

STATE OF SOUTH CAROLINA  
IN SUPREME COURT

Steven McFarland,  
Petitioner

V.

State of South Carolina

Respondent

**RECEIVED**

JUL 14 2014

**S.C. SUPREME COURT**

Certificate of service

Date July 11, 2014

The undersigned do hereby certify that on this 11<sup>th</sup> day of July 2014 I served a Pro SE Response of Deputy Chief appellate Defender Wanda H. Carter Johnson petition for right of certiorari to the office mention below.

The Supreme Court of  
South Carolina Clerk of  
Court. Daniel E. Shearouse  
P.O Box 11330  
Columbia, S.C 20211

S Steven B. McFarland

Steven McFarland 263704  
Wateree River Corr.Inst.  
P.O. Box 189  
Rembert, S.C 29128

Would your office be so kind  
As to return clocked stamped  
Copy of the 18 pages of Petition  
and nine Exhibits

State of South Carolina  
In the Supreme Court

Certiorari to Lancaster County  
Clifton Newman, Circuit Court Judge

Steven McFarland,

v.

Petitioner

State of South Carolina,

Respondent

Appellate case No. 2013- 002787

Pro SE response of Johnson petition

Steven McFarland  
PRO SE

Wateree River Correctional Institution  
P. O. Box 189  
Rembert, SC 29128

**RECEIVED**

JUL 14 2014

**S.C. SUPREME COURT**

## Statement of Fact

Sgt. Short did appear before the honorable Rhonda Parker on Nov.23, 2009 to procure a warrant No.K-374376 Exhibit No.1 in February of 2010 that warrant was before the Lancaster County Grand Jury. McFarland was indicted for shoplifting third or subsequent property crime, Indictment No.2010GS-29-262.

### Exhibit No.2

On July 28, 2010 the case was called for trial before the Honorable Paul Burch. McFarland was represented by attorney Mark Grier of the Public Defender's office. Attorney Grier moved for a continuance as McFarland was not present when the state called the case for trial. Judge Burch denied the motion for continuance and the trial began at 3:15pm July 28, 2010. (APP.3-5)The next morning at 9:00am on July 29,2010 McFarland appeared in the court with the witness that attorney Grier advise McFarland to procure. Judge Burch found McFarland in contempt of court for failing to appear the day before and sentence him to 90 days. The shoplifting trial continued Cynthia Gaston testified and closing arguments. The Jury returned a Verdict of guilty. Judge Burch sentence McFarland to 10 years suspended upon the service of 9 years with 5 years probation. A timely notice of intent to appeal was served on July 29, 2010.

August 18, 2011 Katherine Hudgins of Indigent Defense filed the initial brief and designation of matter for Mr. McFarland. Ms. Hudgins raised the following three issues in the initial brief:

- (1) Did the judge error in refusing to grant a reasonable continuance and allowing the to proceed in his absence when appellant was not present when the state called the case for trial because he was attempting to secure the attendance of a critical witness and there was no evidence that Appellant was advise that he would be tried in his absence if he failed to appear.
- (2) Did the judge err in holding the appellant in contempt of court for failing to appear when the state called the case for trial when appellant appeared in the court the next morning and explained that he was not present because he was attempting to secure the attendance of a critical witness.
- (3) Did the judge err in imposing an excessive sentence for exercising his right to a trial by Jury and right to present a defense demonstrated by the judge's comments in reference to the defense witness. On February 7, 2012 the state filed an initial brief and designation of matter.

On Dec.3, 2012 The South Carolina Court of Appeals filed Remittor PER Curiam copy of the judgment of this court enclosed SEE Exhibit No.3-4 appeal denied.

November 26, 2012 petitioner filed a PCR application with Lancaster County Clerk of Court Office and then he filed three amended PCR issues with the clerk's office dated May 9, 2013, June 12, 2013, and July 15, 2013 respectively (App.104-110 and 117-125)

The respondent filled a return dated June 25, 2013 in response to petitions PCR action and requested that a hearing be held in the case App.113-116

A hearing was convened on August 5, 2013 at the Lancaster County Courthouse before Honorable

Clifton Newman App.126-173 petitioner was present at the PCR hearing and Charles T. Brooks appeared on his behalf and assistant Attorney General Suzanna White represented the state.

On Dec.12, 2013 Judge Newman issued an order of dismissal denying petitioner's allegations of ineffective assistance of trial counsel in the case (APP.175-183) Petitioner appealed Judge Newman's Order of Dismissal.

The South Carolina Commission of Indigent Defense Attorney Ms. Wanda Carter was appointed for petitioner MR. McFarland. On the 28<sup>th</sup> day of May, 2014 she filed a Johnson Petition.

Now comes the Petitioner McFarland Pro SE  
Response

The Pro SE Petitioner McFarland wish that Supreme Court of South Carolina take Judicial notice of the exhibits 1-10 that has been filed on the applicants behalf, either in Lancaster County Clerk of Courts or the SC Court of Appeals pursuant to rule 201(E) SCRE, courts are permitted to take Judicial notice of facts at any stage of case. Wise V. Wise 394 SC.591, 601, 716 SE 2D 117, 122 (ct. App. 2011)

Most importantly an appellant court can take judicial notice of something that was not before the trial Court of if it is indisputable, furthermore these facts were filed with the Lancaster County Clerk of Court, or the S.C court of appeals and is included in the lower court file associated with this case. See South Carolina Dept. Social Services v. Janice C. 383 S.C 221,227,678 SE 2d 463, 467 (CT App. 2009) these documents were filed with the family court therefore they were a part of the record.

