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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

George C. James, Jr., Circuit Court Judge

KEVIN L. HOLT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000953

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS
10-GS-26-02915

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
 vs.)
)
 KEVIN L. HOLT,)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF RECORD

NOVEMBER 1, 2010
CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, STEVEN H. JOHN, JUDGE

APPEARANCES:

BY: J. SCOTT HUCKS, ESQ.
ATTORNEY FOR STATE

BY: STUART M. AXELROD
ATTORNEY FOR KEVIN L. HOLT

BRENDA R. BABB
Circuit Court Reporter

RECEIVED
S. C. ATTORNEY GENERAL
DATE 12/30/11

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GUILTY PLEA - NOVEMBER 1, 2010

3

1 MR. HUCKS: YOUR HONOR, THE STATE AT THIS TIME
2 WOULD CALL THE CASE OF THE STATE OF SOUTH CAROLINA V. MR.
3 KEVIN LESHON HOLT. YOUR HONOR, IT'S THE STATE'S
4 UNDERSTANDING HE'LL BE PLEADING GUILTY TO INDICTMENT NUMBER
5 2010-GS-26-2915. IT WAS ORIGINALLY INDICTED FOR
6 TRAFFICKING COCAINE 100 TO 200 GRAMS. IT'S THE STATE'S
7 UNDERSTANDING HE'LL BE PLEADING GUILTY TO A LESSER INCLUDED
8 OFFENSE, YOUR HONOR, OF TRAFFICKING COCAINE 28 GRAMS TO 100
9 GRAMS. IT'S A NEGOTIATED SENTENCE OF 12 YEARS, YOUR HONOR.

10 THE COURT: ALL RIGHT, THANK YOU.

11 MR. HUCKS: YOUR HONOR, THE STATE, AS WE TALKED
12 ABOUT IN CHAMBERS EARLIER, IS REQUESTING THAT YOU WITHHOLD
13 SENTENCE ON MR. HOLT -

14 THE COURT: ALL RIGHT, SIR.

15 MR. HUCKS: --- UNTIL THE DEPOSITION OF HIS
16 CODEFENDANT IN THIS CASE.

17 **EXAMINATION OF MR. HOLT REGARDING RIGHTS**

18 **BY THE COURT:**

19 THE COURT: AND, SOLICITOR, THE INDICTMENTS FOR
20 2010-2917, FOR POSSESSION WITH INTENT TO DISTRIBUTE COCAINE
21 BASE AND 2010-2916, POSSESSION WITH INTENT TO DISTRIBUTE
22 HEROIN, WHAT'S THE STATE'S INTENTION ON THOSE?

23 MR. HUCKS: THEY WILL BE DISMISSED AS A RESULT
24 OF THIS PLEA, YOUR HONOR.

25 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT,

GUILTY PLEA - NOVEMBER 1, 2010

4

1 MR. HOLT, GIVE ME YOUR ATTENTION, PLEASE, SIR. YOU COME
2 BEFORE THE COURT PLEADING GUILTY TO TRAFFICKING COCAINE
3 WEIGHT 28 TO 100 GRAMS FIRST OFFENSE; IS THAT CORRECT, SIR?

4 DEFENDANT HOLT: YES, SIR.

5 THE COURT: ALL RIGHT, SIR, IN THIS PARTICULAR
6 MATTER YOU UNDERSTAND THAT THAT IS A LESSER INCLUDED
7 OFFENSE OF THE ONE FOR WHICH YOU WERE INDICTED? YOU WERE
8 INDICTED FOR A SECOND OFFENSE; IS THAT CORRECT?

9 DEFENDANT HOLT: YES, SIR.

10 THE COURT: ALL RIGHT, SIR, LET'S SEE, I'M
11 SORRY, LET'S SEE HE WAS INDICTED, I'M SORRY, YOU INDICTED
12 FOR TRAFFICKING COCAINE WEIGHT 100 TO 200 GRAMS; IS THAT
13 CORRECT, THAT'S WHAT YOU WERE INDICTED FOR, CORRECT?

14 DEFENDANT HOLT: YES, SIR.

15 THE COURT: AND YOU'RE PLEADING TO THE LESSER OF
16 28 TO 100, CORRECT?

17 DEFENDANT HOLT: YES, SIR.

18 THE COURT: ALL RIGHT, VERY GOOD, THIS
19 PARTICULAR MATTER WAS PRESENTED TO THE HORRY COUNTY GRAND
20 JURY AND A TRUE BILL WAS RENDERED IN THIS MATTER ON JULY
21 29TH, 2010; DO YOU UNDERSTAND THAT?

22 DEFENDANT HOLT: YES, SIR.

23 THE COURT: ALL RIGHT, SIR, AND THE MATTER COMES
24 BEFORE THE COURT BY NEGOTIATIONS OR THAT HAVE BEEN
25 CONDUCTED AMONG YOURSELF, YOUR ATTORNEY, AND THE STATE FOR

GUILTY PLEA - NOVEMBER 1, 2010

5

1 A SENTENCE OF 12 YEARS; YOU UNDERSTAND THAT?

2 DEFENDANT HOLT: YES, SIR.

3 THE COURT: ALL RIGHT, SIR, NOW YOU UNDERSTAND I
4 DON'T HAVE TO ACCEPT, WAS IT A RECOMMENDATION OR A
5 NEGOTIATION?

6 MR. HUCKS: IT'S A NEGOTIATION, YOUR HONOR, IT'S
7 A RECOMMENDATION, YOUR HONOR, IT'S WHAT WE AGREED TO.

8 MR. AXELROD: YOUR HONOR, MY UNDERSTANDING WAS
9 A NEGOTIATION OF 12 YEARS.

10 THE COURT: ALL RIGHT, THAT'S FINE. ALL RIGHT,
11 NOW, MR. HOLT, YOU UNDERSTAND I DO NOT HAVE TO FOLLOW THOSE
12 NEGOTIATIONS?

13 DEFENDANT HOLT: YES, SIR.

14 THE COURT: YOU UNDERSTAND THAT?

15 DEFENDANT HOLT: YES, SIR.

16 THE COURT: ALL RIGHT, SIR, I WOULD ALLOW YOU TO
17 WITHDRAW YOUR PLEA BUT I DON'T HAVE TO ACCEPT THAT AS A
18 SENTENCE; YOU UNDERSTAND THAT?

19 DEFENDANT HOLT: YES, SIR.

20 THE COURT: ALL RIGHT, SIR, AND YOU ALSO
21 UNDERSTAND THAT THE STATE HAS REQUESTED TO HAVE THE COURT
22 NOT IMPOSE THE SENTENCE UNTIL THE COURT DISPOSES OF A CASE
23 INVOLVING A CODEFENDANT BY THE NAME OF A ELENA KING; YOU
24 UNDERSTAND THAT?

25 DEFENDANT HOLT: YES, SIR.

GUILTY PLEA - NOVEMBER 1, 2010

6

1 THE COURT: TO ACCEPT YOUR PLEA BUT NOT IMPOSE A
2 SENTENCE UNTIL THAT PARTICULAR CASE IS DISPOSED OF; DO YOU
3 UNDERSTAND THAT?

4 DEFENDANT HOLT: YES, SIR.

5 THE COURT: ALL RIGHT, SIR, UNDERSTANDING ALL
6 THIS DO YOU WANT TO GO FORWARD WITH YOUR GUILTY PLEA AT
7 THIS TIME?

8 DEFENDANT HOLT: YES, SIR.

9 THE COURT: ARE YOU CURRENTLY UNDER THE
10 INFLUENCE OF ANY DRUGS OR INTOXICANTS OF ANY KIND OR
11 CURRENTLY HAVE THEM IN YOUR SYSTEM?

12 DEFENDANT HOLT: NO, SIR.

13 THE COURT: ARE YOU SUFFERING FROM ANY KIND OF
14 PHYSICAL, MENTAL, EMOTIONAL PROBLEM THAT WOULD KEEP YOU
15 FROM UNDERSTANDING WHAT YOU'RE DOING HERE TODAY?

16 DEFENDANT HOLT: NO, SIR.

17 THE COURT: NOW WHEN YOU ENTER YOUR GUILTY PLEA
18 YOU GIVE UP CERTAIN CONSTITUTIONAL RIGHTS. AMONG THOSE ARE
19 ARE THE RIGHT TO REMAIN SILENT SO WHEN YOU TALK TO ME
20 YOU'RE GIVING THAT RIGHT UP; DO YOU UNDERSTAND THAT?

21 DEFENDANT HOLT: YES, SIR.

22 THE COURT: OTHER RIGHTS ARE THE PRESUMPTION OF
23 INNOCENCE, THE RIGHT AGAINST SELF INCRIMINATION AT A TRIAL.
24 THE STATE HAS TO PROVE YOUR GUILT BEYOND A REASONABLE
25 DOUBT. WHEN YOU PLEAD GUILTY YOU GIVE THOSE RIGHTS UP; DO

GUILTY PLEA - NOVEMBER 1, 2010

7

1 YOU UNDERSTAND THAT?

2 DEFENDANT HOLT: YES, SIR.

3 THE COURT: YOU'RE ENTITLED TO A JURY TRIAL, 12
4 MEN AND WOMEN WOULD LOOK AT THE FACTS PRESENTED BY THE
5 STATE TO SEE IF THERE ARE INDEED ENOUGH FACTS TO PROVE YOU
6 GUILTY BEYOND A REASONABLE DOUBT. WHEN YOU ENTER YOUR PLEA
7 YOU GIVE UP THOSE RIGHTS; DO YOU UNDERSTAND THAT?

8 DEFENDANT HOLT: YES, SIR.

9 THE COURT: AND IN THAT JURY TRIAL WITH YOUR
10 ATTORNEY YOU HAVE THE RIGHT TO QUESTION THE WITNESSES AND
11 THE EVIDENCE. YOU HAVE THE RIGHT TO PRESENT A DEFENSE;
12 YOU CAN TESTIFY. YOU CAN CALL WITNESSES ON YOUR BEHALF BUT
13 WHEN YOU PLEAD GUILTY YOU GIVE ALL THAT UP; DO YOU
14 UNDERSTAND THAT?

15 DEFENDANT HOLT: YES, SIR.

16 THE COURT: NOW YOU COME BEFORE THE COURT AND
17 YOU'RE PLEADING GUILTY TO TRAFFICKING COCAINE WEIGHT 10 TO
18 28 GRAMS; ARE YOU PLEADING GUILTY TO THIS CRIME FREELY AND
19 VOLUNTARILY?

