

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

RECEIVED

JUN 17 2014

S.C. Supreme Court

GEORGE JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002467

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2003-GS-23-7212; 7216

ORIGINAL

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
vs.)
GEORGE DEAN JACKSON,)
DEFENDANT.)

TRANSCRIPT OF RECORD

June 15, 2004
Greenville, South Carolina

B E F O R E:

THE HONORABLE W. EDWARD MILLER, JUDGE.

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

RACHEL LIST, ESQ.
Attorney for the State

JAMES H. PRICE, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

GEORGE JACKSON:

Examination by the Court.....	3
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E X H I B I T S

There were no Exhibits.

1 THE CLERK: Indictment 2003-GS-23-8851, Jerome Luster,
2 Jr., indicted for possession of stolen goods, pleading to
3 receiving stolen goods. It's a true bill.

4 Indictment 2003-GS-23-9155, Tawan Jarmayne Sullivan,
5 indicted for driving under suspension, pleading to driving
6 under suspension, second. It is a true bill. Indictment
7 2003-GS-23-9136, Tawan Sullivan, indicted for failure to stop
8 for a blue light, pleading to the same. It is a true bill.

9 Indictment 2003-GS-23-7328, Tawan Sullivan, indicted for
10 financial identity fraud, pleading to the same. It is a true
11 bill.

12 Indictment 2003-GS-23-7212, George Dean Jackson, Jr.,
13 indicted for trafficking in cocaine, pleading to the same.
14 It is a true bill. Indictment 2003-GS-23-7216, George
15 Jackson, Jr., indicted for trafficking cocaine, pleading to
16 the same. It is a true bill.

17 Indictment 2003-GS-23-1824, John Thomas Sizemore,
18 indicted for financial transaction card fraud, pleading to
19 the same. It is a true bill.

20 Raise your right hands.

21 (WHEREUPON, all the defendants were sworn.)

22 EXAMINATION

23 BY THE COURT:

24 All right, Mr. Luster, how old are you?

25 MR. LUSTER: 22.

1 THE COURT: What's the highest grade you finished?

2 MR. LUSTER: Graduated.

3 THE COURT: What kind of work do you do?

4 MR. LUSTER: Run a concrete company down in Greenville.
5 Hansman Concrete.

6 THE COURT: What's your marital situation?

7 MR. LUSTER: Girlfriend and two kids.

8 THE COURT: How old are your kids?

9 MR. LUSTER: Seven and three got one on the way.

10 THE COURT: Days in jail?

11 MR. LUSTER: Sir?

12 THE COURT: Spend any days in jail?

13 MR. LUSTER: Just a day.

14 MS. LIST: One day, Your Honor.

15 THE COURT: Mr. Sullivan, how old are you?

16 MR. SULLIVAN: 26.

17 THE COURT: Highest grade you finished?

18 MR. SULLIVAN: Graduated.

19 THE COURT: What kind of work do you do?

20 MR. SULLIVAN: I work for BMW.

21 THE COURT: Your marital situation?

22 MR. SULLIVAN: Single.

23 THE COURT: Do have any children?

24 MR. SULLIVAN: Two.

25 THE COURT: How old are they?

1 MR. SULLIVAN: 10 and 1.

2 THE COURT: Days in jail?

3 MR. SULLIVAN: One.

4 MS. LIST: One.

5 THE COURT: Mr. Jackson, how old are you?

6 MR. JACKSON: 33.

7 THE COURT: Highest grade you finished?

8 MR. JACKSON: Graduated.

9 THE COURT: What kind of work do you do?

10 MR. JACKSON: Building a truck.

11 THE COURT: Marital?

12 MR. JACKSON: No, sir.

13 THE COURT: Children?

14 MR. JACKSON: Four.

15 THE COURT: How old are they?

16 MR. JACKSON: 13, 8, 5 and 1.

17 THE COURT: Days in jail?

18 MR. JACKSON: One.

19 THE COURT: One.

20 Mr. Sizemore, how old are you?

21 MR. SIZEMORE: 19.

22 THE COURT: Highest grade?

23 MR. SIZEMORE: 10.

24 THE COURT: Work?

25 MR. SIZEMORE: Not working anywhere at this point in

1 time.

2 THE COURT: Well what do you do?

3 MR. SIZEMORE: Just part-time construction.

4 THE COURT: Marital?

5 MR. SIZEMORE: No, sir.

6 THE COURT: Children?

7 MR. SIZEMORE: No, sir.

8 THE COURT: Days in jail?

9 MR. SIZEMORE: I believe it's eight days.

10 MS. LIST: Your Honor, it's four days on the original
11 charge and eight days on the bench warrant.

12 THE COURT: Okay. Within the last 24 hours have you had
13 any drugs, alcohol or medication?

14 (WHEREUPON, all the defendant's answered, No,
15 sir.)

16 THE COURT: Ever been treated for the abuse of alcohol,
17 drugs, mental illness or emotional problems?

18 (WHEREUPON, all the defendants answered, No,
19 sir.)

20 THE COURT: Mr. Luster, you're up here on 03-8851, which
21 alleges you did in Greenville County, December 22, '02 --
22 between December 22, '02, and March 15, '03 possess stolen
23 goods. Tools valued in excess of a \$1000 when you knew or
24 should have known they were stolen. That carries five years,
25 do you understand that?

1 MR. LUSTER: Yes, sir.

2 THE COURT: Mr. Sullivan, you're here on 03-9155, alleges
3 that you did in Greenville County, August 12, '03, drive a
4 motor vehicle on a public highway while your license was
5 suspended and you got at least one prior in the last five
6 years. That's 60 days, do you understand that?

7 MR. SULLIVAN: Yes, sir.

8 THE COURT: You're also here on 03-9136, alleges you did
9 in Greenville County, August 12th, '03, unlawfully fail to
10 stop for a police vehicle when signaled to do so by use of a
11 blue light or siren. That's three years, do you understand
12 that?

13 MR. SULLIVAN: Yes, sir.

14 THE COURT: You're also here on 03-7328, alleges you did
15 in Greenville County, March 6, 2000, unlawfully use the name,
16 date and birth and social security number of Charles L.
17 Jackson to obtain financing of a vehicle through Watson
18 Finance. Value in the amount of \$3,613.38. That's ten
19 years, do you understand that?

20 MR. SULLIVAN: Yes, sir.

21 THE COURT: Mr. Jackson, you're up here on 03-7212,
22 alleges you did in Greenville County on March 27, '03,
23 traffick or knowingly sell, manufacture, bring into South
24 Carolina, provide financial or other assistance to do those
25 things or knowing, actual, constructive possession of more

1 than 100 grams of cocaine. I believe that's three to ten.
2 Well, no sorry, it's 25 years.

3 MR. PRICE: Your Honor, that's being reduced down one
4 level.

5 THE COURT: So 7 to 30?

6 MR. PRICE: I understand --

7 You go ahead.

8 MS. LIST: Your Honor, I'm not aware of any reduction in
9 the charge.

10 MR. PRICE: Your recommendation was 15 years concurrent.
11 So it would have to be reduced to get to that level. Without
12 the reduction it would have to be the minimum mandatory of
13 25.

14 THE COURT: Who's got the CDR code book? Check 280.

15 MR. PRICE: I know we'll get it straightened out.

16 THE COURT: All right.

17 All right, on the next indictment, Mr. Jackson, 03-7216,
18 alleges you did in Greenville County, December 18th,
19 knowingly sell, manufacture, bring into to South Carolina,
20 provide financial assistance or otherwise aide and abet or
21 conspire to do any of those things or you were in knowing,
22 actual, constructive possession of more than 28 grams and
23 that carries 7 to 30 years and a \$50,000, do you understand
24 that?

25 MR. JACKSON: Yes, sir.

1 THE COURT: All right.

2 MS. LIST: It would be a reduction, Your Honor.

3 THE COURT: All right. 280's wrong. Check that's the --
4 all right, we'll get that straight. The CDR code.

5 All right, Mr. Sizemore, you're here on 03-1824, alleges
6 you did in Greenville County, December 19th, '02, unlawfully
7 use a financial transaction card to receive goods and
8 services from Belk's in the amount of \$366.96. Charging on a
9 Belk's credit card belonging to Ruth Davis. Carries six
10 months, do you understand that?

11 MR. SIZEMORE: Yes, sir.

12 THE COURT: All right. Understanding the nature of the
13 charges against you, the maximum possible punishment, how do
14 you want to plead?

15 (WHEREUPON, all the defendants answered,
16 Guilty.)

17 THE COURT: All right. I see that Mr. Luster,
18 Mr. Jackson, Mr. Sizemore all have recommendations. And I'll
19 tell you that I don't have to go along with that, I could
20 give you the maximum under the statute.

21 Do you understand that, Mr. Luster?

22 MR. LUSTER: Yes, sir.

23 THE COURT: Mr. Jackson?

24 MR. JACKSON: Yes, sir.

25 THE COURT: Mr. Sizemore?

1 MR. SIZEMORE: Yes, sir.

2 THE COURT: And other than the recommendation, has
3 anybody forced you, coerced you, threatened you or promised
4 you anything to get you to plead guilty?

5 (WHEREUPON, all the defendants answered, No,
6 sir.)

7 THE COURT: Each of you understand that you have an
8 absolute right to a trial by jury where you would be presumed
9 innocent unless and until the government can prove you guilty
10 beyond any reasonable doubt of each and every element of the
11 offense or offenses you're charged with. You have the right
12 to confront, cross-examine the witnesses and the evidence put
13 up against you by the State. You'd have the right to compel
14 any Court all the relevant and competent evidence in your
15 defense or you can remain silent. Your silence cannot be
16 held against you and you cannot be compelled to incriminate
17 yourself. Do you understand all those rights?

18 (WHEREUPON, all the defendants answered, Yes,
19 sir.)

20 THE COURT: And do you want to give up those rights and
21 plead guilty?

22 (WHEREUPON, all the defendants answer, Yes,
23 sir.)

24 THE COURT: Are you guilty?

25 (WHEREUPON, all the defendants answered, Yes,

1 sir.)

2 THE COURT: And have you had ample opportunity to review
3 the evidence that the State would present against you?

4 (WHEREUPON, all the defendants answered, Yes,
5 sir.)

6 THE COURT: Are you totally, completely satisfied with
7 the representation of your attorney and have they done for
8 you everything that you think is reasonably necessary to
9 adequately prepare your defense?

10 (WHEREUPON, all the defendants answered, Yes,
11 sir.)

12 THE COURT: Speak up a little bit. And do you have any
13 complaint you want to make against either your attorney, the
14 solicitor's office, or law enforcement in connection with
15 these cases?

16 (WHEREUPON, all the defendants answered, No,
17 sir.)

18 THE COURT: All right, listen carefully while the State
19 explains the facts that they'd prove at trial.

20 MS. LIST: Your Honor, in regards to Jerome Luster,
21 during the course of an investigation into the theft of
22 several power tools and other items from Laurens County,
23 investigators with the Simpsonville police learned that some
24 of the reported stolen items were located in the Budget Buy
25 store in Simpsonville. This defendant's girlfriend reported

1 to the victim, Thomas Smothers, that the defendant stole the
2 items and sold them to the owner of Budget Buys.

3 Investigators went to the Budget Buys and confirmed with the
4 owner that he had bought a flashlight, some power tools and
5 other items from the defendant. The victim then went to the
6 store and identified and reclaimed some of the stolen items.

7 The owner of the store gave a statement saying he bought
8 the tools from the defendant. A warrant for the possession
9 of stolen goods was issued for the defendant's arrest and was
10 arrested several days later. The value of the stolen items
11 was \$1200. This occurred in Greenville County.

12 With regards to a prior record in 1999 the defendant has
13 a CDV and a petit larceny. And the recommendation from the
14 State is probation.

15 THE COURT: All right, is all that true?

16 MR. LUSTER: Yes, sir.

17 THE COURT: All right, sir, I'll accept the plea.

18 MR. WARDER: Your Honor, the only thing unusual about is
19 this case come up like they said, the tools were stolen in
20 Laurens County. He actually went to pre-trial for diversion
21 in Laurens County and at that time made restitution to the
22 victim for the larceny. He was charged with the receiving in
23 Greenville County. It would not be double jeopardy because
24 of the fact he went to pre-trial diversion rather than to
25 court down there. But I wanted you to know that he had been

1 through for that same offense.

2 MR. LUSTER: And I have paid Mr. Smothers his money back,
3 you know, for the tools.

4 THE COURT: Okay.

5 MR. WARDER: And so I'd ask you to follow the
6 recommendation of probation.

7 THE COURT: All right, three years provided upon time
8 served. Probation two years, five days public service,
9 random drug and alcohol testing.

10 THE COURT: All right.

11 MS. LIST: May it please the Court. Tawan Sullivan, the
12 financial identity fraud incident occurred on or about 7/8/03
13 at various locations within Greenville County. During this
14 time the defendant used the identifying information of
15 Charles Jackson to obtain a South Carolina identification
16 card, a vehicle registration and a loan from Watson Finance.

17 The failure to stop and driving under suspension occurred
18 on or about 8/12/03 at Butler Road, located in Greenville
19 County. On this date the defendant was driving a car with a
20 tag that was not illuminated by a tag light. When the
21 officer attempted to pull the defendant over, he disregarded
22 the officer's blue lights and request to stop that had been
23 sounded over the P.A. mic. At a red light where the officer
24 existed his car and asked the defendant not to go through the
25 light, the driver did go through the intersection. Then two

1 other officers fell in behind the defendant. The defendant
2 was traveling no more than 35 miles per hour and the pursuit
3 lasted from Butler road to Pleasantburg Drive.

4 Regards to a prior record, in '94 a hit and run. '94 a
5 check fraud, simple assault and battery. '95 shoplifting,
6 resisting arrest. '95 shoplifting. '95 DUS. '96 DUS. '97
7 DUS. '98 contributing to the delinquency of a minor. '98
8 DUS. '99 DUS. And in 2000 a disorderly conduct. And
9 there's no recommendation from the State.

10 THE COURT: All right, is all that true?

11 MR. SULLIVAN: Yes, sir.

12 THE COURT: All right, I'll accept the plea.

13 MR. WARDER: Your Honor, I guess I'll go about explaining
14 the charges and the way they happened. First of all, the
15 identity fraud, it's unusual because he -- a friend or fellow
16 he knew, he just went and got an ID card in his name. He
17 then incurred some obligation -- he's actually financed three
18 cars through Watson finance in the other fellow's name. And
19 paid for them. I mean, it wasn't like he was cheating Watson
20 Finance. He didn't have a driver's license. Was attempting
21 to get around that. Went out, got ID and ended up using the
22 ID that he was presenting everywhere.

23 In the failure to stop -- but Watson Finance is not out
24 and I wanted you to know that. In all occasions he had been
25 making timely payments on the loan. Didn't quit when it all

1 fell in. And that fell in because when they arrested him
2 they found the other ID on him. At that point they started
3 inquiring around.

4 Your Honor, on the pursuit, he knew he didn't have a
5 driver's license. It was his girlfriend's car, he wanted to
6 get the car back to her and he didn't go over 35 miles an
7 hour. He even stopped at a red light when the officers came
8 up beside him. He just drove the car back. Or was
9 attempting to drive the car back. Your Honor, this is -- in
10 the five years I think it's DUS second.

11 THE COURT: Yeah.

12 MR. WARDER: And I'd ask you to be as lenient as you can
13 under the facts. My client has a good job. Works out at
14 BMW. If he was incarcerated and not be able to make that. I
15 believe that job is the most important thing he has. Ask you
16 to be as lenient as you can.

17 THE COURT: Anything you want to tell me?

18 MR. SULLIVAN: Like even now I'm in a position to get my
19 license back. It's just that when I went up there to the
20 insurance place they told me I probably better hold off
21 because if those charges were in effect my SR-22 and I have
22 to start all over again.

23 THE COURT: Yeah, you're going have to start all over
24 again, you got convicted.

25 MR. WARDER: And he won't be in a position to get a

1 license because this will suspend it again.

2 THE COURT: All right, sir. All right, on the identity
3 fraud, five years provided upon the service of 60 days. The
4 balance is suspended, probation for two years. Random drug
5 and alcohol testing. On the failure to stop, three provided
6 upon the service of 60 days, the balance is suspended. On
7 the DUS 60 days. Credit for the one day he done.

8 THE COURT: All right. Mr. Jackson, before we go any
9 further I think I may have misstated your sentence. I think
10 I said it was 7 to 30 years, it's 7 to 25 years. Okay, do
11 you understand that?

12 MR. JACKSON: Yes, sir.

13 THE COURT: Does that change any of the answers you've
14 given me up to this point?

15 MR. JACKSON: No, sir.

16 THE COURT: Okay. I think we have your CDR code correct.

17 MS. LIST: On 3/27/03, this defendant did deliver more
18 than 100 grams of cocaine to a confidential informant with
19 the Greenville County Sheriff's Office. This transaction
20 occurred at 1922 August Street in Greenville County. On
21 December 18th of 2002, this defendant distributed more than
22 28 grams of cocaine to a criminal informant at 1111 August
23 Street in Greenville County. Regards to prior a record, in
24 '93 a CDV. The recommendation from the State is 15 years,
25 concurrent.

1 THE COURT: All right, is all that true?

2 MR. JACKSON: Yes, sir.

3 THE COURT: All right, I'll accept it.

4 MR. PRICE: Your Honor, before I say what I have to say

5 --

6 Dad, did you want to stand up and say anything for your
7 son?

8 THE COURT: What is your name?

9 THE FATHER: My name is George Jackson. I raised my son
10 the best I know how, Your Honor. He a good child, everybody
11 had mistake. I just ask you to show mercy.

12 THE COURT: Okay, thank you. Appreciate your coming to
13 court.

14 MR. PRICE: Judge, I got hired on this case in March of
15 this year. I met with Mr. Jackson and his father back there.
16 His father obviously has a lot of love and respect for his
17 son. I got a discovery package two weeks later and learned
18 not only did they have a confidential informant but there
19 were several recorded telephone conversations between the two
20 of them prior to that. The informant gave a statement. And
21 after Mr. Jackson got arrested he gave a statement admitting
22 what he had done. So from the get go it's not been a
23 question of guilt or innocence, just been a question of
24 begging and pleading. I've gone over the evidence with
25 Mr. Jackson. I have advised him that I think that he stands

1 little or no chance at a trial. The solicitor would not go
2 any better than 15 years so we're at the point where I saw no
3 choice in what we have to do. And I think Mr. Jackson feels
4 the same say. He understands it's an 85 percent case. And
5 having said all of that the young man has no prior drug
6 record. This is just one of those senseless things that you
7 and I see all time. Why he got into this, I don't know. He
8 was doing all right. But I'd ask the Court to go along with
9 the recommendation.

10 THE COURT: All right, anything you want to tell me,
11 Mr. Jackson?

12 MR. JACKSON: No. I just left that life behind and just
13 gave myself over to the Lord. And just want to go ahead, do
14 what I got to do and come back home to my kids.

15 THE COURT: Well I hope you find strength and endurance
16 through that and I wish you the best of luck. I'll go along
17 with the recommendation, 15 years on each of them,
18 concurrent. Credit for the time he's entitled to.

19 MR. PRICE: Thank you, sir.

20
21 (WHEREUPON, the requested portion of the
22 proceedings were concluded.)
23
24
25

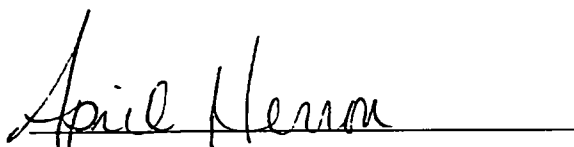
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, April Herron, Official Court Reporter for the 13th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 15th day of June, 2004.

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

January, 23, 2006



April Herron, Court Reporter

My Commission Expires: 11-17-07

20

J. Finkner Wilkes

FORM 5

STATE OF SOUTH CAROLINA

ENTERED COMPUTER

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

GEORGE JACKSON, 302760

2012-CP-23- 4393

Full name and prison number (if any) of Applicant.

