fact, you saw them on the video looking in the
24 vehicle. You saw on the video headlights of cars going
25 by, taillights down the street, and yet, they want you

1 to believe they can tell that that window tint was in
2 violation at ten o' clock at night.

3 Testimony and reports indicate, again, that there
4 was no suspicious behavior. He answered all the
5 questions. He provided them the information they asked
6 for. Even when they were trying to subdue him. He
7 leaned forward the way they asked. He put his hands on
8 the steering wheel the way they asked. He put his
9 hands behind his back the way they asked. The only
10 time that this man did anything that they didn't ask
11 him to do was when they tried to arrest him without
12 probable cause. And he's entitled to do that. He's
13 entitled to get away from that. The law is clear that
14 he is entitled to get away from that.

15 There's nothing in any case law that suggests you
16 can arrest someone for reasonable suspicion. The
17 Prosecutor is not going to be able to cite from a
18 single case that says you can arrest someone for
19 reasonable suspicion.

20 Now Your Honor, we also have a Gant violation in
21 this case. I mean, there are three grounds you can
22 throw this case out on -- three grounds that you need
23 to throw this case out on.

24 One is an illegal arrest under Haddad with no
25 probable cause. The other is the Berkemer violation

1 where they smelled marijuana. They rightfully followed
2 up with questions. He answered the questions. There
3 was nothing suspicious about his behavior or the
4 answers to the questions and Berkemer says at that
5 point that you must be released.

6 And the third thing is a Gant violation, Your
7 Honor. He can call this search whatever he wants under
8 direct examination but the truth is right here on the
9 chain of custody form. While search incident to lawful
10 arrest ---

11 THE COURT: I understand what Gant says..

12 MR. STAVRINKAS: And also the Inventory Tow sheet,
13 Your Honor, that's not how you do an inventory. You
14 know you do an inventory. You tow the car back to the
15 station. You follow procedures. The only way the
16 Supreme Court will validate an inventory search is if
17 you follow procedures. You don't tow a car back to the
18 station after you've already searched it and the tow
19 sheet says nothing was taken out of it and call that an
20 inventory search. That's not an inventory search.
21 That's a search incident to an arrest.

22 And what does Gant tell us, Your Honor? Gant
23 tells us that when the defendant can no longer access
24 his vehicle that a search incident to arrest is
25 invalid. It is no longer valid grounds for searching

1 that vehicle. And the officer testified that when the
2 defendant was subdued and placed into custody he was on
3 the other side of the street. That he was immediately
4 handcuffed and placed in another vehicle. And then
5 after that he went back and searched that vehicle
6 across the street.

7 And what do we have probable cause to arrest for
8 at that point? Arguably the only thing we have is
9 Failure to Stop for a Blue Light, which I don't think
10 we have probable cause for, but arguably we have that
11 and arguably, from the Prosecution's perspective, we
12 have a resisting arrest. Or an assault while resisting
13 arrest.

14 What is the other thing that Gant says? It says,
15 "If you're going to search the vehicle, either the
16 defendant has to be able to access it or you have to be
17 able to find evidence of which you had probable cause
18 for." You are not going to find probable cause of
19 resisting arrest or failure to stop for a blue light in
20 a vehicle search on the inside of the vehicle.

21 So Gant is clear, Your Honor. This is a Gant
22 violation, as well. There's three grounds to throw
23 this search out on and Judge, I know -- I know Judges
24 don't like to throw evidence out of cases -- I know you
25 don't -- but the law says that this search is pro se

1 unreasonable -- per se unreasonable -- I'm sorry and
2 that they have to provide an exception. They haven't
3 done it. And any of these exceptions that they can
4 cite, reasonable suspicion, Berkemer shoots that down.
5 Search incident to arrest, Gant shoots that down.
6 Lawful custody, Hadarre shoots them down. Inventory
7 search -- I gave you those cases as well, Colorado
8 versus Vertine and State versus Brandon Shupman saying
9 that say you have to follow procedures. You have to
10 tow the vehicle back and follow the procedures for an
11 inventory search. And you saw the chain of custody
12 form anyway, the search incident to arrest, the one
13 when he testified to that is either the defendant has
14 to be able to access that vehicle or there has to be
15 proof, likely proof of resisting arrest or failure to
16 stop for a blue light in a vehicle. You have to find
17 proof of that inside the vehicle, Judge.

18 I don't know if you have any questions, Your Honor
19 but that's basically what I've presented.

20 THE COURT: Thank you very much. Solicitor?

21 MR. SAVAGE: Yes, Your Honor. Firstly, this case
22 is what you said at the beginning. It's a case of two
23 detentions.

24 THE COURT: I'm sorry, what?

25 MR. SAVAGE: Two detentions. And defense counsel

1 is wrong. He stated there was no per se reasonable
2 stop. Case law reads probable cause is a traffic
3 violation has occurred. The stop is per se reasonable.
4 Here the officer testified they couldn't see inside the
5 car. They couldn't see whether it was a male, female,
6 black, white, they couldn't determine race. That's how
7 dark the tint was. So the stop is reasonable. They
8 testified that when they walked up to the car and as
9 soon as that window came down they smelled marijuana
10 from that side -- coming from inside the car.

11 You notice the whole time the defense attorney
12 spoke just then, not one time did he mention, Oh yeah,
13 they did find marijuana inside the ashtray. There was
14 burnt marijuana as well as another joint. That was
15 inside the car. So the officers weren't making up what
16 they smelled. They smelled it, it was in there,
17 reasonable suspicion to believe there was another crime
18 in progress at that point as soon as that window wound
19 down and as soon as the officer went up there and spoke
20 to the defendant.

21 They tried to detain him and as the defense
22 counsel mentioned, this is a Gant violation, this is a
23 Gant violation, Gant pursues the proposition of he was
24 arrested for driving under suspension. That defendant
25 was removed from the vehicle and placed in handcuffs

1 and the Judge in that decision stated there was no
2 probable cause to believe there was any further basis
3 to search that vehicle for additional driving
4 violations ---

5 THE COURT: The evidence their looking for has to
6 be relevant to the crime they arrested him for ---

7 MR. SAVAGE: Correct and I'm getting there. And
8 in this case they had the evidence. They smelled the
9 marijuana. It went from a traffic stop, now, to a
10 potential drug violation. They smelt that. The
11 defendant was still in the car when they tried to
12 effectively detain him. Gant -- the defendant Gant is
13 outside of the vehicle so they are not the same. He's
14 trying to compare one with the other. You get apples
15 and oranges. They do not -- they do not even -- they
16 don't compare. They are easily distinguishable on
17 their faces. Gant is nothing more than a traffic
18 violation. And the Court said there was nothing in
19 that vehicle -- there was no reason to search that
20 vehicle to try and determine further traffic
21 violations.

22 Here it's not the case. They had reasonable
23 suspicion to search that vehicle to at least further
24 investigate because of the smell of marijuana.

25 THE COURT: My problem with the procedure and let

1 me just put this in the form of a question. My problem
2 is what I heard is this, I agree they had the right to
3 detain for their personal safety ---

4 MR. SAVAGE: Um hum.

5 THE COURT: But do they have the right to handcuff
6 ---

7 MR. SAVAGE: I believe they do ---

8 THE COURT: I think any reasonable person would
9 assume that they are under arrest. At that point in
10 time all they had was a reasonable suspicion. They did
11 not have probable cause to arrest. That's my problem
12 with what has transpired.

13 Now, they never effected that -- to secure the
14 defendant or arrest the defendant -- because he took
15 off and now we are dealing with a separate issue, ie.
16 failure to stop for a blue light, assault on police
17 officer, et cetera. Yes, that -- that would be
18 incident to arrest in my opinion. But my problem is
19 the handcuffs. It's the North Charleston Police
20 Departments policy, apparently, of handcuffing these
21 people and saying as to their safety. I have a problem
22 with the factual scenario of this case.

23 MR. SAVAGE: I respectfully disagree. They are
24 entitled to detain the defendant and they attempted to
25 do that given the smell of drugs in this case, which is

1 significant here.

2 THE COURT: I don't disagree that they have the
3 right to detain but they don't have the right to
4 arrest. So the question is factually, was this an
5 arrest or was it not an arrest. Is that correct or is
6 that not correct.

7 MR. SAVAGE: Yes it is correct, Your Honor.

8 THE COURT: Okay.

9 MR. SAVAGE: And the officer stated at the point
10 they tried to detain him they told him, you are not
11 under arrest. He testified that you are not under
12 arrest because the detention and the detaining
13 procedure and I believe that they are entitled to
14 handcuff him for officer safety.

15 THE COURT: But don't the cases say what a
16 reasonable person would consider an arrest is an
17 arrest? Whether you grab them by the scuff of the neck
18 or whatever. Isn't that what the cases say?

19 MR. SAVAGE: I'd have to go back and research
20 that because as you see in the defenses motion it
21 doesn't talk about illegal arrest ---

22 THE COURT: You don't have to do that. I think
23 you clearly understand the Court's difficulty with this
24 fact scenario. I'm gonna give you time to address that
25 issue, okay?

1 MR. SAVAGE: Okay.

2 THE COURT: Whether the handcuffs were to secure
3 the individual for the police's protection and I think
4 that's the basic issue that the Court has to decide.

5 MR. SAVAGE: Very well, Your Honor.

6 THE COURT: Thank you very much.

7 MR. SAVAGE: Appreciate it.

8 MR. STAVRINAKIS: Judge, if I could just add a
9 couple of things. One, I would like, in the cases I've
10 provided you, and if it's okay with you I would just
11 point out again, that in Hadaree they say -- the
12 Supreme Court says -- There can be constructive
13 detention which will constitute an arrest, although the
14 party is never actually brought within the physical
15 custody of the party making the arrest. This is
16 accomplished merely by touching, however slight ---

17 THE COURT: I know what the case says. You may
18 address this. When can you get it to me?

19 MR. SAVAGE: Tomorrow. Just for the record, Your
20 Honor, I'd put it on the record that Hadaree was
21 provided to me this morning and ---

22 THE COURT: That's fine. I'm going to give you an
23 opportunity to address whatever you want to address.
24 If you think I'm wrong as far as the handcuffs and the
25 facts scenario of this case, that's all right. You can

1 get it to me by tomorrow? When can you reply?

2 MR. STAVRINAKIS: Tell me when you want me to
3 reply, Judge. I'm suppose to be leaving town but I
4 will reply whenever you tell me.

5 THE COURT: You can reply within a reasonable
6 time. When are you leaving town?

7 MR. STAVRINAKIS: I'm suppose to be leaving Friday
8 afternoon.

9 THE COURT: All right. How about getting it in
10 the mail to me next week?

11 MR. STAVRINAKIS: I can do that.

12 THE COURT: Mail it to this address. Thank ya'll
13 very much.

14 (Whereupon the hearing ended at 10:33 A.M.)

15

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--- END OF TRANSCRIPT OF RECORD ---

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I, the undersigned Deborah E. Everett, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 27th day of August 2009.

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

April 14, 2011


Deborah E. Everett
Official Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 07-GS-10-9498
	)	
Jameek Williams,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing was held on November 12, 2009, before The Honorable Thomas L. Hughston, Jr., in Courtroom 4D of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Dale Savage, Assistant Solicitor
 9TH CIRCUIT SOLICITORS OFFICE
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 Appearing for State of South Carolina

L. Stavrinakis, Esq.
 Appearing for Defendant

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Guilty Plea of November 12, 2009
Before The The Honorable Thomas L. Hughston, Jr..

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1 THE COURT: You are Jameek Williams?

2 DEFENDANT: Yes, sir.

3 THE COURT: All right. I have here
4 in my hands two indictments -- excuse me, not
5 two. One indictment. I don't want to scare you
6 to death by saying it's two, it's just one.

7 One indictment, but it's a big one.
8 April 6th, 2007, the States claims that you were
9 trafficking in heroin.

10 DEFENDANT: (Affirmative nod).

11 THE COURT: At least four, up to
12 fourteen grams. First offense. Do you
13 understand that charge?

14 DEFENDANT: Yes, sir.

15 THE COURT: That carries a penalty of
16 from a minimum of seven up to twenty-five years
17 in the penitentiary. Do you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Of course, you don't have
20 to plead guilty to anything, Mr. Williams. You
21 have an absolute right under the Constitution of
22 this state and of the United States to have a
23 jury trial; put the State to the test, see if
24 they can convince twelve jurors that you're
25 guilty beyond a reasonable doubt. Do you

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3

1 understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: If you want a jury trial,
4 you and your attorney would help select a jury,
5 twelve people, and they would take an oath to
6 decide your case based only the evidence
7 presented against you here in court. The jury
8 could not convict you and I could not sentence
9 you to anything unless all twelve members of the
10 jury were convinced by the evidence presented
11 here in court that you were guilty beyond a
12 reasonable doubt. Do you understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: After having helped
15 select a jury, you and your attorney would
16 participate fully in the trial, cross examine
17 the State's witnesses, ask them questions to
18 make sure that they were telling the truth.
19 You could call witnesses and you could testify,
20 if you wanted to, although you don't have to.
21 Nobody can make you testify against yourself.
22 Do you understand that?

23 DEFENDANT: Yes, sir.

24 THE COURT: Would you like to have a
25 jury trial?

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1 DEFENDANT: No, sir.

2 THE COURT: How do you wish to plead,
3 guilty or not guilty?

4 DEFENDANT: Guilty.

5 THE COURT: Are you really guilty?

6 DEFENDANT: Yes, sir.

7 THE COURT: Has anybody promised you
8 anything or threatened you in any way to get you
9 to plead guilty?

10 DEFENDANT: No, sir.

11 THE COURT: Are you pleading then of
12 your own free will?

13 DEFENDANT: Yes, sir.

14 THE COURT: I ask you again, would
15 you like to have a jury trial on this charge?

16 DEFENDANT: No, sir.

17 THE COURT: I ask you again, are you
18 really guilty of the charge?

19 THE COURT: I will accept his plea,
20 then. Solicitor, how did you'all find out about
21 this?

22 SOLICITOR: Yes, Your Honor, may it
23 please the Court, on April 6th, 2007, at Spruill
24 Avenue in Charleston County, North Charleston
25 Police Department conducted a traffic stop of

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1 the Defendant's vehicle. As the officers
2 approached the Defendant, the sole occupant
3 in that vehicle, they detected the odor of
4 marijuana from inside. The attempted to detain
5 the Defendant, he was placed in handcuffs while
6 he was inside that vehicle. The Defendant
7 started up the vehicle and fled the scene.