20 DEFENDANT HOLT: YES, SIR.

21 THE COURT: OF YOUR OWN FREE WILL AND ACCORD?

22 DEFENDANT HOLT: YES, SIR.

23 THE COURT: PLEADING GUILTY BECAUSE YOU ARE
24 GUILTY OF THIS CRIME?

25 DEFENDANT HOLT: YES, SIR.

GUILTY PLEA - NOVEMBER 1, 2010

8

1 THE COURT: DID ANYBODY PROMISE YOU ANYTHING OR
2 THREATEN YOU OR FORCE YOU IN ANY WAY TO GET YOU TO PLEAD
3 GUILTY?

4 DEFENDANT HOLT: NO, SIR.

5 THE COURT: NOW YOU'RE HERE WITH YOUR ATTORNEY
6 MR. AXELROD; IS THAT CORRECT?

7 DEFENDANT HOLT: YES, SIR.

8 THE COURT: REGARDING THIS CASE AND THE OTHER
9 TWO THAT WERE PREVIOUSLY MENTIONED THAT THE STATE WOULD
10 DISMISS IN CONJUNCTION WITH THE PLEA DID YOU TALK TO YOUR
11 ATTORNEY ABOUT ALL THESE CASES?

12 DEFENDANT HOLT: YES, SIR.

13 THE COURT: HAVE YOU HAD ENOUGH TIME TO TALK TO
14 HIM ABOUT ALL THE CASES?

15 DEFENDANT HOLT: YES, SIR.

16 THE COURT: DO YOU NEED ANY MORE TIME TO TALK TO
17 HIM?

18 DEFENDANT HOLT: NO, SIR.

19 THE COURT: ARE YOU SATISFIED WITH HIS HELP AND
20 REPRESENTATION?

21 DEFENDANT HOLT: YES, SIR.

22 THE COURT: ANY COMPLAINTS ABOUT HIS HELP OR
23 REPRESENTATION?

24 DEFENDANT HOLT: NO, SIR.

25 THE COURT: ALL RIGHT, MR. AXELROD, YOU

GUILTY PLEA - NOVEMBER 1, 2010

9

1 REPRESENT THE INTERESTS OF YOUR CLIENT MR. HOLT IN THIS
2 CASE AND THE OTHER TWO, CORRECT?

3 MR. AXELROD: I DO, YOUR HONOR.

4 THE COURT: AND HE COMES BEFORE THE COURT
5 TENDERING HIS PLEA OF GUILTY TO THE OFFENSE NAMED; DO YOU
6 CONCUR?

7 MR. AXELROD: I DO, YOUR HONOR.

8 THE COURT: AND DO YOU BELIEVE HE'S COME BEFORE
9 THE COURT OF HIS OWN FREE WILL AND ACCORD?

10 MR. AXELROD: HE IS, YOUR HONOR.

11 THE COURT: AND HAVE YOU EXPLAINED TO HIM HIS
12 CONSTITUTIONAL RIGHTS, ANY DEFENSES HE MIGHT HAVE, AS WELL
13 AS THE INFORMATION, THE EVIDENCE IN THE POSSESSION OF THE
14 STATE?

15 MR. AXELROD: I HAVE, YOUR HONOR.

16 THE COURT: THANK YOU VERY MUCH, SIR. ALL
17 RIGHT, SOLICITOR, THE FACTS OF THE CASE, PLEASE?

18 MR. HUCKS: YES, YOUR HONOR, ON THE NIGHT OF
19 FEBRUARY 3RD OF 2010 THE OFFICERS OF THE MYRTLE BEACH
20 POLICE DEPARTMENT NOTICED THE DEFENDANT MAKE A HAND TO HAND
21 TRANSACTION WITH WHAT THEY BELIEVED WAS A, WHAT THEY
22 BELIEVED TO BE A DRUG TRANSACTION. THEY FOLLOWED THE
23 PERSON THAT HE HAD THE TRANSACTION WITH. UPON MEETING WITH
24 THAT PERSON THEY ARRESTED HIM FOR POSSESSING A QUANTITY OF
25 DRUGS. THAT PERSON SAID THAT MR. HOLT WAS THE PERSON WHO

GUILTY PLEA - NOVEMBER 1, 2010

10

1 HAD SOLD HIM THE DRUGS AND TOLD HIM WHERE HE STAYED AT THE
2 CROWN REEF MOTEL. THEY WENT AND CONDUCTED SURVEILLANCE ON
3 THE CROWN REEF HOTEL AND THE FOLLOWING MORNING THEY SAW MR.
4 HOLT AND A CODEFENDANT, MS. KING, LEAVE THE CROWN REEF
5 HOTEL, GET IN A VEHICLE, GO PICK UP ANOTHER GENTLEMAN, AND
6 DRIVE TO SURFSIDE WHERE THEY WENT TO A TACO BELL.

7 THEY SAW MR. HOLT GET IN AND OUT OF THE VEHICLE
8 SEVERAL TIMES, GO MEET WITH OTHER PEOPLE, COME BACK, GET
9 BACK IN THE VEHICLE. AT ONE POINT HE GOT OUT AND DROVE
10 AWAY WITH SOME OTHER FOLKS WHERE MS. KING FOLLOWED THEM
11 AROUND. THE POLICE BELIEVED ALL THIS TO BE INDICATIVE OF
12 DRUG ACTIVITY, THE MULTIPLE TIMES OF GETTING OUT, GOING TO
13 MAKE TRANSACTIONS WITH FOLKS AND GETTING BACK IN THE CAR.

14 THEY FOLLOWED THE CITY, THEY FOLLOWED THE
15 DEFENDANT BACK INTO THE CITY LIMITS OF MYRTLE BEACH WHERE
16 UPON ENTERING THE CITY LIMITS OF MYRTLE BEACH HE WAS
17 STOPPED FOR HAVING A TAG LIGHT OUT. HE WAS PLACED UNDER
18 ARREST FOR AN OPEN BENCH WARRANT THAT HE HAD IN THE CITY OF
19 MYRTLE BEACH AND MS. KING WAS FOUND TO BE IN POSSESSION OF
20 101.42 GRAMS OF COCAINE.

21 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT,
22 MR. HOLT, YOU HEARD THOSE FACTS OF THIS PARTICULAR CASE AND
23 FURTHER THOSE ARE THE FACTS THAT ARE SET FORTH IN YOUR
24 INDICTMENT; ARE THOSE FACTS TRUE AND CORRECT?

25 DEFENDANT HOLT: NOT ALL OF THEM.

GUILTY PLEA - NOVEMBER 1, 2010

11

1 THE COURT: ALL RIGHT, SIR, TALK TO YOUR
2 ATTORNEY MR. AXELROD FIRST.

3 MR. AXELROD: YOUR HONOR, WHAT MY CLIENT IS
4 TELLING ME IS THAT HE SAYS THAT THEY DIDN'T SEE HIM MAKE A
5 DRUG SALE INITIALLY BUT WHAT I SAID TO HIM ON THE RECORD
6 AND WHAT THEY READ WAS I THINK THAT SOMEBODY SAID THAT THEY
7 BOUGHT DRUGS FROM MR. HOLT.

8 THE COURT: THAT THEY HAD STOPPED THIS
9 INDIVIDUAL AND HE INFORMED THEM THAT HE HAD BOUGHT THE
10 DRUGS FROM MR. HOLT.

11 MR. AXELROD: AND THEN THE SOLICITOR WENT ON TO
12 SAY AT THAT POINT THEY PUT HIM UNDER SURVEILLANCE.

13 THE COURT: SURVEILLANCE.

14 MR. AXELROD: AT THE CROWN REEF.

15 THE COURT: RIGHT. ALL RIGHT, SO WITH THAT
16 CHANGE OR ADDITION TO THE FACTS ARE THOSE FACTS TRUE AND
17 CORRECT?

18 DEFENDANT HOLT: YES, SIR.

19 THE COURT: ALL RIGHT, AND YOU UNDERSTOOD WHEN
20 YOU ENGAGED IN THAT KIND OF ACTIVITY AS DESCRIBED BY THE
21 STATE AND IN YOUR INDICTMENT YOU'RE COMMITTING A CRIME; DO
22 YOU UNDERSTAND THAT?

23 DEFENDANT HOLT: YES, SIR.

24 THE COURT: HAVE YOU UNDERSTOOD MY QUESTIONS
25 HERE TODAY?

GUILTY PLEA - NOVEMBER 1, 2010

12

1 DEFENDANT HOLT: YES, SIR.

2 THE COURT: HAVE ALL YOUR ANSWERS BEEN THE
3 TRUTH?

4 DEFENDANT HOLT: YES, SIR.

5 THE COURT: ANYBODY TELL YOU HOW TO ANSWER MY
6 QUESTIONS?

7 DEFENDANT HOLT: NO, SIR.

8 THE COURT: AND YOU UNDERSTAND YOU HAVE THE
9 RIGHT TO APPEAL YOUR GUILTY PLEA WITHIN TEN DAYS?

10 DEFENDANT HOLT: YES, SIR.

11 THE COURT: I FIND THERE'S BEEN A SUBSTANTIAL
12 FACTUAL BASIS FOR THE PLEA. I FIND THE DEFENDANT'S
13 DECISION TO PLEAD GUILTY HAS BEEN DONE FREELY, VOLUNTARILY,
14 KNOWINGLY, AND INTELLIGENTLY MADE. HE'S HAD THE ADVICE OF
15 COMPETENT COUNSEL WITH WHOM HE'S SATISFIED THEREFORE MR.
16 HOLT'S DECISION TO PLEAD GUILTY TO TRAFFICKING IN COCAINE
17 WEIGHT 28 TO 100 GRAMS FIRST OFFENSE IS ACCEPTED. I WAS
18 JUST CHECKING THE CDR CODE TO MAKE SURE THAT THOSE WERE
19 CORRECT.

20 SINCE I'M GOING TO NOT SENTENCE MR. HOLT RIGHT
21 NOW AND I'LL SEE WHERE THE OTHER CASE IS, MR. AXELROD, DO
22 YOU WANT TO WAIT UNTIL THE ACTUAL SENTENCING TO ADDRESS THE
23 COURT RATHER THAN DOING IT RIGHT NOW?