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LIVESAY CORRECTIONAL INSTIUTION
2. Name and location of Court which imposed sentence GREENVILLE COUNTY

GENERAL SESSIONS

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:
 - (a) 2003GS2307212 TRAFFICKING IN COCAINE, 28 - 100 GRAMS
 - (b) 2003GS2307216 TRAFFICKING IN COCAINE, 10 - 28 GRAMS
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 061504 15 YEARS

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL WAS WITHDRAWN
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NA
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) VIOLATION OF BRADY AND OTHER RELEVANT CASES PERTAINING TO THE DISCOVERY AND DISCLOSURE OF INFORMATION BY THE STATE TO THE DEFENSE.

(b) _____

(c) _____

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

(a) THE APPLICANT HAS DISCOVERED WITHIN THE LAST YEAR INFORMATION THAT HE BELIEVES SHOWS THE STATE FAILED TO DISCLOSE INFORMATION OR MATERIAL THAT IT HAD A DUTY TO PROVIDE TO THE APPLICANT PRIOR TO HIS GUILTY PLEA AND THAT THE DUTY TO DISCLOSE IS A CONTINUING DUTY SUCH THAT DISCOVERY OF THIS INFORMATION GIVES RISE TO A CAUSE OF ACTION. APPLICANT HAS DISCOVERED THAT WHILE THE APPLICANT'S CASE WAS PENDING THE CONFIDENTIAL INFORMANT IN HIS CASE HAD MULTIPLE ARRESTS. THAT THE APPLICANT WAS NOT MADE AWARE OF THIS INFORMATION NOR OF ANY DEALS OR AGREEMENTS BETWEEN THE STATE AND THE CONFIDENTIAL INFORMANT THAT WOULD HAVE BEEN RELEVANT TO THE DEFENSE OF THE APPLICANT'S CASE AND HIS DECISION AS TO WHETHER HE SHOULD GO TO TRIAL OR WAIVE HIS RIGHTS AND ENTER A GUILTY PLEA. HAD THE INFORMATION DISCOVERED BEEN REVEALED BY THE STATE AND MADE KNOWN TO THE APPLICANT PRIOR TO HIS PLEA, THE APPLICANT WOULD NOT HAVE WAIVED HIS RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS AND PLED GUILTY. HAD THE STATE FURTHER DISCLOSED THIS INFORMATION PRIOR TO THE EXPIRATION OF TIME FOR THE INITIAL PCR CASE, THE APPLICANT COULD HAVE INCLUDED THAT INFORMATION AND CLAIM IN HIS INITIAL PCR CASE.

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? YES

(b) any petition in State or Federal Courts for habeas corpus or post-convictions

relief? YES

(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? YES

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. PCR 2005-CP-23-7170

ii. HABEAS CORPUS DISTRICT COURT

iii. _____

iv. _____

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

i. GREENVILLE COUNTY COMMON PLEAS

ii. US DISTRICT COURT SC

iii. _____

iv. _____

(c) the disposition thereof:

i. DISMISSAL

ii. DISMISSAL

iii. _____

iv. _____

(d) the date of each such disposition:

i. AUGUST 25, 2006

ii. 110209

iii. _____

iv. _____

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

i. 2005-CP-23-7170

ii. 4:08-cv-02340-CMC-TER

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. NA
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. NA
 - 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) THE APPLICANT HAS ONLY RECENTLY DISCOVERED THAT THE STATE WITHHELD INFORMATION RELATING TO THE CASE WHICH IT WAS REQUIRED TO DISCLOSE. BECAUSE THIS DUTY IS A CONTINUING DUTY, UPON DISCOVERY OF THE STATE'S FAILURE TO DISCLOSE INFORMATION THE APPLICANT BELIEVES THAT HE MAY FILE AN ACTION AND STILL BE TIMELY.
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
 - (b) your trial, if any? NA
 - (c) your sentencing? YES
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. JAMES H. PRICE, 644 WASHINGTON ST. GREENVILLE, SC 29601
 - ii. J. FALKNER WILKES, 114 WHITSETT STREET, GREENVILLE, SC 29601
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. TRIAL LEVEL
 - ii. PCR REVIEW AND PREPARATION
 - iii. _____
19. State clearly the relief you seek in filing this application:
REVERSAL OF CONVICTION AND TO HAVE THE PLEA SET ASIDE AND A
NEW TRIAL GRANTED.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA

)

)

County of GREENVILLE

)

VERIFICATION

I, GEORGE JACKSON, 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.

George Jackson

SWORN to and subscribed before me this 31
day of May, 2012.

Cornie C. Smith (L.S.)
Notary Public

My Commission Expires: 8/29/15

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

I, GEORGE JACKSON, 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.

George Jackson
Applicant

SWORN or affirmed to and subscribed before me this

31 day of May, 2012.

Chris C. Smith
Notary Public

My Commission Expires: 8/29/15

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 George D. Jackson,)
 S.C.D.C. No. 302760,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. ~~2005-CP-23-7170~~

2012CP2304393

2013 FEB 21 P 4:02

FILED CLERK OF COURT
 GREENVILLE CO. SC
 PAUL B. WICKENS, JR.

[Signature]

RETURN AND MOTION TO DISMISS

ENTERED COMPUTER

In response to the post-conviction relief (PCR) application filed July 6, 2012, the Respondent would show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the October 2003 term of the Greenville County Grand Jury for two (2) counts of trafficking cocaine (2003-GS-23-7212, -7216). He was represented by James H. Price, III, Esquire.

On June 15, 2004, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of fifteen (15) years on each count.

A notice of appeal was filed at the South Carolina Court of Appeals. The Applicant, however, chose to withdraw his appeal. The Court of Appeals issued an order dismissing the appeal at the Applicant's request on August 16, 2005.

2005-CP-23-7170

The Applicant filed a PCR application on November 7, 2005 (2005-CP-23-7170). The

SCANNED

Applicant Jackson
 2 21 13

Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to "request the proficiency test and SLED certification" of chemist.
 - b. Failed to obtain Brady material.
2. Erroneous sentencing.
3. Lack of subject matter jurisdiction.

An evidentiary hearing was convened on April 18, 2006 at the Greenville County Courthouse. Susannah C. Ross, Esquire represented the Applicant. The Honorable James E. Lockemy denied and dismissed the PCR application by order filed May 19, 2006.

The Applicant filed a notice of appeal. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Supreme Court denied the petition for writ of certiorari on March 6, 2008.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (4:08-2340-CMC-TER). The Respondent submitted a motion for summary judgment on September 26, 2008. The Honorable Thomas E. Rogers, III, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated July 27, 2009. On August 19, 2009, the Honorable Cameron M. Currie, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

II.

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

1. "Violation of Brady and other relevant cases pertaining to the discovery

and disclosure of information by the State to the defense.”

- a. “The Applicant has discovered within the last year information that he believes shows the State failed to disclose information or material that it had a duty to provide to the Applicant prior to his guilty plea and that the duty to disclose is a continuing duty such that discovery of this information gives rise to a cause of action. Applicant has discovered that while the Applicant’s case was pending the confidential informant in his case had multiple arrests. That the Applicant was not made aware of this information nor of any deals or agreements between the State and the confidential informant that would have been relevant to the defense of the Applicant’s case and his decision as to whether he should go to trial or waive his rights and enter a guilty plea. Had the information discovered been revealed by the State and made known to the Applicant prior to his plea, the Applicant would not have waived his rights under the Fifth and Sixth Amendments and pled guilty. Had the State further disclosed this information prior to the expiration of time for the initial PCR case, the Applicant could have included that information and claim in his initial PCR case.”

For the purpose of this Return, the Respondent incorporates the Greenville County Clerk of Court records, the South Carolina Department of Corrections’ records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offenses he challenges in this application on June 15, 2004 and the South Carolina Court of Appeals dismissed his appeal on August 16, 2005. The Applicant was therefore required to file his application before August 16, 2006. This application was filed on July 6, 2012, which was over five years beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

IV.

The Court should also summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other

proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a summary dismissal of the application because it is successive.

V.

The Respondent submits the Applicant's claim of newly- or after-discovered evidence is without merit. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted).

The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not

material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. The Respondent submits the Court should summarily dismiss this allegation.

VI.

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

VII.

WHEREFORE, the Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and filed after the statute of limitations expired.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: AL N. Wilson
Attorneys for Respondent

February
January 15, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

04393
2012-CP-23-7170

GEORGE D. JACKSON, 302760)

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent)

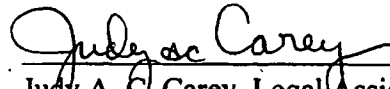
FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMON
2013 FEB 21
P 4:02

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

George D. Jackson, 302760
Livesay Correctional Institution
Post Office Box 580
Una SC 29378

Jeff Wilkes
114 Whitsett St
Greenville 29601

DATED this 15th day of February, 2013.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-04393
COUNTY OF GREENVILLE	)	
	)	
George D. Jackson,	)	
Applicant,	)	APPLICANT'S REPLY TO THE
	)	STATE'S MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	ENTERED COMPUTER
	)	

The State has filed a Return and Motion to Dismiss based on a claim that the Application in this case is time barred and successive. Based on the factual allegations, the State's Motion should be denied pursuant to S.C. Code Section 17-27-10 (C) which provides that in certain circumstances a claim may be made within one year of the time of discovery by the Applicant:

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year *after the date of actual discovery of the facts by the applicant* or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Section 17-27-10 (C).

In this case the Applicant has alleged the applicability in this case of S.C. Code Section 17-27-10 (C) as an exception to the general rule. This action arises out of the recent discovery of information which the Applicant submits was not

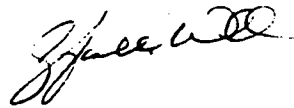
properly disclosed by the Solicitor prior to the Applicant's guilty plea. Applicant further submits that the Solicitor had a duty to disclose the information at issue prior to the Applicant's guilty plea, but failed to do so despite proper requests from the defense and a duty to disclose pursuant to Brady v. Maryland and other relevant case law. The Applicant has alleged that had the State properly disclosed this information it would have altered the Applicant's decision to waive his right to a jury trial. That further, the Applicant alleges that the State had a continuing duty to disclose this information such that the State should not be entitled to raise the time bar or successive nature of the claim as a defense in this case.

Summary dismissal would be inappropriate in this case as the Applicant is entitled to establish facts which, if proven, would entitle him to relief. The Applicant is entitled to prove facts through an evidentiary hearing as to the timeliness of this action, as well as the substantive portion of his claim. Pursuant to his Application, the Applicant intends to establish that the defense submitted discovery requests that, combined with Brady and other relevant case law, placed a continuing duty on the State to disclose information relating to the informant. That the State failed to properly disclose this information to the Applicant and, had the State disclosed this information the Applicant would not have waived his right to a jury trial.

The Applicant has sufficiently alleged the diligence of his efforts as well as the timeliness of this action. Applicant therefore submits that he has sufficiently alleged a *prima facie* case under the provisions of the Post Conviction Relief Act, such that he is entitled to an evidentiary hearing.

Wherefore, based on the underlying factual allegations, an evidentiary hearing is proper to allow the Court to fully determine the application of S.C. Code Section 17-27-10 (C), as well as the remaining issues as to substantive relief.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 421-4618
(864) 271-6035
jfalknerwilkes@gmail.com

Counsel for Applicant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-04393
COUNTY OF GREENVILLE	)	
	)	
George D. Jackson,	)	
Applicant,	)	Certificate of Service for APPLICANT'S
	)	REPLY TO THE STATE'S MOTION
v.	)	TO DISMISS
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

I certify that I have on the 4th day of March, 2013, served a copy of the APPLICANT'S REPLY TO THE STATE'S MOTION TO DISMISS on the State by placing a copy of same in the United State's Mail, first class postage prepaid, addressed to counsel of record as indicated below:

Karen C. Ratigan
Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1549

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 421-4618
(864) 271-6035
jfalknerwilkes@gmail.com

Counsel for Applicant

PC 189

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
George D. Jackson,)
S.C.D.C. No. 302760,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. ~~2005-CP-23-7170~~

2012CF2304393

CONDITIONAL ORDER OF DISMISSAL

ENTERED COMPUTER

2012 SEP -5 PM 2:30

HW

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 6, 2012. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant was indicted at the October 2003 term of the Greenville County Grand Jury for two (2) counts of trafficking cocaine (2003-GS-23-7212, -7216). He was represented by James H. Price, III, Esquire.

On June 15, 2004, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of fifteen (15) years on each count.

A notice of appeal was filed at the South Carolina Court of Appeals. The Applicant, however, chose to withdraw his appeal. The Court of Appeals issued an order dismissing the appeal at the Applicant's request on August 16, 2005.

2005-CP-23-7170

The Applicant filed a PCR application on November 7, 2005 (2005-CP-23-7170). The

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Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to "request the proficiency test and SLED certification" of chemist.
 - b. Failed to obtain Brady material.
2. Erroneous sentencing.
3. Lack of subject matter jurisdiction.

An evidentiary hearing was convened on April 18, 2006 at the Greenville County Courthouse. Susannah C. Ross, Esquire represented the Applicant. The Honorable James E. Lockemy denied and dismissed the PCR application by order filed May 19, 2006.

The Applicant filed a notice of appeal. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Supreme Court denied the petition for writ of certiorari on March 6, 2008.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (4:08-2340-CMC-TER). The Respondent submitted a motion for summary judgment on September 26, 2008. The Honorable Thomas E. Rogers, III, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated July 27, 2009. On August 19, 2009, the Honorable Cameron M. Currie, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

II.

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

1. "Violation of Brady and other relevant cases pertaining to the discovery

and disclosure of information by the State to the defense.”

- a. “The Applicant has discovered within the last year information that he believes shows the State failed to disclose information or material that it had a duty to provide to the Applicant prior to his guilty plea and that the duty to disclose is a continuing duty such that discovery of this information gives rise to a cause of action. Applicant has discovered that while the Applicant’s case was pending the confidential informant in his case had multiple arrests. That the Applicant was not made aware of this information nor of any deals or agreements between the State and the confidential informant that would have been relevant to the defense of the Applicant’s case and his decision as to whether he should go to trial or waive his rights and enter a guilty plea. Had the information discovered been revealed by the State and made known to the Applicant prior to his plea, the Applicant would not have waived his rights under the Fifth and Sixth Amendments and pled guilty. Had the State further disclosed this information prior to the expiration of time for the initial PCR case, the Applicant could have included that information and claim in his initial PCR case.”

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offenses he challenges in this application on June 15, 2004 and the South Carolina Court of Appeals dismissed his appeal on August 16, 2005. The Applicant

was therefore required to file his application before August 16, 2006. This application was filed on July 6, 2012, which was over five years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. (emphasis in original). If the

Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

This Court finds the Applicant's claim of newly- or after-discovered evidence is without merit. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted).

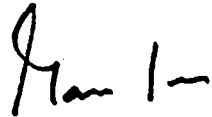
This Court notes the Applicant has failed to articulate the exact nature of the "new evidence" and has not attached any documentation of such to the PCR application. The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. This Court also notes the drug transaction was video recorded and the Applicant gave a confession to police. As such, this issue is dismissed.

VI.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons,

factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 25th day of Feb., 2013.



D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

George D. Jackson, 302760

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-23-~~7470~~ 04393MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
George D. Jackson, 302760, Bar No.
Address:
Livesay CI PO Box 580 Una SC 29378
phone: fax:
e-mail: other:

Defendant's Attorney:
Karen C. Ratigan, Bar No. 68331
Address:
Post Office Box 11549 Columbia SC 29211-1549
phone: (803) 734-3737 fax: (803) 734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

AK. R. WS
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant

February 15, 2013

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
 (check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO: 2012CP2304393

George Jackson vs. South Carolina State Of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC: ☐ Rule 41(a).
 SCRPC (Vol. Nonsuit): ☐ Rule 43(k), SCRPC (Settled): ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC: ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed: ☐ Reversed: ☐ Remanded:
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order: ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 5th day of March, 2013.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 5th day of March, 2013, and a copy mailed first class this 5th day of March, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

J. Falkner Wilkes 114 Whitsett St. Greenville, SC
 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia,
 SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
 - Clerk of Court

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. No. 2012-CP-23-04393
George D. Jackson,)
Applicant,) APPLICANT'S MOTION
AND REPLY TO THE
CONDITIONAL ORDER OF
v.) DISMISSAL
State of South Carolina,)
Respondent.)
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The State filed a Return and Motion to Dismiss which was served on the Applicant but not counsel for the Applicant. Applicant was therefore not able to file a timely Reply. Applicant submits this Reply in response to the Court's Conditional Order of Dismissal and moves the Court to set aside said Order and grant an evidentiary hearing in this case.

The Conditional Order of Dismissal is based on a finding that the Application in this case is time barred and successive. This finding is unsupported under the allegations as set forth in the verified Application, and pursuant to S.C. Code Section 17-27-10 (C), which provides that in certain circumstances a claim may be made within one year of the time of discovery by the Applicant:

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this

chapter within one year *after the date of actual discovery of the facts by the applicant* or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Section 17-27-10 (C).

In this case the Applicant has alleged the applicability in this case of S.C. Code Section 17-27-10 (C) as an exception to the general rule. This action arises out of the recent discovery of information which, the Applicant submits was not properly disclosed by the Solicitor or the State prior to the Applicant's guilty plea. Applicant further submits that the Solicitor had a duty to disclose the information at issue prior to the Applicant's guilty plea, but failed to do so despite proper requests from the defense and a duty to disclose pursuant to Brady v. Maryland and other relevant rules and case law. The allegation of a breach of this duty creates a cause of action under the Post Conviction Relief Act where the allegation is brought within one year of its discovery. Applicant has alleged facts which establish a timely action pursuant to discovery of the cause of action.

The Applicant has also alleged that, had the State properly disclosed this information, the Applicant would not have chosen to waive his right to a jury trial. That further, the Applicant has alleged that the State had a continuing duty to disclose this information, such that the State should not be entitled to raise the time bar or successive nature of the claim as a defense in this case.

Here the Court's Order has included a finding that the information discovered would not have changed the outcome of the case. This finding is unsupported where the allegation is that the information, had it been disclosed pursuant to discovery rules, would have changed the Applicant's decision to waive his right to a jury trial. This issue does not turn on a finding of whether or not the information would have any specific effect on the trial itself, but rather whether it would have changed the Applicant's decision as to a waiver of his rights.

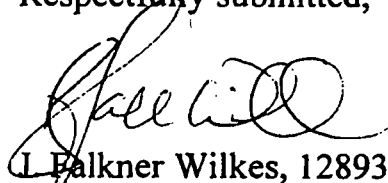
Summary dismissal is inappropriate where the Applicant has alleged a *prima facie* case by way of a verified application. Pursuant to the Post Conviction Relief Act the Applicant is entitled to establish facts which, if proven, would entitle him to relief. The Applicant is entitled to prove his claim by way of an evidentiary hearing, allowing him to establish the timeliness of this action, as well as the substantive portion of his claim. Pursuant to his Application, the Applicant intends to establish that the defense submitted discovery requests that, combined with Brady and other relevant rules and case law, placed a continuing duty on the State to disclose information relating to the informant. That the State failed to properly disclose this information to the Applicant and, had the State disclosed this information the Applicant would not have waived his right to a jury trial.

The Applicant has sufficiently alleged the diligence of his efforts as well as

the timeliness of this action. Applicant therefore submits that he has sufficiently alleged a *prima facie* case under the provisions of the Post Conviction Relief Act, such that he is entitled to an evidentiary hearing.

Wherefore, based on the underlying factual allegations, an evidentiary hearing is proper to allow the Court to fully determine the application of S.C. Code Section 17-27-10 (C), as well as the remaining issues as to substantive relief. Applicant moves this Court to set aside the Conditional Order of Dismissal and grant the Applicant an evidentiary hearing.