8 One of the officers was in the process
9 of leaning in the car when this occurred and had
10 the choice of sort of getting dragged or jumping
11 in the vehicle. He ended up jumping in the car
12 and they drove off together. There was a short
13 pursuit, probably to twenty to thirty seconds I
14 believe, not much longer than that and the
15 officer threw the car into Park and stopped the
16 vehicle.

17 The Defendant got out and fled. He was
18 apprehended a short distance away. They got
19 into a fight, a fistfight and the Defendant was
20 eventually apprehended with Capsaicin spray and
21 some other officers arrived at the scene, I
22 believe.

23 Inside the Defendant's vehicle were
24 three baggies of heroin weighing a total of
25 16.54 grams, a digital weigh scales, numerous

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6

1 glassine packets, latex gloves, a metal pipe
2 which was wrapped in tape underneath the
3 driver's seat, a black ski mask and forty-one --
4 a box of forty-one caliber bullets in the trunk.

5 Defendant's prior record is a 1992
6 voluntary manslaughter.

7 He is pleading to the lesser-included
8 offense with a range of ---

9 THE COURT: How much was actually in
10 the vehicle, how much did it weigh?

11 SOLICITOR: Sixteen point five four
12 (16.54).

13 THE COURT: But you've reduced it to
14 the four to fourteen. Correct?

15 SOLICITOR: That's correct.

16 THE COURT: All right.

17 SOLICITOR: I did speak with the
18 officers. They were -- I spoke with them this
19 morning. They were coming. I don't see them in
20 the courtroom right now.

21 The State also is dismissing a prox
22 charge, a failure to stop for a blue light and
23 an assaulting a police officer charge, as well.

24 THE COURT: All right.

25 SOLICITOR: I know in my discussions

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7

1 with the officers they're looking for a sentence
2 in the upper range, part of the reason being
3 that his prior record, the manslaughter,
4 basically the facts of that were that this
5 defendant -- the codefendant meet the victim in
6 that case at a Burger King and rode with the
7 victim to Argonne Street (phonetic) in
8 Charleston County where this defendant shot that
9 victim three times in the back of the head in
10 his vehicle with a nine millimeter pistol.

11 THE COURT: So when did he get out of
12 prison?

13 MR. STAVRINAKIS: 2002, Your Honor.

14 SOLICITOR: This Defendant owed that
15 victim \$500 for drugs. Given that he was
16 dealing in drugs then and ---

17 THE COURT: The victim owed him or he
18 owed the victim?

19 SOLICITOR: The Defendant owed the
20 victim \$500 for drugs and that -- that's the
21 reason for the shooting, based on the
22 information in that file.

23 We have grave concerns about danger to
24 the community in this case given that he is
25 still involved, that he's put himself back in

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1 drugs. Also what was inside the car, we are not
2 just talking about heroin but there was also a
3 ski mask, a metal pipe, a box of forty-one
4 caliber bullets. We are concerned, given his
5 prior record and the conditions of that charge
6 and what was found, and the fact that he was
7 willing to run from the cops and fight with the
8 police again. That's the reason for the police
9 wanting an upper-end sentence on this charge.

10 THE COURT: All right, I will
11 consider all that. We will switch now to the
12 other side. What would like to tell me on
13 behalf of your client?

14 MR. STAVRINAKIS: Thank you, Your
15 Honor, may it please the court. Your Honor, I
16 am not used to doing pleas where those kinds of
17 details and facts of a prior record come out.

18 I mean, I hear what Mr. Savage is
19 saying but the simple fact is that it can't be
20 assembled as what is being presented to you. I
21 don't know what happened almost twenty years
22 ago. I wasn't involved in that case. This guy
23 was a teenager then and, you know, he's a
24 thirty-four year old man now. But I will tell
25 you that the outcome speaks to something

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1 different. He pled to a reduced charge and he
2 didn't even get the maximum sentence on that
3 plea. So I don't know what all the details
4 were. I am not going to pretend as if I know.
5 But I know that everything that you read in an
6 incident report isn't always what the truth is
7 and it isn't always what you can prove in court.
8 I think the reduction in charge and the sentence
9 being a full third less than the maximum speaks
10 pretty clearly that there was something else
11 going on in that case besides just whatever that
12 incident report said.

13 Judge, you know, this has been a tough
14 case. I've worked real hard on this case for my
15 client. My client has worked hard with me, his
16 family has worked hard with me -- he's got a lot
17 of family in the courtroom here today, his
18 parents are here, his fiancée is here, his in-
19 laws. Not here today, Your Honor, he also has
20 three children, ages seventeen, six and one-
21 year-old. He also has provided support for two
22 stepchildren, ages sixteen and eleven years old.
23 He's been engaged for about ten years.

24 As you heard, Your Honor, he got
25 released in 2002. That was his only conviction

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1 prior to that. This is his only arrest since
2 then. This case, Your Honor, is two and a half
3 years old. Okay?

4 So for two and a half years he's been
5 on bond and -- I will tell you, Judge, that all
6 that he has done is work. Work and be where I
7 tell him to be when I tell him to be there.
8 He's worked more than one job. He's very
9 skilled. He's an electrician. When he first
10 got out of prison, of course he had a hard time
11 finding work but he was doing temp jobs and
12 eventually hooked on as an electrician and has
13 worked over the years to enhance that field, to
14 get it to where it is now. He actually was
15 putting wiring into armored vehicles for the war
16 on terror, so he's providing the community with
17 some valuable skills and service.

18 In addition to that work, whenever he
19 can, he's gotten odd jobs, second jobs, to work
20 as a delivery driver or whatever he could do to
21 make extra money for his family and, of course,
22 to meet his obligations as an adult to this
23 case.

24 Judge, you know, we had a hard time
25 getting where we are today. Part of the reason

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1 is that the stop-and-search in this case are --
2 you know, it was a really close call. Dale and
3 I had a Motion hearing in front of Judge
4 Nicholson and I think Dale would be candid and
5 tell you that if Judge Nicholson had ruled on
6 the day that we had that hearing that he
7 probably would have suppressed all the drugs and
8 evidence in this case. But he didn't, he took
9 it under advisement. We provided him some
10 additional briefs and he ended up ruling for the
11 State, so the State has the right to continue
12 prosecuting this and that's where we are now.
13 But I would tell you that it was a very close
14 call in that regard.

15 THE COURT: Well, I appreciate that
16 but I want to make sure that your client
17 understands, though, ---

18 MR. STAVRINAKIS: He does.

19 THE COURT: --- that once you plead
20 guilty all that goes out. Mr. Williams, so any
21 close call as far as any suppression or anything
22 like that is concerned is gone once you plead
23 guilty. Do you understand that?

24 DEFENDANT: (Affirmative nod).

25 MR. STAVRINAKIS: I've advised him of

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1 that, Your Honor.

2 THE COURT: All right.

3 MR. STAVRINAKIS: That's kind of where
4 I was going. He ---

5 THE COURT: That is just not
6 something for me to consider.

7 MR. STAVRINAKIS: No. I'm just
8 telling you that he had to make a big leap to
9 get here. It is not like ---

10 THE COURT: Okay. All right.

11 MR. STAVRINAKIS: I don't want you to
12 think that it's just like the State is the only
13 one who ---

14 THE COURT: I am sure of that.
15 Anybody pleading guilty, knowing that they are
16 going to prison for at least seven years, it's
17 not going to be easy to do.

18 MR. STAVRINAKIS: Right. But I want
19 you to understand that he feels like, you know,
20 that he is giving something up besides his
21 freedom by getting here, by doing this. He
22 feels like he would have a legitimate chance but
23 the fact is, Your Honor, that since -- since all
24 this, he's had another baby and he ---

25 THE COURT: Sorry to hear that.

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1 MR. STAVRINAKIS: --- realized that
2 the mistake that he made is bigger than just
3 going back to prison. I mean, you know, he's
4 got this young child depending on him and -- you
5 know, I can tell you that I saw him fight harder
6 than ever and work harder than ever after that
7 child was born. I think that he's made a
8 difference with him. I know that he has. He's
9 -- you know, again, uh, he's here in front of
10 you under difficult circumstances. You know,
11 honestly what we would like for you to do,
12 Judge, is to give him the minimum sentence.
13 It's a substantial sentence, it's a heavy
14 sentence; seven years under an eighty-five
15 percent scenario, no hope of parole. It's a
16 very, very tough sentence.

17 I don't think that Your Honor should
18 think for a minute that it is not tough. In
19 fact, if you look at South Carolina relative to
20 other jurisdictions with regard to this kind of
21 weight and drugs, the sentencing schemes that
22 the Legislature has set out in South Carolina is
23 exceedingly tough. The original charge, as
24 you've heard, Your Honor, carried a forty-five
25 (sic) year mandatory minimum. And this charge,

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1 of course, is seven to that same twenty-five
2 (sic). If we were in Federal Court, Your Honor,
3 where all these heavy sentences originally came
4 from -- that's kind of where it all started --
5 the Federal Courts have the reputation of being
6 the heaviest sentencing jurisdiction on drugs
7 and all these similar kinds of crimes.

8 If we were there, Your Honor, the
9 Federal guidelines would have him at a Level 16
10 and a Category 2 for a criminal record. Okay?
11 Now, before he got credit for entering his plea,
12 that would have him at twenty-four to thirty
13 months. That would be the range of his
14 sentence, twenty-four to thirty months. And
15 after he enters his plea, which he is doing
16 today, in Federal Court he would get a three
17 level credit, which would take him down to Level
18 13, fifteen to twenty-one months, Judge.

19 I am not telling you that you're bound
20 by that. I'm not saying who is right or wrong.
21 I am just saying that the Federal system, which
22 is notorious for having the hardest and harshest
23 sentences on drug traffickers would be less than
24 half of this minimum that I am asking you to
25 impose. Far less than half, Judge, and I think

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1 that it's a heavy sentence. There's no question
2 that it sends the message that you need to send
3 to him and to the community that we can't
4 tolerate drug trafficking in our community.
5 There is no question that it would send that
6 message.

7 I know that -- I know, Judge, that you
8 don't take any of this lightly. I know you'll
9 consider everything, what Mr. Savage has to say,
10 what I have to say, but I ask you to consider
11 that and to consider the equity, the weight of
12 that sentence, a no-parole sentence of seven
13 years is a heavy sentence.

14 I think Mr. Williams ---

15 THE COURT: Is there anything, Mr.
16 Williams, that you would like to say?

17 DEFENDANT: You know, I'm working.
18 I've got three kids, two stepkids, plus a
19 family. I was working. Since 2002. I just
20 made a mistake, you know?

21 MR. STAVRINAKIS: I think, Judge, ---

22 THE COURT: All right. I appreciate
23 that. Anybody else want to say anything? You
24 don't have to -- yes, ma'am, tell me your name.

25 ADRIAN BELTON: Adrian Belton

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16

1 (phonetic). I am his fiancée. Basically what
2 he said, he made a mistake. We have two young
3 kids and my other two kids, which he -- he's a
4 great man, he's a great father, you know, and I
5 -- I am just begging you, please, please
6 sentence him to the minimum.

7 THE COURT: I appreciate that. Yes,
8 ma'am, tell me your name.

9 YVONNE WILLIAMS: My name is Yvonne
10 Williams (phonetic).

11 THE COURT: All right, tell me what
12 you want to say.

13 YVONNE WILLIAMS: I AM Jameek's
14 mothers. Thank you, Judge, for giving me the
15 opportunity to talk on my son's behalf. He's a
16 good young man, he works to support his family
17 and kids. Please, Judge, I beg of you -- on
18 behalf of all the things that you heard on his
19 behalf, Your Honor, please have mercy on Jameek.
20 Thank you, sir.

21 THE COURT: All right. Thank you.
22 Mr. Williams, you sure got yourself in a mess
23 with this and all. I think that, considering
24 everything, that -- the sentence is that you be
25 confined in the South Carolina Department of

State of South Carolina v. Jameek Williams
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17

1 Corrections for a period of seven years. Good
2 luck to you.

3 (HEARING CONCLUDED)

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18

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the hearing
8 held before The Honorable R. Markley Dennis,
9 Jr., on November 12, 2009;

10 I further certify that I am neither kin nor
11 counsel to any of the parties and have no
12 interest in the outcome of this action.

13

14



15

Deborah Garrison

16

Circuit Court Reporter

17

9th Judicial Circuit

18

19

20

21

22 Charleston, South Carolina

23 June 22, 2010

LEON E. STAVRINAKIS

ATTORNEY AT LAW
 ONE COOL BLOW, BUILDING 200
 CHARLESTON, SOUTH CAROLINA 29403
 LEON@STAVLAW.NET

843-724-1060
 OFFICE

843-853-7816
 FACSIMILE

November 12, 2009

By Hand:
 Mr. Jameek J. Williams

RE: State v. Jameek J. Williams
Indictment No. 2007-GS-10-9497-9500
Charges: Trafficking Heroin, Failure to Stop, PWID Heroin Proximity &
Assault on a Police Officer While Resisting Arrest

Jameek,

As you know we are at the point in this case where you must make a final decision to plead guilty pursuant to the plea offer I have negotiated for you or proceed to trial where, if convicted, you would face a mandatory minimum sentence of 25 years incarceration. I have told you I do not see how we can reasonably expect to avoid a conviction at trial given the lack of favorable evidence available in the case discovery or through my conversations with you. Also, I have made clear that the 25 year sentence you could receive is a mandatory minimum, it could be higher but not lower if convicted of the Trafficking charge, is not parole eligible, is violent and requires service of 85%.

I know this is not an easy decision because, although the plea agreement reduces your Trafficking charge and dismisses all of your other charges, it still requires a sentence of between 7 and 25 years in the discretion of the court. It is also violent, not parole eligible, not suspendable, not probation eligible and a serious offense. This conviction would give you two convictions of serious or most serious offenses and would make you eligible for a sentence of life without parole should you be convicted of a serious or most serious offense a third time. It also carries an automatic driver's license suspension.

I know we all had high hopes for a dismissal after our suppression hearing in front of Judge Nicholson in August. As you know, he did not rule our way and the state is now free to proceed with its prosecution of you. That was really our only viable defense that I have seen. I have also advised you that your right to appeal that ruling will be eliminated by entering a guilty plea under the plea offer.

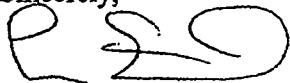
Despite all of that, it is still my advice that you accept the plea offer and end this case. We will argue as strongly as possible for a 7 year sentence. I simply cannot advise you to walk into a nearly certain sentence of 25 years or more on the hope that Judge Nicholson's ruling will be reversed on appeal. Although I feel we built the best possible record, the percentages would be overwhelmingly against you and on top of it you would be stuck with a sentence of 25 years or more without hope of parole while you await a decision and permanently if you lose on appeal.