24 MR. AXELROD: YOUR HONOR, IT'S MY UNDERSTANDING
25 WE HAD NEGOTIATED A 12 YEARS.

GUILTY PLEA - NOVEMBER 1, 2010

13

1 THE COURT: ALL RIGHT.

2 MR. AXELROD: MY CLIENT HAS NO CRIMINAL DRUG
3 CONVICTIONS. THIS IS HIS FIRST CONVICTION, YOUR HONOR.

4 THE COURT: OKAY.

5 MR. AXELROD: IT'S A STEEP, IT'S A STEEP
6 SENTENCE AND I THINK IN TERMS OF THE WEIGHT THAT HE WAS
7 CARRYING IT'S PROBABLY APPROPRIATE.

8 THE COURT: ALL RIGHT.

9 MR. AXELROD: I'VE EXPLAINED TO HIM THAT HE
10 COULD HAVE BEEN CHARGED UNDER THE 100 TO 200 WHICH WOULD
11 HAVE PUT HIM I THINK THE SEVEN TO 25, CORRECT?

12 THE COURT: IT WOULD HAVE BEEN 25 YEARS.

13 MR. AXELROD: TWENTY-FIVE.

14 THE COURT: THE 100 TO 200 IS 25 YEARS.

15 MR. AXELROD: STRAIGHT 25.

16 THE COURT: STRAIGHT 25 YEARS.

17 MR. AXELROD: I TOLD MY CLIENT AND TO PUT ON THE
18 RECORD MY CLIENT MAKES A CONFESSION AT THE POLICE
19 DEPARTMENT. HE SPEAKS TO THE OFFICERS AND HE PUTS ON THE
20 RECORD THAT THE DRUGS WERE ALL HIS. I SAID WITH THAT
21 CONFESSION ALONE, AND HE WAS A GRAM AND A HALF OVER THE 100
22 GRAMS, I SAID REALLY WE HAVE NO CHOICE BUT TO TAKE WHAT THE
23 STATE HAS OFFERED US HERE. I THINK IT'S THE APPROPRIATE
24 THING FOR HIM TO DO AND I WOULD ASK THE COURT TO TAKE THE
25 NEGOTIATION OF 12.

GUILTY PLEA - NOVEMBER 1, 2010

14

1 THE COURT: ALL RIGHT, VERY GOOD, ALL RIGHT ---

2 MR. AXELROD: AND, YOUR HONOR, FOR THE RECORD --

3

4 THE COURT: YES, SIR.

5 MR. AXELROD: ONE MORE THING FOR THE RECORD.

6 FROM THE TIME MY CLIENT WAS STOPPED HE HAS OWNED ALL THE
7 DRUGS. I KNOW THAT THE CODEFENDANT ACTUALLY HAD THE DRUGS
8 ON HER AT THE TIME BUT MY CLIENT HE TOLD THE POLICE WHEN HE
9 HIRED ME RECENTLY HE TOLD ME HE'S ALWAYS MAINTAINED IT WAS
10 HIS DRUGS. I THINK HE GAVE THEM TO HER AND SAID, HERE,
11 STICK THESE DOWN YOUR PANTS OR SOMETHING BUT WHICH HAPPENED
12 I THINK, BUT CLEARLY FROM THE VERY BEGINNING WHEN HE
13 CONFESSED TO THE POLICE ON THAT TAPE RECORDED STATEMENT HE
14 TELLS THE POLICE THEY WERE MY DRUGS. I JUST WANT THE COURT
15 TO BE AWARE THAT HE'S MAINTAINED THAT FROM THE TIME HE GOT
16 ARRESTED TO THE TIME HE'S BEEN IN MY OFFICE TO THIS
17 AFTERNOON IN THE COURTROOM.

18 THE COURT: ALL RIGHT, THANK YOU, MR. AXELROD, I
19 APPRECIATE THAT. IF YA'LL JUST WANT TO STEP DOWN FOR A
20 MINUTE AND LET ME SEE WHERE WE ARE WITH THE OTHER MATTER,
21 THANK YOU. IF YA'LL JUST WANT, MR. AXELROD, IF YA'LL.
22 YA'LL JUST WANT TO HAVE A SEAT OVER THERE IN THE FRONT ROW
23 OVER THERE THAT WOULD BE GREAT.

24 ALL RIGHT, MR. HOLT, YOU WANT TO COME FORWARD,
25 PLEASE, SIR?

GUILTY PLEA - NOVEMBER 1, 2010

15

1 ALL RIGHT, 2010-GS-26-2915, STATE OF SOUTH
2 CAROLINA COUNTY OF HORRY V. KEVIN LESHAWN HOLT, REGARDING
3 TRAFFICKING COCAINE WEIGHT 28 TO 100 GRAMS FIRST OFFENSE, I
4 FIND THAT THE COURT SHOULD ACCEPT THE NEGOTIATIONS IN THIS
5 MATTER, THEREFORE, THE DEFENDANT IS COMMITTED TO THE STATE
6 DEPARTMENT OF CORRECTIONS TERMINATE TERM OF 12 YEARS. THE
7 DEFENDANT IS GIVEN CREDIT FOR ANY TIME THAT HE HAS ALREADY
8 SERVED, THANK YOU VERY MUCH.

9 PROBATION OFFICER ANDERSON: YOUR HONOR, ON
10 DEFENDANT HOLT, I WAS UNAWARE THAT MR. HOLT WAS ON
11 PROBATION UNTIL AFTER HE HAD ALREADY PLED TO THE OFFENSE
12 THAT HE JUST PLED TO.

13 THE COURT: ALL RIGHT, SIR.

14 PROBATION OFFICER ANDERSON: AND HE IS CURRENTLY
15 ON PROBATION. HE WAS SENTENCED DOWN IN GEORGETOWN BEFORE
16 JUDGE HYMAN. WE SUPERVISED HIM HERE IN HORRY COUNTY AND
17 TODAY'S CONVICTION IS GOING TO BE A VIOLATION OF THAT
18 PROBATION.

19 THE COURT: ALL RIGHT, MR. HOLT, YOU UNDERSTOOD
20 THAT YOU WERE ON PROBATION, CORRECT?

21 DEFENDANT HOLT: YES, SIR.

22 THE COURT: YOU KNEW YOU WERE ON PROBATION?

23 DEFENDANT HOLT: YES, SIR.

24 THE COURT: ALL RIGHT, SIR, AND YOU UNDERSTOOD
25 THAT PART OF THE PROBATION WAS TO KEEP THE PEACE AND GOOD

GUILTY PLEA - NOVEMBER 1, 2010

16

1 ORDER OF THE STATE, THAT IS NOT TO COMMIT ANY OTHER CRIMES
2 OR GET ARRESTED FOR ANYTHING ELSE; YOU UNDERSTAND THAT?

3 DEFENDANT HOLT: YES, SIR.

4 THE COURT: ALL RIGHT, SIR, AND SO YOU
5 UNDERSTAND WITH YOUR GUILTY PLEA THAT WAS A VIOLATION OF
6 YOUR PROBATION, CORRECT?

7 DEFENDANT HOLT: YES, SIR.

8 THE COURT: ALL RIGHT, SIR. WHAT WAS THE
9 SENTENCE OF JUDGE HYMAN?

10 PROBATION OFFICER ANDERSON: HE WAS ON FOR TWO
11 COUNTS OF ABHAN, IT WAS FIVE YEARS SUSPENDED TO 84 DAYS AND
12 THREE YEARS PROBATION.

13 THE COURT: ALL RIGHT, SIR, JUST WHAT I'M GOING
14 TO DO IS REVOKE THREE YEARS ON THAT, TERMINATE THE CASE,
15 TURN ANY AMOUNTS OWED INTO A CIVIL JUDGMENT, RUN THE THREE
16 YEARS CONCURRENT WITH THE 12-YEAR SENTENCE THAT MR. HOLT
17 JUST GOT.

18 PROBATION OFFICER: THANK YOU, JUDGE.

19 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.
20 END OF REQUESTED TRANSCRIPT.....

21

22

23

24

25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA.

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

_____, 2011

BRENDA R. BABB, CVR

OFFICIAL REPORTER

Motion to Alter or Amend - May 11, 2011

13

CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, Official Court Reporter for the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal in the Court of Common Pleas for Horry County, South Carolina.

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

December 16, 2011

Brenda R. Babb

Brenda R. Babb, CVR
OFFICIAL REPORTER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Kevin Lashon, ^{Holt} SCDC # 343450)
)
)
)
 v.)
)
 State of South Carolina)
)
)

IN THE COURT OF COMMON PLEAS

11

8926

**APPLICATION FOR
 POST-CONVICTION RELIEF**

RECEIVED
 COURT REPORTER
 11/09/25 PM 3:38

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Horry County
3. Name(s) of co-defendant(s) (if any) Eliana Natalie King
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 10-GS-26-02915
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 1, 2010 - twelve year sentence in the Department of Corrections
 - (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?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Attorney did not offer to file appeal and did not inform client how or when to appeal.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective Assistance of counsel - counsel encouraged client to plea based upon false information.

(b) Ineffective Assistance of counsel - counsel did not properly advise client as to triable issues related to his charges.

(c) _____

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

(a) Counsel did not explain a "negotiated plea" to client and informed client part of his plea bargain was that the co-defendant's charge would be dismissed.

(b) Counsel did not inform client properly in regards to the issues that may arise during a jury trial including but not limited to issues surrounding his statement, the confidential informant, jurisdictional issues, and whether the initial stop was proper.

(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? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No.

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

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) Missed deadline to file appeal.
- (b) Issues are more appropriate for a post-conviction relief action.
- (c) _____

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

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

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. Stuart M. Axelrod, 604 16th Avenue, N., Myrtle Beach, South Carolina 29577
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea and sentencing
 - ii. _____
 - iii. _____

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

I wish to have my conviction vacated because I would not have plead guilty but for the fact that my counsel was ineffective in his advice to me regarding the guilty plea and my option for a jury trial.

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

I am also serving a three year sentence for a probation violation concurrent to the conviction for 10-GS-26-02915. Both sentences were imposed by the same Court on November 1, 2010.

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

8926

I, Kevin Leshon Holt, 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.

Kevin Holt

SWORN to and subscribed before me this 11th
day of October, 2011.