EXHIBITS:

- (1) Warrant No.K - 374376
- (2) Indictment No.2010GS-29-262
- (3) Remittor court of appeals filed Dec.3,2012
- (4) PER Curiam filed Dec. 2012
- (5) Officer's statement case file
- (6) Brady Motion
- (7) Sentencing Sheet
- (8) Subpoena
- (9) Subpoena

EXhibit (1)

ARREST WARRANT  
K-374376

STATE OF SOUTH CAROLINA

County/  Municipality of Lancaster

THE STATE  
against

Steve Barry McFarland

Richburg Rd

Great Falls, SC 29055

DOB: 03-48-4140

SSN: -

Sex: M Race: W Height: 6'00" Weight: 225

State: SC DL #: -

DOB: 03/02/1963

Agency ORI#: SC0230102

Prosecuting Agency: LANCASTER POLICE DEPARTMENT

Prosecuting Officer: Officer Funderburk

Offense: Shoplifting Greater than Third

Offense Code: -

Code/Ordinance Sec: 16-1-57

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused to be arrested and brought before me to be arr with according to law.

Signature of Judge

(L.S.)

RETURN

copy of this arrest warrant was delivered to defendant Steve Barry McFarland

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Wanda H. Parker, Associate Judge

P. O. BOX 1149

Lancaster, SC 29721

(483) 285-7522

STATE OF SOUTH CAROLINA  
County/  Municipality of Lancaster

A F F I D A V I T

Personally appeared before me the affiant Sgt. Short

being duly sworn deposes and says that defendant Steve Barry McFarland

did within this county and state on November 22, 2009

State of South Carolina (or ordinance of County/  Municipality of Lancaster

DESCRIPTION OF OFFENSE: Shoplifting Greater than Third

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:  
One Steve Barry McFarland did Shoplift at Wal-Mart located at 805 Hwy 9 Byp on 11/22/09. Officers Funderburk and Walker were in the store of the above incident location and witnessed a white female placing unknown items underneath the jacket of a white male subject (McFarland) who appeared to be acting in a nervous manner. Officers order both suspects to stop, but both suspects ignored officers and left the store with the hidden merchandise. McFarland was apprehended and arrested but the female was able to flee the scene. Total stolen merchandise was valued at approx. \$220.71. McFarland has more than three property crime convictions on his criminal history. This incident was investigated and reported by Officer Funderburk and Lt. Walker.

SEE T.P. 31 + 38

Signature of Affiant

STATE OF SOUTH CAROLINA

County/  Municipality of Lancaster

Lancaster

Affiant's Address  
P. O. BOX 1149  
Lancaster, SC 29721

Affiant's Telephone  
(803) 283-1171

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

If appearing from the above affidavit that there are reasonable grounds to believe that

on November 22, 2009 defendant Steve Barry McFarland

did violate the criminal laws of the State of South Carolina (or ordinance of County/  Municipality of Lancaster

DESCRIPTION OF OFFENSE: Shoplifting Greater than Third

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

Signature of Issuing Judge

Judge Code: 018

Judge's Address  
P. O. BOX 1149  
Lancaster, SC 29721

Judge's Telephone  
(803) 285-7622

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

K-374376

Xref #: 2009-18744

WITNESSES

Underpin - LPD #09-18744

28

DOCKET NO. 2010-GS-29-262

The State of South Carolina

County of Lancaster

FILED  
OFFICE OF CLERK  
OF COURT

2010 FEB 19 A 10:47

CLERK OF COURT  
LANCASTER COUNTY, SC

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

ARREST WARRANT NUMBER DOA

0374376 (DOA-11-23-09)

ACTION OF GRAND JURY

THE STATE

vs.

Steve Barry McFarland

*Steve P McFarland*  
Preparation of Grand Jury  
Date: FEB 18 2010

VERDICT

*Smith*

TRUE BILL

Foreperson of Petit Jury  
Date:

*7/29/10*

Indictment for  
Shoplifting 3<sup>rd</sup> or Subsequent  
Property Crime

SC Code: § 16-13-01(10)(B)(1), § 16-01-57  
CDR Code: 2367  
Class: Felony, F

Exhibit (3)

EX 63



RECEIVED

DEC 03 2012

ATTORNEY GENERAL

OFFICE

MF-HLC

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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

December 03, 2012

The Honorable Jeff L. Hammond  
PO Box 1809  
Lancaster SC 29721-1809

### REMITTITUR

Re: The State v. McFarland, Steve  
Lower Court Case No. 2010GS2900262  
Appellate Case No. 2010-168967

Dear Clerk of Court:

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

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Mark Reynolds Farthing  
Kathrine Haggard Hudgins

**PER CURIAM:** Steve McFarland appeals his conviction of shoplifting, third offense, arguing the trial court erred in: (1) refusing to grant McFarland's motion for a continuance and beginning the trial *in absentia*; (2) sentencing McFarland for contempt; and (3) imposing an excessive sentence because McFarland opted for a jury trial. We affirm<sup>1</sup> pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in refusing to grant McFarland's motion for a continuance: *State v. Babb*, 299 S.C. 451, 454, 385 S.E.2d 827, 829 (1989) ("The granting or denial of a motion for a continuance is within the sound discretion of the trial [court] whose ruling will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the appellant."); *State v. Ravenell*, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010) ("Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth.").