Respectfully submitted,



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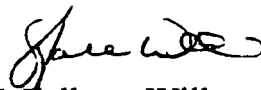
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-04393
COUNTY OF GREENVILLE	)	
	)	
George D. Jackson,	)	
Applicant,	)	Certificate of Service for APPLICANT'S
	)	MOTION AND REPLY TO THE
	)	CONDITIONAL ORDER OF
	)	DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

2013 MAR 15 PM 3:28

I certify that I have on the 15th day of March, 2013, served a copy of the APPLICANT'S MOTION AND REPLY TO THE CONDITIONAL ORDER OF DISMISSAL on the State by placing a copy of same in the United State's Mail, first class postage prepaid, addressed to counsel of record as indicated below:

Karen C. Ratigan
Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1549

Respectfully submitted,



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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2012-CP-23-04393

GEORGE JACKSON,
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)

ORIGINAL

June 8, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

J. FALKNER WILKES, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Attorney for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.(AW) GEORGE DEAN JACKSON, JR.:

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(AW) JAMES H. PRICE, III:

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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A-2	Letter Dated 3/15/04.....	13.....	30
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All Exhibits were retained by the Clerk of Court for
Greenville County.

P R O C E E D I N G S

THE COURT: This is George Jackson v. State of South Carolina, 2012-CP-23-4393. Mr. Wilkes is here representing Mr. Jackson, who's, also, present in the courtroom.

Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

I'll just go through a very brief procedural history so we know what posture we're in today. Mr. Jackson was indicted for two counts of trafficking cocaine back in 2003. He pled guilty June 15th of 2004. He was represented at that time by Chip Price. He received a 15-year active sentence.

He did file an appeal. The Court of Appeals dismissed that appeal at his own request back in August of 2005. Mr. Jackson, three months later, then filed his first PCR application. We had a hearing on the case back in April of 2006. He was represented by counsel, but Judge Lockemy dismissed the application. An order of dismissal was filed in May of 2006.

Mr. Jackson then filed a writ for habeas corpus in the federal court. That kind of went down its usual path of report recommendation, and then it went to the district court. The State's motion for summary judgment was

1 granted in August of 2009.

2 Then approximately three years later, Mr. Jackson
3 filed this PCR application. So that's his second
4 application. The State filed a return of motion to
5 dismiss arguing that it was successive and untimely.

6 I then, also, submitted a conditional order of
7 dismissal for Your Honor's signature. You did sign that
8 conditional order on May 5th of 2013. However, about 10
9 days later, Mr. Wilkes filed a reply to that conditional
10 order. And Your Honor filed a Form 4 on April 25th of
11 2013, setting the State's motion for a hearing.

12 So, at this point, the State is here to argue its
13 motion to dismiss. And, again, I can -- it's all set out
14 in the return of motion to dismiss. We would argue the
15 matter is untimely. It was filed more than a year after
16 his direct appeal was dismissed in August of 2005. We'd,
17 also, argue it's successive, that he had his one bite at
18 the apple at his PCR hearing back in 2006. He could have
19 raised all issues at that time.

20 We would, also, argue that his claim of
21 after-discovered evidence has not been substantiated, that
22 he would have to have filed the PCR application within one
23 year of finding out this alleged after-discovered
24 evidence. We would argue that's not been proven today,
25 that that was filed within a year of discovery.

1 I do recognize that Mr. Wilkes has arguments to make
2 in opposition, so I'll go ahead and turn it over to him at
3 this point. But, again, the State -- the position we have
4 is that it's very clearly untimely and successive, and
5 that it should summarily be dismissed.

6 THE COURT: Mr. Wilkes.

7 MR. WILKES: Thank you, Your Honor.

8 I believe 17-27-10(c), which I have put in my
9 memorandum, sets forth the exceptions. Date of actual
10 discovery of the facts is when the year begins to run. In
11 this case, we have alleged a violation of the State's duty
12 under Brady and other relevant case law, including Giglio
13 requiring disclosure of certain information in discovery,
14 which it has turned up that was never disclosed.

15 Upon learning that, he has the right to bring an
16 action. The delay in bringing the action is based on the
17 State's failure to make that disclosure, which is a
18 continuing duty under both Brady and Giglio. And,
19 therefore, he would be timely in his action.

20 And today, we, of course, need to establish, one,
21 that we filed within one year of his discovery, which we
22 can do through his testimony. We have the Solicitor's
23 Office representative with the file. We can show what was
24 responded to throughout the Prosecution. And we believe
25 we'll be able to show the absence of disclosure of that

1 impeaching testimony -- or impeaching evidence.

2 And Mr. Price is here. And we can ask him questions
3 as to whether or not he recalls ever receiving it, and
4 whether or not the impeaching evidence would have had an
5 impact on his evaluation of the case.

6 So if we may proceed, I would start with Mr. Jackson.

7 THE COURT: All right. Yes, sir.

8 MR. WILKES: Mr. Jackson, if you'll go up there and
9 take the witness stand.

10 THE CLERK: Mr. Jackson, step over to the Bible and
11 I'll swear you in.

12 Place your left hand on the Bible and raise your
13 right hand.

14 WHEREUPON,

15 GEORGE DEAN JACKSON, JR.,
16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 Please state your full name for the record.

19 THE WITNESS: George Dean Jackson, Jr.

20 THE CLERK: Thank you.

21 You may be seated.

22 DIRECT EXAMINATION

23 BY MR. WILKES:

24 Q Mr. Jackson, you were represented by Mr. Price at
25 your original trial -- or guilty plea?

1 A Correct.

2 Q When you retained Mr. Price to represent you, were
3 you aware that the informant in your case had been
4 arrested several times for trafficking and other offenses?

5 A No, sir.

6 Q During the time that Mr. Price represented you and
7 leading up until the time that you pled guilty, was that
8 ever disclosed to you?

9 A No, sir.

10 Q Now, would -- discovery of that information, if you
11 had known that, would that have changed your decision as
12 to whether or not to plead guilty or go to trial?

13 A Yes, sir.

14 Q Do you believe that if you had known that at the time
15 that you would have chosen to go to trial?

16 A Probably, yes.

17 Q Okay. And when was the first time you discovered
18 that information?

19 A When I seen the motion. That's the only thing I
20 seen. And I didn't know anybody's name until I seen the
21 statement.

22 Q Okay. And did you -- during our discussions, was
23 that the first time you learned of the actual charges he
24 had pending?

25 A Yes.

1 Q Did we bring the PCR action within one year of
2 discovering that?

3 A Once we found out.

4 Q Okay. And you were -- were you aware of those
5 pending charges at any time before we discovered that and
6 filed this action?

7 A I never knew until you showed me about him.

8 MR. WILKES: That's all I have of Mr. Jackson, Your
9 Honor.

10 THE COURT: Cross-examination.

11 MS. RATIGAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. RATIGAN:

14 Q Now, explain to me again how you discovered this
15 information about the CI.

16 A About the CI?

17 Q Yes, sir.

18 A When I seen the motion, I just seen his name where
19 he -- the statement he had wrote.

20 Q By "motion," you mean the motion for discovery?

21 A Right.

22 Q Okay.

23 A That's the only thing I knew. I didn't know nothing
24 about all his arrests, though.

25 Q And can you give me a time frame when you found this

1 out?

2 A About the arrests?

3 Q Yeah. When you found -- when you saw this motion for
4 discovery and you found out about the CI's arrest.

5 A The motion I got was in the first PCR. But I didn't
6 know nothing about all his arrests. I just knew he was
7 the one that testified on me, wrote the statement on me.

8 Q Okay. So you knew the identify of the CI at your
9 first PCR, you just didn't know he had prior arrests?

10 A I didn't know he had priors and all that.

11 Q Okay. So when did you find out that he had these
12 prior arrests? Do you remember like a month, date,
13 anything like that?

14 A Right after when I first had hired -- got with
15 Mr. Wilkes.

16 Q Okay. So once you hired Mr. Wilkes, that's when you
17 learned that this informant had all these priors?

18 A After he digged [sic] and found it out, that's when I
19 knew.

20 Q Okay. Now, when you pled guilty, did you know who
21 the informant was at that time?

22 A I, actually, right then when they -- when I had seen
23 the statement, I knew who it was then, yes.

24 Q So when you pled guilty back in 2004, you knew at
25 that time who the CI was?

1 A Yes.

2 Q Okay.

3 A I kind of figured who he was, yes.

4 Q And didn't you give a confession to the police in
5 this case?

6 A Letting them know that it was me. They was asking me
7 more questions and I said, You got me. I ain't got
8 nothing else to give. It's me.

9 Q Okay. But you did give them a confession and --

10 A Yeah. I told them -- they was asking more. And I
11 told them, No, that's it.

12 Q And the drug transaction, do you recall whether or
13 not that was audiotaped or videotaped by the police? Do
14 you remember?

15 A No.

16 Q If there was an audiotape of the transaction, is that
17 something that you would have discussed with Mr. Price, do
18 you think?

19 A The transaction?

20 Q Uh-huh.

21 A Yes. Because before, they had said that they had
22 some money. And I told them there had never been a
23 transaction like that.

24 MS. RATIGAN: That's all I have, Your Honor.

25 THE COURT: Redirect?

1 MR. WILKES: No redirect, Your Honor.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Thank you.

4 THE COURT: You may call your next witness.

5 MR. WILKES: We would call Chip Price, Your Honor.

6 THE CLERK: Mr. Price, raise your right hand and
7 place your left hand on the Bible.

8 WHEREUPON,

9 JAMES H. PRICE, III,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please state your full name for the record.

13 THE WITNESS: James H. Price, III.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MR. WILKES:

17 Q Mr. Price, did you represent Mr. Jackson at his plea?

18 A I did.

19 Q And when did you engage in your representation,
20 roughly?

21 A Going by the -- in reconstructing the records that
22 I've been given by the Attorney General's Office, I
23 believe I was hired in March of '04. I'm basing that on
24 the testimony from the prior PCR hearing.

25 Q I'll ask you to look at these two documents. Tell me

1 if you recognize them.

2 A One I definitely recognize. That's the -- my letter
3 and attachments from March the 5th of '04. The other one,
4 I'm assuming, is the discovery package that I got from the
5 Solicitor's Office some 10 days later.

6 MR. WILKES: Okay. Your Honor, we'd mark these as
7 our Applicant's Exhibit Nos. 1 and 2 for identification.

8 THE COURT: Okay.

9 (WHEREUPON, Applicant's Exhibit Nos. 1 and 2 were
10 marked for identification only.)

11 BY MR. WILKES:

12 Q If you'll look at what's marked as Applicant's
13 Exhibit No. 1 for identification purposes, is that a
14 motion, specifically, designed to obtain information on
15 impeachment witnesses?

16 A If you are referring to motion number four in that
17 package --

18 Q I am.

19 A -- yes, sir, it is.

20 Q And, as you have reminded me, there's, actually, a
21 series of motions in there, including a general Brady
22 motion?

23 A Yes, sir.

24 Q But in addition to the general Brady motion, your
25 motion number four was a very detailed, specific, lengthy

1 motion with a citation directly on the issue of
2 impeachment value for the State's witnesses?

3 A Yes, sir.

4 Q Okay. And you requested that on what date?

5 A The transmittal letter is March 5 of '04.

6 Q Okay. And the State responded, apparently, pretty
7 quickly?

8 A Yes, sir.

9 Q On what date?

10 A March 15th of '04 is their transmittal letter.

11 Q And so the transmittal letter is sending you the
12 discovery material that you have requested in your
13 motions?

14 A I'm assuming so, yes, sir.

15 Q Okay. Now, do you recall or has anybody shown you
16 anything to indicate that you were given any information
17 on the CI's arrest, and pending charges, and other
18 impeachment material relating to that confidential
19 informant, whose name we're intentionally not
20 mentioning?

21 A From looking at your file and talking with the -- and
22 looking at the State's file and talking with Ms. Ratigan,
23 the identity of the informant does not appear to be an
24 issue. But I do not recall any information about the
25 informant being arrested, or having been arrested.

1 Q Okay. Now, an informant -- a participant in an
2 offense would have to be a witness; correct?

3 A Yes, sir.

4 Q And, if so, that would be impeachment evidence -- or
5 impeachment material for that witness and it would be
6 important to your case, would it not?

7 A Pending drug charges, I believe so, yes, sir.

8 Q And had you had information --

9 MR. WILKES: And I'll mark these.

10 (WHEREUPON, Applicant's Exhibit Nos. 3 and 4 were
11 marked for identification only.)

12 BY MR. WILKES:

13 Q What's marked as Applicant's Exhibit Nos. 3 and 4 for
14 identification, if you'll look at those --

15 MR. WILKES: And I think -- Your Honor, I think we
16 can stipulate that those are the informant's charges that
17 we're talking about. We've taken the liberty of redacting
18 all of his information, his name. But I think we're in
19 agreement --

20 MS. RATIGAN: We are, Your Honor.

21 MR. WILKES: -- that those are the charges.

22 THE COURT: Okay.

23 BY MR. WILKES:

24 Q Mr. Price, take a look at those and tell me if those
25 charges are the type of charges that would have been

1 beneficial in your defense of the case had you known about
2 them?

3 A You know, they, certainly, would have been beneficial
4 as far as my negotiations with the prosecutor. I can't
5 really say how beneficial they would have been as far as a
6 trial is concerned. They, certainly, would help more -- I
7 mean, it would -- it's better that, from my viewpoint, if
8 Mr. Jackson had elected to go to trial that the informant
9 had baggage.

10 MR. WILKES: Very good.

11 If I can have one moment.

12 (Pause.)

13 MR. WILKES: That's all I have for Mr. Price.

14 THE COURT: Ms. Ratigan.

15 MS. RATIGAN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. RATIGAN:

18 Q Do you recall, would this case -- could it be fairly
19 described as a buy bust type of a case?

20 A Yes, ma'am.

21 Q Do you recall whether or not at the time of the plea
22 you knew who the confidential informant was?

23 A From looking at the -- in talking with Mr. Wilkes and
24 looking at the -- his file, I sent a discovery package to
25 my client, as is my habit. The package had a statement

1 from the informant. So I'm assuming that the informant's
2 identity was not an issue.

3 Q Okay. I believe I asked Mr. Jackson about this. Do
4 you recall whether or not he gave any kind of a confession
5 in this case?

6 A Mr. Jackson?

7 Q Yes, sir.

8 A He did give a statement to the city police.

9 Q Okay. And did you discuss with him the impact that
10 confession had on the overall defense case?

11 A Yes, ma'am.

12 Q And do you recall whether or not the transactions
13 were audiotaped by the police?

14 A There was an audiotape. I saw a letter that I wrote
15 to the prosecutor about it. Because the audiotape was not
16 given to me in the discovery package. I am assuming that
17 I went up to the office to listen to it. But I don't have
18 any independent recollection.

19 Q Would you have discussed with Mr. Jackson the impact
20 that an audiotaped transaction of a buy would have had on
21 your overall case?

22 A If I went to listen to it -- excuse me. If I had
23 listened to it, I would have discussed that with
24 Mr. Jackson.

25 Q Okay. So you -- Mr. Jackson pled about three months

1 after you got involved. Does that sound about right?

2 A Yes, ma'am. It was an old case. And I got hired
3 fairly late in the process.

4 Q Did you ever have any meaningful discussions about
5 going to trial, or was this something that was going to
6 plead from the start, do you think?

7 A Mr. Jackson and I would have talked about all of his
8 Constitutional rights. We would have talked about pro's
9 and con's of going to trial. We would have talked about
10 the entire situation.

11 Q Did he ever -- do you recall him ever saying he
12 wanted to go to trial, or was he satisfied with continuing
13 plea negotiations?

14 A Mr. Jackson talked to me -- and I'm struggling here
15 about how to phrase this. He wasn't happy about pleading
16 guilty. He did talk to me about going to trial. But I
17 can't tell you the specifics of what we talked about. But
18 I know that it was discussed.

19 Q Okay. And do you know the general Solicitor's Office
20 policy about disclosing information about confidential
21 informants?

22 A Now or back then?

23 Q Back then.

24 A Back then, it was kind of a hodgepodge. You had
25 different solicitors with different -- I don't want to say

1 rules, different practices.

2 Q And the Solicitor in this case was Rachel List. Do
3 you happen to recall what her policy would have been about
4 disclosing information?

5 A I don't recall talking to her about a policy. I do
6 recall writing her -- strike that.

7 I did see the letter that I wrote her after I got the
8 initial discovery package asking about tapes. And then I
9 saw the Solicitor's file, there was a notation about
10 authorizing me to come up to the office and listen to the
11 tape. And that's really all that I recall. I don't
12 recall talking policy with her.

13 Q Okay. Now, obviously, this is a totally speculative
14 question. But --

15 MR. WILKES: Well, I object to the speculative
16 question.

17 MS. RATIGAN: But being in PCR is all about Monday
18 morning quarter backing --

19 THE COURT: Not if you're going to pass to Mr. Wilkes.

20 BY MS. RATIGAN:

21 Q Given that he -- given that Mr. Jackson had a
22 confession, given that there were audiotapes of the buy,
23 given that he had some priors, in your opinion, would
24 knowing the prior offenses of the CI have changed the
25 outcome of the case, in your opinion?

1 A It could very possibly have gotten Mr. Jackson a
2 better deal as far as a plea offer. As far as a trial is
3 concerned, you know, that is speculative. It would have
4 been, you know, an arrow in my quiver. I would have still
5 had a tough road to hoe in light of the confession that he
6 gave. But absolutely it would have helped me as far as
7 negotiating with the Solicitor as far as a potential plea
8 is concerned.

9 MS. RATIGAN: That's all I have, Your Honor.

10 MR. WILKES: A few redirect.

11 THE COURT: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MR. WILKES:

14 Q If Mr. Jackson had chosen to go to trial, would that
15 not have been beneficial?

16 A The fact that the informant had pending charges?

17 Q Yes.

18 A Assuming that the Judge would have allowed me to go
19 into it, I would have gone into it as hard as I could.
20 And, yes, it has been beneficial in the past.

21 Q And in discussing the practices of prosecutors in
22 giving CI information, have you ever received information
23 from the Prosecution with the name of the CI blacked out,
24 but the other information present?

25 A Yes, I have.

1 Q And would there be any reason you could not have
2 received information from them saying blank, our CI, has,
3 also, been arrested and has pending charges?

4 A I don't understand the question.

5 Q Would they have been able to deliver to you in a way
6 that did not give up the identity of the CI the same
7 information we're talking about?

8 A I'm not sure where you're coming from. Because the
9 informant was already disclosed in the discovery package
10 that they gave me.

11 Q Then -- okay.

12 A So I see no reason why they could not have
13 disclosed --

14 Q The arrest.

15 A -- the arrest. Because they had already disclosed
16 the identity of the informant, if that's where you're
17 coming from.

18 Q Okay. No. That's better.

19 So you're -- there would be -- there's no reason that
20 you can see in your relationship with List in the case for
21 her not to disclose that information?

22 A Correct.

23 Q Okay. And when the State gives you a response, do
24 you rely on it?

25 A Yes, sir.

1 Q I mean, would you have checked for a criminal history
2 in Kentucky, Washington, Greenville, or Spartanburg?
3 Would you normally go searching about if the State has
4 given you a response?

5 A If I had been put on any kind of notice or if, in
6 this case, my client had an inkling, or if he had been
7 told that the informant had some pending arrests and had
8 told me, then I would have asked some more specific
9 questions above and beyond the impeaching motion that I
10 filed.

11 Q But you -- would you agree that the impeaching motion
12 is fairly detailed and to the point?

13 A Well, that's one of the reasons that I use that
14 motion is to seek impeaching information on the State's
15 case.

16 Q And do they, generally, give you that information as
17 a result of this motion?

18 A One hopes so, but one never knows.

19 Q But you would rely on their answer as being complete
20 and truthful?

21 A Yes, sir.

22 MR. WILKES: Thank you.

23 No further questions.

24 MS. RATIGAN: Just briefly just because it never,
25 actually, made it into the record.

RE CROSS-EXAMINATION

BY MS. RATIGAN:

Q On Applicant's Exhibit Nos. 3 and 4 of the indictments of the CI that you have in front of you, could you tell us what the incident dates were based on -- I guess you could pull that off the warrant or the indictment?

A The assault and battery with intent to kill, which is Applicant's Exhibit No. 4, the incident date is June 1 of '03. And Applicant's Exhibit No. 3, which is the pistol charge with the obliterated serial number, that incident date is 10/14/03.