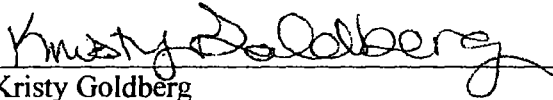
Kristy Dahlberg (L.S.)
Notary Public

My Commission Expires: July 25, 2021

NOTARY PUBLIC
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CLERK OF COURT HAWK

during a jury trial, including but not limited to issues surrounding his statement, the confidential informant, jurisdictional issues, and probable cause.

(c) The Solicitor's office stated detailed facts on the record during the plea which were not mentioned or accounted for in the Discovery provided. This includes but is not limited to information regarding a confidential informant. Accordingly, Applicant was not fully informed as to the evidence against him prior to his decision to plead guilty and his decision to plead was involuntarily made.



Kristy Goldberg
Attorney for Defendant

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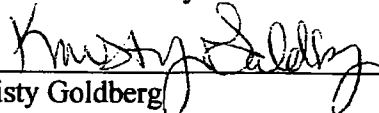
This 27th day of December, 2012

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

(a) Trial counsel did not explain the effect of a “negotiated plea” to Applicant, and Applicant believed he could receive a lesser sentence during the plea. Trial counsel also incorrectly informed client that part of his plea bargain involved a promise of co-defendant’s charges being dismissed. Further, trial counsel failed to withdraw Applicant’s guilty plea when the Solicitor stated a factual basis for the plea that differed from the facts contained within the discovery provided.

(b) Trial counsel did not discuss with Applicant issues that may arise during a jury trial, including but not limited to: the requirement of the State to produce essential witnesses including the confidential informant and chemist and the ability to contest the credibility of witnesses such as law enforcement, the confidential informant and chemist.

(c) The Solicitor’s office stated detailed facts on the record during the plea which were not mentioned or accounted for in the Discovery provided to trial counsel. This includes but is not limited to information regarding a confidential informant. Accordingly, Applicant was not fully informed as to the evidence against him prior to his decision to plead guilty, and as a result his decision to plead was involuntarily made.



Kristy Goldberg
Attorney for Defendant

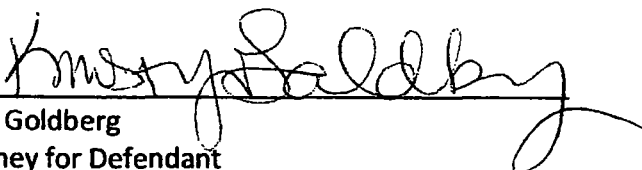
Kristy Goldberg
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Columbia, South Carolina

This 2nd day of May, 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	
)	2011-CP-26-8926
KEVIN HOLT, SCDC # 343450,)	
Applicant,)	
)	
vs.)	CERTIFICATE OF SERVICE
)	
STATE OF SOUTH CAROLINA,)	
Defendant.)	

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 301
 Columbia, SC 29201
 803-252-2299
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 2ND day of May, 2012

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Kevin Leshon Holt, # 343450,

2011-CP-26-8926

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for post-conviction relief filed October 25, 2011, by Kevin Leshon Holt, by and through his attorney, Kristy Grafton Goldberg, would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County.¹ The Applicant was indicted in July 2010 for trafficking in cocaine, 100-200 grams (2010-GS-26-2915). On November 1, 2010, the Applicant pled guilty to the lesser offense of trafficking in cocaine, 28-100 grams, before the Honorable Steven H. John. Stuart M. Axelrod, Esquire, represented him. Judge John imposed a negotiated sentence of 12 years. At least two charges were dismissed pursuant to the plea, including a charge of possession with intent to distribute cocaine (2010-GS-26-2916) and a charge of possession with intent to distribute cocaine base (2010-GS-26-2917). No direct appeal was filed.

Incorporated herein by reference are the records of the Horry County Clerk of Court regarding the conviction. The Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript, will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

¹ The Applicant states he is also currently serving a sentence of three years for a probation violation.

II. – Allegations and Relief Sought

In his Application, Mr. Holt alleges that his custody is unlawful for the following reasons:

- (1) Ineffective assistance of counsel:
 - a. Counsel encouraged client to plead based upon false information – counsel failed to explain a “negotiated plea” to client and informed client that part of the plea bargain was that the co-defendant’s charge would be dismissed; and
 - b. Counsel did not properly advise client as to triable issues related to his charges, including issues surrounding his statement, the confidential informant, jurisdictional issues, and whether the initial stop was proper.

The Applicant states he is seeking to have his conviction vacated.

III.

In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where an application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was deficient and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). However, a guilty plea is a solemn, judicial admission of the truth of the charges against a defendant. Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, statements made during the plea will be

considered conclusive unless the defendant presents persuasive reasons why he should be allowed to depart from the truth of those statements. See Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that an evidentiary hearing should be held to fully resolve the issues of ineffective assistance of counsel. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is DENIED.

V.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

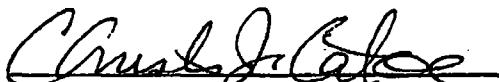
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

November 23, 2011

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS)
 FIFTEENTH JUDICIAL CIRCUIT)

Kevin Leshon Holt, # 343450,)

2011-CP-26-8926)

Applicant,)

v.)

State of South Carolina,)

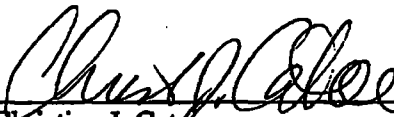
Respondent.)

CERTIFICATE OF SERVICE BY MAIL

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 State's RETURN in the above-captioned matter on the following person(s) by depositing in the United States mail, postage prepaid:

**Kristy Grafton Goldberg, Esquire
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 301
 Columbia, SC 29201**

DATED this 23rd day of November, 2011.


 Christina J. Catée
 Office of the Attorney General
 Post Office Box 11549
 Columbia, South Carolina 29211
 (803) 734-3737

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STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
COUNTY OF HORRY) CASE NO: 2011-CP-26-08926
PCR HEARING

B E F O R E: The Honorable George C. James
March 17, 2014

KEVIN HOLT,
Claimant/Applicant,

 **ORIGINAL**

vs.
STATE OF SOUTH CAROLINA,
Respondent.

APPEARANCES:

Kristy Grafton Goldberg, Esq.
For the Claimant/Applicant.

Joshua L. Thomas, Esq.
For the Respondent.
(Office of the Attorney General)

Court Reporter:
Natalie Dahl, RPR

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I N D E X

WITNESSES

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KEVIN HOLT

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STUART AXELROD, ESQ.

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EXHIBITS

APPLICANT'S

MARKED

ADMITTED

1	Incident Report	13	32
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CALL OF THE CASE
P R O C E E D I N G S

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THE COURT: 2011-CP-26-8926, Kevin L. Holt.
Looks like he pled to a lesser included offense for
trafficking in cocaine, 28 to 100 grams; is that
correct?

MR. THOMAS: That's correct. That was a
November 2010 plea in front of Judge John.

THE COURT: I have Mr. Galmore as plea counsel or
witness. I see, of course, Mr. Axelrod right behind
you and he's referenced in the return. Is he plea
counsel, or is it Mr. Galmore?

MR. THOMAS: It is Mr. Axelrod, Your Honor.

THE COURT: I'm sorry. I was looking at the
wrong one.

MR. THOMAS: I did make changes.

THE COURT: Ms. Goldberg, do you want to tell me
about it?

MS. GOLDBERG: Yes, Your Honor. In your file, I
filed an original PCR in this case, but I did some
amended applications. You should have a second
amended application that was clocked in May 6th.

THE COURT: I have it.

MS. GOLDBERG: That is the application we're
going forward on today. I've spoken with the attorney
general immediately prior to this hearing. "A" and

KEVIN HOLT - DIRECT EXAMINATION

1 "B" we would be going forward on as well. "C" I think
2 was very unartfully pled by myself.

3 For the record, I have obtained a copy of the
4 defense counsel's file with discovery. I reviewed the
5 solicitor's office file, and I FOIA'd Myrtle Beach
6 Police Department's file. The discovery in all of
7 those files is identical, so there is no documents I
8 can point to to say that they were not provided prior
9 to the plea; however, the facts in the transcript that
10 were put on the record, factual basis, differs from
11 the discovery. So I think that probably happened by
12 way of oral conversations between the parties
13 involved, but I'm not so much making a Brady argument,
14 that is what I'm explaining now. What I wrote on the
15 application is kind of inaccurate. My argument is
16 going to essentially be that once the facts placed on
17 the record differed from the discovery, defense
18 counsel should have stood down.

19 THE COURT: Okay. Mr. Thomas, anything before we
20 begin?

21 MR. THOMAS: State's prepared to go forward.

22 THE COURT: First witness.

23 MS. GOLDBERG: At this time I call Kevin Holt.

24 (KEVIN HOLT, having been duly sworn, testified
25 as follows:)

KEVIN HOLT - DIRECT EXAMINATION

1 THE CLERK: State your name for the Court.

2 THE WITNESS: Kevin Lashawn Holt.

3 DIRECT-EXAMINATION

4 BY MS. GOLDBERG:

5 Q Mr. Holt, where are you currently housed?

6 A Evans Correctional Institution.

7 Q What sentence are you serving?

8 A Twelve years.

9 Q For what charge?

10 A Trafficking 28 to 100 grams.

11 Q And did you receive that sentence by way of a
12 guilty plea or a trial?

13 A Guilty plea.

14 Q Who was your attorney?

15 A Stuart Axelrod.

16 Q Do you understand what a post-conviction relief
17 action is?

18 A Yes.

19 Q Do you understand that if you are successful then
20 your case would start all over and you'll be facing
21 your original charge again?

22 A Yes.

23 Q What was your original charge?

24 A Trafficking cocaine, 100 to 200 grams.

25 Q So when you pled guilty, it was actually to the

KEVIN HOLT - DIRECT EXAMINATION

- 1 lesser charge of 100 to 200 grams?
- 2 A Yes.
- 3 Q I'm sorry, 28 to 100 grams; is that correct?
- 4 A That's correct.
- 5 Q Okay. Very good. How did you -- when were you
- 6 arrested?
- 7 A February 4.
- 8 Q What year?
- 9 A 2010.
- 10 Q Who was your attorney after your arrest?
- 11 A I don't even know. He was a public defender.
- 12 Q Did you ever talk with him or deal with him?
- 13 A No.
- 14 Q At what point did you come into contact with Mr.
- 15 Axelrod?
- 16 A About September. I don't know, really.
- 17 Q You retained him?
- 18 A Yes.
- 19 Q What conversations do you recall from -- did you
- 20 meet with him at that point?
- 21 A Yes.
- 22 Q What conversations do you recall from that?
- 23 A We discussed about the payment plan, that's
- 24 pretty much it.
- 25 Q Did you talk about the actual case itself?