Mr. Jameek J. Williams
Letter of November 12, 2009
Page 2 of 2

I have told you repeatedly, this decision is yours and yours alone. I will defend you on these charges in court regardless of which route you choose. I do not want to see you make a bad decision though and I feel the trial and appeal route is very likely just that, a bad decision. I also want you to keep the progress we have made in mind. When you hired me you were looking squarely at a sentence of 25 years or higher, the first plea offer reduced that to 20 years, then down to 15, next we had an offer of a sentence between 10-20 years and finally we progressed to the offer we have on the table now. You voiced your dissatisfaction with it and I proceeded to negotiate a free attempt at a suppression hearing with the offer remaining valid if the ruling went against us.

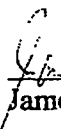
Please know I do not take lightly advising you to waive your constitutional rights or your right to appeal Judge Nicholson's ruling. In fact, it runs counter to most of my natural instincts and training. It is my job, however, to give you the best advise I possibly can. In this instance you have 2 bad options to choose from and I think the chance of success at trial or on appeal is not worth the risk.

Sincerely,



Leon E. Stavrinakis

I acknowledge I have received and read this letter. I have had all of my questions and concerns, whether contained herein or not, answered or addressed by my attorney prior to my decision in the above-referenced case.


Jameek J. Williams

Dated: _____

STATE OF SOUTH CAROLINA

County of Ridgeville

IN THE COURT OF COMMON PLEAS

2010-CP-10-3082Jameek J. Williams, #191622

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2010 APR 14 PM 5:00
JULIE J. HARRIS
CLERK OF COURT

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 MacDougall Corr. Inst., 1516 Old Gilliard Road
Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Charleston County
Court house in Charleston S.C. 29401
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: Indictment # 2007-GS-10-9497-9500
(a) 1) 23344DX 2) K219831 3) K219832 4) K219833

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 12, 2009. Seven years 85%
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) See attachment 9A

- (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) Rule 5/Brady violation
 (c) violation of Constitutional rights to Due Process
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attachment IIA
 (b) see attachment IIB
 (c) see attachment IIC
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. N/A
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 ii. N/A
 iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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) Ineffective Assistance of counsel (see attachment 16A)
- (b) Rule 5/Brady violation (see attachment 16B)
- (c) Violation of constitutional right to Due process (see 16C)

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

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

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. Leon E. Stavrinakis, One Cool Blow, Building
200, Charleston, South Carolina 29403

ii. _____

iii. _____

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

i. Arraignment and plea
sentencing

ii. _____

iii. _____

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

See Attachment 19

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Ridgeville)

I, Jameek J. Williams, #191622, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jameek Williams

SWORN to and subscribed before me this 12
day of April, 2010.

Bernette D. Lewis (L.S.)
Notary Public

My Commission Expires: My Commission Expires 4/24/2016

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

I, Jameek J. Williams # 191622, 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.

Jameek Williams
Applicant

SWORN or affirmed to and subscribed before me this

12 day of Apr., 2010.

[Signature]
Notary Public

My Commission Expires: ~~My Commission Expires~~ 4/24/2016

POST-CONVICTION RELIEF APPLICATION CONT.

Attachment

9A. Applicant's Counselor Leon E. Stavrinakis didn't divulge to Applicant that he could appeal, and to Applicant's knowledge, neither did Judge Houston made reference to an appeal or Applicant's right to one; Nor was Applicant aware that a plea of guilt could be appeal.

11A. Counselor Leon Stavrinakis didn't build a defense, he was only interested in procuring a plea arrangement. He (Counselor) failed to obtain evidence petition under the Rule 5 law. Counselor failed to attained what he considered to be "Exculpatory Evidence"; Such evidence being: the dispatch tape, and a transcript of the officer Dash cam video. Counselor had a copy of the video with no audio. Therefore the video was inconclusive [evidence] and Counselor failed to file a motion to have it dismissed as part of the Solicitor's evidence and case. Counselor led Applicant to believe he was trying to secure said tape and transcript since 2008. When Applicant followed Counselor [Stavrinakis] instruction and pled guilty in November of 2009; Counselor still hadn't secured said tape and transcript — leaving Applicant no choice but to follow Counselor's ill-advised instruction. If Applicant wasn't robbed of his [Constitutional] rights to view all evidence against him, Applicant would've not followed Counselor's ill-advised instruction of "Plea to seven years or get 25 years or life in prison." Counselor even

11A. cont. tried to get Applicant to sign a "Scare-tactics" document on the same day of Applicant's Court appearance. That document (See attachment LEON E. STAVRINAKIS) terrorized Applicant into following Counselor's ill-advised instruction. Yet Applicant wouldn't sign said document; Counselor was trying to force him to sign. True Applicant was facing a considerable amount of time, but Counselor was out of line for insinuating that Applicant's fate was already sealed with his "Either-or comments" and his "Scare-tactics" document.

11B. The Charleston Solicitor Office, and the North Charleston Police Department failed to honor the Rule 5 "fully" that Applicant's Counselor, Leon E. Stavrinakis, claimed he filed. Applicant's Counselor said the Solicitor and Police department failed to turn over all evidence and documents concerning Applicant's case. Applicant's Counselor kept referring to said evidence and documents as "Exculpatory Evidence." The "Exculpatory Evidence" being: The dispatch tape from night of Applicant's arrest, Officers on scene incident reports, Dash cam video with sound, Transcript of dispatch tape, and Transcript of Dash cam video.

11C. Applicant was denied Due process and the right to a fair trial based on the negligence of Counselor Leon E. Stavrinakis, and the inadvertency of the Solicitor office and the North Charleston Police department.

11C. cont. Applicant wasn't given all the evidence [concerning his case] petition under the Rule 5 law and backed and protected by the Constitution. The Charleston Solicitor's office, and the North Charleston Police department knowingly withheld "Exculpatory Evidence" from Applicant; which is not only a violation of Applicant's Constitutional rights it's a crime of prosecutor misconduct, and state official misconduct. Applicant needed to have [had] all the evidence petition under Rule 5 [in order] to have consciously weigh the evidence against him before making such a life changing decision "Based on Counselor's instruction and frightening letter. Applicant's rights were taken away illegally - forcing Applicant to make a unwise admission of guilt based upon Counselor's instructions.

16A. Applicant's lawyer instructed him to admit guilt.

16B. Applicant's lawyer instructed him to admit guilt.

16C. Applicant's lawyer instructed him to admit guilt

19. To have guilty plea lifted, and to have a suppression hearing to weigh all evidence in this case. To be given all evidence requested per rule 5 for Applicant's view. And that Applicant if granted a trial, that he be given the same plea ~~move~~ arrangements if he decides not to move forward with the trial: Applicant respectfully request to be facing no more time than he's currently doing if he "reconsider" the plea move as best. That the

JW

19. cont. Grounds part of Applicant's PCR Application remains opened until Applicant is given an Attorney by the Court's; said Attorney may want to Amend Applicant's Application to include other grounds to [further] support Applicant's Claims of being held unlawfully

4 of 4

10-3082

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same in the United States Mail, postage prepaid, and sent to his/her last known address as follows:

JULIE J. ARMSTRONG

Clerk of Court, C.P. & G.S.

Charleston County

100 Broad Street, Suite 106

Charleston, South Carolina 29401-2258

FILED
2010 APR 14 PM 5:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Jameek Williams

JAMEEK WILLIAMS, #

191622

MacDougall Corr. Inst.

Birch #2 Cube C-16A

1516 Old Gilliard Road

Ridgeville, SC 29472

4-12-2010

DATE

April 12, 2010

Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: Jameek J. Williams, # 191622 v. State
Case# GS-10-2007-9497-9500

Dear Ms. Armstrong,
Please find enclosed an original and one copy of the Applicant's Post-conviction Relief application in the above-captioned case. Please file the original in your office and return a clocked-in copy to me for my file in the enclosed envelope.

Sincerely,

Jameek Williams

10-3082

Jill L. Clark, Chemical Analyst
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, South Carolina 29221-1398

RE: State vs. Jameek J. Williams, #191622
Case # 2007014440
Report # L07-05515 pertaining to B185872

Dear Ms. Jill L. Clark,

On April 13, 2007, items were received in B185872 from Alex Teachey of the North Charleston Police Department. Items being: Three plastic bags containing powder substance—That you tested and determined was Heroin with a combined weight of 16.54 grams (255.24 grains), C-I. The Drug Analysis Report (L07-05515) wasn't clear as to how your results came about. Therefore under the freedom of information Act, I Jameek J. Williams, #191622 am requesting all information pertaining to B185872, Case No. 2007014440; Report L07-05515. Did you tested each bag or just one? How did you came up with the weight? Were the substance weigh inside the bags? What was the overall chemical test results? What was the weight of each bag? What was the Overall Gas Chromatography results? What was the overall Mass spectroscopy results? You

Said Heroin was found, yet there is no depiction of the drug. Officer took "Brown powder-like form substance" supposedly from Jameek Williams, #191622. You tested a Powder substance. Powder, being "white in color." The descriptions don't match what you tested wasn't what was found supposedly on Jameek Williams. What makes Heroin? You mentioned the combined weight, but not the combine substances to prove what you actually had was indeed Heroin? Therefore the report LO7-05515 isn't clear on the issues I've mentioned throughout this document. Under the freedom of information act and pursuant to rule 5 of the Brady Motion I am requesting this additional information found throughout [this document]. I'm in the process of filing a PCR (Post-conviction Relief) Application and therefore need this necessary information and questions answer. Thank you for your time, and I do apologize for any inconvenience.

Sincerely,

Jameek Williams

Date: 4-12-2010

Jameek J. Williams, #191622

MacDougall Corr. Inst.

Birch #2 Cube C-16A

1516 Old Gilliard Road

Ridgeville, SC 29472

10-3082

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same in the United States Mail, postage prepaid, and sent to his/her last known address as follows:

Julie J. Armstrong
Clerk of Court, C.P. & G.S.
Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

FILED
2010 APR 14 PM 5:01
JULIE J. ARMSTRONG
CLERK OF COURT

Jill L. Clark, Chemical Analyst
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, South Carolina 29221-1398

Jameek J. Williams
Jameek J. Williams, #191622
MacDougall Corr. Inst.
Birch #2 Cube C-16A
1516 Old Gilliard Road
Ridgeville, SC 29472

Date: 4-12-2010

10-3082

Ptl. William Janicki
North Charleston Police Department
4900 LaCross Road
North Charleston, SC 29419

RE: State vs. Jameek J. Williams, #191622
Case NO. GS-10-2007-9497-9500

Dear Mr. William Janicki,
Under the Freedom of Information Act and pursuant to rule 5 of the Brady motion I need "All" information, documents, and evidence available in this case (GS-10-2007-9497-9500). I need the Officers involved incident reports as well as their sworn statements (affidavits). I'm in the process of filing a Post-conviction Relief Application and therefore need these necessary documents, along with a transcript of the Officer's Dash Cam Videotape recorder. Thank you for your time, and I do apologize for any inconvenience.

Date: 4-12-2010

Sincerely,
Jameek J. Williams
Jameek J. Williams, #191622

MacDougall Corr. Inst.
Birch #2 Cube C-16A
1516 Old Gilliard Road
Ridgeville, SC 29472

10-3082

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same in the United States Mail, postage prepaid, and sent to his/her last known address as follows:

Julie Armstrong
Clerk of Court.
Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Ptl. William Janicki
North Charleston Police Department
4900 Lacross Road
North Charleston, SC 29419

FILED
2010 APR 14 PM 5:01
JULIE ARMSTRONG
CLERK OF COURT
BY _____

Jameek J. Williams
Jameek J. Williams, 191622
MacDougall Corr. Inst.
Birch #2 Cube C-16A
1516 Old Gilliard Road
Ridgeville, SC 29472

DATE: 4-12-2010

April 12, 2010

Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: Jameek J. Williams, #191622 V. State
Case # GS-10-2007-9497-9500

Dear Ms. Armstrong,
Please find enclosed Two original documents. Please file
these original in your office and return a clocked-in
copies to me for my file.

sincerely,

Jameek Williams

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
Jameek J. Williams, #191622,	)	2010-CP-10-3082
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed April 14, 2010, 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 Charleston County Clerk of Court. The Applicant was indicted at the August 2007 term of the Charleston County Grand Jury for failure to stop for a blue light (2007-GS-10-9497), trafficking heroin (more than 14 grams) (2007-GS-10-9498), possession of heroin with intent to distribute within the proximity of a school (2007-GS-10-9499), and assault on a police officer while resisting arrest (2007-GS-10-9500). Leon Stavrinakis, Esquire, represented the Applicant. On November 12, 2009, the Applicant pled guilty to the lesser-included offense of trafficking in heroin – 1st offense (4-14 grams). The State dismissed the other three offenses in exchange for the plea. The Honorable Thomas L. Hughston, Jr. sentenced him to confinement for seven (7) years for trafficking in heroin. Applicant did not appeal the guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction, the records of the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel in that counsel
 - a. Did not build a defense.
 - b. Failed to obtain Rule 5 evidence.
 - c. Failed to obtain exculpatory evidence (dispatch tape and transcript of the officer's dash cam video).
 - d. Used scare tactics and terrorized Applicant into following counsel's ill-advised instruction.
2. Prosecutorial misconduct in that the State did not turn over the dispatch tape, the officers' incident reports, the dash cam video with sound, the transcript of the dispatch tape, or the transcript of the dash cam video.
3. Applicant was denied due process because he was not given all the evidence under Rule 5.

III.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Applicant alleges prosecutorial misconduct. The Respondent construes his claims to imply that the State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is

material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id.

The Respondent submits that this ground for relief is completely without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this ground for relief.

V.

The Applicant further alleges that he was denied due process of law. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VII.

WHEREFORE, the State requests an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

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

7/14, 2010.

STATE OF SOUTH CAROLINA

)

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

2010-CP-10-3082

Jameek J. Williams, 191622,

)

Applicant,

)

)

vs

) AFFIDAVIT OF SERVICE BY MAIL

)

State of South Carolina,

)

)

Respondent.

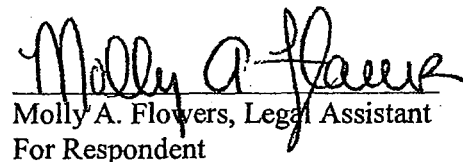
)

)

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 of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Robert A. Kerr, Jr., Esquire
 Hagood & Kerr, PA
 P.O. Box 220
 Mt. Pleasant, SC 29465

DATED this 14th day of July, 2010.