MS. RATIGAN: Okay. Thank you, Your Honor.

MR. WILKES: Nothing further.

THE COURT: How typical is it for an informant to have pending charges?

THE WITNESS: That's a tough question to ask. A lot of informants have convictions. Some informants have pending charges. Very few have -- strike that.

Some have no record. And I can't say what percentage that would be. It's -- I'm not sure.

THE COURT: Okay. Fair enough.

These were just pending; correct?

THE WITNESS: That is what I understand. I was not aware of what all this was about until I -- Mr. Wilkes

1 mentioned this several weeks ago. So I'm just assuming
2 that they were pending as of the date of the plea.

3 THE COURT: Would it be more or less typical for a
4 pending charge of an informant to be related to the type
5 of offense for which the informant is being used to help
6 prosecute somebody?

7 THE WITNESS: I don't know how to answer that, you
8 know. Right here, I've got two indictments that pertain
9 to one crime of violence and one obliterated pistol on two
10 different dates.

11 Had -- if I had known about these and then we were
12 going to -- had I known about these, then I would have
13 gone into the underlying facts. I would have wanted to
14 know whether these things were drug related, who was
15 involved, the circumstances. I would not have stopped
16 just with the fact that there were pending charges. I
17 would want to know everything about them.

18 I would, also, had served -- would have served
19 another motion asking -- as far as promises and leniency,
20 were these charges being taken into account as far as the
21 informant's actions, whether he was going to testify. So
22 there are a lot of things that I would have looked into
23 had I known about it.

24 THE COURT: As an experienced and shrewd defense
25 lawyer, are these types of pending charges more valuable

1 to you than -- in a drug case where the informant, as I
2 understand it, played a role in an undercover drug buy?
3 Is that what happened?

4 THE WITNESS: My understanding is that the
5 informant, basically, arranged the deal and set
6 Mr. Jackson up.

7 THE COURT: Okay. So are these type of offenses of a
8 higher impeachment value than strictly drug offenses? In
9 other words, if this informant was simply working off his
10 own PWID or distribution charges, would -- as a defense
11 lawyer, would you rather have these type of pending
12 charges pop up on his criminal history, or strictly
13 drug-related charges?

14 MR. WILKES: And may I interject something that I may
15 have overlooked?

16 THE COURT: Sure.

17 MR. WILKES: There may be -- if I could look at that
18 right quick, I believe there's a trafficking charge as
19 well. I'm almost positive. I may not have copied it, I'm
20 afraid.

21 THE WITNESS: All that I have --

22 MR. WILKES: No, I may not have copied it. I'll have
23 to get the other record for the Court. But I believe that
24 there's a trafficking charge in there as well, Your Honor.
25 So if I may have leave to pull that. But I'm showing the

1 county records. I believe that's correct.

2 THE WITNESS: That's a tough question. I'm wanting a
3 charge, drug or anything else that might resonate with a
4 jury to question the informant's validity -- not validity,
5 his competency, his truthfulness.

6 Assault and battery with intent to kill, trying to
7 kill somebody, that's a great charge to cross-examine
8 someone on, especially if the Judge let's me get into the
9 facts, especially if there are some -- if it's related to
10 drugs. Okay. A pistol charge, possession of something
11 with an obliterated serial number in and of itself, you
12 know, that's not really all that thing [sic]. But I
13 don't know the background and surrounding
14 circumstances. Trafficking -- if there's a trafficking
15 case, absolutely.

16 THE COURT: Thank you.

17 MR. WILKES: May I ask a follow-up question, Your
18 Honor?

19 THE COURT: Sure.

20 MR. WILKES: And I'll just -- if there's no
21 objection, I can replace this before the end of the
22 hearing. I have from the county records the printout from
23 judicial. It shows that trafficking charge. Apparently,
24 I just didn't get a copy of that a minute ago when I got
25 the certified copies.

FURTHER EXAMINATION

BY MR. WILKES:

Q Mr. Price, that -- adding that trafficking charge in with the other charges, would that have made significant fodder for your defense?

A Yes, sir. Again, whether it's trial or plea negotiations, I would have liked to have had it. And I think it would have been --

Q And, as you see on that record, it indicates a guilty plea, I think, on all of those charges. Would that lead you to believe that there was very likely some negotiation or promises made to him that could have, also, been fodder?

A I don't believe in coincidences, Mr. Wilkes. I'm sure there was some quid pro quo. But I'm just speculating.

Q I understand. And the possibility of it would have been something that you would have inquired about at trial had it come to that?

A I would have filed -- had I known about these, I would have filed a specific motion asking, you know, about deals, or leniency, or anything like that.

Q Would you have preferred to have the State respond with this so that you could have advised Mr. Jackson of these things before he made the decision to plead guilty?

1 A Yes, sir.

2 Q Do you think it would have been fair for him to
3 understand this and know this stuff before he pled guilty?

4 A Yes, sir.

5 MR. WILKES: Thank you, Your Honor.

6 No further questions.

7 MS. RATIGAN: Nothing for Mr. Price.

8 THE COURT: Thank you, Mr. Price.

9 All right. You may call your next witness.

10 MR. WILKES: Your Honor, if I may rest at this
11 point -- well, I guess I can call the Solicitor as my
12 witness.

13 MS. RATIGAN: I was going to call her.

14 MR. WILKES: She's going to call her.

15 If I may keep the record open just so that I may
16 substitute a certified copy of that indictment.

17 THE COURT: Yes, sir.

18 MR. WILKES: And redact -- it will be redacted.

19 We'll rest with that, Your Honor.

20 MS. RATIGAN: The State would call Ms. McCall, K.C.
21 McCall.

22 THE CLERK: Ms. McCall, please, place your left hand
23 on the Bible and raise your right hand.

24 WHEREUPON,

25 KATHRYN MCCALL,

1 after first having been duly sworn, testified as follows:

2 THE CLERK: Thank you.

3 Please state your name for the record.

4 THE WITNESS: It's Kathryn McCall.

5 THE CLERK: Thank you.

6 MS. RATIGAN: Judge, this is going to be mostly for
7 housekeeping just so we don't have issues with the
8 appellate courts later in terms of authenticating.

9 DIRECT EXAMINATION

10 BY MS. RATIGAN:

11 Q Where are you employed, Ms. McCall?

12 A At the Solicitor's Office here in the Thirteenth
13 Circuit.

14 Q And does Rachel List still work in the Solicitor's
15 Office?

16 A She does not.

17 Q And did I ask -- did I request that you get the
18 Solicitor's file in this case, the George Jackson case?

19 A Yes, you did.

20 Q And did you receive that?

21 A I did from storage.

22 Q Now, for purposes of the record, is it a physical
23 copy of the file, or is it a copy that has been scanned
24 in?

25 A It is a physical copy. It's been scanned, too. But

1 this is the physical copy.

2 MS. RATIGAN: May I approach, Your Honor?

3 THE COURT: Sure.

4 BY MS. RATIGAN:

5 Q Let's's see. Looking at Applicant's Exhibit Nos. 1
6 and 2, are those copies that I requested you make from the
7 physical file in this case?

8 A You did. These are copies from the original file.

9 Q Okay. Have you made any kind of notations on them,
10 alterations, amendments, or were they copied directly out
11 of the physical file?

12 A Directly out of the file, no changes.

13 MS. RATIGAN: I think that's all I have, Your Honor.

14 MR. WILKES: If we may introduce those into evidence
15 at this time.

16 MS. RATIGAN: I have no objection, Your Honor.

17 THE COURT: All right. They're in evidence.

18 (WHEREUPON, Applicant's Exhibit No. 5 was marked for
19 identification and admitted into evidence.)

20 (WHEREUPON, Applicant's Exhibit Nos. 1, 2, 3, and 4
21 were admitted into evidence.)

22 MR. WILKES: We have Applicant's Exhibit Nos. 1, 2,
23 3, and 4, which are certified copies. Our Applicant's
24 Exhibit No. 4 is going to be switched for the certified
25 copy later.

1 MS. RATIGAN: Yes. Applicant's Nos. 3 and 4, we
2 already have.

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MR. WILKES:

6 Q If you'll look at the exhibit that is -- purports to
7 be your file response to Mr. Price.

8 A Yes.

9 Q After -- have you reviewed the file in discussing
10 this case?

11 A I have.

12 Q Okay. Can you show anything to indicate that
13 Mr. Price was given the impeachment material on Vance?

14 A No. This is just our standard response with the Code
15 Five and all those things that go with that. There's no
16 NCIC -- I mean, the Defendant's NCIC, but nothing related
17 to the CI. We don't turn over the CI information
18 directly, unless it's a trial.

19 Q All right. If -- for impeachment purposes, would it
20 have been possible to indicate to Mr. Price that the
21 informant had been arrested, but still not disclosed any
22 other information so he could have, at least, known that?
23 There's no reason that could have been done.

24 A Like I said, I didn't handle this case. But -- so I
25 don't have any personal knowledge as to what went back and

1 forth. Typically, you know, the witnesses NCIC's are not
2 turned over until after they testify at trial. We don't
3 do that on the front end.

4 Q Okay. Is there any reason that Mr. Price could not
5 have been told that the confidential informant had those
6 arrests? Would that have compromised --

7 A I just -- I mean, going by the policy, I don't think
8 that that would have been done.

9 Q Okay.

10 A But I don't know. I can't speak for Ms. -- the
11 solicitor at the time.

12 Q I understand.

13 A But, you know, because of the policy that we have
14 going on with confidential informants --

15 Q I understand.

16 A -- you know, and looking at this, I don't think that
17 that would have been done.

18 MR. WILKES: I understand.

19 No further questions, Your Honor.

20 MS. RATIGAN: I have nothing further, Your Honor.

21 THE COURT: Thank you.

22 MS. RATIGAN: And the State would rest at this time.

23 MR. WILKES: May I speak and say briefly what is in
24 my memorandum?

25 THE COURT: Sure. Yes, sir.

1 MR. WILKES: Your Honor, we've just set forth in the
2 memorandum why we believe we are timely and should be
3 allowed not only to proceed, but why we would be entitled
4 to relief. In this case, the defense attorney made an
5 uncommon, unusual, and efficient detailed discovery
6 request, specifically, for the information sought relevant
7 to his evaluation of the case relevant to the Defendant's
8 understanding of the case.

9 Now, what is particularly important in this case and
10 different -- and would differentiate it from other cases
11 is there's a specific request for it. Had this been a
12 generalized request under Brady or Rule 5, it might have
13 been different. But, in this case, it -- there is a very
14 clear request for that information. The Solicitor made a
15 response and produced a packet of numerous documents and
16 things that were relevant to the case.

17 The Solicitor's response omitting it without stating
18 they were omitting it for any reason becomes something
19 that the defense attorney is entitled to rely on. He's
20 entitled to rely on the State's full response to a
21 request. Under Brady and under Giglio, he's, clearly,
22 entitled to it, if he asks for it.

23 And when the State makes a response with all of this
24 information and does not produce it, the defense attorney,
25 at that point, must believe that there is none. And he's

1 reasonable in that belief because of the State's duty to
2 produce it or, at least, say that they will not produce it
3 to say that there is one, but we will not produce it.

4 Most particularly important is the fact that the
5 State cannot give a good reason as to why they could not
6 have notified the defense attorney, yes, there is an
7 arrest. There are impeachment incidents or impeachment
8 material that you may be interested in, but we're not
9 going to give it to you.

10 There's no reason they could not have said, yeah,
11 your informant in this case has been arrested on these
12 charges and they are pending. That would not have
13 disclosed anything about the informant. It wouldn't have
14 given away the informant's identity if they were entitled
15 to just -- you know, to hold that back, it wouldn't have
16 done that. But it would have allowed the defense attorney
17 to properly evaluate his case and advise his client.

18 Mr. Jackson testified that he would most likely have
19 considered going to trial. And that is the burden that we
20 have to prove, and that is the only burden. Case law says
21 that it is not a question of how do we now in retrospect
22 given the overall evidence. Because it's a question of
23 whether the Defendant waives his right to go to trial.
24 It's his right to go to trial, regardless of how we may
25 construe the evidence against him.

1 And if he would have gone to trial knowing this and
2 that would have impacted his decision to go to trial, then
3 that is all that is required for our standard here on a
4 Brady violation, not whether or not there's a lot of
5 evidence against him or not. That's -- there's other
6 defenses to his statement. There's defenses in the case
7 that may be applicable, but that's irrelevant. The
8 question is what would he have done.

9 And particularly important, of course, is the State's
10 response to the specific request. And that's what puts it
11 inside of the recent case from the Fourth Circuit, which I
12 have cited, which was the Fisher case. But they looked,
13 specifically, at does the State make a representation that
14 the defense is relying on? And, in this case, it did when
15 it responded without that impeachment evidence that had
16 been, specifically, asked for.

17 So we would ask the Court to deny the State's motion
18 to dismiss based on successive and timeliness grounds as
19 we have met our burden on that.

20 THE COURT: What did the statement that Mr. Jackson
21 did receive concerning the informant say?

22 MR. WILKES: The name of the informant is on a
23 document. I think Mr. Price testified that the actual
24 identity of the informant was not an issue. The name of
25 the informant is, clearly, listed on a statement that the

1 informant -- I think he wrote it out himself by hand.

2 But that -- what Mr. Price was testifying to -- the
3 identity of the informant was not an issue. The question
4 was, was there impeachment material relating to that
5 informant? And the State did not produce it. And the
6 State knew of...

7 THE COURT: I understand that. But I'm trying to
8 figure out, is what -- is the statement that Mr. Price
9 testified about that the informant made in evidence now?

10 MR. WILKES: It's not in evidence. But, as Mr. Price
11 testified to, the identity was not the issue.

12 THE COURT: Okay.

13 MR. WILKES: That identity was not an issue. The
14 question for him was, was there impeachable material? And
15 that's why he -- I've never seen a motion so good. You
16 could not ask for a more clear, better-argued motion than
17 that. And that's why he had that reliance upon the
18 Government's response because he did ask specifically.

19 THE COURT: Thank you, sir.

20 MS. RATIGAN: I'll be very brief, Your Honor. I'm
21 just going to hit, I think, three main points and then
22 I'll sit down.

23 First of all, we would argue -- before we even get to
24 all the Brady stuff, this is after-discovered evidence.
25 The test for after-discovered evidence in cases such as

1 State v. Mercer, which is 381 S.C. 149, which is a 2009
2 case, and Hayden v. State, which is a more specific PCR
3 case, that's 278 S.C. 610. It's a 1983 case. It sets out
4 a five-point test, as Your Honor know about. With
5 after-discovered evidence, you have to meet all five parts
6 to have something qualify as after-discovered evidence.

7 We'd argue two of the points haven't been made, and
8 we don't even need to get to the other three. The
9 evidence must be shown to be material. And it -- and that
10 it could not in the exercise of due diligence have been
11 discovered prior to the trial. Clearly, he fails both of
12 those prongs. This is not the -- whether or not the CI
13 picked up charges in between working the case and going --
14 and the plea, that's not material to the issue of guilt or
15 innocence.

16 Furthermore, both Mr. Jackson and Mr. Price testified
17 today they knew the CI's identity at the time of the plea.
18 The public index search, as Mr. Wilkes has availed himself
19 of today, you can look up pending charges. This is not a
20 secret. If they knew who the informant was, they could
21 have done a search to see if he had any pending charges.
22 So that was known at the time of the plea. It was
23 absolutely known at the time of the first PCR back in
24 2006, because we back then were, also, talking Brady
25 issues.

1 So there have been years for Mr. Jackson to
2 "discover" this evidence. Therefore, we'd argue it's not
3 after-discovered evidence. So that doesn't get you around
4 the statute of limitations and the successiveness bars the
5 State has argued.

6 Moving on to Brady. If he manages to get over that
7 hump, I don't think this is a Brady violation. Again,
8 cases such as Gibson v. State -- that's 334 S.C. 515.
9 That's a 1999 case. It, basically, says, you know, you
10 can make a Brady claim if you meet four parts. You have
11 to meet four parts. And, again, one of the parts is
12 materiality. It has to be material to the issue of guilt
13 or punishment.

14 And Gibson goes on to state, "A Brady violation is
15 material when there is a reasonable probability that but
16 for the Government's failure to disclose Brady evidence,
17 the Defendant would have refused to plead guilty and gone
18 to trial."

19 I think it's completely speculative based on the fact
20 that he gave a confession, the fact there was an audiotape
21 of the buy. It's completely speculative to say that if I
22 had known that the CI picked up charges after the buy
23 bust, then I would have absolutely, in light of all this
24 evidence against me, have gone to trial. I think that's
25 speculative. And, again, the issue of the CI's pending

1 charges is not material to the issue of guilt or
2 punishment, which is key under Brady.

3 And the last thing I will hit on is, if you look at
4 the actual timeline, the incident dates for Mr. Jackson's
5 charges are December 18th of 2002, and March 27th of 2003.
6 The incident dates for the CI's charges took place three
7 and seven months after the buy bust in this case.

8 So there's no way that it could be argued that he was
9 working off charges at the time of the buy bust. The only
10 thing that could be argued is since he participated in
11 this buy bust, it was not -- charges on completely
12 unrelated cases. He was, clearly, not working it down at
13 the time, because the case had already been made at that
14 point.

15 And I would, also, argue United States v. Ruiz. It's
16 a Supreme Court case, 536 U.S. 622, a 2002 case.
17 Basically, the holding in that case is the Constitution
18 does not require the prosecutor to disclose all
19 information that might be useful. They, specifically,
20 state that information relating to informants falls in
21 that category. You don't have to disclose all of that
22 information prior to entering a guilty plea, because the
23 information is related to the fairness of a trial, not the
24 voluntariness of the plea.

25 So we would argue he hasn't met after discovered.

1 There's no Brady violation. And there was no -- the State
2 was not compelled to disclose information about the CI
3 prior to the case being put on the trial docket. And Ruiz
4 very clearly states that position.

5 So we would argue he hasn't met his burden of proof
6 today.

7 THE COURT: All right.

8 MR. WILKES: Your Honor, may I reply briefly?

9 This is a Brady violation. This doesn't have
10 anything to do with after-discovered evidence. Your
11 Honor, there's two basic -- well, there's two completely
12 different standards. After-discovered evidence does not
13 apply. This is a Brady violation. And it is completely
14 separate and distinct from that analysis. That analysis
15 does not apply.

16 Ruiz is a case that is interpreted by U.S. v. Fisher.
17 And that's why I've cited to the Fourth Circuit and the
18 Fisher case. It interprets Ruiz and would rule Ruiz out
19 in this case. Because the defense attorney made a
20 specific request. And the State made a response on which
21 he relied. And that's what takes Ruiz out of this
22 situation. Fisher applies and interprets the type of
23 situations where the State -- where the Government does
24 something affirmative and the defense is relying on it.
25 And that is the case we're dealing with here.

1 The burden as far as Mr. Jackson's testimony is is
2 that he would have -- it would have had an affect on him.
3 It's not speculative. It is his testimony, especially if
4 this is considered as a motion to dismiss or a summary
5 judgment motion, then it is the light most favorable to
6 the non-moving party, which he has testified that that
7 would have made a difference.

8 So, in this case, I think, Your Honor, we believe
9 Ruiz does not apply. It is not after-discovered evidence.
10 That rule does not apply.

11 And applying Fisher in other cases where there's an
12 affirmative act on the Government does apply and would
13 entitle us to relief.

14 THE COURT: Well, doesn't he -- even under your
15 scenario, which I may end up agreeing with, but doesn't
16 that still require that the Applicant's statement that he
17 would not have pled had he known this withheld information
18 have to be within the realm of a reasonable probability?

19 MR. WILKES: Not on a motion to dismiss. I don't
20 even think that's a consideration. I think it's light
21 most favorable --

22 THE COURT: Well, let's say we got beyond that --

23 MR. WILKES: If we get beyond that, then the question
24 is, is this material? There is a material -- probably a
25 materiality question. Would it have been material? But

1 the testimony here would support that it is material. It
2 would be a very important factor in his case.