KEVIN HOLT - DIRECT EXAMINATION

1 A No. Not that I know of, no.

2 Q Did you then meet with your attorney again
3 another time?

4 A Yeah.

5 Q When was that?

6 A Probably about couple weeks or month later.

7 Q What did you discuss during this meeting?

8 A Basically we discussed about me doing a plea. I
9 was supposed to get seven years, and my codefendant was
10 going to be let free.

11 Q When you said you were supposed to get seven
12 years, what did your attorney say to you exactly?

13 A That's what he would get me.

14 Q Did he say he was going to try to get seven years
15 or there had been an offer for seven years, do you
16 remember how he worded it?

17 A Yeah, that is what he would get me, seven years.

18 Q He just said he would get you seven years?

19 A Yeah.

20 Q And he said the codefendant's charges would be
21 dismissed?

22 A Yeah.

23 Q Did you go over the discovery during this
24 meeting?

25 A I don't know. I can't remember.

KEVIN HOLT - DIRECT EXAMINATION

- 1 Q Do you remember talking about the case?
- 2 A Yeah, we talked about it.
- 3 Q But you don't remember looking at any pieces of
4 paper, police reports and stuff?
- 5 A No.
- 6 Q What did you talk about the case, what all was
7 discussed?
- 8 A Basically about me -- basically about the time,
9 me getting the seven years and somebody had to go down
10 for it, you know.
- 11 Q What do you mean "somebody had to go down for
12 it"?
- 13 A Like both of you were charged with it, one person
14 has to take the time for it.
- 15 Q And based on your conversations with your
16 attorney, did you understand that both you and your
17 codefendant could be convicted of this charge?
- 18 A No.
- 19 Q What did you think?
- 20 A That I would go to jail and she would be
21 released.
- 22 Q Did he ever talk with you about something called
23 "constructive possession"?
- 24 A No.
- 25 Q Do you know what that means?

KEVIN HOLT - DIRECT EXAMINATION

1 A Yes.

2 Q What does that mean?

3 A Like, basically, when you are not in possession,
4 but it is like -- kind of like around you, or something
5 like that.

6 Q Okay. Did you think that you and your
7 codefendant could both be convicted of the drugs in
8 this particular case?

9 A No.

10 Q Did you ever talk with your lawyer about
11 something called "probable cause"?

12 A No.

13 Q Do you remember any other specific conversations
14 about your case at that meeting?

15 A No.

16 Q How was the decision made that it would be a
17 plea?

18 A Say that again.

19 Q Do you remember how you and your lawyer came to a
20 decision it would be a plea?

21 A No.

22 Q Did you ever talk with him about the possibility
23 of going to trial?

24 A No.

25 Q Did your lawyer explain to you that you could

KEVIN HOLT - DIRECT EXAMINATION

1 challenge the probable cause in your case at a trial?

2 A No.

3 Q Did he explain to you you could challenge
4 credibility of law enforcement at trial?

5 A No.

6 Q Did he explain that you could challenge the
7 credibility of any chemical analysis at trial?

8 A No.

9 Q When were you ever told about a plea offer?

10 A Two weeks before I pled, he called me.

11 Q And between the meeting we just discussed and
12 this phone call, did you meet with him anymore?

13 A Not that I can recall, no.

14 Q So he called you two weeks before your court
15 date?

16 A Yeah.

17 Q What did he say?

18 A Have the best two weeks of your life.

19 Q How come?

20 A Because I be going to jail for 12 years.

21 Q Did he say that was a plea offer?

22 A Yeah.

23 Q Did he say if there were any other options, or it
24 was just you would be going to jail for 12 years?

25 A He said there was no more, nothing else.

KEVIN HOLT - DIRECT EXAMINATION

1 Q Did you talk about what would happen with the
2 codefendant?

3 A No, not at the time.

4 Q Not during that phone call?

5 A No.

6 Q Did you ask him any questions or talk anymore
7 about it?

8 A No.

9 Q What happened when you -- when you went to court
10 on the morning of November 1st? What did you think was
11 supposed to happen that day?

12 A That I was going to go to jail, and my
13 codefendant would be set free.

14 Q You thought her charges were going to be
15 dismissed?

16 A Yes, ma'am.

17 Q You went in front of the judge to begin the
18 guilty plea?

19 A Yeah.

20 Q What happened during your guilty plea?

21 A We was going through the process of my pleading
22 guilty and they stopped it, she pled guilty, and then
23 they started back with my plea.

24 Q And so they began your plea and they stopped at
25 one point, correct?

KEVIN HOLT - DIRECT EXAMINATION

1 A Yeah.

2 Q And you sat down in the courtroom?

3 A Yeah.

4 Q Did you remain in the courtroom?

5 A Yeah.

6 Q Did you stay in the courtroom while your
7 codefendant pled guilty?

8 A Yeah.

9 Q Did you watch her get sentenced?

10 A Yeah.

11 THE COURT: Girlfriend/codefendant, same person?

12 MS. GOLDBERG: Yes, Your Honor.

13 Q (MS. GOLDBERG) Did you watch her get sentenced?

14 A Yeah.

15 Q And you stood back up to finish your plea?

16 A Yeah.

17 Q Did you ask your lawyer any questions at that
18 point?

19 A Yeah. I asked him why do I have to still plea if
20 she's going to jail for the crime.

21 Q What did he say?

22 A Didn't say nothing. They called us back up for
23 my plea.

24 Q And did you ask the judge any other questions at
25 that point?

KEVIN HOLT - DIRECT EXAMINATION

1 A No.

2 Q And what happened then?

3 A I went to jail.

4 Q He just sentenced you?

5 A Yeah.

6 Q Mr. Holt, to the best of your recollection, did
7 you see all of your discovery, police reports,
8 documents like that prior to your guilty plea?

9 A No.

10 Q Have you seen them since your guilty plea?

11 A Yeah.

12 Q How did you become in possession of those items?

13 A Through you.

14 Q I provided you with a copy?

15 A Yes.

16 Q Okay.

17 MS. GOLDBERG: If I may approach?

18 THE COURT: Yes, ma'am.

19 MS. GOLDBERG: I'm handing the Applicant
20 Applicant's Exhibit No. 1.

21 Q (BY MS. GOLDBERG) Mr. Holt, look through those
22 pages. Can you identify that document?

23 A Yes.

24 Q What is that document?

25 A Incident report.

KEVIN HOLT - DIRECT EXAMINATION

1 Q And does that document talk anywhere in it about
2 a confidential informant?

3 A No.

4 Q It doesn't mention one at all?

5 A No.

6 Q Prior to your guilty plea, did you know there was
7 a confidential informant involved in your case?

8 A No.

9 Q Had anyone ever mentioned a confidential
10 informant at all?

11 A No.

12 MS. GOLDBERG: May I approach again?

13 (Applicant's Exhibit 2 marked.)

14 MS. GOLDBERG: I'm handing to the Applicant what
15 is marked as Defendant's Exhibit 2 for identification
16 purposes.

17 Q (BY MS. HOLT) Mr. Holt, what is that document?

18 A The towing report.

19 Q Mr. Holt, you understand that to be a part of
20 your discovery as well?

21 A Yes.

22 Q Does that report mention if there was any damage
23 or problems with the car?

24 A No. It says it was dirty, scratches and dent.

25 Q What concerns you about that?

KEVIN HOLT - DIRECT EXAMINATION

1 A Tag light not out.

2 Q How is that relevant?

3 A Because that is what the cop said he pulled us
4 over for.

5 Q Because the tag light was out?

6 A Yeah.

7 Q And that report doesn't mention the tag light as
8 being broken?

9 THE COURT: Does it say it was not out or --

10 MS. GOLDBERG: It doesn't mention it at all.

11 Q (MS. GOLDBERG) And, Mr. Holt, you did not see that
12 prior to your plea?

13 A No.

14 Q You didn't discuss that with your attorney at
15 all?

16 A No.

17 MS. GOLDBERG: I'll approach one more time, Your
18 Honor.

19 (Applicant's Exhibit 3 marked.)

20 THE COURT: Okay.

21 MS. GOLDBERG: I'm handing the Applicant what is
22 marked as Exhibit No. 3.

23 Q (BY MS. GOLDBERG) Mr. Holt, do you know what that
24 document is?

25 A Yes.

KEVIN HOLT - DIRECT EXAMINATION

1 Q What is that?

2 A Drug analysis report.

3 Q Do you understand that to be a copy provided
4 within your discovery?

5 A Yes.

6 Q Did you see that prior to your plea?

7 A I can't recall.

8 Q Possibly?

9 A Yeah, possibly.

10 Q And you've seen it since your plea as well?

11 A Yes.

12 Q What concerns you about that document?

13 A Dates with the notary signing off on it.

14 Q Can you explain that in a little more detail?

15 A It is different from the date when the chemist
16 signed off on it.

17 Q The chemist signs it and provides a date, and it
18 is notarized on a different day?

19 A Yes.

20 Q Is that correct?

21 A Yes.

22 Q What are the two dates?

23 A 9th day of May.

24 Q For which?

25 A For the notary.

KEVIN HOLT - DIRECT EXAMINATION

1 Q Okay.

2 A The chemist is 29th of May.

3 Q Did you discuss that issue with your attorney at
4 all?

5 A No.

6 Q When you were in your guilty plea in court, did
7 you hear what the Solicitor said on the record about
8 the facts of your case?

9 A Yeah.

10 Q Do you recall him stating that there was a
11 confidential informant involved?

12 A Yeah.

13 Q Had you ever heard that prior to the plea?

14 A No.

15 Q Have you ever heard any explanation about that
16 since the plea?

17 A Have I heard any explanation about it?

18 Q Any more details about it?

19 A No.

20 Q Did the Solicitor also mention in the guilty plea
21 that you were pulled over because the tag light was
22 out?

23 A Yeah.

24 Q Did you ask your lawyer about any of that during
25 the plea?

KEVIN HOLT - DIRECT EXAMINATION

1 A No. Not that I recall, no.

2 Q Did you understand that the charge you were
3 pleading to was going to be considered a violent
4 charge?

5 A No.

6 MS. GOLDBERG: Your Honor, I would like to have
7 the Applicant look at two pages on the transcript with
8 me. Since the Court has a copy of the transcript, I
9 don't need to get this marked for identification.