2. As to the remaining issues: *State v. Hoffman*, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994) ("A contemporaneous objection is required to properly preserve an error for appellate review."); *State v. Blalock*, 357 S.C. 74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003) ("In order to preserve an error for appellate review, a defendant must make a contemporaneous objection on a specific ground."); *State v. Passmore*, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005) ("Our courts have consistently refused to apply the plain error rule." (citation and internal quotation marks omitted)).

**AFFIRMED.**

**FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

# Exhibit (5.A)

LANCASTER POLICE DEPARTMENT  
SC0290100

INFORMATION ONLY

CASE NUMBER  
2009-18744

10

NCIC
INQ. Yes    ENTD. No

## INCIDENT REPORT

EXB 5-A

	INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1.	23C SHOPLIFTING	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DEPARTMENT/DISCOL STORE		<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst <input type="checkbox"/> Government <input type="checkbox"/> Relg. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
2.	90N 90N RESISTING ARREST	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DEPARTMENT/DISCOL STORE		
3.	520 520 POSSESSION OF AN ILLEGAL WEAPON	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DEPARTMENT/DISCOL STORE		
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 805 HWY 9 BYP W, LANCASTER, SC				ZIP CODE 29720-	WEAPON TYPE	
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK
11/22/2009		23:00		11/22/2009	23:15	DISP. DATE: 11/22/2009    DISP. TIME: 23:15    TIME ARRIVED: 23:15    DEPART. TIME: 23:50
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) FUNDERBURK, R, L, II			RELATIONSHIP TO SUBJECT		RESIDENT	RACE
			#1	#2	J	B
			#3		M	M
					AGE	ETH
					25 /	N
ADDRESS			CITY		STATE	ZIP CODE
E ARCH ST			LANCASTER		SC	29720-
VICTIM'S NAME (LAST, FIRST, MIDDLE) WAL-MART			RELATIONSHIP TO SUBJECT		RESIDENT	RACE
			#1	#2		
			#3			
					AGE	ETH
					/	
HEIGHT			WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
			0			
ADDRESS			CITY		STATE	ZIP CODE
805 HWY 9 BYP W			LANCASTER		SC	29720-
VS BLE INJURY (VCT.1) <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN-						COMPLANT OF ANY NON-VISIBLE INJURES <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>
VCTM (NO.1) USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> TYPE:						
TWO MAN VEH <input type="checkbox"/> ONE MAN VEH <input type="checkbox"/> DETECTIVE SPLASMT. <input type="checkbox"/> OTHER <input type="checkbox"/> ALONE <input type="checkbox"/> ASSISTED <input type="checkbox"/>						*J-This Jurisdiction.    S-State.    O-Out of State.    U-Unknown.
<input checked="" type="checkbox"/> SUSPECT	NAME (LAST, FIRST, MIDDLE) MCFARLAND, STEVE, BARRY				RACE	SEX
<input type="checkbox"/> RUNAWAY					W	M
<input type="checkbox"/> WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. .04, MUSTACHE (HEAVY)				AGE	ETH
<input type="checkbox"/> WARRANT					46 /	N
<input checked="" type="checkbox"/> ARREST	ADDRESS		CITY		STATE	ZIP CODE
<input type="checkbox"/> JAIL	RICHBURG RD		GREAT FALLS		SC	29055-
<input checked="" type="checkbox"/> SUMMONS	SUBJECT (NO.1) USING ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/>		ARRESTED NEAR OFFENSE SCENE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		DATE/TIME OF OFFENSE	
		DRUGS <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> TYPE		TOTAL # ARRESTED		DATE/TIME OF ARREST
				01		11/22/2009 23:00:00
DAY OF THE WEEK		HOW REPORTED	A= OFFICER DISPATCHED ON CALL    D= COMPLAINT WRITTEN IN		DIFF. FACTOR	
S M T W T F S UNK			B= REPORT TAKEN BY PHONE    E= OFFICER INITIATED		1A= RESISTANCE/HOSTILITY	
			C= COMPLAINANT WALKED IN    F= OTHER		B= WEAPONS	
					C= UNFOUNDED CALLS	
					D= MENTAL SUBJECT	
					E= COMPLAINANT FRE-QUENTLY INTOXICATED	
					F= DOMESTIC	
					N= NORMAL	
SHOPLIFTING						
ON THE ABOVE DATE AND TIME I WAS ON FOOT PATROL AT UNIVERSITY PLACE. AS I ENTERED WAL-MART I OBSERVED A WHITE FEMALE PLACING UNKNOWN ITEMS UNDERNEATH THE JACKET OF A WHITE MALE SUBJECT WHO APPEARED TO BE ACTING IN A NERVOUS MANNER. AS I APPROACHED BOTH SUBJECTS, I ORDERED THEM BOTH TO STOP. BOTH SUBJECTS IGNORED MY ORDER AND LEFT OUT OF THE STORE WITH THE ITEMS AND KEPT WALKING. AS I GOT CLOSER TO BOTH SUBJECTS THEY BEGAN TO FLEE. I DISCHARGED MY TASER STRIKING THE MALE SUBJECT IN THE BACK. ONLY ONE PROBE MADE CONTACT WITH THE MALE SUSPECT. THE SUSPECTS CONTINUED TO FLEE. MOMENTS LATER I APPREHENDED THE MALE SUSPECT, WHO WAS IDENTIFIED AS STEVEN MCFARLAND. RESPONDING OFFICERS WAS ABLE TO IDENTIFY THE MALE SUSPECTS FACE. MCFARLAND WAS HANDCUFFED BEHIND THE BACK, DOUBLE LOCKED AND CHECKED FOR FIT. DURING A WEAPON SEARCH OF						
				JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY SC0290100		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY SC0290100
TYPE (GROUP)	CONSUMABLE	CONSUMABLE				TOTAL VALUE
STOLEN	\$220.71					\$220.71
DAMAGED	\$0.00					\$0.00
BURNED	\$0.00					\$0.00
RECOVERED	\$220.71					\$220.71
SEIZED	\$0.00					\$0.00
SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		S. F.	<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED	<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> EX-CLEAR UNDER 18
					<input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED 18 AND OVER <input type="checkbox"/> EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE NO CUSTODY.						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
FUNDERBURK, II, RICKEY L		11/22/2009 23:15:00	3051	WALKER, LARRY D		
WALKER, LARRY D		11/22/2009 23:15:00	484	FOLLOWUP OFFICER		UNIT NUMBER
						484