3 And the testimony was that he did talk going to trial
4 with Mr. Price. And Mr. Price testified that it would
5 have been a very significant thing in the overall case to
6 have something that would go against the testimony of the
7 informant in the case.

8 So the question is -- and it's not one that we judge
9 after the fact so harshly. Because it's one that -- it's
10 his exercise of the right. And it's not for us to say
11 whether the exercise of that right would be, in our
12 opinion, foolish or not, or good or wise. It's his right
13 to exercise.

14 And what distinguishes this is that it is that
15 affirmative duty on the part of the State to make the
16 disclosure, which changes things dramatically. The fact
17 that they withhold it with no reason, no reason
18 whatsoever, but they withhold that impeachment information
19 despite the specific request is what triggers his right to
20 relief.

21 And the testimony from Mr. Price and from the
22 Applicant, Mr. Jackson, would indicate that it is
23 material, that it's very important. And it is something
24 that would have had to have been considered. And it would
25 have been fair for him to consider it before making that

1 decision to enter a plea or go to trial.

2 THE COURT: Thank you.

3 MS. RATIGAN: And I'll just -- one more quick
4 citation for the record, Riddle v. Ozmint. Because if
5 we're talking about Brady, again, the issue has to be
6 material to guilt or punishment. Riddle v. Ozmint is a
7 2006 case, 369 S.C. 39, "Evidence is material under Brady
8 if there is a reasonable probability that the result of
9 the proceeding would have been different had the
10 information been disclosed."

11 I don't think we're talking today about -- I think
12 we're speaking micro and macro. I think Mr. Wilkes is
13 saying it was material to his determination of whether or
14 not he would have gone to trial. I think the case law
15 takes a more macro view of it, if the result of the
16 proceeding would have been different. If the information
17 that was "withheld" or "suppressed" had been presented at
18 trial if it would have changed the outcome.

19 But, again, in this case, the CI picked up unrelated
20 charges months after the buy bust. I don't think -- I
21 mean, that -- obviously, it would have been some fodder
22 for Mr. Price to try and impeach him on. But I don't see
23 how that is material to the issue of guilt, or punishment,
24 or would have changed the outcome of the trial.

25 And, I mean, obviously, this is all speculative. But

1 I think the case law is very clear that it has a very
2 limited test in Brady. And I just don't think we're even
3 in the ballpark at this point.

4 THE COURT: Aren't you asking me to do two different
5 things there?

6 I mean, you're asking me to discern whether or not
7 the guilty plea should be vacated because he -- or there's
8 evidence concerning whether he would have pled or gone to
9 trial, based on the receipt of this information. But then
10 you're asking me to go a step further and say even if
11 there is enough evidence to show that he would have gone
12 to trial, he still would have lost because the evidence is
13 not material within the meaning of Brady.

14 MS. RATIGAN: Well, that's something we do in PCR all
15 the time, Your Honor. I mean, that's something that Your
16 Honor routinely rules upon in PCR. Because you've got the
17 two-prong Strickland analysis --

18 THE COURT: Yes. But --

19 MS. RATIGAN: -- of error and prejudice --

20 THE COURT: -- not in the context of a guilty plea,
21 do we?

22 MS. RATIGAN: Sure, all the time.

23 I mean, Strickland -- all the time if you're just
24 talking a standard guilty plea, it's error and prejudice.
25 And I -- more times than I can count, a judge will say,

1 you know, maybe Mr. Defense attorney should have done X,
2 but I find, based on the record, there can be no prejudice
3 because of the overwhelming evidence or, you know, the
4 thoroughness of the record, or what have you. That's all
5 speculative, based on what's before Your Honor.

6 But, again, Mr. Wilkes is trying to argue, you know,
7 I don't know why she's talking about after-discovered
8 evidence. Well, after-discovered evidence is his only way
9 to get around the statute. He has to meet the first -- my
10 motion is to dismiss based on the expiration of the
11 statute of limitations. If he can't prove this is
12 after-discovered evidence, you don't get to Brady.

13 So I would argue that this is not after-discovered
14 evidence. This is evidence that was known and could have
15 been educed prior to trial, prior to the first PCR
16 hearing, certainly, prior to the filing of this action in
17 2012. So I mean, I think that stops the determination
18 right there.

19 But even if you get into Brady, it's the same kind of
20 judgment you're making all the time, Judge, about, you
21 know, this was the information that was known or should
22 have been known. I find based on the record before me it
23 would have had an impact or not have had an impact.

24 THE COURT: What else was Mr. Price supposed to do,
25 break into the Solicitor's Office and look at the file?

1 MS. RATIGAN: Of course not. But, I mean, you know,
2 like I said, we do have a public index. I mean,
3 Mr. Wilkes has pulled up all this information off the
4 public index. He could have done that at the time. Or
5 before the first PCR hearing, that could have been done.

6 THE COURT: But the State has unique resources.

7 MS. RATIGAN: Sure.

8 But it's not --

9 THE COURT: Superior resources that are inaccessible
10 to others --

11 MS. RATIGAN: Sure.

12 But it's, also, not impossible to get this
13 information, especially since both Mr. Jackson and
14 Mr. Price knew who the Defendant -- I mean, knew who the
15 CI was at the time. I mean, this isn't one of those
16 things where we had no idea who the CI was and it was a,
17 you know, shrouded in mystery type of thing. They knew
18 who it was.

19 MR. WILKES: But that's playing on the coincidence
20 that his charges were locally. They could have just as
21 well been in Kansas or -- there's no way that the defense
22 attorney could find out all possible information that the
23 State has in their file.

24 I would close with this, Your Honor. This is a quote
25 from Fisher. It says, "When a violation is shown,

1 relevant inquiry is not whether the Defendant undoubtedly
2 would have -- ultimately prevailed in his defense, but
3 whether there is a reasonable probability that he would
4 not have pled guilty had he known the impermissible
5 conduct." I -- that's my point is it's not a recreating
6 or trying to guess at whether it would have been enough to
7 change the outcome of the trial, but whether it has a
8 reasonable probability of his not entering the plea and
9 waiving his right to a trial.

10 THE COURT: So I can't measure or determine whether
11 his choice was reasonable, but whether there's a
12 reasonable probability he would have made that choice?

13 MR. WILKES: Yes, sir. I believe that's correct.

14 THE COURT: Well, thank you for your fine arguments.

15 And I'm going to have to review this one further. So
16 I'll let you know my decision as soon as I can.

17 Thank you.

18 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

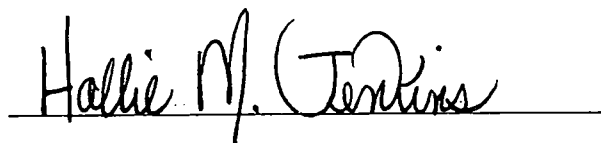
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of June, 2013.

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

February 5, 2014

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

PRICE, PASCHAL & ASHMORE, P.A.

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JAMES H. PRICE III *
HOWARD W. PAT-PASCHAL, JR.
BEATTIE B. ASHMORE
RYAN L. BEASLEY

JOSEPH J. WATSON
—OF COUNSEL—

*Licensed to practice law in South Carolina and New York

March 5, 2004

Rachel I. List, Assistant Solicitor
Greenville County Solicitor's Office
Thirteenth Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

RE: State v. George Dean Jackson, Jr.
Warrant No. H-432997 & H-432998

Dear Rachel:

I have been retained to represent Mr. Jackson in connection with the above-numbered Warrants. Enclosed you will find unfiled copies of Giglio, Brady, Rule 5 and Production of Defendant's Statement Motions together with my Affidavit of Service by Mail.

Inasmuch as I am getting into this case late in the game, I would appreciate whatever you could do to expedite the discovery package. Obviously I am very interested in getting copies of any recorded telephone conversations, body wired conversations, etc.

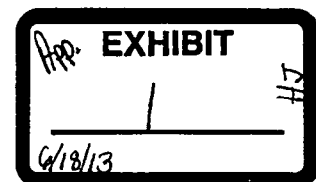
Thanks so much for your help. I look forward to working with you on this case. As always, I remain,

Yours very truly,

PRICE, PASCHAL & ASHMORE, P.A.

J.H. Price, III

JHP/jmf



RECORDED

101

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina

v.

George Dean Jackson, Jr.

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT

) Warrant Nos. H432997 & H-432998

) MOTION FOR PRODUCTION OF
) DEFENDANT'S STATEMENT AND
) MEMORANDUM OF LAW IN SUPPORT
) THEREOF

) DEFENDANT'S MOTION NO. 1

COMES NOW the Defendant, by and through his undersigned counsel, and respectfully requests this Honorable Court to Order the production for inspection and copying all pre-arrest and post-arrest oral, written, or recorded statements made by the Defendant and would allege in furtherance thereof as follows:

1. United States Supreme Court cases specifically provide for the inspection, copying, or photographing of any written or recorded statements made by the Defendant and the disclosure of the substance of any oral statements made by the Defendant.

2. The Defendant further relies upon David v. United States, 413 F.2d 1226 (5th Cir. 1969); United States v. Crisona, 416 F.2d 107 (2d Cir. 1969); United States v. Brvant, 439 F.2d 642 (D.C. Cir. 1971); United States v. James, 495 F.2d 434 (5th Cir. 1974); and United States v. Iovinelli, 267 F.Supp. 629 (N.D. Ill. 1967).

WHEREFORE, the Defendant respectfully requests this Honorable Court to order the Circuit Solicitor's Office to produce all statements made by the Defendant be they written, recorded, or oral.

Respectfully submitted,

PRICE, PASCHAL & ASHMORE, P.A.

By:

James H. Price, III
Attorney for Defendant
644 East Washington Street
Greenville, S.C. 29601
(864) 467-1001

Greenville, SC

March 5, 2004

FILED
MAR 12 2004
CLERK OF COURT

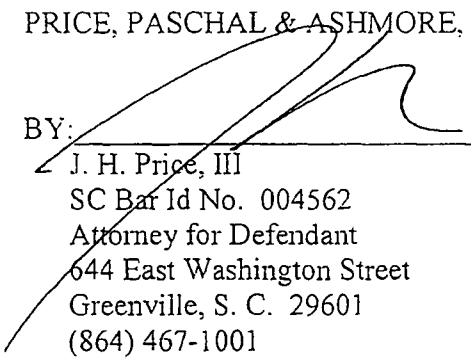
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
State of South Carolina	)	Warrant Nos. H432997 & H432998
	)	
v.	)	DEFENDANT'S MOTION FOR
	)	INSPECTION PURSUANT TO
George Dean Jackson, Jr.	)	RULE 5
	)	
Defendant.	)	DEFENDANT'S MOTION NO. <u>2</u>
	)	

Defendant hereby moves pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure for disclosure and inspection of all statements allegedly given by the Defendant, documents, intangible objects, reports of examination and tests, etc., to be relied upon by the prosecution of the above Defendant. Defendant's demand includes, but is not limited to, inspection and copying of the following:

1. Any and all tangible objects which the State is required to produce pursuant to Rule 5, specifically to cover any video tape recordings, audio recordings, and monitored telephone conversations.

Respectfully submitted,

PRICE, PASCHAL & ASHMORE, P.A.

BY: 

J. H. Price, III

SC Bar Id No. 004562

Attorney for Defendant

644 East Washington Street

Greenville, S. C. 29601

(864) 467-1001

Greenville, S. C.

March 5, 2004

FILED
2004 MAR 8 PM 12:00
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina	)	Warrant Nos. H432997 & H432998
	)	
v.	)	BRADY REQUEST NO. <u>3</u>
	)	MOTION FOR THE PRODUCTION
George Dean Jackson, Jr.	)	AND INSPECTION OF EVIDENCE
	)	AND INFORMATION WHICH MAY
Defendant.	)	LEAD TO EVIDENCE
	)	
	)	
	)	
	)	

You will please take notice that as legal counsel for the Defendant, I am requesting, under the authority of Kyles v. Whitley, 514 U.S. 419 (1995); Brady v. Maryland, 373 U.S. 83 (1963); Napue v. Illinois, 360 U.S. 364 (1959); Alcorta v. Texas, 355 U.S. 28 (1957); Mooney v. Holohan, 294 U.S. 103 (1935); Giglio v. U.S., 405 U.S. 150 (1972); and Moore v. Illinois, 408 U.S. 786 (1972), that your office supply to me, or make available for inspection, all evidence which may be favorable to the Defendant with regard to the offense with which he/she has been charged. The Defendant is requesting access to such favorable information as is in your custody as well as that being held by investigating officers or agencies. Such information would include but would not be confined to, the following:

1. All written and verbal statements of the Defendant, whether signed or unsigned;
2. All written and verbal statements made by witnesses or any other persons, whether signed or unsigned, which relate to this case.
3. All tape recordings made by witnesses or any other persons in connection with this case.
4. Any and all written reports to the State Law Enforcement Division (SLED) Criminalistics Laboratory; Federal Bureau of Investigation Laboratories; City of Greenville Police Department Criminalistics Identification personnel, or any other Law Enforcement Agencies

concerning an examination made by said laboratories and/or personnel thereof, of any physical, photographic, or written evidence concerned with the investigation of this case.

5. Photographs of latent fingerprints found at the scene or in vehicles, and latent fingerprints discovered and lifted at the scene of the incident, or upon any objects alleged to have been used in the crime alleged; any written reports of comparisons made; and also any copies of fingerprints in your possession of the alleged victim and his/her family.

6. Any and all photographs taken of the Defendant on any portion of his/her body.

7. Any and all photographs taken at the scene of the alleged crime and/or the victim, or otherwise relating to this case.

8. Photographs that have been exhibited to any person for the purpose of establishing the identity of the perpetrator of the crime charged and the name and addresses of the person(s) to whom the photographs were shown.

9. Handwritten notes or memoranda of same made by police or other investigating officers of their conversations with the Defendant.

10. Handwritten notes made by police or other investigating officers of their conversations or interviews with witnesses.

11. All transcripts made of tape recorded statements made by the accused and by potential prosecution witnesses, as well as any handwritten notes.

12. Names and addresses of all witnesses having knowledge of the offense charged who have been interviewed by the F.B.I. or any government agency, including the Office of the Circuit Solicitor, its investigators, its staff or the investigating officers, whether subpoenaed or not, in the crime charged.

13. In addition to the criminalistic report requested in Paragraph 4 above, a copy of the crime report, together with copies of all reports written by officers investigating the crime involved in the above-entitled action.

14. Right to inspect and/or copy or photograph all items of any kind and nature seized and removed as a result of any search of the Defendant and/or Co-Defendants, of any premises formerly occupied by the Defendant and/or Co-Defendants, if any, or any vehicle associated with the alleged crime.

15. Names and addresses of any persons interviewed by the Circuit Solicitor's Office, its investigators or agents, or any other law enforcement agency known to the State or its representatives in relation to this case.

16. Record of arrests and convictions of any (all) Defendants and of all witnesses named pursuant to Paragraph 13 above, furnished to the investigating or prosecuting agency by the F.B.I. or any other law enforcement agency known to the Circuit Solicitor's Office in relation to this case.

17. All notes or memoranda, by police officers or other investigating officers of their conversations with persons who appeared before any Grand Jury proceedings in connection with this case, or personnel the State expects to or has called before any such Grand Jury proceeding.

18. All notes or memoranda by police officers, investigating officers, and psychiatrists or other connected medical and mental health examiners, of their conversations with the Defendant.

19. Autopsy reports and pathologist's reports to include any and all photographs of the remains or any portion thereof; patient records provided to the pathologists; histological reports; toxicological studies; hospital admission records; emergency room records (including notations as to any medications administered as well as resuscitative measures instituted, if any).

20. All reports from the State Law Enforcement Division, Sheriff's Office, or any other law enforcement agency, including the Federal Bureau of Investigation, concerning fingerprints checked in connection with this case.

21. Any physical or tangible item in the possession of the Circuit Solicitor's Office which may be relevant to the guilt or innocence of this Defendant. Any criminalistics reports or results of tests performed upon items within this paragraph requested in Paragraph 4 above.

Recognizing that Brady v. Maryland, supra, and other authorities cited require that only information favorable to the Defendant be made available, and further recognizing that a genuine disagreement may arise as to whether or not a particular item of evidence is favorable, it will be requested that the Court Order provide for an in camera inspection of the items sought to be discovered should you feel that such items are not favorable to the Defendant. By permitting the Court to examine the items requested, the legitimate interests of the State will be protected in that no disclosure in excess of Brady, et al, will occur. Further, it will be requested of the Court that said Order will be a continuing one, providing that in the event any items sought to be discovered herein become available subsequent to the making of the order pursuant to this Motion, said items will be made available to the Defendant's attorney forthwith if discovered during trial, or no later than 12:00 Noon on the first Court day following its acquisition if discovered before trial.

The purposes of said Motion is to enable the Defendant herein to properly prepare a defense to the offenses charged and to properly prepare for the examination of any witnesses who may testify in this case. Defendant would show that the failure to produce any of the foregoing evidence or information by the law enforcement agency involved would result in a violation of the Fifth, Sixth, and Fourteenth Amendments of the Federal Constitution of the United States.

Respectfully submitted, ..

PRICE, PASCHAL & ASHMORE, P.A.

BY:

James H. Price, III
SC Bar Id No. 004562
Attorney for Defendant
644 East Washington Street
Greenville, S. C. 29601
(864) 467-1001

Greenville, S. C.

March 5, 2004

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	Warrant Nos. H432997 & H432998
State of South Carolina	)	
	)	MOTION FOR DISCLOSURE OF IMPEACHING
v.	)	INFORMATION AND MEMORANDUM OF LAW
	)	
George Dean Jackson, Jr.	)	DEFENDANT'S MOTION NO. <u>4</u>
	)	
Defendant.	)	

COMES NOW the Defendant, George Dean Jackson, Jr., by and through his undersigned counsel, and moves this Court for the entry of an Order directing the U.S. Attorney's Office forthwith to make inquiry and disclose all of the following within the possession, custody and control of the government, or the existence of which is known or by the exercise of due diligence could become known to the government:

1. Any and all records and information revealing felony convictions for guilty verdicts of juvenile adjudications or guilty verdicts attributed to each witness called by the State, including, but not limited to, relevant "rap sheets."
2. Any and all records and information revealing prior misconduct or bad acts attributed to the witness.
3. Any and all consideration or promises of consideration given to or on behalf of the witness or expected or hoped for by the witness. By "consideration" the Defendant refers to absolutely anything, whether bargained for or not, which arguably could be of value or use to a witness or to persons of concern to the witness, including, but not limited to, criminal, civil or tax immunity, grants, relief from forfeiture, assistance or favorable treatment or recommendations with respect to any criminal, civil, tax court, court of claims, administration or other legal dispute with the government or any other parties, payments of money for fees, witness fees and special witness fees, provisions of food, clothing, shelter, transportation, or other like benefits, placement in a "witness protection program," and anything else which arguably could reveal an interest, motive or bias in the witness in favor of the government or against the defense or acts as an inducement to testify or to color testimony.
4. Any and all threats, express or implied, made against the witness, criminal prosecutions, investigations, or potential prosecutions pending or which could be brought against the witness, any probationary, parole or deferred prosecution status of the witness, any civil, tax court, court of claims, administrative or other pending or potential legal disputes or transactions with the government.
5. The existence and identification of each occasion on which the witness has testified before any court, grand jury or other tribunal or body or otherwise narrated in relation to the Defendant and/or the investigation of the facts in this case.
6. The existence and identification of each occasion on which the witness who, as an informer, accomplice, co-conspirator, or expert, has testified before any court, grand jury or other tribunal or body.
7. Any and all personnel files for the witness and the existence and identity of all government files for the witness.
8. Any and all records and/or information which arguably could be helpful or useful to the defense in impeaching or otherwise detracting from the probative force of the government's evidence or which arguably could lead to such records or information.

9. The same records and information requested in items 1 through 8 above with respect to each non-witness declarant whose statements are offered in evidence.

MEMORANDUM OF LAW

I. INTRODUCTION

Defendant is moving for disclosure of "impeaching information." This raises the questions: Why must the government disclose; when must the disclosure occur; and what must be disclosed?