10 THE COURT: All right. That is part of the
11 record. What page?

12 MS. GOLDBERG: Let me find -- I believe the first
13 one is on Page 4.

14 Q (MS. GOLDBERG) Page 4 at Line 5, do you see that?

15 A Yes.

16 Q Right there the judge asks you -- he says: All
17 right, sir. In this particular matter you understand
18 that that is a lesser included offense of the one for
19 which you are indicted, you were indicted for a second
20 offense; is that correct? You answered: Yes, sir.

21 Did I read that correctly?

22 A Yes, sir.

23 Q Were you indicted for a second offense?

24 A No.

25 Q None of these charges were ever a second offense;

KEVIN HOLT - DIRECT EXAMINATION

1 is that correct?

2 A Correct.

3 Q And so why did you say "yes"?

4 A Because I just wanted to get it over with.

5 Q You were not answering the judge's answers
6 correctly?

7 A No.

8 Q Were you paying attention?

9 A No.

10 Q Mr. Holt, on Page 7 --

11 THE COURT: Would you ask him what he was paying
12 attention to?

13 MS. GOLDBERG: I can.

14 Q (MS. GOLDBERG) Why weren't you paying attention?
15 What were you doing?

16 A I was just going to say "yes" to get it over
17 with, you know.

18 Q You were answering "yes" to all of the questions?

19 A Yeah.

20 Q Mr. Holt, on Page 7 -- on -- on Line 16, the
21 Court asks: Now you come before the Court and you're
22 pleading guilty to trafficking cocaine, weight 10 to 28
23 grams. Are you pleading guilty to this crime freely
24 and voluntarily? You answered: Yes, sir.

25 Am I reading that correctly?

KEVIN HOLT - DIRECT EXAMINATION

1 A Yes.

2 Q Were you pleading guilty to trafficking weight 10
3 to 28 grams?

4 A No.

5 Q So the judge misstated that, correct?

6 A Yes.

7 Q And you did not correct him, neither did anyone
8 else in the courtroom?

9 A No.

10 Q Why didn't you correct him?

11 A Because I was just saying "yeah" to get it over
12 with.

13 THE COURT: We note, for the record, that on Page
14 4 the judge did correct himself, okay. He said: I'm
15 sorry. Let's see -- I'm sorry. Let's see, he was
16 indicted -- I'm sorry, you were indicted for
17 trafficking cocaine, weight 100 to 200 grams; is that
18 correct? And he said: Yes, sir. I want to be sure
19 that that is clear on the record. And he says: And
20 you're pleading to the lesser of 28 to a hundred.

21 You mentioned you went over to Page 7. Go ahead.

22 MS. GOLDBERG: Right. Yes. At this time, that
23 is all I have for Mr. Holt.

24 THE COURT: Thank you. Any questions from the
25 State, Mr. Thomas?

KEVIN HOLT - CROSS-EXAMINATION

1 MR. THOMAS: Yes, Your Honor, if it pleases the
2 Court.

3 CROSS-EXAMINATION

4 BY MR. THOMAS:

5 Q How many meetings did you have with Mr. Axelrod?
6 Two or three?

7 A Yes, if I can recall.

8 Q You went over discovery with him, didn't you?

9 A Not that I can recall. I don't know.

10 Q Did you have an opportunity to give him your
11 version of the facts of the case?

12 A Now?

13 Q When you met with Mr. Axelrod you had a chance to
14 discuss what happened that day that you were arrested,
15 correct?

16 A Yeah.

17 Q You also discussed with him the elements and the
18 defenses you might have to the crime?

19 A Say that again.

20 Q Did you discuss any defenses you had?

21 A No.

22 Q Did you give him any leads to investigate,
23 witnesses to contact?

24 A No. That is what I thought he was supposed to
25 do.

KEVIN HOLT - CROSS-EXAMINATION

1 Q You said you never asked for a trial, correct?

2 A No. We talked about it.

3 Q But you never said, I don't want to plea, I want
4 a trial? You never told him that?

5 A No.

6 Q You gave a confession when you were arrested,
7 didn't you, down at the police station?

8 A Yes. This was after -- it was like let my
9 codefendant go.

10 Q You said Mr. Axelrod communicated that 12-year
11 offer to you, he told you you were going to go to jail
12 for 12 years?

13 A Yes.

14 Q Did he tell you you didn't have to do that, you
15 could decline and go to trial?

16 A No.

17 Q Do you remember -- at your plea, do you remember
18 telling the judge you were going to waive your right to
19 a jury trial?

20 A Yes.

21 Q And when we talk about, I guess, the difference
22 in what you thought the facts of the case were and what
23 the Solicitor said, Mr. Axelrod corrected that on the
24 record, didn't he?

25 A I don't know.

KEVIN HOLT - CROSS-EXAMINATION

1 THE COURT: What page?

2 MR. THOMAS: Your Honor, I'm looking at Page 11,
3 starting at Line 3, I believe.

4 Q (BY MR. THOMAS) Mr. Axelrod talks about your
5 disagreement with the fact that there was a drug sale
6 you were witnessed to do, and that basically it was
7 somebody got stopped and they said, I bought those
8 drugs from Mr. Holt; Mr. Axelrod put that on the
9 record, didn't he?

10 A He's talking about surveillance. The Court was
11 like -- they said that they stopped the individual and
12 he informed him that he bought the drugs from Mr. Holt,
13 and the Solicitor said, They put him under
14 surveillance. Nothing about him saying that.

15 Q And that is consistent with what the police
16 report said and what your understanding of what
17 happened that day was; is that correct?

18 A No.

19 Q Do you remember at the plea when you told the
20 judge you were satisfied with Mr. Axelrod's performance
21 and you didn't need any more time to meet with him; do
22 you remember that?

23 A Yes.

24 Q In terms of the record in which this happened,
25 your plea was accepted before your codefendant's; isn't

KEVIN HOLT - REDIRECT EXAMINATION

1 that correct? Judge John accepted your plea, took a
2 break before sentencing you, and then that is when your
3 codefendant pled?

4 A Yes.

5 Q If I understand your direct testimony, you
6 testified that you answered "yes" to all of the
7 questions because you were ready to get this plea over
8 with?

9 A Yes.

10 Q So you were ready that day to plead guilty and go
11 to jail?

12 A Yes.

13 MR. THOMAS: Beg the Court's indulgence.

14 THE COURT: Okay.

15 (A brief pause in the proceedings.)

16 BY MR. THOMAS: That is all I have.

17 REDIRECT-EXAMINATION

18 BY MS. GOLDBERG:

19 Q Had you known that the codefendant was going to
20 plead guilty and be receiving a prison sentence that
21 day, would you have pled guilty?

22 A No.

23 Q What would you have wanted?

24 A Not guilty, go to trial.

25 Q You would have wanted a trial?

STUART AXELROD, ESQ. - DIRECT EXAMINATION

1 A Yes.

2 Q Had you known the issues in the discovery you
3 pointed out prior to the plea, would you have pled
4 guilty?

5 A No.

6 Q What would you have wanted?

7 A Go to trial.

8 MS. GOLDBERG: Nothing further.

9 RE-CROSS-EXAMINATION

10 BY MR. THOMAS:

11 Q Mr. Axelrod didn't represent your codefendant?

12 A No.

13 THE COURT: Ms. Goldberg, he started a plea,
14 stood down and he was in the courtroom while his
15 girlfriend pled guilty, and she was then sentenced?

16 MS. GOLDBERG: She was. That is not included --

17 THE COURT: Is there any evidence as to why, if
18 that is what he -- if he would have gone to trial if
19 he knew she was going to plead, why he went through
20 with the plea?

21 MS. GOLDBERG: From our discussions, and just
22 from the transcript even, he did the whole plea and
23 the plea was accepted. Then he was allowed to sit
24 down, watched her plea and be sentenced. When he was
25 called back up -- her portion of the plea is not in

STUART AXELROD, ESQ. - DIRECT EXAMINATION

1 the transcript, but the before and after of his is.

2 When he's called back on the 15th, all they talk about
3 is the probation violation. They don't talk about
4 anything else to the plea, and he's sentenced.

5 THE COURT: What was he on probation for?

6 MS. GOLDBERG: Do you recall what you were -- I
7 think assault and battery.

8 THE COURT: All right. You can step down. Thank
9 you. Any other witnesses?

10 MS. GOLDBERG: No, Your Honor.

11 MR. THOMAS: State would call Stuart Axelrod.

12 (STUART AXELROD, having been duly sworn,
13 testified as follows:)

14 THE CLERK: State your name for the record.

15 THE WITNESS: Stuart Axelrod, A-X-E-L-R-O-D.

DIRECT-EXAMINATION

16
17 BY MR. THOMAS:

18 Q How long have you been practicing criminal law,
19 roughly?

20 A About 16 years.

21 Q Were you appointed or retained on Mr. Holt's
22 case?

23 A Retained.

24 Q How many meetings did you have with him?

25 A I don't remember. Sufficient.

STUART AXELROD, ESQ. - DIRECT EXAMINATION

1 Q Did you feel you needed more time before the
2 plea?

3 A No. I believe I received this case after -- he
4 had a public defender, I believe, at one point, and the
5 Solicitor put an offer on the table. I got retained by
6 Mr. Holt, and I tried to do better than the offer.

7 Q So in terms of discovery, who filed those
8 motions, you or the PD?

9 A I think we both did. I filed my own, got
10 discovery, gave discovery to Mr. Holt.

11 Q What was the State's response to that?

12 A To what?

13 Q What did they provide you?

14 A The discovery.

15 Q What did that include?

16 A I think he had about four warrants, trafficking.
17 I think he had two distributions and two distributions
18 near a school, and the big case was the trafficking.

19 Q So you said you had an opportunity to review that
20 with Mr. Holt?

21 A I did.

22 Q In terms of the plea negotiations, what was the
23 State's initial offer to the public defender?

24 A I believe it was the same as to what he pled to,
25 12 years.

STUART AXELROD, ESQ. - DIRECT EXAMINATION

1 Q What was the extent of your negotiations with the
2 solicitor's office?

3 A I was trying to get it lower. I still think to
4 this day that sometimes their offers are ridiculous,
5 and I was trying to get down to the 7 to 25 and get
6 down to the seven. I told Mr. Holt that they weren't
7 budging.