 Molly A. Flowers, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2010-CP-10-03082

JAMEEK J. WILLIAMS)
)
 Applicant,) TRANSCRIPT OF RECORD
)
 -vs-) May 23, 2011
)
)
 STATE OF SOUTH CAROLINA,) Charleston, South Carolina
)
 Respondent.)

B E F O R E:

The Honorable Deadra L. Jefferson, Judge.

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

Stanley Feldman, Esquire
Attorney for the Applicant

Matthew S. Friedman, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Jameek J. Williams	5	17	--	--
4	Leon Stavrinakis	19	25	--	--
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1 (May 23, 2011.)

2 THE COURT: This is Jameek J. Williams versus
3 the State of South Carolina, 2010-CP-10-3082. It's
4 before the Court on an application for post-conviction
5 relief, which was filed on April 14, 2010, term being
6 filed on July 15, 2010. This arises out of a guilty plea
7 which the defendant entered.

8 There were three separate indictments -- it
9 appears there was an indictment for PWID heroin with
10 proximity, which is 2007-GS-10-9499; resisting arrest,
11 assaulting a police officer while resisting arrest, which
12 is 2007-9500. He pled to indictment 2007-9498, which
13 trafficking in heroin, four to fourteen grams, first
14 offense. He received seven years, which was minimum
15 mandatory, got credit for any time that he served, pled
16 before Judge Hughston on 11/2 of '09, and, again, that
17 was from the indictment for trafficking in heroin from
18 the events that arose on April 6 of 2007.

19 And, actually, the indictment indicates that
20 it was in excess of 14 grams of heroin, so he pled to a
21 lesser included offense and also pled to a first offense.
22 It appears that he also had a ticket for failure to stop
23 for a blue light, which was indictment 2007-9497.

24 Just a month ago, he pled to the lesser
25 included offense of first offense trafficking heroin four

1 to fourteen grams instead of in excess of fourteen grams
2 grams, and the other indictments which I've published for
3 the record were dismissed or null prossed in exchange for
4 that plea.

5 He was sentenced to seven years on the
6 trafficking and heroin, and that is the subject of this
7 application for post-conviction relief. His claims are
8 that his attorney did not build a defense, that he did
9 not advise him of his right to appeal his guilty plea,
10 that he did not see the Rule 5 evidence against him, that
11 his attorney did not get exculpatory evidence against
12 him, that his attorney used scare tactics and terrorized
13 him and made an ill-advised decision.

14 He claims the prosecutor -- there was
15 misconduct on their part because they did not turn over
16 dispatch tapes. The officer's dash cam videotape was
17 found. The transcript of the dispatch tape was the
18 transcript of the dash cam video, and he was denied due
19 process because he was not given all this evidence under
20 Rule 5.

21 Is the applicant ready to proceed?

22 MR. FELDMAN: We are, Your Honor.

23 THE COURT: You may proceed. I assume,
24 Mr. Friedman, you're ready as well?

25 MR. FRIEDMAN: I am.

1 MR. FELDMAN: Thank you, Your Honor. I would
2 call Jameek Williams to the stand.

3 THE COURT: You can testify at counsel table.

4 JAMEEK WILLIAMS,

5 having been first duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 MR. FELDMAN: May it please the Court.

9 BY MR. FELDMAN:

10 Q. Mr. Williams, you have heard Judge Jefferson go
11 over the basis of your post-conviction relief
12 application, haven't you?

13 A. Yes, sir.

14 Q. Okay. And I want to -- Your Honor read or took
15 your information from your application. I want to ask
16 you some specific questions about what you are claiming,
17 but first, I want to ask, just so you state on the
18 record, that you understand that if you prevail in your
19 post-conviction relief action that you would go back to
20 the beginning, where all of the charges were pending with
21 the original weight of the charge is in play, facing the
22 maximum, or the minimum mandatories that were applied to
23 the other court.

24 You do understand that; is that correct?

25 A. Yes.

1 THE COURT: You've explained to him, and I
2 don't mean to interject myself, and I apologize, but I
3 read in his post-conviction relief action and what he's
4 also asking alternatively is that if he gets a new trial
5 and he changes his mind about a trial that his old plea
6 deal would be available, and you've explained to him that
7 would not be available.

8 MR. FELDMAN: I have.

9 THE COURT: And If you could cover that with
10 him as well because I don't want him having any
11 misapprehension that somehow it would be the same
12 posture, I believe trafficking in heroin and the grams
13 the way he had his strike and the PWID within the
14 proximity of a school is also a strike, and I'm verifying
15 that right now to make sure.

16 MR. FELDMAN: Okay. I will.

17 THE COURT: I'm going to have my clerk look
18 for me because I want to make sure he's advised
19 appropriately because I don't want -- if he were to get a
20 new trial, I would not want him again under the
21 misapprehension if there were strikes and the state chose
22 to try them separately that he would be facing life
23 without parole, but I wanted to make sure I was accurate
24 before I told you that.

25 And have you explained to him both of these

1 are serious? I don't know what his prior record is.

2 Does he have any prior strikes?

3 MR. FELDMAN: I wrote him a detailed letter
4 about it, but I don't know --

5 THE COURT: Do you -- sir, what is your
6 criminal record?

7 THE DEFENDANT: Voluntary manslaughter in
8 1992.

9 THE COURT: So that is a strike, sir, and I
10 want you to go over it with him that, if the state could,
11 if he gets the relief he's requesting, that he could try
12 him separately on each of these, and they would
13 constitute two additional strikes and they could seek
14 life without parole.

15 I don't know if they came out of the same
16 incident, though. I guess technically you could say it's
17 one incident and one strike, but I always prefer to
18 advise on worst case scenario. You know, worst case is
19 wrong, no harm, no foul, but if you're wrong --

20 MR. FELDMAN: I appreciate that, Your Honor.

21 THE COURT: I just wanted him to know that --
22 I wanted to make sure he is clear that that was not
23 available to him.

24 MR. FELDMAN: I'll cover that on the record.
25 Thank you.

1 THE COURT: You're welcome.

2 BY MR. FELDMAN:

3 Q. Mr. Williams, I want to discuss specifically what
4 Her Honor just raised to make sure there is a clear
5 understanding. In your application for relief, you ask
6 for alternative relief, one, a new trial in which
7 everything would be in play, but you ask for a form of
8 relief that is not available.

9 In other words, if you win your PCR, you cannot go
10 back and be in the same posture where you are now, in
11 other words, you stand now, where a charge was reduced,
12 three charges were dropped, and you got a minimum
13 sentence, and you understand you cannot go back and be in
14 the same posture with the seven-year sentence.

15 Now, the other thing that Her Honor raised,
16 because it was -- I'm going to ask it as a worse case
17 scenario, just to be sure, but if somehow, even though
18 this is the same incident, trafficking heroin or
19 possession within proximity of a school, if somehow they
20 could be tried separately as one strike each, that if you
21 have three strikes, a serious charges, you could be put
22 in jail for life.

23 Do you understand this?

24 A. Yes.

25 Q. Of course, we talked about -- just in terms of

1 what you understand and you perceive, that the
2 trafficking heroin warrant more than 40 grams was a
3 minimum mandatory 25-year sentence anyway, right? Do you
4 understand that? And the failure to stop for a blue
5 light was three years for a first offense?

6 THE COURT: Sir, we need you to say yes or no
7 so we can hear you. You understand that it was a 25
8 minimum mandatory day-for-day sentence with no parole.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay.

12 BY MR. FELDMAN:

13 Q. On the original charge, failure to stop for a blue
14 light, you understand that's three years for a first
15 offense?

16 A. Yes.

17 Q. And possession with intent to distribute in
18 proximity of a school is ten years?

19 A. Yes.

20 Q. And assault while resisting arrest is ten years?

21 A. Yes.

22 Q. Let me also ask you, if you understand that even
23 if you could actually get the same exact deal, you might
24 find yourself in front of a judge who may not agree that
25 the minimum sentence is the appropriate sentence, and you

1 could be sentenced to some other number between seven or
2 25, even under the exact same deal.

3 Do you understand that?

4 A. Yes.

5 THE COURT: Okay.

6 MR. FELDMAN: Thank you, Your Honor.

7 THE COURT: Best case scenario, he would have
8 two strikes. Worse case scenario, he would have three.

9 BY MR. FELDMAN:

10 Q. Now, would you please tell the Court the
11 circumstances for what you say your lawyer didn't do that
12 you asked him to do, what you thought he should do.

13 A. He failed to provide discovery materials.

14 Q. Let's talk specifically about what materials were
15 not provided.

16 A. The dash cam video was provided without the audio.

17 Q. And did you ask him to get the audio?

18 A. Yes.

19 Q. Okay. What else, dispatch tape?

20 A. Dispatch call in and the dispatch log.

21 Q. Okay. What else?

22 A. Counsel failed to properly prepare for the trial.

23 Q. How is that related to the plea that you entered?

24 In other words, do you feel he was ready to proceed on
25 the day of the plea?

1 A. To proceed with trial?

2 Q. Yeah. Was he ready for the case? Was he ready to
3 try the case?

4 A. He wasn't -- I don't think he was prepared for a
5 trial.

6 Q. And that's what I'm asking you, so please tell the
7 Court what -- how that relates to your doing the guilty
8 plea. In other words, was there any pressure? Was there
9 something else going on that caused you to enter the
10 plea?

11 A. I didn't have all the evidence that was against me
12 at the trial, video, with the audio, dispatch tapes and
13 dispatch call in which would prove the officers made a
14 call in from the initial stop, and the audio would prove
15 that the officers, when they pulled me over, they never
16 mentioned what he pulled me over for.

17 Q. And did they think you were somebody else? Were
18 they calling you by another name?

19 A. Yes. After they got my license and registration,
20 they came back to my car and said they smelled marijuana,
21 asked if there was anything illegal in the car, any
22 drugs, and I told them no.

23 They started calling me Stanley Green. I told
24 them I don't know no Stanley Green, and they start
25 telling me, You are Stanley Green, so the other officer

1 came around to the door, opened the or door, my door, and
2 told me to lean on the steering wheel before he Tased me
3 and put my hands behind my back.

4 Q. Now, I'm going to go back to the trial issues, but
5 were you advised about the right to appeal the sentence
6 and the plea, the plea and the sentence?

7 A. No.

8 Q. And how did the guilty plea come about? What did
9 the lawyer tell you would happen if you didn't plead
10 guilty?

11 A. If I didn't plead guilty I would get 25 more
12 years. I told them if they had obtained the audio with
13 the video, the dispatch log, the dispatch log, the call
14 in for the initial stop, if they ever called in a stop,
15 but they were stopping me for suspected illegal window
16 tint. The officers never came to the car, said that he
17 was going to stop for suspected illegal window tint. The
18 officers said they found burnt marijuana, a burnt
19 marijuana cigarette inside the ashtray, but in the
20 incident report, he said he found a marijuana cigarette
21 inside a tool, inside the driver's seat.

22 There was no evidence of marijuana, SLED report,
23 no SLED record on the marijuana, never been tested.

24 There was no marijuana. That was the original second
25 detention, so both of them for the, marijuana but there

1 wasn't any marijuana.

2 Q. Do you know if the lawyer challenged either the
3 weight over 14 grams or the substance heroin as part of
4 the process?

5 A. No. It was never challenged, the weight.

6 Q. Okay. In other words, the weight and substance,
7 those were just taken at face value as SLED set it?

8 A. Yes.

9 MR. FELDMAN: May I have this one page
10 marked, please? It's just a face of a warrant.

11 THE COURT: Did you show it to Mr. Friedman?

12 BY MR. FELDMAN:

13 Q. I want to show you what has been marked
14 Petitioner's Exhibit No. 1 for identification only. That
15 is the face of one of the warrants; is that correct?

16 A. Yes.

17 Q. And you asked me who the affiant was. It says
18 R.E. Stone, and I didn't know who the answer was. Did
19 you raise that issue with your lawyer, that who is this
20 affiant, who is this person that swore out the warrant
21 again you?

22 A. No, Your Honor.

23 MR. FELDMAN: Your Honor, may I show counsel
24 the other --

25 THE COURT: Uh-huh.

1 MR. FELDMAN: Your Honor, I would like to
2 offer this into evidence, and I would also ask whether
3 the Attorney General could stipulate that all of the
4 warrants have this affiant's signature on them.

5 THE COURT: All of that is part of the record
6 already. I'll admit everything that involves the
7 indictment process. The warrant is all attached.

8 MR. FELDMAN: Then I will not even introduce
9 this, Your Honor. Thank you.

10 THE COURT: You're welcome.

11 BY MR. FELDMAN:

12 Q. Mr. Williams, but for -- did the lawyer do
13 anything else that you told him to do that he didn't do
14 or did you tell him to do something they didn't do?

15 A. At the suppression hearing, I told him to
16 challenge the audio not being credited and to bring up
17 the dispatch tape and the dispatch log, the dispatch log
18 and the dispatch call in, and I told him he failed to
19 point out the discrepancies and also the testimony about
20 the marijuana, the half-burnt marijuana cigarette in the
21 ashtray -- and so I guess he found a burn want in the
22 cigarette, why him saying it was burning marijuana when
23 in the testimony he said it was burning marijuana when he
24 came up to the car.

25 So that is when he put in a half a burnt marijuana

1 was in the ashtray, but on the incident report was a
2 marijuana cigarette, and it was never sent to SLED.

3 Q. So you object to that issue not being raised by
4 the lawyer?

5 A. Yes.

6 Q. Okay. Now, what is it you say the prosecutor did
7 or didn't do that violated your rights?

8 A. Well, the conspiracy about him turning over the
9 evidence, he said he talked to the North Charleston
10 police department and they don't have dispatch call in
11 their dispatch log, but with the evidence and the case
12 still open, I don't see why they don't have it.

13 Q. Okay. And did the lawyer file any motions to
14 compel, to your knowledge? In other words, even if you
15 asked for materials, did he file any motions to make them
16 do it afterwards, if it wasn't produced?

17 A. The only thing they subpoenaed for and they told
18 him, they don't have it. They never turned it over.
19 They said he told the North Charleston police department,
20 and they don't have any dispatch log, and they had no
21 audio or video.

22 Q. Now, you were talking about the plea. We talked
23 about this a minute ago. When you were talking about the
24 plea, you said that the lawyer scared you or instructed
25 you or both into pleading. Tell the Court about that.