# Exhibit (5B)

## ADDITIONAL NARRATIVE

①  
Exb 5B

Agency Name: LANCASTER POLICE DEPARTMENT	ORI #: SC0290100	Report Date/Time: 11/22/2009 23:00:00	OCA #: 2009-18744
---	---------------------	--	----------------------

...CFARLANDS PERSON, A TIGHT ROLL OF PENNIES, WRAPPED IN BLACK ELECTRICAL TAPE, COMMONLY KNOWN AS A EQUALIZER, WERE FOUND IN HIS LEFT FRONT PANTS POCKET. MCFARLAND WAS TRANSPORTED TO MJC WERE HE WAS BOOKED, FINGER PRINTED AND PICTURED. MCFARLAND ALREADY HAS THREE PROPERTY CRIME CONVICTIONS.

THE FEMALE SUSPECT GOT AWAY BY LEAVING IN A VEHICLE. ITEMS RECOVERED WAS EIGHT MEATS, ONE BLOCK OF CHEESE, AND TWO PACKS OF PECANS. THE TOTAL VALUE OF THIS ARE \$220.71. WHILE BEING HANDCUFFED, THE SUSPECT ADVISED OFFICERS THAT HE HAD A WRIST/ HAND INJURY FROM A PREVIOUS INCIDENT.

SEE T.P 31 Lines 20-22

No Lt - Walker

# Exhibit (G-A)

THE STATE OF SOUTH CAROLINA )  
COUNTY OF LANCASTER )

THE STATE )

v. )

STEVE MCFARLAND, )

IN THE COURT OF GENERAL SESSIONS  
FOR THE SIXTH JUDICIAL CIRCUIT  
INDICTMENT NO.:

**2018-27-56**  
**NOTICE FOR DISCOVERY  
AND DISCLOSURE OF EVIDENCE  
AND OBJECTION TO ADMISSION  
OF REPORT OF CHEMICAL ANALYSIS  
AND/OR CHAIN OF CUSTODY  
STATEMENT**

S/L 3rd or above(<\$1K)  
DEFENDANT.

The above named Defendant, would through his or her lawyer, respectfully requests the following information:

1. Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the Defendant whether before or after arrest in response to interrogation by any person known to the Defendant to be a prosecution agent;

2. A copy of Defendant's prior criminal record, if any, as is within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney of the prosecution;

3. Any books, papers, documents, photographs, tangible objects, building or places, or copies of portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant;

4. Any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at trial;

# Exhibit B

5. The names and addresses of any witnesses who have given written or oral statements of information concerning the incident(s) in question;

6. A copy of the original incident report and any supplemental reports produced by the arresting or investigation agency;

7. Any other information or evidence within the knowledge or possession of the State that tends to indicate the innocence of the Defendant, or that tends to mitigate any punishment should he be found guilty.


8. A copy of the co-defendant or any other witnesses with prior criminal records, if any, as is within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney of the prosecution.

## **OBJECTION TO ADMISSION OF REPORT OF CHEMICAL ANALYSIS AND CHAIN OF CUSTODY STATEMENT**

The Defendant, through his or her lawyer, pursuant to Rule of Criminal Procedure 6, hereby objects to the admission of any report of chemical analysis for any purpose whatsoever at any proceeding without the chemist or analyst being present at the proceeding for which the State intends to attempt to introduce the report of chemical analysis into evidence, and to the admission of any certified or sworn statement made by any person for the the purpose of establishing chain of custody at any proceeding without the person having made the statement being present at the proceeding for which the State intends to introduce the statement into evidence.

February 22, 2010

Respectfully submitted,  
LANCASTER COUNTY PUBLIC DEFENDER

By:   
Mark Grier, Esq.  
Attorney for Defendant  
Post Office Box 1809  
Lancaster, SC 29721

Exb 7

Exb. 7

Exhibit (7)

263 204

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-29

AKA: Steve Boney McFarland

Race: W

Sex: M

Age:

DOB: 3-2-1963

SS#:

Address:

City, State, Zip:

DL#

SID#

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or  PLEADS

TO: Contempt of Circuit Court

In violation of § 14-5-320 of the S.C. Code of Laws, bearing CDR Code # 173

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45 (CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,

Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is:  Without Negotiations or Recommendation,

Negotiated Sentence,  Recommendation by the State.

ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #  
WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 90 days/months/years or  under the Youthful Offender Act not to exceed years  
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and or payment  
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are  
incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:

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

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Set by SCDPPPS

Obtain GED

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling

\*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
\$44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	13290

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

Conditional Discharge, §44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk  
Court Reporter:

Presiding Judge

Judge Code:

Sentence Date

Ex 6.8

Exhibit (8)

II (2)

**SUBPOENA IN A CRIMINAL CASE**

STATE OF SOUTH CAROLINA CITY OF LANCASTER	IN THE GENERAL SESSIONS COURT
STATE OF SOUTH CAROLINA, VS. STEVE BARRY MCFARLAND	WARRANT NO.: K374376 SUBPOENA FOR <u>X</u> PERSON <u>X</u> DOCUMENT(S) OR OBJECT(S)

TO: Wal-Mart Super Center  
ATTN: Megan Robinson  
805 Hwy 9 Bypass W.  
Lancaster, SC 29720

10-23192

X YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.

PLACE Lancaster County General Sessions Court at Temporary Justice Center 3888 Chester Highway Lancaster, South Carolina 29720	COURTROOM MAIN  DATE AND TIME Wednesday, July 28, 2010 at 2:00 P.M.
--	---

X YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).  
LIST DOCUMENT(S) OR OBJECT(S)

\*\*\* All documents, reports, statements and records, and video security tape pertaining to alleged shoplifting incidents on November 22, 2009 for the time period of 10:00 P.M. through 12:00 Midnight.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK OF COURT	DATE
(BY) DEPUTY CLERK <i>Carol Williams</i>	7-28-10
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: <input type="checkbox"/> SOLICITOR <input checked="" type="checkbox"/> DEFENDANT	ATTORNEY'S NAME AND ADDRESS MARK GRIER, PUBLIC DEFENDER 3888 Chester Highway Lancaster, South Carolina 29720 (803) 285-5585

Exb. 9 Exhibit (9)

(15)  
III (3)

**SUBPOENA IN A CRIMINAL CASE**

STATE OF SOUTH CAROLINA CITY OF LANCASTER STATE OF SOUTH CAROLINA,	IN THE GENERAL SESSIONS COURT
VS.	WARRANT NO.: K374376
STEVE BARRY MCFARLAND	SUBPOENA FOR <u>X</u> PERSON <u>X</u> DOCUMENT(S) OR OBJECT(S)

TO: Wal-Mart Super Center  
ATTN: Kapatchy Allen, APC  
805 Hwy 9 Bypass W.  
Lancaster, SC 29720

10-93

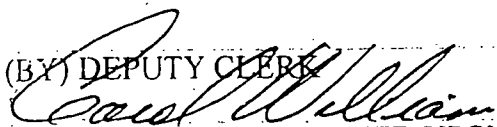
X YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.

PLACE Lancaster County General Sessions Court at Temporary Justice Center 3888 Chester Highway Lancaster, South Carolina 29720	COURTROOM MAIN
	DATE AND TIME Wednesday, July 28, 2010 at 2:00 P.M.

X YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).  
LIST DOCUMENT(S) OR OBJECT(S)

\*\*\* All documents, reports, statements and records, and video security tape pertaining to alleged shoplifting incidents on November 22, 2009 for the time period of 10:00 P.M. through 12:00 Midnight.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK OF COURT	DATE
(BY) DEPUTY CLERK 	7-28-10
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE:	ATTORNEY'S NAME AND ADDRESS
<input type="checkbox"/> SOLICITOR <input checked="" type="checkbox"/> DEFENDANT	MARK GRIER, PUBLIC DEFENDER 3888 Chester Highway Lancaster, South Carolina 29720 (803) 285-5585

## Ineffective Assistance of Counsel

For Conclusions of law as required by S.C Code Ann. 17-27-80(2003)

The Applicant alleges he received ineffective assistance of counsel. In PCR action "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frazier v. State, 351 S.C. 385, 389, 570, S.E 2d 172,174(2002) (citing Rule 71.1(e), SCRPC. Where ineffective assistance of counsel is alleged as a group for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial can not be relied upon as having produced a just result". Strickland v. Washington, 466 U.S 668, 104 S.Ct.2052, 2064, 80 L Ed. 2d 674, 692(1984); Butler v. State 286 S.C. 441, 334 S.2dE 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C.115, 386 S.E 2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonable under professional norms". Cherry, 300 S.C.at 117,385 S.E 2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different ".Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625."A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial". Johnson v. State, 325 S.C. 182, 186,480 S.E.2d 733,735(1997) (citing Strickland).

## ISSUES PRESENTED

(A) Did PCR Court ERR: Not granting relief on the grounds that Mark Grier of L.C Public Defender's Office was ineffective for not inspecting discovery material, and not challenging indictment.

(B) Did PCR Court ERR: Not granting relief on the grounds of counsel was deficient for the wave of his defendant's rights that he was constitutently in titled too.

(C) Did PCR Court ERR: Not granting relief for counsel deficient performance not objecting to a reasonable continuance, and not objecting to or participating in defendant (McFarland) Bench trial for contempt of court.

(D) Did the PCR Court ERR: In not granting relief on the grounds defense counsel was ineffective in waving defendant's right to cross examine witness allowing predicial (Hearsay ) testimony, and uncontested statements that disclosed under Brady v. Maryland Motion in the defendant's ( McFarland ) absence.