A. The Duty of Disclosure

To begin with, due process requires that the government not suppress evidence favorable to the accused or discrediting to its own case, and, upon request, that it disclose to the defense all such information. Brady v. Maryland, 373 U.S. 83 (1963). See also, Mooney v. Holohan, 294 U.S. 103 (1935); Pyle v. Kansas, 317 U.S. 213 (1942). This requirement of candor by the sovereign encompasses information which bears upon the credibility of its witnesses as well as matters more directly material to guilt or innocence. Napue v. Illinois, 360 U.S. 264 (1959); Giglio v. United States, 405 U.S. 105 (1972). See generally, Williams v. Dutton, 400 F.2d 797 (5th Cir. 1968), cert. denied 393 U.S. 1105 (1969). As stated by the Supreme Court in Napue v. Illinois, supra, 360 U.S. at 269:

"The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."

B. Disclosure is Necessary Forthwith

Secondly, disclosure of information impeaching witnesses' credibility must be timely to enable effective preparation for trial. United States v. Polisi, 416 F.2d 575, 578 (2d Cir. 1969); United States v. Baxter, 492 F.2d 150, 1973-1974 (9th Cir. 1973), cert. denied 417 U.S. 940 (1974). See United States v. Opager, 589 F.2d 799 (5th Cir. 1979). As pointed out recently in United States v. Pollack, 534 F.2d 964, 973 (D.C. Cir. 1976) (Lumbard, J. sitting by designation):
Disclosure by the government must be made at such time as to allow the defense to use the favorable material effectively in preparation of the presentation of its case, even if satisfaction of this criterion required pre-trial disclosure. See, e.g., United States v. Deutsch, 373 F.Supp. 289, 290-291 (S.D. N.Y. 1974).

See also Grant v. Alldredge, 498 F.2d 376, 382 (2d Cir. 1974); Clay v. Black, 479 F.2d 319 (6th Cir. 1973) (per curiam). In the Fifth Circuit, the prosecution must, of course, produce requested evidence which is materially favorable to the accused either as direct or impeaching evidence. The appropriate time is as early as possible to enable defense counsel effectively to use it in preparing the case for trial. Compare United States v. Compagnuolo, 593 F.2d 853 (5th Cir. 1979), with United States v. Opager, 589 F.2d 799 (5th Cir. 1979). Indeed, even when the favorable information takes the form of a witness statement otherwise protected from pre-trial discovery by the Jencks Act (19 U.S.C. Section 3500), the prosecution must nonetheless disclose it as far in advance of trial as due process may practically require for the defense to make fair use of it. United States v. Compagnuolo, supra.

Defendant by her Motion seeks meaningful preparation for cross examination and, if necessary, for the preparation of defense evidence. They offer avoidance of both the trial conundrums arising from Brady too little, Brady too late, as well as the specter of collateral attacks arising from the same. Pre-trial disclosure should be required in the interest of justice.

C. The Scope of Impeachment

Then, we must answer the question of what disclosure is in order. Wigmore has defined the process of impeaching testimonial evidence as the general logical process of explaining or discrediting the assertions of a witness by reference to the "human element in [the] testimony: But A's assertion that a street lamp was lighted at a given time or place is generally of a piece with hundreds of thousands of former evidential data, viz, it is a human assertion, resting for credit on human qualities.

The human element in this testimony is an element in common, running through the vast mass of prior human testimonies. And even though human beings differ, yet their differences also are more generic, each on a vast scale. Moral character, bias, experience, powers of perception in light and dark, powers of memory after a lapse of time, susceptibility to falsify under torture, -these and other qualities have been under observation in so many thousands of instances under varying conditions that we have built up generalizations (more or less correct or uniform), which pass for general truths (or at least, as working guides) on those subjects. In short, we possess a fund of general principles, applicable to a specific instance of this class of evidence, and almost totally lacking for specific circumstantial evidence. ³ Wigmore, Evidence Section 587 at 362-363 (3rd Ed. 1940) (emphasis in original).

Thus, we are concerned with these "general principles" of crediting witnesses. McCormick has identified "five main lines of attack upon the credibility of a witness:"

There are five main lines of attack upon the credibility of a witness. The first, and probably the most effective and most frequently employed, is an attack by proof that the witness on a previous occasion has made statements inconsistent with her present testimony. The second is an attack by showing that the witness is biased on account of emotion influences such as kinship for one party of hostility to another, or motives of pecuniary interest; whether legitimate or corrupt. The third is an attack upon the character of the witness. The fourth is an attack by showing defeat of capacity in the witness to observe, remember or recount the matters testified about. The fifth is proof by other witnesses that material facts are otherwise than as testified to by the witness under attack.

McCormick, Evidence Section 33 at 66 (2d Ed. 1972). As can be seen, impeachment is not limited to discrediting character for veracity. ³ Wigmore, Evidence Section 874 at 362 n. 1 (3d Ed. 1940). Nor is the process limited to cross examination. Extrinsic evidence showing bias, for example, may be elicited. E.g., Johnson v. Brewer, 521 F.2d 556, 662 & n. 13 (8th Cir. 1975).

II. SPECIFIC REQUESTS FOR DISCLOSURE

To help focus the duty of disclosure, Defendant is making specific requests for disclosure, itemizing likely sources of impeaching information within the knowledge or reach of the prosecutions. See, note, The Prosecutor's Duty to Disclosure After United States v. Agurs, 1977 U. Ill., L.F. 690, 696, 698, 705, 709, 718.

A. Defendant's request for information regarding prior felony convictions and juvenile adjudications invokes a classic avenue of impeachment and appears directly within the ambit of Rule 609 of the Rules of Evidence for United States Courts and Magistrates (hereafter referred to as Federal Rules of Evidence). The Conference Committee Report to that Rule speaks in terms of "... the need for the trier of fact to have as much relevant evidence on the issue of credibility as possible." H.R. Rep. 93-1957, 93d Conf. 2d Sess. 9 (1974). See generally, Beaudine v. United States, 368 F.2d 417, 421-22 (5th Cir. 1966). The inclusion of "guilty verdicts" in the request results from recent decisions authorizing their use, even though not reduced to judgment for purposes of impeachment. United States v. Carady, 466 F.2d 1191 (9th Cir. 1972) (per curiam); United States v. Rose, 526 F.2d 745 (8th Cir.) cert. denied 425 U.S. 905 (1976). Disclosure is plainly in order. For convenience, it should also extend to production of any and all so-called "rap sheets" for the witnesses.

B. The Rules of Evidence also give the court discretion to permit a defendant cross examination of a witness as to specific instances of misconduct, so called felony conviction if the evidence impeaches the witness' truthfulness. Rule 608(b), Federal Rules of Evidence. This enactment appears to alter prior Fifth Circuit law.

³ Weinsteins' Evidence paragraph 608(5) at 608-36 (1076). The purpose of such testimony, incidentally, is specifically to attack the witness' character and not to establish bias, interest or prejudice. See McCormick, Evidence, Section 52 at 83 (2d Ed. 1972). Since this is a permissible area of inquiry, the prosecution must disclose to the defense any behavior by its witnesses which arguably constitutes such "bad acts."

C. The government has an institutional obligation to disclose any and all consideration which is as held out to a witness or which the witness subjectively hopes for and anticipates

since such consideration directly gives rise to the inference of bias or interest. See generally, United States v. Mayer, 556 F.2d 245, 248 (5th Cir. 1977) (cross examination of a prosecution witness who has had prior dealing with the prosecution or other law enforcement officials "ought to be given the largest possible scope;" conviction reversed). A common example of such a matter which must be disclosed to the defense is the making of promises of the holding out of other inducement for a witness to cooperate and testify against the Defendant. E.G., United States v. Tashman, 478 F.2d 129 (5th Cir. 1973); Boone v. Padernick, 541 F.2d 447 (4th Cir. 1976); United States v. Sanfilippo, 564 F.2d 176 (5th Cir. 1977); Annunziato v. Manson, 566 F.2d 410 (2d Cir. 1977). In Giglio v. United States, 405 U.S. 150 (1972), the Supreme Court made it plain that this duty is an affirmative one which the government must discharge responsibility and that the ignorance of one prosecutor as to the promises made to a government witness by another prosecutor does not excuse the failure to disclose. In the instant case, the prosecution is obliged to make appropriate inquiry and search to determine what consideration, broadly defined, it has offered to its witnesses, or bestowed upon them, including but not limited to the total compensation or benefits paid to or expected by each witness, e.g., United States v. Partin, 493 F.2d 493 (6th Cir. 1977); United States v. Wolfson, 473 F.2d 862, 874-75 (2d Cir. 1970); immunity grants, e.g., United States v. Dillard, 419 F.Supp. 1000 (N.D. Ill. 1976); omission from being named in an indictment as an unindicted co-conspirator, relief from forfeiture, e.g., United States v. Parness, 408 F.Supp. 400, 444-45 (S.D. N.Y. 1975). These examples, of course, are only intended to make the principle clear.

D. In addition to promises of consideration which might promote a witness' cooperation with the government, defendants are entitled to color their testimony in favor of the government out of fear or interest in self preservation. E.G., United States v. Sutton, 542 F.2d 1239 (4th Cir. 1976) (threat by FBI agent to prosecute witness intended to induce witness' cooperation). In this regard, sometimes it is overlooked that evidence of wrongdoing even though not amounting to a felony conviction or comparable evidence or moral turpitude or bad character, may nonetheless be adduced when relevant to show the bias of self interest of the witness. McCormick, Evidence Section 40 at 78-80 (2d Ed. 1972). Typical of this category is information concerning the witness' vulnerability to prosecution, parole or probation revocation or other sanctions by the government. In United States v. Bonanno, 430 F.2d 1060 (2d Cir. 1970), cert. denied 400 U.S. 963 (1971), the court condemned the government's failure to disclose an outstanding indictment against its witness since the pendency of the charge would have shown "possible motivation of the witness to testify favorably for the government." 430 F.2d at 1062. Similarly, in United States v. Padgent, 432 F.2d 701 (2d Cir. 1970), the court reversed the defendant's conviction because her counsel had been denied the right to question a government witness on cross examination with regard to the witness' vulnerability to future indictment for bail jumping. See also, United States v. Gerard, 491 F.2d 1300, 1304 (9th Cir. 1974).

More recently the Supreme Court of the United States granted habeas corpus relief to a defendant who had been foreclosed from such inquiry. Davis v. Alaska, 415 U.S. 308 (1974). In Davis, the Court held that the Petitioner's constitutional right of confrontation had been denied when the State of Alaska, out of solitude to maintain confidentiality of juvenile convictions, successfully prevented cross examination as to the probationary status of an important witness against the accused. Since the witness might have colored her story in favor of the government to avoid the possibility of revocation, the Defendant was entitled to prove this course of possible bias or interest. See also, Meeks v. United States, 163 F.2d 599, 600 (9th Cir. 1947). In a vigorous opinion by Chief Justice Burger, the Davis Court underscored the necessity and legitimacy of searching out possible bias, prejudices and ulterior motives of the witness: Cross examination is the principal means by which the believability of a witness and the truth of her testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross examiner is not only permitted to delve into the witness' story to test the witness' perception and memory, but the cross examiner has traditionally been allowed to impeach, i.e., discredit, the witness. One way of discrediting the witness is to introduce evidence of a prior criminal conviction of that witness. ... A more particular attack on the witness' credibility is effected by means of

cross examination directed toward, revealing possible biases, prejudices, or ulterior motives of the witness as they relate directly to the issue or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and affecting the weight of her testimony.¹ 3 A.J. Wigmore, Evidence Section 940, p. 775 (Chadbourn rev. 1970). We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross examination. Green v. McElroy, 360 U.S. 474, 496 (1959).

Of course, other motivations besides fear of criminal sanctions are also material. Thus, the prosecution should disclose such sources of bias or interest as potential financial reward by the United States. Wheeler v. United States, 351 F.2d 946 (1st Cir. 1965), or through its efforts. United States v. McCrane, 547 F.2d 204 (3d Cir. 1976) (per curiam); Patriarca v. United States, 402 F.2d 314, 319 (1st Cir. 1968), or, on the other hand, the potentiality of civil tax liability to the United States even though in either event no promises of consideration may have been made. The witness' expectations or hopes are what counts.

E. The existence and identification of each occasions on which the witness has testified or otherwise narrated relative to the facts should be disclosed so that the defendant can, for example, order transcripts of testimony for use in cross examination or investigate sources of extrinsic impeachment. McCormick points out:

When a witness testifies to the facts material in a case the opponent may have available proof that the witness has previously made statements that are inconsistent with her present testimony. Under a modern view of the hearsay rule, these previous statements would be admissible as substantive evidence of the fact stated.

McCormick, Evidence Section 34 at 67 (2d Ed. 1972). See also Rules 801(d) (1) and 806, Federal Rules of Evidence. If the government has available information which may lead to proof of prior inconsistent statements or other evidence helpful to the accused, fundamental fairness requires that it be turned over to defense without further delay.¹ Davis v. Heyd, 579 F.2d 446 (federal habeas corpus relief granted to stated prisoner where undisclosed prior statements or prosecution witness specifically corroborated defense theory and contradicted her trial testimony). See generally, United States v. Barash, 365 F.2d 395, 400-01 (2d Cir. 1966) (cross examination by use of prior statements). As the Ninth Circuit recently reminded us in a similar context:

We agree with the trial court that [the witness'] statement was in part exculpatory material and should have been turned over to the defense. The fact that the government concluded in good faith that the evidence would not be very helpful to Miller does not excuse its failure to disclose the statement. The prosecutor is not merely an advocate for a party; he is also an administrator of justice. Considering the vast investigatory resources and powers at the government's disposal, an elemental sense of fair play demands disclosure of evidence that in any way be exculpatory. If the government, upon request by the accused, has serious doubts about the usefulness of the evidence to the defense, the government should resolve all doubts in favor of full disclosure. Such a rule appears particularly appropriate since disclosure could cause no harm to the government while suppression could very well prejudice the defendant. United States v. Miller, 529 F.2d 1125, 1128 (9th Cir. 1979) (emphasis in original) (footnote omitted.)

Thus the government should identify its sources of information which will allow Defendant to make their own pursuit of impeaching information. See, e.g., Britt v. North Carolina, 404 U.S. 226 (1971) (indigent defendant entitled to free transcript, or adequate transcript substitute, of prior trial).

F. This request takes the previous request one step further. If the witness is an

¹ This motion is not directly concerned with prior statements which may be producible only at the time of a witness' testimony because of the "Jencks Act," 18 U.S.C. Section 3500, or be used to refresh the recollection of a witness, Rule 612 Federal Rules of Evidence; see Bradford v. United States, 271 F.2d 58 (9th Cir. 1959). Rather it seeks early disclosure of Jencks material only to the extent required by due process, see United States v. Compagnuolo, 592 F.2d 852 (5th Cir. 1979), and primarily seeks identification of statements not solely "in the possession of the United States", 19 U.S.C. Section 3500(a) and (b), so that they may be obtained from other sources.

informer, accomplice, or co-conspirator, Defendant should also be advised of all occasions, known to the Government, on which the witness has previously testified even if the Government discerns no relation to the case at hand. As to crucial and inherently suspect witnesses, the Defendant must have the greatest possible latitude in investigation as well as cross examination. Johnson v. Brewer, 521 F.2d 556 (8th Cir. 1975), illustrates this point well. In Johnson v. Brewer, *supra*, the court granted federal habeas corpus relief to a prisoner who had been convicted on the testimony of a paid informer. At her Iowa state trial, petitioner offered to prove that the witness had lied and attempted to frame a defendant in another drug trial in Michigan. In light of the witness' modus operandi as an undercover agent, her career status as an informant depended on a continuing relationship with state authorities, the possibilities of bias arising from the fact of the prior lie and the career status, and the perceived unreliability of informer witness, the court of appeals conclude the jury was entitled to know of the Michigan testimony. The exclusion of the evidence amounted to a denial of due process.

Similarly, failure to grant the disclosure requested herein may amount to a denial of due process.

The same capability to assess all prior testimony of expert witnesses is also necessary if there is to be true confrontation and cross examination. See, McConnell v. United States, 393 F.2d 404 (5th Cir. 1968) (defendants entitled to impeach handwriting expert by showing mistaken identification at another, albeit related, trial).

G. It has also been held that where a government employee serves as a prosecution witness, the defendants are entitled to have access to their government personnel files in order to ascertain whether there is information within it which could be of an impeaching nature. United States v. Deutsch, 475 F.2d 55, 58 (5th Cir. 1973). Similarly, in United States v. Morell, 524 F.2d 550, 552-55 (2d Cir. 1978), the Court of Appeals held that defense counsel were entitled to impeaching information in the confidential file of an informant witness. See also, United States vs. Beekman, 155 F.2d 580 (2d Cir. 1946). As pointed out by one commentator, "This information is extremely valuable to the criminal or civil practitioner in thoroughly investigating and preparing any cases where the credibility of a police officer is at issue." Snyder, Discovery of Police Personnel Files in Criminal Proceedings, 523 Fla.Bar.J. 119, 122.

The purpose of the present motion, Defendant's request, is aimed at files which the government has access to. As to personnel files (government or otherwise), all should be disclosed on the authority of United States v. Deutsch, *supra*.

H. This item is a catch-all. If, for bizarre example, the government has used hypnosis or hypnotic age regression in the preparation of its witness, Defendant is entitled to pretrial disclosure of the facts. Such methods are not unknown. United States v. Miller, 411 F.2d 825 (2d Cir. 1969); Emmett v. Ricketts, 397 F.Supp. 1025 (n.D. Ga. 1975). See also, United States v. Bennett, 460 F.2d 872, 874-77 (D.C. Cir. 1972) (failure of government psychiatrists to disclose that defendant was receiving daily doses of major tranquilizer during the period they observe her and formed their opinions that she suffered no mental disease or defect). The same requirement of disclosure, of course, would be true if the government knew a witness had an appetite for narcotic drugs at the time of the relevant events. United States v. Fowler, 465 F.2d 566, 57-74 (D.C. Cir. 1972), or during trial, Wilson v. United States, 232 U.S. 563, 568 (1914), or even a distaste for the defendants, e.g., United States v. Haggett, 438 F.2d 893, 897 (9th Cir. 1969). Impeachment comes in many forms and to the extent that the government recognizes it -- either by virtue of the flagging in this Motion or otherwise -- it should be suppressed.

I. And, if the government seeks to make its proof against the Defendant by introducing the declarations of non-witnesses, the Defendant is still permitted to impeach the declarant. Rule 806, Federal Rules of Evidence. Indeed, such statements in the nature of common law hearsay authorize impeachment in the same way as if the declarant were offered on the witness stand. E.g., People v. Mayfield, 23 C.A. 3d 236, 241-44, 100 Cal. Rptr. 104 (5th Dist. 1972) (prosecution witness used to admit former identification of defendant by non-witness declarant; no cross examination of testifying witness allowed for purpose of showing possible bias, interest, motive or unreliability of absent declarant,

conviction reversed); Am-Cal Investment co. v. Sharlyn Estates, Inc., 255 C.A. 2d 526, 541-44, 63 Cal.Rptr. 518 (4th Dist. 1967) (hearsay declarations of trust company admitted on behalf of plaintiff; refusal to admit defense testimony; prejudicial error);² United States v. Glenn, 473 F.2d 191, 195 & n.1 (D.C. Cir. 1972) (per curiam) (suggesting that under proposed Rule 806 an excited utterance, admitted as hearsay exception under proposed Rule 803(2), could be attacked by proof of the high percentage of alcohol in the declarant's blood contemporaneous to her making the statement). See generally, 3 Wigmore, Evidence Section 884 at 376-77 (3d Ed. 1940).

The principal is simple. The advisory Committee's Note to Rule 806 puts it this way:

The declarant of a hearsay statement which is admitted in evidence is in effect a witness. His credibility should in fairness be subject to impeach and support as though he had in fact testified. See Rules 608 and 609...