1 A. I felt under pressure by my lawyer because he
2 didn't -- he didn't have all the evidence. He wasn't
3 prepared for trial.

4 Q. But for the lawyer's mistakes would you have
5 entered a guilty plea? Would you have pled guilty?

6 A. I wouldn't have pled guilty. I went out there as
7 guilty because if I would have had all the evidence that
8 was entitled to me pursuant to Brady, I would have had
9 all the evidence. By me not having all the evidence that
10 that I'm entitled to, I have no choice but to plead
11 guilty.

12 Q. And as a result of -- well, because of the
13 situation where you wouldn't have pled guilty but for the
14 things that you're saying the lawyer did that's a
15 mistake, are you now asking the Court for a new trial?
16 Which is the only thing you could get in a PCR hearing.

17 A. Right.

18 Q. With some rare exemptions. So is that what you're
19 asking the Court for, a new trial? Just to make sure we
20 covered -- all the issues, all the charges pending as
21 they were originally?

22 A. If I had all the evidence from the state before we
23 even got from the suppression hearing, I probably
24 wouldn't have been in this position now, or I could have
25 been in this position or I couldn't have been in this

1 position.

2 Q. I understand, but you indicated you would not have
3 pled guilty, and I'm just asking you, are you asking the
4 Court for a new trial?

5 A. Yes.

6 MR. FELDMAN: Thank you. Please answer any
7 questions the Attorney General has.

8 THE COURT: Mr. Friedman?

9 MR. FRIEDMAN: Thank you.

10 CROSS-EXAMINATION

11 BY MR. FRIEDMAN:

12 Q. Mr. Williams, you pled guilty; that is right?

13 A. Yeah.

14 Q. Do you remember telling the plea judge you
15 understood the nature of the charge and the possible
16 punishment?

17 A. Yes.

18 Q. And I believe the possible punishment was seven to
19 25 years; is that correct?

20 A. That was the plea set for 25.

21 Q. And you were sentenced to seven; is that right?

22 A. Yes.

23 Q. Do you remember telling the plea court that you
24 understood your constitutional right, including your
25 right to a jury trial?

1 A. Yes.

2 Q. Do you remember telling the judge you did not want
3 a jury?

4 A. Yes.

5 Q. You also told the Court were you, in fact, guilty
6 of this offense?

7 A. Yes.

8 Q. You told the Court no one had threatened you or
9 promised you anything in order to get you to plead
10 guilty; do you remember that?

11 A. Yes.

12 Q. You also told the Court you were pleading guilty
13 of your own free will; is that correct?

14 A. Yes.

15 Q. Now there was a suppression hearing on the stop
16 and search, right?

17 A. Yes.

18 Q. That was prior to the plea hearing?

19 A. Yes.

20 Q. Do you remember Judge Hughston on the plea told
21 you once you plead guilty you cannot challenge the ruling
22 on the suppression hearing? Do you remember that you
23 told him that?

24 A. I'm not sure.

25 Q. Did you ask counsel to file an appeal for you?

1 A. I didn't know I could appeal.

2 MR. FELDMAN: I have nothing further.

3 THE COURT: Any redirect?

4 MR. FELDMAN: I don't have any redirect.

5 THE COURT: Any further witnesses?

6 MR. FELDMAN: No, Your Honor.

7 THE COURT: The state may proceed.

8 MR. FRIEDMAN: Thank you, Your Honor. The
9 state would call Leon Stavrinakis.

10 LEON STAVRINAKIS,

11 having been first duly sworn,

12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FRIEDMAN:

15 Q. How long have you been practicing law?

16 A. Since 1992.

17 Q. Were you appointed or retained in this case?

18 A. Retained.

19 Q. Do you recall about how many times you met with
20 the applicant?

21 A. This case was pending for a good while. Probably
22 somewhere between ten and twenty times, at least.

23 Q. Do you recall if you discussed charges and what
24 the state was required to prove at trial?

25 A. Yes.

1 Q. Did you discuss potential defenses with him?

2 A. Yes.

3 Q. And he testified that he believed that you all
4 were missing certain discovery materials. What is your
5 recollection on the discovery?

6 A. Sometime, you know, I would guess about halfway
7 through my representation of Mr. Williams, these issues
8 kind of bubbled up about whether the police thought that
9 he was somebody other than who he was, and I had included
10 in requests for videos and audios and Rule 5. They
11 didn't produce any.

12 I followed up with the solicitor, Dale Savage. He
13 responded to me there was no videos or audios of the
14 incident or any other part of the police contact with
15 Mr. Williams. Mr. Williams and I continued to discuss
16 these issues and felt like we needed to make sure, so I
17 sent a subpoena to the city of North Charleston, I'm
18 pretty sure it was, and a copy of it to Mr. Savage.

19 Sometime later he produced a video, in car video,
20 and we reviewed that several times, Mr. Williams and I,
21 and I also believe in the presence, at least one time, of
22 his fiancée. So we -- and, you know, I also requested
23 the logs, the dispatch reports. Unfortunately, they
24 produced some items, but not the actual tape of the
25 dispatch of the audiotape, so that is kind of how that

1 process unfolded.

2 Q. I believe there was a suppression motion; is that
3 right?

4 A. There was.

5 Q. What was your argument during this suppression
6 hearing?

7 A. We argued several grounds to Judge Nicholson who
8 presided that day that we felt justified suppression of
9 the evidence, and I also asked that the case be dismissed
10 in summary, and I'll be glad to elaborate at your
11 request, but, I mean, ultimately we argued, I think three
12 distinct grounds. One was that the search incident to
13 arrest was unlawful; two, that the detention subsequent
14 search and seizure were unlawful, and, three, that an
15 illegal arrest had, in effect, taken place when the
16 officers attempted to handcuff Mr. Williams and basically
17 argued that line of questioning.

18 Those were the three basics, and during the
19 suppression hearing, I think one officer testified and he
20 was cross-examined extensively, and I felt like it went
21 well, so did Mr. Williams, but, unfortunately, Judge
22 Nicholson ended up taking it under advisement and made a
23 ruling in favor of the state, denying the motion.

24 Q. Are there any plea offers in this case other than
25 the lesser included offense?

1 A. Over time there were several plea offers. I think
2 some of them were oral offers, and at least two were put
3 in writing. I think the first discussion I had with
4 Mr. Savage, he wanted Mr. Williams to plead straight up
5 to 25 years, and, you know, I let him know that wasn't
6 going to happen.

7 Subsequent to that, I think he made an offer to
8 reduce and negotiated 15 years. In other words, we had
9 to agree to the 15 years to get the reduction. I
10 continued to work with him for a better plea offer, and
11 sometime after that, I believe, he offered an
12 alternative, which was a plea that had a minimum ten
13 years with a cap of 20, or, again, to accept the offer of
14 a negotiated 15, and then, finally -- well, not finally,
15 but then we got to where he offered a plea of reducing it
16 with no recommendation, so he reduced it down to the
17 seven to 25 range, dismissed the other charges.

18 At first, Mr. Williams didn't agree to that, but
19 then later, when I got Mr. Savage to agree to allow us to
20 do the suppression hearing, and if the suppression motion
21 failed, that the offer would remain open, Mr. Williams
22 agreed to pursue that course of action.

23 Q. Did you communicate all the offers to the
24 applicant?

25 A. Yes. We reviewed all of the offers, some of them

1 multiple times. We probably didn't review the ones in
2 much detail. I knew he wasn't interested in those offers
3 and I wasn't interested in him taking it.

4 Q. Did you inform the applicant of the consequences
5 of the plea?

6 A. Yes.

7 Q. Were you prepared to go to trial if that's what
8 you decided to do?

9 A. You know, I was as prepared as I felt that I could
10 be. I talked to him multiple times, you know, throughout
11 most of this process, he and his family -- I shouldn't
12 say his family. He and his fiancée indicated they really
13 had no interest in going to trial, but they wanted me to
14 try to minimize the damage, and I worked very hard to
15 accomplish that.

16 Later on, though, when -- close to the end he kind
17 of changed his mind some and was talking actively about
18 trying the case. During that time, I emphasized to him
19 multiple times that as I viewed the case, the only real
20 arguments I saw were legal ones and that if we were going
21 to have a chance to argue this case factually in front of
22 a jury that I felt like, you know, he needed to help me
23 some in looking at the facts and the incident reports.

24 I didn't see much of a defense except for legal
25 defenses, and nothing was ever brought to my attention

1 that changed my mind about that, but, in fact, we did get
2 the opportunity to argue those legal effects, so I felt
3 that in some ways we actually did try the case to the
4 best degree that we could by being able to argue those
5 legal defenses and still being able to take advantage of
6 the plea offer, but we did talk about trial.

7 I felt like because nothing factually extra was
8 brought to my attention that having argued the legal case
9 I was as prepared as I could be to that point.

10 Q. Did you ever tell him he would get 25 years if he
11 did not plead guilty?

12 A. I certainly told him that if he were convicted at
13 trial he would get that much or more, and, you know, we
14 talked about how if the only defenses were legal and we
15 had already lost the suppression motion, we would have a
16 hard time winning the case at trial, and I certainly let
17 him know it wasn't guaranteed he would lose, but that's
18 the way it looked to me, and, you know, he would get 25
19 or more because there were, I think, three other charges,
20 and they all carried various degrees of time, and I think
21 his maximum exposure was 48 years or something like that.

22 Q. And if he had gone to trial, would that have been
23 on the original charge, the 25 to minimum?

24 A. Yes, and the other three charges as well.

25 Q. Whose decision was it to plead guilty?

1 A. It was his, ultimately. I mean, he was certainly
2 hesitant, no question about it, but after the plea, he
3 went forward on his own and he had some hesitation early,
4 as I recall, but ultimately went through.

5 Q. Did he ask you to file an appeal on his behalf?

6 A. He did not.

7 MR. FRIEDMAN: I have nothing further.

8 THE COURT: Any cross?

9 MR. FELDMAN: Yes, Your Honor, thank you.

10 THE COURT: You may proceed.

11 CROSS-EXAMINATION

12 BY MR. FELDMAN:

13 Q. Mr. Stavrinakis, let me hand you what has been
14 marked for identification only. This is just the front
15 of one of the warrants. Did you know who that is, R.E.
16 stone, the affiant?

17 A. I'm pretty sure that is Officer Stone who works
18 for North Charleston, and he handles most of their --
19 certainly their bond court paperwork, and I think he
20 quite often presents affidavits to magistrates for their
21 signature.

22 Q. But he wasn't involved in this case, was he?

23 A. To my knowledge, he was not a part of the stop,
24 search, and arrest.

25 Q. So wouldn't that have been a good issue to start

1 with, by way of a challenge, you know, I mean, because
2 this is how the case started, with those warrants.

3 A. Well, he did point out that we were in court. He
4 had already been indicted, and the indictment at that
5 point, in my view, you know, takes precedence. And back
6 at the prelim stage when something like this might have
7 been useful, first of all, none of that would have been
8 binding on the prosecutor, even if a prelim judge had
9 dismissed it, but, more importantly, the family and
10 Mr. Williams were actively seeking a bond reduction, and
11 if I recall correctly, I secured a reduction and we
12 waived the prelim, is I think what happened.

13 I'm not 100 percent sure of that, but I'm pretty
14 sure that that would have been the time when I probably
15 would have raised something like this and at that point
16 in the case it might have been productive, but the family
17 was trying to get him out of jail and wanted bond
18 reduced.

19 Q. Now, with respect to the -- would you agree with
20 me the biggest problem in this case was the minimum
21 mandatory for, I think, over 14 grams of heroin; is
22 that --

23 A. It was a huge weight on him, and the other defense
24 was the leverage that creates in trying to defend a case
25 like this.

1 Q. And the amount that SLED weighed it, I think, was
2 16 grams and change. I hate to be that imprecise, but it
3 was all over 16 --

4 THE COURT: 16.54.

5 MR. FELDMAN: Thank you very much, Your
6 Honor.

7 THE COURT: You're welcome.

8 BY MR. FELDMAN:

9 Q. 16.54.

10 A. Right.

11 Q. Wouldn't that have been a good thing to challenge,
12 either weight or substance, in terms of, you know,
13 whether you do an independent search or -- not a search,
14 but an independent analysis?

15 A. If he had ever said to me, I want to go to trial,
16 we certainly would have talked about doing that and
17 secured the funds about doing something like that. He
18 never said to me that, I want to go to trial and let's
19 get ready for trial, so, you know, I think that the --
20 you know, that the weights were tested and sworn, you
21 know, to, and they were in my general -- you know, unless
22 it's right on the number, I think that they're pretty
23 reliable, but certainly it would have been something we
24 would have talked about.

25 Q. And in fairness, a gram is -- I mean, it's two,

1 two-and-a-half, 2.54 before the cutoff, but that is where
2 all the leverage was in this case -- well, in fairness,
3 let me strike that.

4 That is where a great deal of leverage was in this
5 case, was on the mandatory minimum of 25 versus the seven
6 to 25.

7 A. Sure.

8 Q. When the dispatch tape, the audio, the
9 transcripts, when all those things that have to do with
10 the stuff were not produced, and I appreciate that you
11 said you discussed it with the solicitor, did you file
12 any motions to compel or whatever would be the
13 appropriate motion or document in General Sessions court
14 to compel it?

15 A. Well, what I chose to do was subpoena, but I want
16 to say that it's not accurate that these weren't
17 produced. The video was ultimately produced, and it did
18 have audio. I know that Mr. Williams, for whatever
19 reason, has a hard time with that, but there was audio on
20 the video. What there wasn't was out of car audio. In
21 other words, the officers were simply not miked up, so
22 the only audio that picked up on the recording was what
23 happened in the car and what you could hear when the car
24 doors were open.

25 The only other thing that he asked for that wasn't

1 produced, really, is a recording, an audio recording, of
2 the dispatch, and, you know, all I can say is I asked for
3 it multiple times, I issued a subpoena for it, and the
4 prosecutor looked into it, and it just didn't exist.

5 Q. But that issue was never tested in court, either
6 at the suppression hearing or at any other time; is that
7 correct?

8 A. Which issue?

9 Q. I'm sorry. The issue of -- you said you asked for
10 it and you subpoenaed it and it wasn't produced. You
11 asked for it a number of times.

12 A. Yeah.

13 Q. But you took -- that issue of whether or not such
14 existed was not challenged in any court proceeding.

15 A. I did ask about it at the suppression hearing.
16 I'm not sure exactly what I asked about it. I know that
17 he wanted me to question them about what he felt the
18 content of that would yield, and I did question him about
19 that and the officer denied, and in the audio portion of
20 the video, there was no reference to a Stanley Green, or
21 whatever that name was, I'm pretty sure it was Green.