(E) Did the PCR ERR: not granting relief for counsel's ineffectiveness for not challenging burden shifting Jury instruction.

(F) Did the PCR Court ERR: in not granting relief on the grounds that Public Defender Grier was ineffective for not calling two witness under subpoena and not subpoena Lt. Walker for (issue A)

(6)

Argument ISSUE (A)

(A) PCR Court error in failing to grant relief on the ground that Public Defender Mark Grier did not pursue the discrepancy in arrest warrant exhibit No.1 and Testimony of officer Ricky Funderburk . Under the United States v. Maryland 373us.83 sct. 1194 1963.As well as the language and spirit of Giglio v. United States; 405us 150, 92 sct.763 (1972) and Napue v. Illinois 360 us 264 79 sct.1173 (1959 are there any "inconsistent" statements of a particular witness or between witnesses. This includes the witness of the Grand Jury that testified to the following fact. See app pg 124 Amendment to PCR filed July 18, 2013

Mark Grier had in his possession facts of false statement included by affiant that was before the Grand Jury that was true billed. In Jerome Franks v state of Delaware, No.77-5176, Delaware Supreme Court 373 A2d 578 the defendant makes substantial preliminary showing that a false statement knowingly and intentionally or with reckless disregard for the truth was included by affiant and affidavit and if allegedly false statement is necessary the to the finding of probable cause, Fourth Amendment requires that a hearing be held at defendant's request.

Testimony of officer Funderburk (app. 33:20-21) I called for back up my Lieutenant arrives cross examination by Public Defender Mr.Grier Q: Were there other law enforcement officers on the premises, in the area, or any security personal? What kind of help did you have immediately? Funderburk's answer: The immediate help I had was my lieutenant, and my sergeant responded to me when I called. Mr. Grier Q: (App. 40:9-12) were they in the parking lot or where were they at? (Funderburk's answer) They weren't in the parking lot at that time but my LT. as we got in the foot chase my LT. was pulling down in the parking lot.Warrant No. K-374376 One Steve Barry McFarland did shoplift at Wal-Mart located at 805 Hwy 9 by pass on 11/22/09. Officers Funderburk and walker were in the store of the above incident location and witnessed a white female placing unknown item underneath the jacket of a white male subject (McFarland) who appeared to be acting in a nervous manner. Officers ordered both suspects to stop, but both suspects ignored officers and left the store with hidden merchandise McFarland was apprehended and arrested but the female was able to flee the scene. Total stolen merchandise was valued at approx. \$ 220.71 McFarland has more than

three property crime convictions on his criminal history. This incident was investigated and reported by officer Funderburke and Lt. Walker.

See testimony of defendant McFarland uncontested App.140 line 16 - 142 line 10 at PCR Hearing. See testimony of Mark Grier (App. 163.2 - 164.3) App. 170 15 -16 App.53 13-24 Mr.Grier direct verdict, testimony of McFarland App.152 on the lack of Mr. Grier's direct verdict.

First the applicant received ineffective assistance of counsel by preponderance of the evidence before mention Frasier v. State 351 SC 385, 389, 570 S.E 2d 172,174( 2002) (citing Rule 71.1(E) (SCRCP) trial can not be relied upon as having produced a just result Strickland v. Washington 466 US 668, 104 sct.2052, 2064,80 LE 2d 674, 692(1984)

Second Counsel's deficient performance has produced the applicant such that there is reasonable probability that for counsel's unprofessional errors, the proceeding would have been different. "Cherry v. State 300 SC at 117 18,386 SE 2d 625(1989) (A) there is a probability sufficient to undermine confidence in the outcome of trial. Johnson v. State 325 SC 182, 186 480 SE 2d 733, 735 (1997) citing strickland

## Argument (B) and (C)

Did the PCR Court Err? Not granting relief on the grounds of defense counsel Mark Grier performance was so deficient that trial could not have reached a just result  
(B) For the wave of his clients rights being present at the most critical part of his trial  
(C) Not objecting to or participating in the defendant (McFarland) bench trial for contempt as he was constitutionally entitled (See App. 119- 123) Amendment to Post conviction Relief application filed with the Lancaster County Clerk of Court on June 24,2013

When the state called the case for trial, the appellant Mr. McFarland was not present, due to being advised by counsel to procure a witness. Counsel (Mark Grier) moved for a continuance based upon the fact that approximately one hour before the state called the case for trial the counsel had been informed by the defendant Mr. McFarland by phone and Mr. McFarland stated that he had located the witness and was on the way back to court. (app. pg. 3 lines 5 – pg 4 lines 1-4) The state opposed the continuance motion stating (Mr. Grier) been notice he's on trial since Monday morning, he's had two days to find his witness. He was up for trial, he was here this morning, I don't see ant reason why we can't go forward (app pg. 4 lines 6-9)

The Judge Denied the Motion for continuance stating (app. pg.5 lines 4-22)

“Well I will have to deny your motion, we are going forward today. It's pretty obvious from the scenario that you have put before the court that he has possibly flown the coup. Because there's adequate communication available to him out there if he was involved in an accident or something tragic has happen he would be getting a hold of us, And if that were to prove true later on there's a remedy for that but right now it appears that he probably realized that his time was up and taken the easy route of flight. I am sure he knows the consequences of what is going to happen, or what would happen if he tells you he's going to be back with a witness and we don't hear anything back. It's obvious to court that he has decided to flee rather than face the Jury.