Accordingly, "in fairness" the prosecution should be required to disclose the requested impeaching information.³

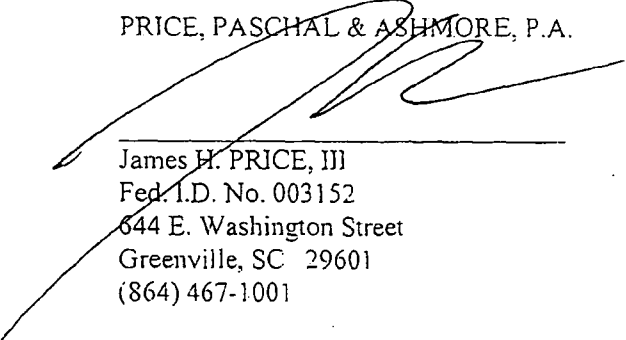
III. CONCLUSION

The right of counsel for the accused to confront, cross examine and impeach is cherished and remains "the principal means by which the believability of a witness and the truth of her testimony are tested." Davis v. Alaska, 415 U.S. 308, 316 (1974) (Burger, C.J.). Our specific requests for impeaching information are highly material to defense counsel's investigation and preparation for precisely this venerable mission. See generally, United States v. Opager, 589 F.2d 799 (5th Cir. 1979). Therefore, the constitution requires for the prosecution to disclose it or to show good cause why not. United States v. Agurs, 427 U.S. 97, 106 (1976); Brady v. Maryland, 373 U.S. 83 (1963).

An application of these fundamental precepts requires, I submit, that the accused's Motion be granted.

Respectfully submitted,

PRICE, PASCHAL & ASHMORE, P.A.



James H. PRICE, III
Fed. I.D. No. 003152
644 E. Washington Street
Greenville, SC 29601
(864) 467-1001

Greenville, SC
March 5, 2004

Attorney for Defendant

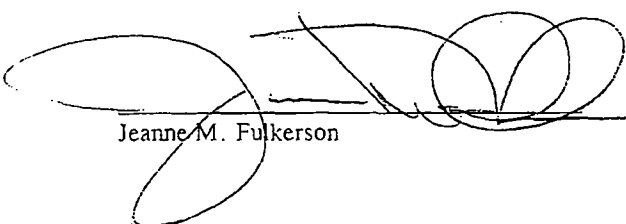
² Defendants have cited several California examples because they are illustrative and also because of the State's long experience under California Evidence Code Section 1202 which is similar to Rule 806. See Advisory Committee's Note to Rule 806, Federal Evidence Code.

³ Nor is the "Jencks Act" a bar since it only bans the early production of "statements" and, further, since such statements must be one "made by the government witness or prospective government witness," 18 U.S.C. Section 3500(a). There is little need, after all, to protect a "witness" who will not be called to the stand to testify. On the other hand, once the hearsay declaration has been introduced, both the spirit of the Jencks Act and regard for proper "standards" for the administration of justice in the federal courts," see Jencks v. United States, 353 U.S. 657, 668 (1957), compel immediate production of all prior and subsequent statements made by the declarant touching the subject matter of the declaration.

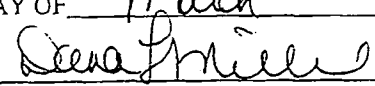
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	Warrant Nos. H432997 & H432998
State of South Carolina	)	
	)	Affidavit of Service
v.	)	
	)	
George Dean Jackson, Jr.	)	
	)	
Defendant.	)	

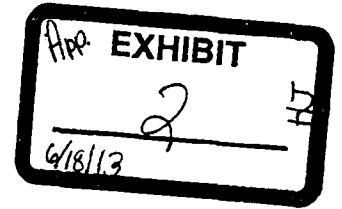
I, the undersigned, hereby certify that I have on this the 5 day of March, 2004 served filed copies of Defendant's Brady request, Rule 5 and Motion for Production of Defendant's Statements, Motion for Disclosure of Impeaching Information and Memorandum of Law and Affidavit of service by Mail upon the following individual(s) by depositing the same in the United State Mail at Greenville, SC to:

Rachel I. List
 Greenville County Solicitor's Office
 Thirteenth Judicial Circuit
 Greenville County Courthouse
 305 E. North Street, Suite 325
 Greenville, SC 29601-2185


 Jeanne M. Fulkerson

SWORN TO BEFORE ME THIS 5
 DAY OF March, 2004


 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES: 2/1/05



State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
Robert M. Ariail

March 15, 2004

J.H. Price, III, Esq.
644 East Washington Street
Greenville, South Carolina 29601

Re: State of South Carolina vs. George Dean Jackson, Jr.
Warrant(s): H-432997 and H-432998

Dear Chip:

Enclosed please find the following discoverable material, pursuant to Rule 5,
South Carolina Rules of Criminal Procedure:

1. Above-referenced warrants;
2. Indictments;
3. GPD Incident Report by Officer M.A. Lawson, Case No. 03-031458, dated 3/27/03, 2 pages;
4. GPD Supplemental Report by Officer T.M. Conroy, dated 3/27/03, 1 page;
5. GPD Special Investigations Unit Intelligence Report by Officer M.A. Lawson, dated 3/27/03, 1 page;
6. GPD Supplemental Report by Officers J.M. Aiken and E.M. Lewis, dated 7/31/03, 1 page;
7. Surveillance Report by Officer T.M. Conroy, dated 3/27/03, 1 page;
8. Surveillance Report by Officers White and Lawson, dated 3/27/03, 1 page;
9. Waiver of defendant's Miranda rights, dated 3/27/03, 1 page;
10. Defendant's statement, dated 3/27/03, 1 page;
11. GPD Property and Evidence Report, dated 3/27/03, 2 pages;
12. Greenville Crime Laboratory Report by James W. Armstrong, dated 3/31/03, 1 page;
13. GPD Incident Report by Officers M.A. Lawson and M.A. White, Case No. 02-099485, dated 12/18/02, 2 pages;
14. GPD Special Investigations Report Intelligence Report by Officer M.A. Lawson, dated 12/18/02, 1 page;
15. Print screen of DMV information about defendant's vehicle, 1 page;

J.H. Price, III, Esq.

March 15, 2004

Page 2

16. GPD Special Investigations Unit Surveillance Report by Officer M.A. Lawson, dated 12/18/02, 1 page;
17. GPD Surveillance Report by Officer M.A. Lawson, dated 12/18/02, 1 page;
18. GPD Property and Evidence Report, dated 12/18/02, 2 pages;
19. Photocopies of money, 7 pages;
20. Greenville Crime Laboratory Report by James W. Armstrong, dated 12/23/02, 1 page;
21. NCIC Criminal History.

Please contact our office regarding a mutually convenient time for you to view evidence which may be contained in the Property and Evidence Room at the Law Enforcement Center here in Greenville County. Pursuant to discovery rules, we will allow you to inspect the evidence which may be utilized at trial.

Also, please find enclosed the State's Request for Reciprocal Discovery and the State's Request for Notice of Alibi and/or Insanity Defense, pursuant to Rule 5, South Carolina Rules of Criminal Procedure.

If you have any questions regarding this defendant's case(s), please do not hesitate to call me. I look forward to working with you.

Sincerely,



Rachel I. List
Assistant Solicitor

RIL/msk

Re: George Dean Jackson, Jr.

*** Please acknowledge receipt of discovery by signing here and returning a copy of this to me within 10 days. If I do not hear from you or receive a copy of this acknowledgement within the allotted time, I will assume you received the enclosed documents and have no objections.

Attorney for Defendant

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

THE STATE)

vs.)

GEORGE DEAN JACKSON, JR.,)

DEFENDANT)

CERTIFICATE OF MAILING

The undersigned hereby certifies that s/he has this date served upon opposing counsel for the above referenced case: the Discovery Materials requested by defense counsel pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure; the State's Discovery Request for All Discoverable Material pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure; and the State's Request for Notice of Alibi and Insanity Defense by depositing same in the United States Mail, with sufficient postage affixed thereto, to the following address:

J.H. Price, III, Esq.
644 East Washington Street
Greenville, SC 29601


Wendy Stolzenbach
Legal Investigator

On behalf of:

Rachel I. List
Assistant Solicitor
305 E. North Street, Suite 325
Greenville, SC 29601

Date: 3/15, 2004

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)

THE STATE)
)
 vs.) REQUEST FOR RULE 5 DISCLOSURE
)
 GEORGE DEAN JACKSON, JR.,)
)
 DEFENDANT)

Pursuant to Rule 5(b)(1)(A) of the Rules of Criminal Procedure, the State would request from the defendant to inspect a copy books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at trial.

Further, pursuant to Rule 5(b)(1)(B), the State would request to inspect and copy any result or reports of physical or mental examinations and of scientific tests or experiments made in connection with this particular case, or copies thereof, within the possession and control of the defendant, which the defendant intends to introduce as evidence in chief at trial or which were prepared by a witness whom the defendant intends to call at trial when the results or reports relate to his testimony.

Furthermore, the State hereby submits that it has received and complied with a request of the defendant pursuant to Rule 5(a)(1)(C) or (D) in this case.

Respectfully requested this 15th day of March, 2004.

Rachel List
Rachel I. List
Assistant Solicitor

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF GREENVILLE)

THE STATE)
)
 vs.) REQUEST FOR NOTICE OF ALIBI
) AND INSANITY DEFENSE
)
 GEORGE DEAN JACKSON, JR.,)
)
)
DEFENDANT)

Pursuant to Rule 5 of the Rules of Criminal Procedure, the State requests from the above-named Defendant written notice of his/her intention to offer an alibi defense to the charge(s) of Trafficking Cocaine, which arose from an incident at Applebee's parking lot, 1922 Augusta Street, Greenville, South Carolina, on or about March 27, 2003, at approximately 5:37 p.m. Specifically, the State requests notice of the particular place or places Defendant would claim to have been at the time of the incident and the names and addresses of any witnesses upon whom Defendant intends to rely to establish such alibi.

FURTHER, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, the State requests written notice of Defendant's intention to rely upon the defense of insanity at the time of the incident.

Rachel I. List

Rachel I. List
 Assistant Solicitor

Greenville, South Carolina
March 15, 2004

THE STATE)
)
 vs.) REQUEST FOR NOTICE OF ALIBI
) AND INSANITY DEFENSE
)
 GEORGE DEAN JACKSON, JR.,)
)
 DEFENDANT)

Pursuant to Rule 5 of the Rules of Criminal Procedure, the State requests from the above-named Defendant written notice of his/her intention to offer an alibi defense to the charge(s) of Trafficking Cocaine, which arose from an incident at Kentucky Fried Chicken parking lot, 1111 Augusta Street, Greenville, South Carolina, on or about December 18, 2002, at approximately 7:14 p.m. Specifically, the State requests notice of the particular place or places Defendant would claim to have been at the time of the incident and the names and addresses of any witnesses upon whom Defendant intends to rely to establish such alibi.

FURTHER, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, the State requests written notice of Defendant's intention to rely upon the defense of insanity at the time of the incident.

Rachel List
Rachel I. List
Assistant Solicitor

Greenville, South Carolina
March 15, 2004

WITNESSES

D.M. BURDETTE

amg/s

GPD

10/14/03

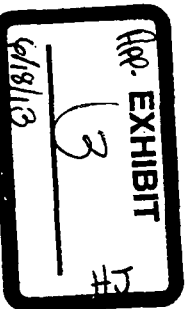
DOCKET NO. 2003-GS-808337

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2003



ARREST WARRANT NUMBER

H 495634

PLEAD GUILTY

VS.



THE STATE

ACTION OF GRAND JURY
TRUE BILL

Quessell G. Smith

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

✓
2364

Indictment for

POSSESSION OF PISTOL BEARING
OBLITERATED SERIAL NUMBER

VIOLATION § 16-23-30

Foreperson of Petit Jury

Date:

431

A Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 6-18-13

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) INDICTMENT FOR
) POSSESSION OF PISTOL BEARING OBLITERATED
) SERIAL NUMBER

At a Court of General Sessions, convened on NOVEMBER 18, 2003 the
Grand Jurors of Greenville County present upon their oath:

That [REDACTED] did in Greenville County, on or about the 14th day of October, 2003,
have a semi automatic pistol in his possession which the serial number from the manufacturer has been
removed or obliterated. This is in violation of §16-23-30 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.


SOLICITOR

124
STATE OF SOUTH CAROLINA
COUNTY OF Greenville
STATE VS.
JAMES VANCE

AKA:
Race: [REDACTED] Age: 32
DOB: [REDACTED]
Address: [REDACTED]
DL# [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2003GS2308337

A/W#: H495634

Date of Offense: 10-14-2003

S.C. Code § : 16-23-0030. 0050(

CDR Code #: 2364

☐ CASE RESTORED
SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: POSSESSION OF [REDACTED] BEARING OBLITERATED SERIAL NUMBER

in violation of § 16-23-0030, 0050(of the S.C. Code of Laws, bearing CDR Code # 2364

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Mark M...
Solicitor

[REDACTED]
Defendant

[REDACTED]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

10-12-04

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

PTUP

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

days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv Surcharge \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Paul B. Wickens
Clerk of Court/ Deputy Clerk

Court Reporter: *Hudgens*

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, § 35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE *[Signature]*

Judge Code: *21318*

Sentence Date: 10/13/04

ARREST WARRANT
H-495634 / 01513
STATE OF SOUTH CAROLINA
County/ ☒ Municipality of GREENVILLE

THE STATE 03-83829
against

Phone: [REDACTED] - 0000
Sex: M Race: B Height: [REDACTED]
DL State: [REDACTED] DL #: [REDACTED]
DOB: [REDACTED] Agency ORI#: [REDACTED]
Prosecuting Agency: GREENVILLE POLICE DEPARTMENT
Prosecuting Officer: D M BURDETTE
Offense: POSSESSION OF
ALTRFD FIREARM Offense Code: 16-23-
Code/Ordinance Sec. 16-23-30

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of [REDACTED]
The accused
is to be arrested and brought before me to be
dealt with according to law.

Date: _____
Signature of Judge (L.S.) _____

RETURN
A copy of this arrest warrant was delivered to
defendant on 10/14/03
Signature of Constable/Law Enforcement Officer [REDACTED]

RETURN WARRANT TO:
GREENVILLE MUNICIPAL COURT
426 NORTH MAIN STREET
GREENVILLE SC 29601 - 0000

STATE OF SOUTH CAROLINA)
County/ ☒ Municipality of GREENVILLE)
AFFIDAVIT

Personally appeared before me the affiant D M BURDETTE
being duly sworn deposes and says that defendant [REDACTED] who
did within this county and state on 10/14/03 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of [REDACTED])
in the following particulars:
DESCRIPTION OF OFFENSE: POSSESSION OF ALTERED FIREARM

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:
AFFIANT STATES THAT PURSUANT TO A KNOCK AND TALK INVESTIGATION
AFFIANT SPOKE WITH THE DEFENDANT [REDACTED] WHO SIGNED A
CONSENT TO SEARCH FORM. FOLLOWING THE SEARCH DEFENDANT WAS FOUND
TO BE IN POSSESSION OF OVER 10GRAMS OF WHITE ROCK LIKE SUBSTANCE
WHICH FIELD TESTED POSITIVE AS CRACK COCAINE. DEFENDANT WAS ALSO
FOUND TO BE IN CONSTRUCTIVE POSSESSION OF A LORCIN BLACK AND
SILVER MODEL L 9 MM WITH THE SERIAL NUMBER FILED OFF. THIS INCIDE
NT OCCURED AT 13 B ALAMEDA STREET IN THE CITY LIMITS OF
GREENVILLE, SC.

born to and subscribed before me
10/14/03
Signature of Affiant [REDACTED]
Affiant's Address: 4 MCGEE STREET
GREENVILLE SC 29601 - 0000
Signature of Issuing Judge [REDACTED] (L.S.)
Affiant's Telephone: 864 467-5325

STATE OF SOUTH CAROLINA)
County/ ☒ Municipality of GREENVILLE)
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 10/14/03 defendant [REDACTED]
did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of [REDACTED]) as set forth below:
DESCRIPTION OF OFFENSE: POSSESSION OF ALTERED FIREARM

Now, therefore, 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 his execution, or as soon thereafter as is practicable.

Signature of Issuing Judge [REDACTED] (L.S.)
Judge's Address: 426 NORTH MAIN ST
GREENVILLE SC 29601 - 0000
Judge's Telephone: 864 467-6650
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

WITNESSES

T.M. COX

GCSO

06/01/03

Baron

DOCKET NO. 2003-GS-23-

008451

The State of South Carolina

10-6-04

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2003

EXHIBIT
4
6/18/13

THE STATE

VS.

PLEAD GUILTY

ARREST WARRANT NUMBER
H 376703

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Baron

VERDICT

Baron

0014

Indictment for

ASSAULT AND BATTERY WITH INTENT TO
KILL

VIOLATION § 16-3-620

Foreperson of Petit Jury

Date:

A Certified Copy

Paul B. Williams
Clerk of Court C.P. & G.S.

Greenville County, SC

Dated 6-18-13

560

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY WITH INTENT TO KILL

At a Court of General Sessions, convened on NOVEMBER 18, 2003 the
Grand Jurors of Greenville County present upon their oath:

That [REDACTED] did in Greenville County, on or about the 1st day of June, 2003, willfully, unlawfully and with malice aforethought, express or implied, commit an assault and battery upon W.L. McKinney. This is in violation of §16-3-620 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.

L. Mark May
SOLICITOR

ARREST WARRANT

667

H-376703

6-10-03

STATE OF SOUTH CAROLINA

County/ Municipality of
GreenvilleTHE STATE 03-08-1499
against

Adversely

Phone:

Sex: M

DL State

DOB: 11-11-1971

Prosecuting Agency: Greenville County S.O.

Prosecuting Officer: T.M. Cox 4558 ASST

Offense: Murder with intent to kill

Code/Ordinance Sec. 16-3-620

Offense Code:

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of the arrest warrant was delivered to
defendant on 06-01-03

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

AFFIDAVIT

Personally appeared before me the affiant R.J. Seymour for T.M. Cox ASST

who

being duly sworn deposes and says that defendant

did within this county and state on June 1, 2003

State of South Carolina (or ordinance of County/ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Assault with intent to kill

16-3-620

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: Affiant has ALIBIEN

STATEMENT FROM WITNESS STAFFIN THAT HE OBSERVED DEFENDANT DISCHARGE

FIREARMS AT THE HOME, W.L. McKNIGHT. Affiant also has a WITNESS

STATEMENT FROM THE HOME STAFFIN, HE OBSERVED DEFENDANT FLEEING

A BEAT OFFER ENTERED BY WITNESS AND CHASE VICTIM.

COMPLETED OFFENSE OCCURRED IN GREENVILLE COUNTY

JUN 02 2003

GREENVILLE COUNTY

Signed to and Subscribed before me

on 06-01-03

Signature of Issuing Judge

(L.S.)

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

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 06-01-03 defendant

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

County/ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Assault with intent to kill

16-3-620

Now, therefore, 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

Judge's Address 4735 (Greenville) Dr. SRES

Judge's Telephone 963-3457

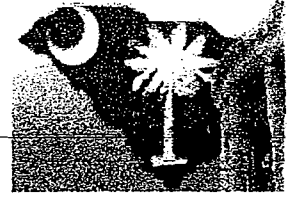
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

130



Greenville County
13th Circuit
Public Index

[Back](#)[New Search](#)[County Home Page](#)**STATE OF SOUTH CAROLINA VS JAMES ANTHONY VANCE**

Case Number: H495633

Court Agency: Greenville General
Sessions

Filed Date: 10/27/2003

Case Type: Criminal-Clerk

Case Sub Type:

Status: Pled Guilty

Assigned Judge: Hawley, Matthew R

Disposition
Judge: Hill, D. Garrison

Disposition: Pled Guilty

Disposition Date: 10/13/2004

Date Received: 10/15/2003

Arrest Date: 10/14/2003

Law Enf. Case:

True Bill Date: 11/18/2003

No Bill Date:

Prosecutor
Case:Indictment
Number: 2003GS2308336

Waiver Date:

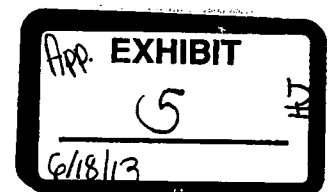
Probation Case:

[Parties](#) | [Charges](#) | [Sentencing](#) | [Associated Cases](#)**Charges**

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Vance, James Anthony	0450-DRUGS / TRAFFICKING IN CRACK COCAINE/ICE	-DRUGS / TRAFFICKING IN CRACK COCAINE/ICE	10/13/2004

CMS 5.5.07.02

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STATE OF SOUTH CAROLINA)

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE)

George Jackson

Plaintiff(s),)

EXHIBIT LIST

State of SC vs.)