22 And because it was not in the incident report,
23 because it was not on any audio, because I asked him
24 about it at a suppression hearing and it was denied,
25 honestly, I didn't know where else to go with it. To

1 answer your question directly, I did not file a motion to
2 compel or anything like that. They responded to my
3 subpoena. They just didn't have everything that I asked
4 for.

5 Q. With respect to the what I would characterize was
6 the mysterious issue, the marijuana wasn't really
7 discussed except at the suppression hearing. In other
8 words, you raised a good point about how you can see tint
9 at 10:00 at night, the discussion about the marijuana,
10 but that was like a suppression hearing special issue,
11 was it not? I mean, it didn't find its way in other
12 parts of the case.

13 A. Well, you now, obviously you can always second
14 guess yourself. The reason that I didn't go further with
15 that is because during the suppression hearing, the
16 arresting officer amended, under oath, that he did not
17 have probable cause to arrest Mr. Williams at the time
18 they tried to handcuff him and he then took off.

19 I didn't feel like I needed anything more than
20 that, to be honest with you. I got the officer to admit
21 he didn't have probable cause to arrest at the moment
22 they're trying to handcuff my client. I thought at that
23 point he was entitled to resist that arrest and had laid
24 the proper foundation to support that third element of
25 our suppression motion.

1 I didn't feel like I should give the officer the
2 opportunity to explain that away after he had admitted
3 it, and if I had gone into questioning him about
4 marijuana, whether they found marijuana, he could have
5 put evidence in the record that indicated probable cause,
6 even though he didn't testify that there was no probable
7 cause, I felt it was best to leave that right there
8 because the only evidence in the record at that point was
9 him saying, I did not have probable cause to arrest.

10 So, you know, I knew the judge was going to rule
11 against me, I would have done it anyway, but I also, at
12 that point, I felt that was right way to go.

13 Q. Now, I want to ask you about the plea because --
14 that occurred November the 12th of '09, and your
15 discussion, or your letter, was also November 12th of
16 '09. That would not have given him a lot of time to
17 think about all the other consequences.

18 A. Yeah, but the truth is, we talked about it
19 multiple times prior to that, and he, like I said, at the
20 last minute started talking about not pleading guilty,
21 and he certainly had that right, and I let him know that,
22 but that was after we had, you know, gotten to that point
23 where it really wasn't discussed, where we were going to
24 do much other than that, if things didn't go well at the
25 suppression hearing, and, you know, as a lawyer, I want

1 to do what my client wants, but I have to say that, you
2 know, when I talked to him about the suppression hearing,
3 I told him that Mr. Savage was agreeing to leave the
4 offer open, but it was under the pretense that we
5 resolved by plea if the motion did not succeed.

6 Again, certainly, I told him he had no -- if he
7 wanted to change his mind, he could, and we had several
8 discussions prior to me showing him that letter. The
9 reason for the letter was because at the last minute, he
10 started talking about not entering a plea. I wanted to
11 make sure that it was covered that I had gone over with
12 him everything that I thought he was putting at risk if
13 he did not enter the plea, but, certainly, it was his
14 decision.

15 Q. Let me ask you, did it ever occur to challenge
16 South Carolina's -- on the constitutional basis of South
17 Carolina's rule that you cannot do a conditional plea?
18 In other words, you know, in federal court, you got a
19 suppression hearing, you lose it, you may plea, but you
20 can still challenge the suppression hearing. I don't
21 think any such challenge was made. Did that occur?

22 A. We talked about those issues. I mentioned that
23 briefly, I think, that we couldn't do that. I certainly
24 talked to him at length about the fact that, you know, if
25 he wanted to appeal, the only way to do it was through a

1 trial, and I didn't discuss with him, I don't think, that
2 I would make that a part of the agreement. I just told
3 him that if he wanted to appeal Judge Nicholson's ruling,
4 if that was his primary objective, that he couldn't do it
5 by pleading guilty, that if he -- you know, if he went to
6 trial, and we talked about a lot of different -- you
7 know, we talked about a couple different ways of doing
8 it, even doing it, you know, by bench trial, but I just
9 didn't see any good in that.

10 So we mentioned it, but I didn't tell him I would
11 make that the basis of an appeal, no.

12 Q. And -- okay. And just because I didn't ask it
13 probably as clearly as I should have, there was no
14 constitutional objection to the rule that prohibits you
15 from doing a conditional plea.

16 A. At the plea, no.

17 Q. Or any other time.

18 A. No.

19 MR. FELDMAN: Would the Court indulge for me
20 one minute, Your Honor?

21 THE COURT: Yes.

22 MR. FELDMAN: Your Honor, I have no other
23 questions.

24 THE COURT: Any redirect?

25 MR. FRIEDMAN: No other questions, Your

1 Honor.

2 THE COURT: Sir, you may step down.

3 Anything further from the state?

4 MR. FRIEDMAN: No other witnesses, Your
5 Honor.

6 THE COURT: I'll be glad to hear argument.

7 MR. FELDMAN: Your Honor, I wouldn't belabor
8 the point, but a plea that is brought about by duress or
9 without an understanding is not a proper plea, and on the
10 basis of -- on that basis, I would ask the Court grant a
11 new trial. I think that when you make a plea of guilty
12 and it's based upon incomplete information that
13 there's -- I think you heard the applicant say that but
14 for what he considers to be errors in things not done, he
15 would not enter a plea of guilty, and I would ask the
16 Court to consider that argument and consider all the
17 matters in the record that a Court identifies and grant a
18 new trial hearing.

19 THE COURT: Mr. Friedman?

20 MR. FRIEDMAN: Just briefly, the state would
21 submit the record reflects plea was entered freely and
22 voluntarily. He testified that no one threatened or
23 promised him anything to plead guilty. He's pleading
24 guilty of his own free will. He told the Court that he
25 was, in fact, guilty of this offense. Counsel testified

1 that it was applicant's decision to plead guilty. After
2 they discussed the pros and cons of going to trial on the
3 original charge that Judge Hughston and counsel explained
4 to the applicant that once he pled guilty, he would not
5 be able to challenge the suppression hearing. We would
6 ask that you deny this and dismiss the application.

7 THE COURT: In considering an application for
8 post-conviction relief, Court is required to look at the
9 applicable precedent, which we all know is Strickland vs.
10 Washington and Cherry vs. State and its progeny. The
11 Court's required to look at a two-prong test in looking
12 at ineffective assistance of counsel: Measuring the
13 attorney's performance by the reasonableness under the
14 sectional norm and whether counsel's deficient
15 performance must prejudice the applicant such that there
16 is a reasonable probability that but for counsel errors
17 the result would have been different.

18 With respect to a guilty plea, the applicant
19 must show there is a reasonable probability that but for
20 counsel's alleged errors he would not have pled guilty
21 and would have insisted on going to trial. The Court
22 finds that the applicant has failed to meet his burden.
23 I have reviewed the testimony. I have reviewed the
24 suppression hearing of August 27, 2009. I've also
25 reviewed the guilty plea transcript which was before

1 Judge Hughston on November 12 of 2009, and going in order
2 of the applicant's claims -- and, again, in the interest
3 of time, if I skip over anything, Mr. Friedman is given
4 leave to make any findings of fact and conclusions of law
5 consistent with this record.

6 There's no evidence in the record that
7 Mr. Stavrinakis did not build a defense. I find his
8 testimony credible, that he did build a defense, that he
9 had the Rule 5 materials available to him, that he was
10 ready to go to trial. He was really between the
11 proverbial between a rock and a hard place regarding his
12 client, and, unfortunately, what Mr. Williams is
13 experiencing right now is a little bit of hindsight and
14 buyer's remorse, wishing, as I often observe in court,
15 which is defendants always want option C, which is not
16 available, which is to go home, and he was in an
17 incredible hard place.

18 He was facing a minimum mandatory of 25 years
19 on a trafficking. There was no question as to the amount
20 of drugs that were found in the car, and that brings up a
21 peripheral issue, which is whether Mr. Stavrinakis should
22 have had it independently weighed. It would not have
23 been any of any import. Even if it was less, he couldn't
24 have gotten a better deal from the state. They allowed
25 him to plead from one to fourteen grams. They really

1 couldn't have gotten any lower than that so it really
2 wouldn't have mattered. The only way it would have
3 mattered was if it weighed zero, which wasn't going to
4 happen under these facts as they have been presented.

5 Failure to obtain Rule 5 evidence, there is
6 no evidence in the record that he failed to do that. In
7 fact, his testimony is that even though he requested
8 certain documents and he issued subpoenas for other
9 documents, in dealing with the dispatch record, it just
10 really would not have been of any import, really.

11 He had the camera which had audio and video
12 of the events, but even if he didn't have it, there is no
13 requirement that he have it. There is a statute that
14 provides when the drop dead date is for that to be
15 provided. It has not come yet, I don't think. All cars
16 are not equipped with them, and in and of itself, the
17 officer's testimony would have been sufficient for the
18 state to have met its burden on the elements of proof,
19 but in this case there was an audio and a video, and even
20 though the state had not necessarily produced it,
21 Mr. Stavrinakis issued a subpoena and it was produced, so
22 he did have the ability to go over that, and the record
23 supports that.

24 There is no indication that that was
25 exculpatory in any way. In fact, it appears that it was

1 inculpatory, and on that same issue, these were some very
2 bad facts in this case, very bad facts, including them
3 taking off in this vehicle with the officer's body
4 partially in the car, him then getting in the vehicle
5 with -- it's just a bad, bad set of facts, so really --

6 I'm amazed, frankly. I know Mr. Savage very
7 well. I'm amazed he offered this deal because he's very
8 hard about everything. He thinks the maximum is
9 appropriate in every case. I have to work on him all the
10 time. He's young. I hope that tenor of him will soften.
11 It's not a pejorative statement at all. He's just young,
12 and he feels everything is egregious and he feels the
13 maximum is appropriate on every case. So the fact that
14 he came down, I'm amazed, frankly. As I read the
15 transcript and as I read what he was offered, I'm amazed
16 that he came down and, I find Mr. Stavrinakis credible.

17 I believe he offered him a plea straight up
18 to 25. That was his first offer. It's completely
19 probable to me, knowing his personality, that it was 15
20 years negotiated after that, then a seven to twenty year
21 with a negotiated cap of fifteen, and then, finally, down
22 to the one to fourteen years with a minimum of seven,
23 maximum of twenty-five with no recommendation, I'm
24 frankly shocked that he offered that at all.

25 Because I just am, just knowing -- because

1 I've done this so long, I've been here with most of the
2 assistant solicitors, and they all have their own
3 personalities and their own theories about the cases, so
4 I'm a little surprised, to tell you the truth, but I
5 would imagine he gave some mitigation based on -- and I
6 only have to extrapolate from what Mr. Stavrinakis
7 offered and argued in mitigation to the judge is that he
8 must have presented that same stuff to Mr. Savage, and in
9 some way it must have touched a soft spot in some way to
10 persuade him to offer that.

11 There is absolutely no evidence in the record
12 that he used any scare tactics or that he's been
13 terrorized. I've done enough guilty pleas to know
14 defendants are just not skittish about telling you when
15 they don't want to do something, and even when they
16 don't -- and Judge Hughston has been doing this a long
17 longer than me, and I always admire him so because he
18 always does what he thinks is right, irregardless of what
19 he thinks anybody else thinks about him, and I love that
20 about him. That's the benefit of being retired.

21 If he doesn't think a plea is free and
22 voluntary, he's not going to qualify it. He's not going
23 to take it, and the things that judges look at in terms
24 of defendants and lawyers, we look at very objective
25 things that most people would not think we're looking at.

1 We've been doing this a long time, and even for those of
2 us who haven't been doing it a long time, we have a sixth
3 sense about people and behaviors and other things that
4 most people would probably not pay attention to. The
5 eyes tell you everything about whether somebody is doing
6 something because they want to. Their body language says
7 it too. Even if they're saying yes, their body is saying
8 no, and we pick up on that stuff, and I would imagine,
9 knowing Judge Hughston as I do, that he would have picked
10 up on it, and he would have said, Are you sure?

11 I mean, he has many times -- and I sort of
12 chuckle to myself because again, I love just his -- he
13 just has such a passion about right and wrong and what he
14 thinks is fair that there are many times when he has just
15 flat out told the state, I'm not going to take the plea.
16 I just don't think it's right and has not qualified a
17 plea.

18 So from reading the transcript I think if
19 there was any hesitancy or ambivalence on the part of the
20 defendant, he would have picked up on it whether he said
21 it or not, and just knowing -- and just from my years of
22 experience, many times defendants are saying yes but
23 their body tells me no, and I will reenforce it, If you
24 really want a trial, I'll give you one, and I'm not going
25 to let you plead guilty if that's not what you want to do

1 because you have remorse about it later and you have to
2 be able to sleep at night and so does your Court and so
3 does your lawyer because it's just going to end up on a
4 PCR.

5 But above and beyond that, the record is very
6 clear when you look at the transcript as it regards the
7 plea, and Judge Hughston went over with him very clearly
8 the nature of the penalty and that had been explained to
9 him and he understood it, and that is at page 2, lines 15
10 through 18. He extensively went over with him the right
11 to a jury trial, and the Court was willing and ready to
12 give him one if he so desired, and that is the page 2,
13 lines 19 through 25, page 3, page 4 line 1, and page 4,
14 lines 14 through 16, and he agreed that he understood
15 that and he knew going forward he would be waiving that.

16 He also went over very thoroughly with him
17 whether he was pleading guilty because he was, in fact,
18 guilty, and that's at page 4 lines 1 through 6, page 4,
19 line 17, and, again, it looks like page 15, lines 17
20 through 20 where he admits his guilt. He goes over with
21 him whether there were any threats or promises and
22 whether he's doing it of his own free will, page 4, lines
23 7 through 13, and then the state goes over the facts,
24 pages 4 and 5, there at page 5, lines 23 through 25 there
25 are three bags of heroin found, total weight of 16.52

1 grams, and that's at page 6, lines 11 through 12.

2 Judge Hughston then at page 11, lines 19
3 through 24 very carefully questioned him about the
4 suppression hearing and the fact that he was waiving all
5 that by pleading guilty, and he wanted him to be clear
6 that he was doing that before he went forward with the
7 guilty plea. And the defendant indicated that he
8 understands that, and then his attorney confirmed that he
9 went over that with him, and page 11, line 25, through
10 page 12, lines 1 through 4. And his attorney, if you
11 look at the transcript, argues for mitigation and that he
12 get the minimum sentence, and that's at page 8, line 14
13 through 25, page 9, lines 1 through 12 -- actually, 1
14 through 25 on page 10.