The Judge ruled at approximately 3:15pm (app pg 4 lines 17) The Judge error was in refusing the motion for continuance and allowing the trial to proceed in absentia. The trial courts denial of a motion for continuance will not be disturbed on appeal absent a clear abuse of discretion. State v. McKennedy, 348 SC 270, 280, 559, S.E 2d 850, 855 (2002) in the state v. Ravenell 387 SC 449, 455, 456, 692 SE 2d 554 557-558 (Ct app 2010)

The South Carolina Court of Appeals wrote

It is well established that, although the sixth amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and defendant may be tried in his absence State v. Fairey 374 SC 92, 99, 646 S.E 2d 844, 895 (1989) see also Rule 16, SCR Crimp (except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/ or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon failure to attend the court.) A trial Judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try defendant in his absence. State v. Patterson 367 S.C 219, 229 625 S.E 2d 239, 244 (Ct. App 2006) citing State v. Jackson 288 SC 94, 95, 341 SE 2d 375 (1986) the Judge must make a finding of fact on the record that the defendant (1) received notice of his right to be present (2) Was warned he would be tried in his absence should he fail to attend. (3) There is no evidence that appellant voluntarily waived his right to be present at trial. The Judge abused his discretion by not making a finding of fact on the record that appellant received notice of his right to present and failed to make findings of fact on the record that appellant was warned that he would be tried in his absence should fail to attend. There is no evidence in the record to suggest that appellant was warned that he would be tried in his absence, or the Judge's findings that the appellant understood the consequences if he failed to appear. The Judge findings constitutes an abuse of discretion because there is nothing in the record to support the finding that appellant was warned that he would be tried in his absence if he fail to appear. The abuse of discretion occurs when the courts decision is unsupported by the evidence or controlled by an error of law. State v. Garrett 350 SC 613, 619, 567 SE 2d 523, 526 (CT. App. 2002) On August 18, 2011 Katherine Hudgins of Indigent Defense raised those issues in Appeals Court. On Dec. 3, 2012 the Court of Appeals filed a Remittor per Curiam copy of judgment SEE EXB 3, 4 enclosed appeals court affirmed conviction on the following authorities.

State v. Babb, 229 SC 451, 454, 385 SE 2d 827, 829 (1989) (The granting or denial of a motion for a continuance is within the sound discretion of the trial court whose ruling will not be disturbed on appeal absent abuse of discretion resulting in prejudice to the appellant) State v. Hoffman, 312 SC 386, 393, 440 SE 2d 869, 873 (1994) (A contemporaneous objection is required to properly preserve an error for appellate review) State v. Balock 357 SC 74, 79, 591 SE 2d 632, 635 (Ct. App. 2003) In order to preserve an error for appellate review, a defendant must make a contemporaneous objecting on a specific ground ) State v. Passmore 336, SC 568, 583, 611 SE 2d 273, 281(Ct. App. 2005) Our courts have consistently refused to apply the plain error rule citation and internal quotation marks omitted ) Public Defender Mark Grier unprofessional errors have prejudiced the defendant McFarland in such there is a reasonable probability the result of the proceeding would have been different. Cherry v. State 300 SC at 117, 385 SE 2d at 625 citing Strickland that is outlined in the before mention amendment filed June 24, 2013 see (App. 119 -123) and Issue D. As to Judge Burch conducting a bench trial for contempt of court (see exb. 7) sentencing sheet 14- 5- 320 contempt of court is a

specific criminal offense and a party charge therewith has the same inalienable right to be heard in his defense as he would against a charge of murder or any other crime. State v. Weinberg 229 SC 286 92 SE 2d 842 (1956) SEE (App. 50 lines 25 -53 line 13 )  
Defendants bench trial testimony of McFarland PCR (APP. 150 line 1- p. 152 line 19) uncontested by state in (PCR) Counsel made errors so serious that counsel was not functioning as the counsel's guaranteed by the sixth Amendment and counsel performance prejudiced the defense depriving the defendant of a fair trial .  
Strickland , 466 US AT 104 S. Ct. at 604, 80, L ED. 2d at 693.

## ISSUE D

Did the PCR Court ERR: In not granting relief on the grounds defense counsel was ineffective in waiving defendant's rights to cross examine witness allowing predicial (hearsay) testimony uncontested statements that not disclosed under Brady v. Maryland 373US 83,83 S.Ct 1194 (1963)motion in defendants (McFarland) absence.

Here the testifying and accusing officer (Mr. Ricky Funderburke) testified that the defendant made statements or extra Judicial comments (statements outside of court) before the Jury when the defendant was prohibited from actively participating and help devise rigorous or vigorous cross examination and legal challenges to combat (or refute) such testimony that never appeared in the testifying officials incident or police report or affidavit. See exhibit 5, 1 on the case legal challenges which prejudicially affected the Jury in this case that virtually hinged upon speculation regarding absent videotape footage from Wal-Mart of the incident: See Amendment App. p.121-122 and most importantly, the credibility or successfully believability of the testifying officer