8 In response to what I've heard before, I never
9 force anyone to plea. He could have gone to trial.

10 Q Did you ever make any promises regarding the
11 length of the sentence?

12 A No. I have a phrase I use in every single one of
13 my clients, and I think they will all attest to the
14 fact that I tell them, I don't promise the sun will
15 come up tomorrow. I don't promise anybody anything.

16 Q You never promised him seven years?

17 A I don't promise anybody anything. I promise one
18 thing, to work hard as best as I can for my client.

19 Q And what were your discussions with him regarding
20 his version of events or any defenses you might have
21 had to the case?

22 A The problem with the case -- I believe it was a
23 good stop. As I explained, the police officer stopped
24 him for a tag light, requested identification. They
25 arrest him for an unrelated offense of some type. I

STUART AXELROD, ESQ. - DIRECT EXAMINATION

1 think there was an outstanding warrant in the city for
2 something, I don't remember. And then the codefendant,
3 a woman, she got 102 grams of cocaine shoved down her
4 pants. She tells the police that he told her to put it
5 there and it was his cocaine.

6 It was a bad set of facts. I think the stop was
7 good, and I explained to him that. It's, you know -- I
8 just think it was a good stop. Truax (phonetic), he
9 was the one that stopped it, and in my dealings with
10 him I always found him to be a straight-up cop, you
11 know. Some of them you think aren't, but he really
12 was. You know, he got arrested. In the police report
13 it says he stopped him because his tag light was out,
14 okay. And then he gets him out of the car, or
15 whatever, and has an unrelated arrest warrant for him,
16 it kind of opens the door to a search or search
17 incident to arrest. If he hadn't had a warrant for his
18 arrest, I think the outcome could have possibly been
19 quite different.

20 Q As far as the CI stuff goes, what information did
21 you have regarding a criminal informant, if there was
22 one?

23 A The CIs were blacked out. I don't believe I got
24 ahold of who they were. But in the buys, they were
25 going and making buys from, allegedly, Mr. Holt. They

STUART AXELROD, ESQ. - DIRECT EXAMINATION

1 made buys from Mr. Holt, identified Mr. Holt as a drug
2 dealer, so at that point the police put their little
3 surveillance in. I think the Court is well aware that
4 if they want to stop somebody, you know, they'll stop
5 them for no seatbelt or stop them for no turn signal or
6 tag light out, and that was the case here. They tagged
7 him and just went after to get him, and that's about
8 it.

9 Q As far as the search goes, I guess, the search
10 was independent of any information that may have been
11 in the file about somebody buying drugs from Mr. Holt,
12 the stop of the car and the search?

13 A Can you repeat that again? You confused me.

14 Q The stop and the search would have occurred,
15 based on your reading of the file, that was independent
16 of any knowledge of a CI? You said it was a clean
17 stop?

18 A Yeah. What happened was, you know, they
19 dismissed those charges at the plea, but that was what
20 put, I believe, Mr. Holt on the police radar, the guys
21 to the CI. Then, at that point, you know, they did
22 everything they could to stop Mr. Holt. Unfortunately,
23 they stopped him on the day that there was 103 grams of
24 cocaine in his codefendant's pants.

25 Q When they mentioned the CI at the plea, you

STUART AXELROD, ESQ. - DIRECT EXAMINATION

1 corrected that information?

2 A I did.

3 Q You didn't -- who represented the codefendant?

4 A I don't remember. I don't remember. I just know
5 that, you know, in talking to Mr. Holt, they weren't
6 coming down. I didn't force him to do the plea. They
7 just weren't budging. My advice would have been as
8 today, that they have a real good case against you.

9 Q If he had asked for a trial, would you have been
10 prepared to go?

11 A Yes.

12 Q What were your discussions with him regarding a
13 trial or a plea? Did you advise him about a trial?

14 A Well, I tell all my clients I enjoy doing trials,
15 and sometimes I think that -- what is the phrase --
16 discretion is a better form of hour. He pays me for my
17 opinion, and my opinion was that if we were going to go
18 to trial, he would have been convicted.

19 MR. THOMAS: Beg the Court's indulgence.

20 THE COURT: Okay.

21 (A brief pause in the proceedings.)

22 Q (MR. THOMAS) Do you have Applicant's Exhibits 1
23 through 3?

24 THE COURT: You offered those?

25 MS. GOLDBERG: We entered them for identification

STUART AXELROD, ESQ. - DIRECT EXAMINATION
1 purpose. We can consent to enter them for evidence.

2 MR. THOMAS: I have no objection.

3 THE COURT: Those are in.

4 (Applicant's Exhibits 1 through 3 admitted.)

5 THE WITNESS: I'll staple 2 together, if that is
6 all right.

7 THE COURT: Just refer to the sticker number when
8 you are ready.

9 THE WITNESS: Do you want me to look at these
10 first?

11 MR. THOMAS: If you could, just look at them
12 first.

13 (A brief pause in the proceedings.)

14 THE WITNESS: I'm ready.

15 Q (MR. THOMAS) Are you familiar with Exhibits 1
16 through 3? Have you seen those before?

17 A I have.

18 Q As far as Exhibit 2 is concerned, did you put in
19 -- what significance did you place on the fact that it
20 doesn't mention a broken taillight?

21 A Well, it was my understanding that a taillight
22 was never broken until it was out, and in my dealings,
23 when a police officer says your taillight is out, it is
24 just not working, but not necessarily broken, per se,
25 or missing.

STUART AXELROD, ESQ. - DIRECT EXAMINATION

1 Q And as far as Exhibit 3 is concerned, all of that
2 basically came back positive for cocaine and heroin as
3 well, it looks like?

4 A Item 1 came back to .02 grams of heroin. Item 2
5 is .08 grams of heroin. Item 3 is .11 grams of heroin.
6 Item 4 came back as .2 grams of heroin. Item 5 came
7 back .2 grams of heroin Item 6 came back at .85 grams
8 of cocaine base crack. Item 7 came back .56 grams of
9 cocaine base crack. Item 8, 1.59 grams of cocaine base
10 crack. Item 9 came back at cocaine, 17.1 grams
11 cocaine. Item 10, cocaine, 28.39 grams of cocaine.
12 Item 11 was 28.13 grams of cocaine. Item 12 was
13 cocaine found, 27.8 grams of cocaine. I left the
14 hundredths off.

15 Q I appreciate that. Did you notice that
16 discrepancy in the dates? What significance do you
17 place on that?

18 A None.

19 Q Would you have been prepared to cross-examine had
20 you gone to trial based on that?

21 A I guess. They had a chain in this case, a good
22 chain. You know, I understand what they are saying,
23 that it was sworn on the 9th of May and signed on the
24 29th. My taking of it was that the chemist just did a
25 report that day and then stood in front of the notary

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 that day and had it sworn.

2 Q Whatever happened to any charges from --

3 A The reason I say that, just to follow up, is
4 because the date of her form is April 29th. So I think
5 she dates and then went in front of somebody. I didn't
6 think it was improper, if that is the question.

7 Q Whatever happened to any of the charges; were any
8 filed regarding heroin or crack cocaine?

9 A No, sir. He pled to one charge, and it was the
10 one they had him on. He was caught in an inappropriate
11 time with an inappropriate amount of drugs in the car.

12 Q And as far as the incident report, Exhibit No. 1,
13 is the facts in that incident report, is that
14 consistent with what you understood the facts of the
15 case to be?

16 A Yes, sir.

17 Q And you corrected the facts that the Solicitor
18 stated?

19 A Yes, sir.

20 MR. THOMAS: Thank you. That it is all I have.

21 CROSS-EXAMINATION

22 BY MS. GOLDBERG:

23 Q Attorney Axelrod, I think you mentioned during
24 direct you were never able to find out anything more
25 about the confidential informants?

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 A Correct. As far as I know, they never released
2 those names to me in that case.

3 Q So prior to the plea, you were aware there was a
4 confidential informant in this case?

5 A Yes. It was the preliminary that established
6 this case. It was --

7 Q Do you mean the preliminary hearing, or something
8 else?

9 A The preliminary facts to establish Mr. Holt.
10 They had those cases and, ultimately, my focus was on
11 the stop with the cocaine. You know, one could argue
12 that he might not have sold the drugs to the CI, but
13 whatever the basis was of those prior cases was the
14 prerequisite for Truax of the Myrtle Beach Police to
15 have Mr. Holt on his radar to stop him, ultimately, and
16 was the focus there. It was really -- if any issue
17 would have gone to trial, it would have been that one.
18 It wasn't any other cases.

19 Q If it weren't for the confidential informant,
20 they wouldn't have been watching Holt to begin with, is
21 what you are saying?

22 A I agree, but I take it a step further and say
23 that -- I agree with that, but if they had stopped him
24 for just that purpose, then I would absolutely agree
25 with your position, but here he was stopped for his tag

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 light out, and then when approached he had an
2 outstanding warrant for, I believe, Myrtle Beach, and
3 they arrested him. So no matter what the prerequisites
4 are or what they knew about him, that stop in and of
5 itself was a unique incident that they prosecuted him
6 on.

7 Q Despite -- you have just explained how you knew
8 about the confidential informant's involvement, but
9 they are not discussed in the discovery anywhere for
10 this particular case, would you agree with that, to the
11 best of your recollection?

12 A I have that stuff. He had it. We had all of
13 those, but it wasn't the basis of what the State was
14 moving forward on. I think Hucks was the solicitor, if
15 I remember. I think Hucks was the solicitor. I'm not
16 sure, but he was just, you know -- he had blinders on.
17 All he saw was a hundred grams of drugs and he had
18 Mr. Holt and he didn't care about anything else.

19 I believe Erin Bailey might have been the
20 solicitor on it with the other ones, because I believe
21 he had Georgetown charges. I believe the two
22 distributions and two proximities were Georgetown, and
23 then up here Mr. Hucks had the trafficking.

24 Q Let me see if I understand. Are you saying that
25 in a way the other cases were related to this one as

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 well?

2 A No.

3 Q Okay. They are completely unrelated?

4 A Really are, because there wasn't any basis of the
5 prior charges for the stop. The stop was because a
6 taillight was out, asked for identification,
7 outstanding warrant, arrested him for the warrant, the
8 girl says these drugs in my pants are his, 103 grams
9 approximately that she says he puts there, and I
10 believe he probably at one point confesses to it.