Defendant(s).)

Docket No. 2012-CP-23-04393

Plaintiff	Defendant
Attorney: <u>Jeff Wilkes</u>	Attorney: <u>Karen Patigan</u>
Hearing Start: <u>6/18/13</u>	Judge: <u>G. Hill</u>
Hearing End: <u>6/18/13</u>	Court Reporter: <u>Hollie M. Jenkins</u>

Applicants

~~Plaintiff~~	Exhibit Description	Defendant	Exhibit Description
1.	<u>Letter dated 3/5/04</u> EV	1.	
2.	<u>Letter dated 3/15/04</u>	2.	
3.	<u>Indictment #03-GS-23-8337</u>	3.	
4.	<u>Indictment #03-GS-23-8451</u>	4.	
5.	<u>Records Search Document</u>	5.	
6.		6.	
7.		7.	
8.		8.	
9.		9.	
10.		10.	
11.		11.	
12.		12.	
13.		13.	
14.		14.	
15.		15.	
16.		16.	

Submitted and received this 18th day of June, 2013.Hollie Jenkins
Court ReporterJan White
(Deputy) Clerk of Court

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No. 2012-CP-23-4393

George D. Jackson,
S.C.D.C. No. 302760,

Applicant,

v.

State of South Carolina,

Respondent.

FINAL ORDER OF DISMISSAL**ENTERED COMPUTER**2013 AUG 21 PM 3:08
CLERK OF COURT
GREENVILLE
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 6, 2012. The Respondent made its Return and Motion to Dismiss dated February 15, 2013. This hearing was held on June 18, 2013 at the Greenville County Courthouse. The Applicant was present and represented by Jeffrey Falkner Wilkes, Esquire. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office.

The Applicant testified on his own behalf. Also testifying were assistant solicitor Kayce McCall, Esquire and the Applicant's plea counsel, James H. Price, III, Esquire. The Court had before it: (1) the Greenville County Clerk of Court records, (2) the Applicant's South Carolina Department of Corrections records, (3) the PCR application, (4) the return and motion to dismiss, (5) the records from the prior appeal, PCR, and federal habeas actions, and (6) Exhibits 1-5.

I.

The Applicant was indicted at the October 2003 term of the Greenville County Grand Jury for two (2) counts of trafficking cocaine (2003-GS-23-7212, -7216). He was represented by

SCANNED

James H. Price, III, Esquire.

On June 15, 2004, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of fifteen (15) years on each count.

A notice of appeal was filed at the South Carolina Court of Appeals. The Applicant indicated he wanted to withdraw his appeal. The Court of Appeals issued an order dismissing the appeal on August 16, 2005 and the remittitur was issued on August 26, 2005.

2005-CP-23-7170

The Applicant filed a PCR application on November 7, 2005 (2005-CP-23-7170). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to "request the proficiency test and SLED certification" of chemist.
 - b. Failed to obtain Brady material.
2. Erroneous sentencing.
3. Lack of subject matter jurisdiction.

An evidentiary hearing was convened on April 18, 2006 at the Greenville County Courthouse. Susannah C. Ross, Esquire represented the Applicant. The Honorable James E. Lockemy denied the PCR application by order filed May 19, 2006.

The Applicant filed a notice of appeal at the South Carolina Supreme Court. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court denied the petition for writ of certiorari on March 6, 2008.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (4:08-2340-CMC-TER). The Respondent submitted a motion for summary judgment on September 26, 2008. The Honorable Thomas E. Rogers, III, United

9/1/08

States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated July 27, 2009. On August 19, 2009, the Honorable Cameron M. Currie, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

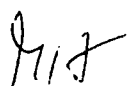
II.

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

1. "Violation of Brady and other relevant cases pertaining to the discovery and disclosure of information by the State to the defense."
 - a. "The Applicant has discovered within the last year information that he believes shows the State failed to disclose information or material that it had a duty to provide to the Applicant prior to his guilty plea and that the duty to disclose is a continuing duty such that discovery of this information gives rise to a cause of action. Applicant has discovered that while the Applicant's case was pending the confidential informant in his case had multiple arrests. That the Applicant was not made aware of this information nor of any deals or agreements between the State and the confidential informant that would have been relevant to the defense of the Applicant's case and his decision as to whether he should go to trial or waive his rights and enter a guilty plea. Had the information discovered been revealed by the State and made known to the Applicant prior to his plea, the Applicant would not have waived his rights under the Fifth and Sixth Amendments and pled guilty. Had the State further disclosed this information prior to the expiration of time for the initial PCR case, the Applicant could have included that information and claim in his initial PCR case."

III.

This Court finds this matter should be dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads



as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant pled guilty to the offenses he challenges in this application on June 15, 2004 and the South Carolina Court of Appeals issued the remittitur (after he withdrew his appeal) on August 26, 2005. The Applicant was therefore required to file his application before August 26, 2006. This application was filed on July 6, 2012, which was more than five years after the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a

subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

The Applicant argues there is after-discovered evidence in his case. The Applicant argues that, within the last year, he has discovered the State did not disclose information about a confidential informant. The Applicant testified, however, that he knew the identity of the informant by the time of his first PCR hearing. The Applicant testified he recently discovered the confidential informant had "prior arrests" and that he "probably" would have gone to trial if he had known this information.¹ Plea counsel testified they knew the identity of the confidential informant at the time of the guilty plea hearing because he received the informant's statement in

¹ At the PCR hearing, the Applicant introduced into evidence three indictments that were in the confidential informant's name and issued on charges incurred after the underlying transaction in this case. (Applicant's Exhibits 3-5).

the discovery materials. Plea counsel testified the identity of the confidential informant was not an issue but that he did not recall receiving any information that the informant had been arrested.

The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)) (emphasis added).

This Court finds the Applicant failed to meet his burden of proving the information about the confidential informant's arrests constituted after-discovered evidence. The Applicant gave a confession in this case and was recorded engaging in a drug transaction. Further, the issue of whether the confidential informant was arrested after his participation in this case is not material to the issue of the Applicant's guilt or innocence. Based upon the foregoing, the Applicant has failed to meet all five parts of the Hayden test for proving after-discovered evidence. See id.; see also State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("The credibility of newly-discovered evidence is for the trial court to determine.").

VI.

The Applicant argues there was a Brady² violation in his case because the solicitor's office should have turned over – in the discovery materials – information about the confidential informant's pending charges. Plea counsel testified that part of his discovery motion to the State included a request for information regarding impeachment witnesses. Plea counsel testified it

² Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963).

Hit

was possible that having information about the confidential informant's charges may have assisted with plea negotiations. Plea counsel admitted, however, that negotiations in this case would have been difficult anyway because of the Applicant's confession.

"A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (emphasis added). "A Brady violation is material when there is a reasonable probability that, but for the government's failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial." Id. at 525, 514 S.E.2d at 325; see also Riddle v. Ozmint, 369 S.C. 39, 44-45, 631 S.E.2d 70, 73 (2006) ("Evidence is material under Brady if there is a "reasonable probability" that the result of the proceeding would have been different had the information been disclosed.").

9/15 This Court finds that, while plea counsel filed skillfully drafted discovery requests that ~~may have~~ required the State to disclose the confidential informant's pending charges, the Applicant has failed to meet his burden of proving the existence of a Brady violation that prejudiced his case. The credible evidence indicates the incident dates for the confidential informant's three pending charges were after the Applicant's drug transactions in this case. This information consequently had diminished relevance to the confidential informant's credibility. Further, this information was not material to the issue of the Applicant's guilt or punishment, especially in light of the audiotape of the drug transaction and the Applicant's confession. The information about the confidential informant's record and pending charges, therefore, cannot

have been material under Brady because there was no reasonable probability the result of the Applicant's case would have been different if it had been disclosed. See Riddle v. Ozmint, 369 S.C. at 44-45, 631 S.E.2d at 73.

VII.

Accordingly, this Court finds the Applicant has failed to meet his burden of proving he is entitled to post-conviction relief. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence."). Therefore, this PCR application 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 this Order if he wants 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 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 14 day of AUG., 2013.

D. Garrison Hill

D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-04393
COUNTY OF GREENVILLE	)	
	)	
George D. Jackson,	)	ENTERED COMPUTER
Applicant,	)	MOTION
	)	RULE 59(e)
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

The State has filed a Return and Motion to Dismiss based on a claim that the Application in this case is time barred and successive. Based on the factual allegations, the State's Motion should be denied pursuant to S.C. Code Section 17-27-10 (C) which provides that in certain circumstances a claim may be made within one year of the time of discovery by the Applicant:

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year *after the date of actual discovery of the facts by the applicant* or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Section 17-27-10 (C).

In this case the Applicant has alleged the applicability in this case of S.C. Code Section 17-27-10 (C) as an exception to the general rule. This action arises out of the recent discovery of information which the Applicant submits was not

properly disclosed by the Solicitor prior to the Applicant's guilty plea. Applicant further submits that the Solicitor had a duty to disclose the information at issue prior to the Applicant's guilty plea, but failed to do so despite proper requests from the defense and a duty to disclose pursuant to Brady v. Maryland and other relevant case law. The Applicant has alleged that had the State properly disclosed this information it would have altered the Applicant's decision to waive his right to a jury trial. That further, the Applicant alleges that the State had a continuing duty to disclose this information such that the State should not be entitled to raise the time bar or successive nature of the claim as a defense in this case.

Summary dismissal would be inappropriate in this case as the Applicant is entitled to establish facts which, if proven, would entitle him to relief. The Applicant is entitled to prove facts through an evidentiary hearing as to the timeliness of this action, as well as the substantive portion of his claim. Pursuant to his Application, the Applicant intends to establish that the defense submitted discovery requests that, combined with Brady and other relevant case law, placed a continuing duty on the State to disclose information relating to the informant. That the State failed to properly disclose this information to the Applicant and, had the State disclosed this information the Applicant would not have waived his right to a jury trial.

The Applicant has sufficiently alleged the diligence of his efforts as well as the timeliness of this action. Applicant therefore submits that he has sufficiently alleged a *prima facie* case under the provisions of the Post Conviction Relief Act, such that he is entitled to an evidentiary hearing.

Wherefore, based on the underlying factual allegations, an evidentiary hearing is proper to allow the Court to fully determine the application of S.C. Code Section 17-27-10 (C), as well as the remaining issues as to substantive relief.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 421-4618
(864) 271-6035
jfalknerwilkes@gmail.com

Counsel for Applicant

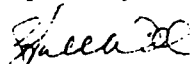
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-04393
COUNTY OF GREENVILLE	)	
	)	
George D. Jackson,	)	
Applicant,	)	CERTIFICATE OF SERVICE
	)	
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

I certify that I have served a copy of the Applicant's Motion pursuant to Rule 59(e) on the Respondent, this 29th day of August, 2013, by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below:

Karen Christine Ratigan
Office of the Attorney General
P.O. Box 11529
Columbia, SC 29211

The Honorable D. Garrison Hill
305 E. North St., Suite 213
Greenville, SC 29601

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

August 29, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)GEORGE JACKSON, 302760)

Plaintiff,)

vs.)

STATE)

Defendant.)

IN THE FAMILY COURT
13TH JUDICIAL CIRCUIT**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**Docket No. 2012-CP-23-4393Plaintiff's Attorney:
J FALKNER WILKES, Bar No. 12893Address:
114 WHITSETT ST. GVILLE, SC 29601Phone: 864 282-1292 Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:
KAREN C. RATIGAN, Bar No. _____Address:
POB 11549, COLUMBIA, SC 29211Phone: 803-734-4042 Fax _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**Nature of Motion: RULE 59(e)

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ DefendantAUGUST 29, 2013
Date submitted**SECTION III: Motion Fee**☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____ Date: _____, 20____

Judge Signature: _____

CLERK'S VERIFICATIONCollected by: NB

Date Filed: _____, 20____

☐ MOTION FEE COLLECTED: \$ na☐ CONTESTED - AMOUNT DUE: \$ _____

Custodial Parent (if applicable): _____

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No. 2012-CP-23-4393

George D. Jackson,
S.C.D.C. No. 302760,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN TO MOTION TO ALTER OR
AMEND THE ORDER OF DISMISSAL

ENTERED COMPUTER

2013 SEP 25 PM 3:40

TO: J. FALKNER WILKES, ESQUIRE, ATTORNEY FOR THE APPLICANT

Respondent, by and through undersigned counsel, making Return to Applicant's Motion to Alter or Amend, would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief action filed July 6, 2012.
2. A hearing was convened on June 18, 2013 at the Greenville County Courthouse.
3. Applicant was present at the hearing and represented by J. Falkner Wilkes, Esquire. Applicant testified in his own behalf. Also testifying were assistant solicitor Kayce McCall, Esquire and the Applicant's plea counsel, James H. Price, III, Esquire.
4. After a full review of the evidence presented at the hearing, the post-conviction relief court issued an order dated August 14, 2013 and filed August 21, 2013 denying the application for post-conviction relief.
5. Applicant – through counsel – filed a Motion to Alter or Amend Judgment dated August 29, 2013 (which was received by Respondent on September 13, 2013). Applicant moves this Court to alter or amend the final order of dismissal.

Copy mailed to
Attorney <u>Wilkes</u>
on <u>9</u> / <u>25</u> / <u>13</u>

6. Respondent submits Applicant's Motion to Alter or Amend Judgment should be denied. Applicant is not requesting either an alteration or amendment to the final order. Rather, Applicant is asking the Court to reverse its decision and grant relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

7. Respondent submits the post-conviction relief court fully reviewed and properly ruled upon all issues and that the Motion to Alter or Amend should be denied.

8. Respondent further submits Applicant's request for a hearing should be denied as unnecessary.

Respectfully submitted,

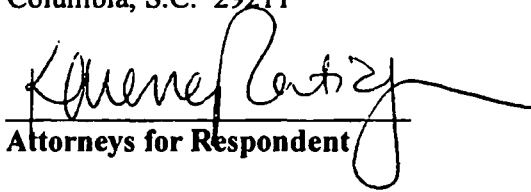
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

September 17, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2012-CP-23-4393

GEORGE D. JACKSON, 302760)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

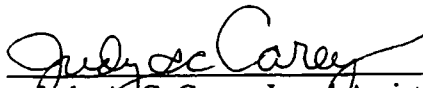
AFFIDAVIT OF SERVICE BY MAIL

FILED
GREENVILLE CO SC
PAUL B. WILKES
2013 SEP 25 PM 3:40

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Motion to Alter or Amend the Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville SC 29601

DATED this 17th day of September, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2304393

George Jackson vs. South Carolina State Of

ENTERED COMPUTER

2013 OCT 16 PM 5:50

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

The Plaintiffs Motion Rule 59(e) is respectfully denied.

Dated at Greenville, South Carolina, this 16th day of October, 2013.

Court Reporter:

Garrison Hill

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 16th day of October, 2013, and a copy mailed first class this 16th day of October, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

J. Falkner Wilkes 114 Whitsett St. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Paul B. Wickensimer Greenville County Clerk Of Court
 - Clerk of Court

SCANNED

WITNESSES

T M CONROY

GPD

07/31/03

ARREST WARRANT NUMBER

H-432908

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Forfeiture of Petit Jury

Date:

007212

DOCKET NO. 2003-GS-23-

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

OCTOBER TERM 2003

THE STATE

vs.

GEORGE DEAN JACKSON, JR.

21-01-03-0025

George D Jackson Jr.

Indictment for

TRAFFICKING COCAINE

VIOLATION § 44-63-373

ENTERED

MOCT

220

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on OCTOBER 21, 2003 the

Grand Jurors of Greenville County present upon their oath:

That GEORGE DEAN JACKSON, JR. did in Greenville County, on or about the 27th day of March, 2003, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than more than 100 grams of Cocaine. This is 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.

Heidi B. Poole for
SOLICITOR PIL

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

STATE VS.

George Jackson

AKA:

Race: B Sex: M Age: 32

DOB: [REDACTED] SS#: [REDACTED]

Address: GREENVILLE, SC 29601

DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT CASE#:

2003GS2307212

A/W#: 11432998

Date of Offense: 03-27-2003

S.C. Code §: 44-53-0375(C)(1)(c)

CDR Code #: 0280

☐ CASE RESTORED
SENTENCE☒ PLEA ☐ TRIAL☐ CONVICTED OF or ☒ PLEADSIn disposition of the said indictment comes now the Defendant who was
TO: DRUGS / TRAFFICKING IN CRACK COCAINE/ICE

in violation of § 44-53-0375(C)(1)(A) of the S.C. Code of Laws, bearing CDR Code # 0280 392

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-29-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Rachel Dietz

Solicitor

George Jackson

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 ~~months~~ years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 1049

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 35-13 (Public Def Prob)

\$500

\$

§ 73-3, 1B TP (Law Enforce. Funding)

\$25

\$

§ 33-7, 1B TP (Drug Court Surcharge)

\$100

\$

§ 56-21-14 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Paul B. Wilber

Clerk of Court/ Deputy Clerk

Court Reporter: Herron

PTUP:

 days/hour: 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, § 35-13-TP Requires \$500. be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

WITNESSES

T.M. CONROY

[Signature]

GPD

07/31/03

DOCKET NO. 2003-GS-007216

The State of South Carolina

County of Greenville

[Signature]

COURT OF GENERAL SESSIONS

OCTOBER TERM 2003

THE STATE

VS.

GEORGE DEAN JACKSON, JR.

PLEAD GUILTY

ARREST WARRANT NUMBER

H-432697

ACTION OF GRAND JURY

TRUE BILL

[Signature]

FOREMAN, GRAND JURY
Election of Grand Jury

VERDICT

2399
1292

Indictment for

TRAFFICKING COCAINE

VIOLATION § 44-53-370

Forfeiture of Bail, JURY

LINE

ENTERED

ACCT 76

219

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on OCTOBER 21, 2003 the

Grand Jurors of Greenville County present upon their oath:

That GEORGE DEAN JACKSON, JR. did in Greenville County, on or about the 18th day of December, 2002, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than more than 28 grams of Cocaine. This is 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.

Seely B. Parster for
SOLICITOR. *DL*

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.George Jackson

AKA:

Race: B Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
Greenville, SC 29601DL#: [REDACTED] SID#: [REDACTED]In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: DRUGS / TRAFFICKING IN CRACK COCAINE/ICEIn violation of § 44-53-0375(C)(1)(A) of the S.C. Code of Laws, bearing CDR Code # 1020 392☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Rachel Rust
Solicitor:George Jackson
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 1 Day

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv Surcharg) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharg) \$100 \$ § 16-5-2995 (DUI Assessment) \$12 \$ § 35.13 (Public Def Prob) \$500 \$ § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25§ 33.7, 1B TP (Drug Court Surcharg) \$100 \$ 100§ 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ TOTAL \$ Paul B. Wickersham
Clerk of Court/ Deputy ClerkCourt Reporter: Heron

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 6643

2003GS2307216

A/W#: H432997Date of Offense: 12-18-2002S.C. Code §: 44-53-0375(C)(1)(A)CDR Code #: 2359☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIAL☐ CONVICTED OF or ☒ PLEADSIn violation of § 44-53-0375(C)(1)(A) of the S.C. Code of Laws, bearing CDR Code # 1020 392☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Rachel Rust
Solicitor:George Jackson
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
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by the State Department of Corrections. 1 Day

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Clerk of Court/ Deputy ClerkCourt Reporter: HeronPTUP days/hours Public Service EmploymentObtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel § 35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE 221 W M QJudge Code: 21 1 3 10Sentence Date: 12-18-04