SCRCP

The out of court damaging statements testified by the officer as been originated from defendant, alleging a on the scene response of it being "hard times" (APP. p.34 lines 21-23) as a result of his apprehension for the alleged shoplifting of WAL-Mart food merchandise, had no other effect other than to be inculpatory in nature and design before the Jury in accepting culpability (App.p.132 line 17-133 line 16)therefore Err of law by the prosecution -under (SCRCP Rule 5-1-d-3)the state had 30 days to disclose these so called statements after the request for disclosure(Mr. Grier defense attorney testified)(App. 171 lines 14-18) he learned of these statements immediately prior to his(Mr.Funderburke's)testimony. No objection from Mr.Grier and he testified he did a Brad v Maryland 373 US 83,83 S.Ct 1194 and these statements was not disclosed in the case file, again no objection, uncontested and both statements remained Hallmarked challenges and prime candidates for a Jackson v. Denno 378 US 368(1964) and a qualifying for a determination under the Illinois v. Gates 462 US 213,03 S.Ct 762 US ed 2d 527 test of whether the statements originated from the defendant, and whether they were constitutional voluntary all viable plausible,and serious challenges left untested and without challenge left without the vigorous cross examination. The very last fact uncontested statement by officer Funderburke not disclosed in motion. Mr. Funderburke testified he got a package of meat off the defendant(McFarland)see Exhibit 5, 1 not on affidavit based on the facts not in his incident(police report)and all three of these unchallenged statements were use by solicitor Cook

in closing argument . (APP.p.80 line 23- p.81 line 1  
still had meat on him and the "hard times"  
statement and that my girlfriend had nothing to do  
with it. (APP.83 lines 21-p.84 line 1) (App.85 stolen  
meat on you)not disclosed under Rule5 state v.  
Edwards 373 S.C 230,236,644 SE 2d 66,69 (ct  
App.2009)

ISSUE (E)

Did PCR Court ERR: Not granting relief for counsels ineffectiveness for not challenging burden shifting Jury Instruction. The applicant testified that counsel failed to object to the jury charge about conspiracy and hands of one hands of all doctrine the facts must support a jury instruction for it to be proper. State v. Crosby 355 S.C 47,589 S.E 2d 110(S.C 2003). The Facts of the case (APP. 171 lines 19 - 172 line 5) the testimony of Mark Grier (Q)in paragraph 8 of your Rule 5 that talks about copy of the co-defendants (A)criminal record right. (Q) Did you get that? (A) Well there were no co-defendants until the co-defendant became a co-defendant. Upon her admission during the trial so no I did not. (Q)So she didn't get arrested on the case?(A)No she never was arrested to my knowledge, That's the fact of the case. Mr. Grier never objected or questioned the Jury Charge.

ISSUE (F)

(F) Did PCR Court ERR: in not granting relief on the grounds Public Defender Mark Grier was ineffective for not calling two witnesses under subpoena and not subpoena Lt. Walker for issue (A).

The nature and scope of cross examination is inherently a matter of trial tactics United States v. Nerseian, 824 F.2d 1294, 1321(2d cir 1989) "A" defendant has a burden of supplying sufficiently precise information of evidence that would be desired investigation. The defendant has supplied the information that Lt. Walker was not in the store SEE: (Issue A) SEE App. 40 lines 4-12 ) testimony of officer Funderburke.

Under cross examination from Mr. Grier (Q) Well were there other officers on the premises or in the area or any security people? What kind of help did you have immediately Mr. Funderburke? (A) The immediate help I had was my Lt. and my sergeant responded to me when I called. Mr. Grier (Q) were they in the parking lot or where were they at? (A) They weren't in the parking lot at that time but my Lt. as we got on the foot chase my Lt. (he) was pulling down in the parking lot.

This court and everyone knows his answer would have been Lt. was in the store he saw everything, and as for the two theft prevention officers testimonies. If Mr. Grier made sure the court was not going to hear more nonsense testimony of arresting officer Funderburke. (Mr. Cook Solicitor)(Q) Did you ever talk to anybody in there about a video?

I talked to someone that night it was one of the managers who stated at that time that --- Mr. Grier; your Honor he is getting ready to go into hearsay!! There by saying that he stated that the

manager the standard of reasonableness. Evitts v. Lucy 469 U.S 387, 105 S.ct. 830.

"There is a lacking that equality demanded by the fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into to record, research of the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself".

*Id.*, at 357-358, 835, Ct., at 816-17.

## SUMMARY

The PCR Court ERRS: in regards to the allegations of ineffective assistance of counsel. That of Mark Grier's representation for Steven McFarland fell well below the standard of reasonable assistance, and McFarland constitutional rights, and due process for his bench trial for contempt with no representation from Mr. Grier. This is just a bench mark for ineffective assistance with Mr. Grier allowing hearsay testimony unchallenged in McFarland's absence. Mr. Grier did not comply with Brady v. Maryland. Mr. Grier was thoroughly incompetent in his representation.

Accordingly the PCR court should rule that the first prong of Strickland test that counsels failed to render reasonable effective assistance under prevailing professional norms.

The applicant presented specific court filed evidence (exhibits 1-9) and compelling evidence that counsel committed error in his representation of the applicant.

PCR should find that applicant did prove the second prong of Strickland that he was prejudiced by counsel's poor performance.

SUBMITTED BY



Steven B. McFarland

SCDC # 263704

Wateree River Corr.Inst.

P.O Box 189

Rembert, S.C. 29128

Steven McFarland #263704  
Waterce Corr. Inst D-4-C-24  
P.O. Box 189  
Rembert SC 29128

The South Carolina  
Clerk of Supreme Court  
Honorable Daniel Shearss  
P.O. Box 11330  
Columbia, SC 20211