15 So I have no concerns, and, again, just based
16 on my breadth of experience in doing guilty pleas, I have
17 just had too many defendants say, I'm not guilty, I want
18 a trial in the middle of a plea and I say I don't want to
19 go forward, I don't agree with this, and my attorney
20 hasn't explained it to me, and there is no indication in
21 the record of that and there is no indication but that
22 this was the free and voluntary actions of the applicant.

23 And, also, Mr. Stavrinakis goes into what he
24 really feels is the inequitable nature of our truth in
25 sentencing, basically, that in federal court he would

1 have got a lot less time, but in the state court it just
2 seems like the penalties are very overly harsh, and, of
3 course, that has been taken up most recently by the
4 sentencing commission and there has been some
5 equalization, but really sentences haven't changed very
6 much, which is an indication of public policy of the
7 state regarding certain levels of offenses.

8 I find it credible that he went over the
9 offers with him in detail and went over those in advance
10 of the trial and in advance of a plea and in advance of a
11 suppression hearing and that I do find it credible that
12 at the time the applicant's main concern was mitigation,
13 because, again, it was such a strict set of facts that he
14 was facing in terms of the minimum mandatory of 25, none
15 of which could be suspended on probation, which,
16 basically, you have to serve day for day under current
17 sentencing structure, so he had a substantial amount of
18 exposure in light of the facts as they were presented,
19 and they were presented extensively in the suppression
20 hearing.

21 I don't think there was a rock that was left
22 unturned, and I read carefully and I don't know what else
23 his lawyer could have raised in the suppression hearing.
24 But having raised -- having made mention of that, there
25 was probable cause to stop the car. Intent is enough to

1 stop and the car is stopped at night for tint all the
2 time. The smell of marijuana, and the judge makes note
3 of that, that is a reasonable and articulable suspicion
4 that criminal activity is afoot, and that is enough to
5 take you into a Terry situation and to search the car.
6 So there was more than sufficient reasons to stop the
7 car, and there was probable cause, and then all the other
8 things that happened, you know, all the other stuff that
9 really sort of raised it to a level of aggravation I
10 think that really enured to his benefit that he was able
11 to get these other things dismissed, including the
12 proximity charge and the assault while resisting arrest.

13 It's really amazing that the officer was not
14 injured in that situation, and I do find it credible that
15 he sent the letter to him just because it appeared he was
16 going to be changing his position, and he really wanted
17 to make sure he some follow-up to all the verbal
18 conversations that they had regarding the fact that he
19 could not -- you could plead guilty and get the benefit
20 of this great deal or you could challenge and run the
21 risk with the substantial amount of evidence against you,
22 getting this 25 years, which, for a young person, is a
23 lot of time, especially in light of the fact of his
24 familial situation, wanting to have a second chance to
25 raise his children and his stepchildren.

1 As regards the raising of the conditional
2 plea, I think our Supreme Court has spoken loudly and
3 clearly there are no conditional pleas in South Carolina,
4 and if my recollection serves me correctly, the United
5 States Supreme Court says it is a state matter and may
6 not get involved. So as it stands in South Carolina,
7 there are no conditional pleas. He would have had to
8 have gotten permission to argue against precedent, and I
9 just don't know that that would have really made any
10 appreciable difference.

11 Based on my review of this record, there is
12 nothing that causes me or gives me pause that but for --
13 first of all, applicant's counsel performed within
14 professional norms and there is nothing in the record
15 that gives me any indication that he would not have pled
16 guilty. I think right now he has some buyer's remorse.
17 Seven years is a long time to serve day for day,
18 basically. What is 85 percent? I'm not good at math.
19 That is a lot less than 24, and so while I think that
20 it's a hard pill to swallow, and I think -- I do this
21 every day, day in and day out, and it really causes me a
22 long of angst to see young people -- because most times
23 people are in the opposite position, they roll the dice.

24 And the Court has no posture one way or the
25 other. I believe the system works. Whether you get

1 convicted or acquitted, I believe it works. Twelve
2 people made a decision, but oftentimes when people roll
3 the dice like that, they get convicted they and they're
4 faced with the 25, and the first thing they say to me is,
5 Can I have my old deal back? And it's just not
6 available.

7 So there's always going to be remorse on one
8 side or another, but based on this record, I don't see
9 anything that gives me any concern that counsel performed
10 insufficiently, and therefore the motion for
11 post-conviction relief is denied. Thank you very much.

12 - - -

13 (Whereupon, the proceedings were concluded.)

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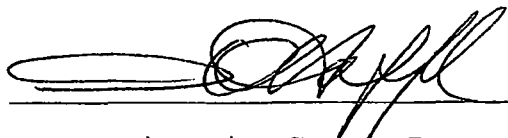
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 23rd of May 2011.

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

February 3, 2011

A handwritten signature in black ink, appearing to read 'A. Haffenden', is written over a horizontal line.

Circuit Court Reporter

ME 9

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Jameek J. Williams, #191622,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-10-3082

ORDER OF DISMISSAL

2011 JUL 25 PM 3:38
CLERK OF COURT
JUDICIAL CIRCUIT 9Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:Deadra L. Jefferson
H. Stanley Feldman, Esq.
Matthew J. Friedman, Esq.
Leon Stavrinakis, Esq.
May 23, 2011
Amanda Haffenden

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 14, 2010. The Respondent made its Return on July 14, 2010 which was filed on July 15, 2010. An evidentiary hearing into the matter was convened on May 23, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by H. Stanley Feldman, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant and plea counsel, Leon Stavrinakis, Esquire, testified at the PCR hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 2007 term of the Charleston County Grand Jury for failure to stop for a blue light (2007-GS-10-9497), trafficking heroin (more than 14 grams) (2007-GS-10-9498), possession of heroin with intent to distribute within the proximity of a school (2007-GS-10-9499), and assault on a police officer while resisting arrest (2007-GS-10-9500). Leon Stavrinakis, Esquire, represented the Applicant. On November 12, 2009, the Applicant pled guilty to the lesser-included offense of trafficking in heroin—1st offense (4–14 grams). The State dismissed the other three (3) offenses in exchange for the plea. The State requested a sentence in the upper range due to the Applicant's prior manslaughter charge and the facts and conditions of that charge.¹ The Honorable Thomas L. Hughston, Jr. sentenced Applicant to confinement for seven (7) years for trafficking in heroin. Applicant did not appeal the guilty plea or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel
 - a. Did not build a defense.
 - b. Failed to obtain Rule 5 evidence.
 - c. Failed to obtain exculpatory evidence (dispatch tape and transcript of the officer's dash cam video).
 - d. Used scare tactics and terrorized Applicant into following counsel's ill-advised instruction.
2. Prosecutorial misconduct in that the State did not turn over the dispatch tape, the officers' incident reports, the dash cam video with sound, the transcript of the dispatch tape, or the transcript of the dash cam video.

¹ Trafficking in heroin—1st offense (4–14 grams) carries a penalty of seven (7) to twenty-five (25) years and a maximum fine of \$25,000.00 pursuant to S.C. Code Ann. § 44-53-370(c)(3)(a)(1).

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3. Applicant was denied due process because he was not given all the evidence under Rule 5.

At the hearing, Applicant alleged the following additional grounds for relief:

1. Counsel was not prepared for trial.
2. Counsel did not advise Applicant of his right to appeal.
3. Applicant was pressured to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and hear the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified that counsel failed to obtain certain discovery materials, including the audio from the dash cam video and the dispatch tape. He testified that counsel was not fully prepared for trial and scared him into pleading guilty. He asserted that counsel told him he would get twenty-five (25) years if he did not plead guilty. Applicant testified that counsel never challenged the weight or substance of the drugs. He also asserted that he did not know the affiant on the arrest warrant, R.E. Stone. Applicant testified that he was not advised of his right to appeal, although he admitted that he did not ask counsel to file an appeal.

Plea counsel testified that he was retained and met with Applicant at least ten (10) to twenty (20) times. Counsel testified he discussed with the Applicant the elements of the charges and potential defenses. He testified that he requested the videos and audio from the solicitor, but the solicitor informed him there were no videos or audio. Counsel testified he later sent a subpoena to the City of North Charleston, and the in-car video was subsequently produced. He testified that he reviewed the discovery with Applicant, including the video that contained audio.

He testified that he requested dispatch logs and some items were received, but no tape was ever received. Counsel asserted that there was no recording of the dispatch call. He testified that the affiant on the arrest warrant was Officer Stone of North Charleston who handles bond court paperwork and often presents affidavits to magistrates. Counsel testified that the solicitor agreed to keep the plea offer open after the suppression hearing. Counsel testified the suppression hearing was held before the Honorable J.C. Nicholson, Jr. at which time counsel moved for the case to be dismissed on the following grounds: the search incident to arrest was unlawful under Arizona v. Gant; the subsequent search and seizure was unlawful; and an illegal arrest took place when the officer tried to handcuff the Applicant. He testified that the suppression hearing went well, but the judge ultimately denied the motion. Counsel testified that he would have been prepared for trial and would have looked into challenging the weights of the drugs at trial. Counsel asserted that he told Applicant he would get at least twenty-five (25) years if he was convicted at trial because the original charge carried a mandatory minimum of twenty-five (25) years. He testified that all offers were communicated to the Applicant as well as the consequences of a plea. He asserted that it was Applicant's decision to plead guilty to the lesser-included offense. He testified that he told Applicant the only way to appeal the ruling from the suppression hearing was to go to trial. Counsel testified that Applicant did not ask him to file an appeal.

Ineffective Assistance of Counsel / Involuntary Guilty Plea

The Applicant alleges that he received ineffective assistance of counsel and that he was pressured to plead guilty. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground

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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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness, and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). "When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing." Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419.

This Court finds counsel's testimony credible. This Court finds that counsel is a trial practitioner who has experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, discovery, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. This Court finds the record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he understood the nature of the charges and the range of punishment. (Tr. 2:15-18.) The record reflects the Applicant was advised by the plea judge of his constitutional right to a jury trial, and the Applicant stated that he did not wish to have a jury trial. (Tr. 2:19-4:1.) He told the court that no one had threatened him or promised him anything to get him to plead guilty. (Tr. 4:7-10.) Applicant told the court that he was pleading guilty of his own free will. (Tr. 4:11-13.) He admitted that he was, in fact, guilty of this offense. (Tr. 4:1-6, 4:17, 15:17-20.) The facts published for the record (Tr. 4:22-6:4) reflect that three (3) bags of heroine weighing a total of 16.54 grams, in addition to other

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items, were found inside the Applicant's vehicle. (Tr. 5:23-25, 6:11-12.) The record also reflects counsel for the Applicant argued to mitigate the penalty received by the Applicant. (8:14-10:23.) The Applicant indicated that he understood that if he pled guilty he could not challenge the court's ruling on the suppression hearing (Tr. 11:19-24), and his attorney confirmed. (Tr. 11:25-12:4.) This Court finds that it was Applicant's decision to plead guilty with a full understanding of the consequences of the plea.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814. This Court finds counsel adequately conferred with the Applicant, conducted a proper investigation, reviewed the discovery with Applicant, and was thoroughly competent in his representation. The Court further finds no evidence of scare tactics used by counsel to persuade the Applicant to plead guilty. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds there is no evidence that counsel failed to build a defense. The Court finds it credible that counsel would have been prepared for trial had Applicant elected to proceed to trial. As for the independent weight of the drugs, the Court finds it would not have mattered due to the fact the Applicant pled to a lesser weight. The Court further finds there was no failure to obtain Rule 5, SCRCrimP documentation. Counsel issued a subpoena for the videos and audio, and the in-car video was produced. Counsel testified that the video had audio, and he was able to review the video and the rest of the discovery with the Applicant. The Court finds that

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the items that were not turned over would have made no appreciable difference in developing or presenting a defense. There is no requirement that there be audio, as the officer's statement is sufficient for the State to meet its burden of proof. Further, there is no testimony that the missing audio would have aided the defense relative to any theory of the defense (i.e. credibility or impeachment of a witness). A mere assertion without more does not meet the required burden of proof.

The Court finds that counsel asked everything he possibly could at the suppression hearing, but the motion was eventually denied. The Applicant's main concern was mitigation of time he would receive due to his amount of exposure. Counsel and the plea judge both informed Applicant that he would not be able to appeal the ruling on the suppression motion if he pled guilty. The Court finds it credible that counsel communicated each plea offer to the Applicant and informed him of the consequences of pleading guilty in advance.

This Court finds that Applicant is not entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029 (2000). The Court went on to hold that a professionally reasonable attorney should, in most cases, consult with the defendant regarding an appeal. Id.

In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered. Id. In examining the totality of the circumstances, courts should consider: (1) whether a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) whether a particular defendant reasonably demonstrated to counsel that he was interested in appealing. Id. at 480, 120 S. Ct. at 1036. Where the PCR judge determines that the applicant did not freely and

voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See Rule 243(i), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

Trial counsel is not required to file a notice of appeal without specifically being asked to do so. Roe, 528 U.S. 470, 120 S. Ct. 1029. In the present case, there is no indication that Applicant specifically asked counsel to file a notice of appeal. In fact, counsel and Applicant both testified that Applicant did not ask counsel to file an appeal. Moreover, Applicant received a favorable sentence under the circumstances so there was no reason for counsel to believe that Applicant wanted to appeal.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. The Court finds no indication that the Applicant would not have pled guilty but for counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they

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are hereby denied and dismissed.

CONCLUSION

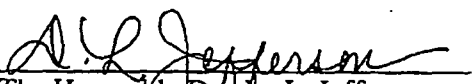
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

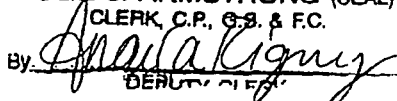
AND IT IS SO ORDERED this 25th day of July, 2011.


 The Honorable Debra L. Jefferson
 Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

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ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., C.S. & F.C.
 By: 
 DEPUTY CLERK

ARREST WARRANT

K- 219831

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

 THE STATE
 against
JAMEEK JAMAR WILLIAMS
 Address: **NORTH CHARLESTON, SC 29418**

 Phone: _____
 Sex: **M** Race: **B** Height: **5'07** Weight: **155**
 DL State: **SC** DL#: _____
 DOB: **4-9-75** Agency ORI#: _____
 Prosecuting Agency: **NCPD**
 Prosecuting Officer: **JANICK**
 Offense: **TRAFFICKING HEROIN**
 Offense Code: _____
 Code/Ordinance Sec: **44-53-370**

 This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

 _____ (L.S.)
 Signature of Judge

Date: _____

RETURN

 A copy of this arrest warrant was delivered to
 defendant _____
 on _____

 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
CHARLESTON)

AFFIDAVIT

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

 Personally appeared before me the affiant _____ who
 being duly sworn deposes and says that defendant **JAMEEK JAMAR WILLIAMS**
 did within this county and state on **4-6-07** violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **CHARLESTON**)
 in the following particulars:
TRAFFICKING HEROIN
44-53-370

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

 STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
CHARLESTON)

 Affiant's Address **4900 LACROSS RD**
NORTH CHARLESTON, SC 29405
 Affiant's Telephone **843-554-5700**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on **4-6-07** defendant **JAMEEK JAMAR WILLIAM**
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **CHARLESTON**) as set forth below:
TRAFFICKING HEROIN
44-53-370

 Sworn to and subscribed before me)
 on **April 7, 2007**)
 _____ (L.S.))
 Signature of Issuing Judge
 Judge Code: **5749/CAF**

 Judge's Address **3870 LEEDS AVENUE, SUITE 106**
N. CHARLESTON, SC 29405
 Judge's Telephone **843-746-9822**
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

OCA# 2007014440
INV. PTL. JANICKI

Personally appeared before me, a magistrate of this County, one *RESTON*
who, first being duly sworn, deposes and says that (name of the defendant)

JAMEEK JAMAR WILLIAMS

did within this County and State on the 6th day of April 2007,
violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
TRAFFICKING IN HEROIN,
VIOLATION OF SECTION 44-53-370

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on or about April 6th 2007, at approximately 2110 hours, while at Spruill Avenue and McMillian Avenue, located in the City of North Charleston, South Carolina, the defendant, **JAMEEK JAMAR WILLIAMS**, did commit the offense of **TRAFFICKING IN HEROIN** In violation of section 44-53-370 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully have in his possession and under his control approximately 18.8 grams of a brown, powder substance, which field tested positive for Heroin. Facts to establish the aforesaid are that the defendant had the substance in a brown leather bag in the rear seat of his 2002 Ford Taurus, Gold in Color bearing South Carolina license plate 593UPS. Ptl. Janicki and Cpl. Walker are witness to prove the same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this _____ day of APR 08 2007
2007.

[Signature]

Signature of Judge

RESTON

(AFFIANT)

Address: 4900 Lacross Drive
North Charleston, SC 29418
Phone: (843) 554-5700

ARREST WARRANT

K- 219832

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

CHARLESTON

THE STATE
against

JAMEEK JAMAR WILLIAMS

Address: B
NORTH CHARLESTON, SC 29418

Phone: _____

Sex: M Race: B Height: 5'07 Weight: 155DL State: SC DL#: _____DOB: 4-9-75 Agency ORI#: _____Prosecuting Agency: NCPDProsecuting Officer: JANICKOffense: PWID C Heroin within 1/2 MILE
SCHOOL Offense Code: _____Code/Ordinance Sec: 44-53-445This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
The accused
is to be arrested and brought before me to be
dealt with according to law._____
Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____
on __________
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of)
CHARLESTON)Personally appeared before me the affiant _____ who
being duly sworn deposes and says that defendant JAMEEK JAMAR WILLIAMS
did within this county and state on 4-6-07 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON)

In the following particulars:

DESCRIPTION OF OFFENSE:

PWID Heroin within 1/2 MILE SCHOOL
44-53-445I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
CHARLESTON)Affiant's Address 4900 LACROSS RD
NORTH CHARLESTON, SC 29405
Affiant's Telephone 843-554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 4-6-07 defendant JAMEEK JAMAR WILLIAM
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☐ Municipality of CHARLESTON) as set forth below:

DESCRIPTION OF OFFENSE:

PWID Heroin within 1/2 MILE SCHOOL
44-53-445Having found probable cause and the above defendant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.Sworn to and subscribed before me)
on April 7, 2007)_____
(L.S.))

Signature of Issuing Judge

Judge Code: _____

5749/CAP

ORIGINAL

Judge's Address 3870 LEEDS AVENUE, SUITE 106N. CHARLESTON, SC 29405Judge's Telephone 843-746-9822Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

OCA# 2007014440
INV. PTL. JANICKI

Personally appeared before me, a magistrate of this County, one RESTON
who first being duly sworn, deposes and says that (name of the defendant)

JAMEEK JAMAR WILLIAMS

did within this County and State on the 6th day of April 2007,
violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
PWID OF HEROIN
WITHIN ½ MILE PROXIMITY OF A SCHOOL,
VIOLATION OF SECTION 44-53-445

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on or about April 6th 2007, at approximately 2100 hours, while at Spruill Avenue and McMillian Avenue, located in the City of North Charleston, South Carolina, the defendant, , did commit the offense of **PWID OF HEROIN WITHIN ½ MILE PROXIMITY OF A SCHOOL** In violation of section 44-53-445 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully have in his possession and under his control approximately 18.8 grams of a brown, powder substance, which field tested positive for Heroin. Facts to establish the aforesaid are that the defendant did have the contraband in his 2002 Ford Taurus, bearing South Carolina License Plate 593UPS, in proximity to Chicora Elementary School 1912 Success Street. Ptl. Janicki and Cpl. Walker are witness to prove the same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this _____ day of APR 08 2007.
2007.

[Signature]
Signature of Judge

RESTON
(AFFIANT)

Address; 4900 Lacross Drive
North Charleston, SC 29418
Phone: (843) 554-5700

ARREST WARRANT

K- 219833

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

 THE STATE
 against
JAMEEK JAMAR WILLIAMSAddress: NORTH CHARLESTON, SC 29418

Phone: _____

Sex: M Race: B Height: 5'07 Weight: 155DL State: SC DL#: 1-123456789DOB: 4-9-75 Agency ORI#: _____Prosecuting Agency: NCPDProsecuting Officer: JANICKOffense: ASSAULT WHILE RESISTING ARREST
 Offense Code: _____
 Code/Ordinance Sec: 16-9-320(B)

 This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

 _____ (L.S.)
 Signature of Judge

Date: _____

RETURN

 A copy of this arrest warrant was delivered to
 defendant _____
 on _____

 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
CHARLESTON)

 Personally appeared before me the affiant _____ who
 being duly sworn deposes and says that defendant JAMEEK JAMAR WILLIAMS
 did within this county and state on 4-6-07 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON)
 in the following particulars:

DESCRIPTION OF OFFENSE:

ASSAULT WHILE RESISTING ARREST
16-9-320(B)

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

 STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
CHARLESTON)

 Affiant's Address 4900 LACROSS RD
NORTH CHARLESTON, SC 29405
 Affiant's Telephone 843-554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 4-6-07 defendant JAMEEK JAMAR WILLIAMS
 did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON) as set forth below:
 DESCRIPTION OF OFFENSE:

ASSAULT WHILE RESISTING ARREST

16-9-320(B)
 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me)
 on April 7, 2007)

_____ (L.S.))

Signature of Issuing Judge

 Judge Code: 5749/CAP

 Judge's Address 3870 LEEDS AVENUE, SUITE 106
N. CHARLESTON, SC 29405

 Judge's Telephone 843-746-9822

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

OCA# 2007014440

Inv: Ptl. Janicki

Personally appeared before me, a magistrate of this County, one
who, first being duly sworn, deposes and says that

RESTON

JAMEEK JAMAR WILLIAMS

did within this County and State on the 6th day of April, 2007, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
ASSAULT WHILE RESISTING ARREST
VIOLATION OF SECTION 16-9-320(B)

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On or about April 6, 2007 at approximately 2058 hours, while at Spruill Avenue and McMillian Avenue, located in the City of North Charleston, County of Charleston, State of South Carolina, the defendant, JAMEEK JAMAR WILLIAMS, did commit the offense of ASSAULT WHILE RESISTING ARREST, in violation of section 16-9-320(B) of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully resist officers while they were attempting to place him into custody.

Facts to establish the aforesaid, are that officers conducted a traffic stop on the 2002 Gold Ford Taurus, SC tag 593UPS, at Spruill Avenue And McMillian Avenue, which the defendant was driving. After a short vehicle pursuit and foot chase, officers caught the defendant and attempted to place him into custody. The defendant resisted officers fighting and running until he was sprayed with Stroom Streamy Foam. Ptl. Janicki and Cpl. Walker are witnesses to prove the same. All this done against the form of the State Statute and against the law, peace, and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this _____ day of APR 08 2007
2007.



Signature of Judge

RESTON
(AFFIANT)

Address: 4900 Lacross Drive
North Charleston, SC 29418
Phone: (843) 554-5700

83 SAY20070406657

WITNESSES

WILLIAM JANICKI

North Charleston Police Department

AGENCY CASE NUMBER

2007014440

ARREST WARRANT NUMBER

23344DX

DATE OF ARREST

2007-04-06

ACTION OFFERED JURY

TRUE BILL

AUG 11 7 2007

Foreperson of Grand Jury

Date:

Lisa Cohen

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1009497

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2007

THE STATE

vs.

JAMEEK JAMAR WILLIAMS

07-2229(4)

Indictment for

Failure to Stop for a Blue Light

FILED

2007 AUG -9 PM 12: 14

JULIE J. ARMSTRONG
CLERK OF COURT

[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

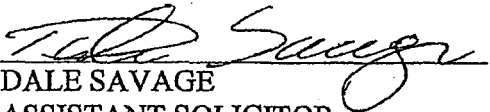
INDICTMENT

At a Court of General Sessions, convened on August 6, 2007 the Grand Jurors of Charleston County present upon their oath:

Failure to Stop for a Blue Light

That in Charleston County, South Carolina, on or about April 6, 2007, the Defendant, JAMEEK JAMAR WILLIAMS, while driving a motor vehicle on a road, street, or highway of the State, did fail to stop for a law enforcement vehicle after being signaled by a flashing light or a siren to do so; all in violation of Section 56-5-750, 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.


DALE SAVAGE
ASSISTANT SOLICITOR

DOCKET NO. 2007GS1009498

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2007

THE STATE

vs.

JAMEEK JAMAR WILLIAMS

07-2229(1)

Indictment for

Trafficking Heroin

FILED

2007 AUG -9 PM 12:14

JULIE J. ARMSTRONG
CLERK OF COURT

[Signature]

WITNESSES

WILLIAM JANICKI

North Charleston Police Department

AGENCY CASE NUMBER

2007014440

ARREST WARRANT NUMBER

K219831

DATE OF ARREST

2007-04-06

ACTION OF GRAND JURY

TRUE BILL

AUG 7 2007

Foreperson of Grand Jury

Date:

[Signature]

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2007 the Grand Jurors of Charleston County present upon their oath:

Trafficking Heroin

That in Charleston County, South Carolina, on or about April 6, 2007, the Defendant, JAMBEK JAMAR WILLIAMS, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Heroin, in excess of 14 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


DALE SAVAGE
ASSISTANT SOLICITOR

SAV2G070406657

WITNESSES

WILLIAM JANICKI

North Charleston Police Department

AGENCY CASE NUMBER

2007014440

ARREST WARRANT NUMBER

K219832

DATE OF ARREST

2007-04-06

ACTION OF

TRUE BILL

AUG 7 2007

Foreperson of Grand Jury

Date:

John Coker

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1009499

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2007

THE STATE

vs.

JAMEEK JAMAR WILLIAMS

07-2229(2)

Indictment for

Possession of Heroin with the Intent to
Distribute within the Proximity of a School

FILED

2007 AUG -9 PM 12:14

JULIE J. ARMSTRONG
CLERK OF COURT

[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2007 the Grand Jurors of Charleston County present upon their oath:

Possession of Heroin with the Intent to Distribute within the Proximity of a School

That in Charleston County, South Carolina, on or about April 6, 2007, the Defendant, JAMEEK JAMAR WILLIAMS, unlawfully did distribute, sell, purchase, manufacture, or possess with intent to distribute Heroin, a controlled substance, within a one-half mile radius of the grounds of Chicora Elementary School; all 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.


DALE SAVAGE
ASSISTANT SOLICITOR

SAV20070406657

WITNESSES

WILLIAM JANICKI

North Charleston Police Department

AGENCY CASE NUMBER

2007014440

ARREST WARRANT NUMBER

K219833

DATE OF ARREST

2007-04-06

ACTION OF GRAND JURY

TRUE BILL

AUG 7 2007

Foreperson of Grand Jury

Date:

John Cohen

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1009500

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2007

THE STATE

vs.

JAMEEK JAMAR WILLIAMS

07-2229(3)

Indictment for

Assault on a Police Officer While Resisting
Arrest

FILED

2007 AUG -9 PM 12:14

JULIE J. ARMSTRONG
CLERK OF COURT

[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

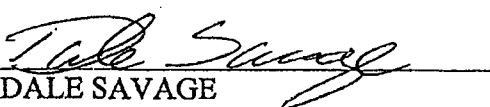
INDICTMENT

At a Court of General Sessions, convened on August 6, 2007 the Grand Jurors of Charleston County present upon their oath:

Assault on a Police Officer While Resisting Arrest

That in Charleston County, South Carolina, on or about April 6, 2007, the Defendant, JAMBEK JAMAR WILLIAMS, knowingly and willfully did assault, beat, or wound Officer Janicki and Cpl. Walker, law enforcement officers of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when he knew or reasonably should have known that Officer Janicki and Cpl. Walker, were law enforcement officers, in violation of Section 16-9-320(b), 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.


DALE SAVAGE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
JAMEEK JAMAR WILLIAMS

AKA:

Race: B Sex: M Age: 34DOB: 04-09-1975 SS#:

Address:

N CHAS, SC 294180000DL#: SID#:

In disposition of the said indictment comes now the Defendant who was
 TO: Trafficking in Heroin, 4--14 grams, 1st offense

INDICTMENT/CASE#: 2007GS1009498A/W#: K219831Date of Offense: 4/6/2007S.C. Code § : 44-53-0370(e)(3)(b)CDR Code #: 0287

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 44-53-0370(e)(3)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2361

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: T. L. Garrison 75420 Jameek Williams 65307
Savage, Dale SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 7 years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. CREDIT 23 DAYS JAIL TIME, T.L.G.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

_____ 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: _____

☐ Appointed PD or appointed other counsel, §47.12
 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 210Sentence Date: 11/12/09