11 Q I guess the heart of the question I'm getting to
12 is in the plea, the Solicitor puts on the record there
13 was a confidential informant who witnessed a purchase.
14 That doesn't appear in the incident report. Do you
15 have any information that Mr. Holt knew that that was a
16 part of the case at all?

17 A That wasn't part of this case. The Solicitor was
18 just trying to, I guess, make some kind of comment
19 about his other cases, because the Solicitor was not
20 the solicitor on those other cases; Erin Bailey from
21 the Georgetown office was. So his statement there was,
22 you know, it wasn't necessary for what we were pleading
23 to. We were pleading to the trafficking charge with a
24 negotiated sentence of 12 years that I couldn't get
25 lower for him.

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 Q So do you think the confidential informant was
2 related to the Georgetown cases?

3 A It was related to, I believe, Erin Bailey's
4 cases. I'm not sure where she was at that point.

5 Q Related to one of the other cases?

6 A Do you want me to look?

7 Q I'm just trying to figure out if the Solicitor
8 misspoke entirely, or if Mr. Holt was unaware that that
9 was a part of the case.

10 A Mr. Holt -- I'll look for you, but Mr. Holt was
11 aware that the case we pled to was independent of
12 anything else. The distribution cases with the
13 informant were out of Georgetown County on June 8th --
14 I think May -- June 8th, June 14th, May 18th were the
15 three distributions, I believe. Let me check for you.
16 (Witness examines document.)

17 On May 8th, Mr. Holt was arrested for
18 distribution near a school and distribution using an
19 informant. On June 8th, Mr. Holt was arrested for
20 selling crack cocaine with an informant. I believe
21 there is also a school on that one. It was near a
22 school. One near a school was Warrant J513594. The
23 crack with the informant was J513593. The one in
24 May 18, J506155, that is near the school. And then
25 J506154 was distribution of crack cocaine base, first

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 offense, on May 18th. They were all -- the Georgetown
2 cases were using a Georgetown County organized crime
3 bureau and their informant.

4 Q Do you have the transcript in front of you from
5 the plea?

6 A I do.

7 Q Would you turn to Page 9. I want you to follow
8 along.

9 A One second, I'll find it. I'm on Page 9.

10 Q Beginning on Page 18, I'll read the beginning,
11 not all of it.

12 A Eighteen?

13 Q Page 9, Line 18, I apologize. The Solicitor
14 begins: Yes, Your Honor. On the night of
15 February 3rd, 2010 the officers of the Myrtle Beach
16 Police Department noticed the defendant make a
17 hand-to-hand transaction with what they believed --
18 what they believed to be a drug transaction. They
19 followed the person that had the transaction with.
20 Upon meeting that person, they arrested him for
21 possessing a quantity of drugs. That person said
22 Mr. Holt was the person who had sold him the drugs and
23 told them where he stayed, at the Crown Reef Motel.
24 They went and conducted the surveillance on the Crown
25 Reef Motel, and the following morning they saw Mr. Holt

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 and a codefendant, Ms. King, leave the Crown Reef Hotel
2 and get in a vehicle, go pick up another gentleman,
3 drive to Surfside where they went to Taco Bell.

4 Is that consistent with what your understanding
5 of the facts were prior to the plea, or is that
6 completely new information during the plea?

7 A No. We had that information, but that had
8 nothing to do with the prior buys. Mr. Holt was -- he
9 was a suspect in their eyes and, to me, it didn't
10 matter how he was a suspect, but he was a suspect.
11 We've gone over this. Ultimately, what they did is
12 they stopped his car in what I consider to be a lawful
13 traffic stop, which sometimes isn't the case, and they
14 asked him for his identification. So we've gone over
15 the discovery.

16 He was just -- best way to put it is that he was
17 a person of interest. He was a direct person of
18 interest to the police and they stopped him. They saw
19 him doing transactions. He was on different things. I
20 look at that one -- I look within the vacuum of the one
21 case. They stopped his car for a tag light out. He
22 had a warrant for his arrest, outstanding warrant, so
23 they arrested him. When they arrest him, the
24 codefendant has 103 grams of crack shoved down the
25 front of her pants saying it was his, he asked her to

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 put it there. That is our case. It is a bad set of
2 facts, and I'm sorry it went down that way, but I had
3 to live with what I had there.

4 Everything else -- it would be different if they
5 stopped him not for the tag light. Say they stopped
6 him -- in your question -- because of some other
7 person, maybe there is issues. But Truax puts him in
8 the report he stops him because a tag light is out,
9 goes up there, there is a warrant and finds a God awful
10 amount of cocaine in that car and arrests everybody
11 there. His arrest is constructive possession. We've
12 discussed what that is, that you can have something
13 right here and that is not mine, but it is close enough
14 that one could argue that this clip is constructively
15 mine. It was a bad set of facts.

16 I did my darndest to get below the 12. Hucks
17 never budged. They had a good case, and I think he
18 would have gotten a tremendous amount more time if we
19 went to trial.

20 Q As to that stop, do you know if they had a video
21 of the stop, or did you request one?

22 A I don't think I requested a video of the stop.

23 Q Applicant's Exhibit No. 2, I believe the tow
24 report. You said the fact that it does not list an
25 un-operable or not working tag light, that doesn't

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 concern you?

2 A Well, I haven't been doing this that long, 15, 16
3 years, but usually, you know, the cars aren't on when
4 they make their -- it would concern me if the report
5 said all lights are in operable condition. It just
6 says -- it is just a tow report, just done by -- just a
7 tow report saying the vehicle was dirty, miscellaneous
8 scratches and dents, and that is their only outdoor
9 remarks so the tow company doesn't get sued for messing
10 something up.

11 Inside it just said miscellaneous trash, pack of
12 open cigarettes, Amoral, miscellaneous clothing, large
13 purse containing miscellaneous papers, wallet
14 containing miscellaneous change, \$21 in cash,
15 miscellaneous jewelry. In the glove box there was
16 miscellaneous change keys, cologne, Nokia cell phone --

17 THE COURT: That is not responsive. The inside
18 is not relevant to her question.

19 Q (MS. GOLDBERG) Do you recall ever discussing the
20 actual stop with Mr. Holt and whether he believed his
21 tag light was working at the time?

22 A We probably did. In my argument or conversation
23 with him would be that -- let's say for your position
24 today, say that the tag light had been working. I
25 would say -- I say to my clients as an -- my clients a

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 lot of times will say they never gave consent to
2 search, and I say, Well, the police report says you did
3 and, therefore, you did. We have to deal with the
4 credibility of who would the jury believe, a uniform
5 officer carrying a gun and walkie-talkie, or believe my
6 client. That is just something that we live with doing
7 this form of business here. I have to live with him
8 stopping for the tag light out.

9 I did say earlier, and I would say to you again,
10 that Truax has been just a straight-up cop in my
11 dealings, and I don't say that about all cops, you
12 know. I don't. A lot of times cops lie, but I think
13 they had a good stop. I think if we went to trial the
14 stop would survive.

15 Q And I believe you said on direct the issue that
16 Mr. Holt found with the chemical analysis, that
17 wouldn't have concerned you at trial either?

18 A No, because I think when you look on the front of
19 the sheet she dates the report the 29th, signs her name
20 to it and then she dates it the 29th. She probably
21 went in front of a notary and swore that that was her
22 signature on the 8th or 5th of May, whatever. I think
23 that is the clerical doing.

24 What would concern me is the chain of custody on
25 those drugs, and I considered the chain strong. It was

STUART AXELROD, ESQ. - CROSS EXAMINATION

1 strong enough, I think, that it would survive a
2 collateral attack at trial.

3 Q Do you recall having any conversations with
4 Mr. Holt about what was going to be happening with his
5 codefendant's case?

6 A Truly, I don't remember. I don't remember. I
7 don't think he wanted her charged, and I would probably
8 agree with him. I don't remember what happened there,
9 to be honest. I know I wasn't able to budge off the 12
10 years, that is all I remember.

11 Q Do you remember ever attempting to make what
12 happened with the codefendant a part of your plea
13 negotiations?

14 A I don't remember. I just don't remember.

15 Q The drugs were found in her pants, correct?

16 A That is where they were ultimately located, yes.

17 Q So at that point, when discussing the case with
18 Mr. Holt, did you believe that he, at trial, could be
19 found guilty of possession of those drugs that were in
20 her pants?

21 A I think her -- if she had testified at trial she
22 would say they were his, and I believe he made a
23 statement. I don't remember now, but I believe that he
24 made a statement to the police that they were his and
25 he didn't want her charged, if I remember, or some type

1 STUART AXELROD, ESQ. - REDIRECT EXAMINATION
2 of statement made to the police at the interrogation
3 room.

4 MS. GOLDBERG: Beg the Court's indulgence.

5 THE COURT: Okay.

6 (A brief pause in the proceedings.)

7 MS. GOLDBERG: Nothing further.

8 THE COURT: Redirect?

9 REDIRECT-EXAMINATION

10 BY MR. THOMAS:

11 Q Who represented Mr. Holt in the Georgetown
12 charges?

13 A I have them.

14 Q You represented him?

15 A I have the discovery. I represented him. I took
16 all of the charges when he retained me.

17 Q If you had gone to trial, would you have
18 challenged the stop?

19 A Yes.

20 Q Would you have done the same thing for the chain
21 of evidence as far as the drugs go?

22 A As far as the Court would allow me on the
23 functionality of the evidence. It is kind of
24 diminished now. They pretty much have to show that
25 they have the drugs to SLED, we'll say, and they don't
26 have to show them back, but I would not stipulate to

KEVIN HOLT - REDIRECT EXAMINATION

1 MS. GOLDBERG: I think Mr. Holt would like to
2 testify, and I want to ask him one specific question
3 to clear something up.

4 THE COURT: Come on back up. You are still under
5 oath. Depending on the question, I'll allow a reply.
6 Mr. Thomas can object if he thinks it's not...

7 REDIRECT-EXAMINATION

8 BY MS. GOLDBERG:

9 Q Mr. Axelrod testified that part of the
10 circumstances of why he thought you would be convicted
11 at trial involved a confession that was made. Do you
12 want to clear up for the Court the circumstances that
13 led to that confession?

14 MR. THOMAS: I'll object. I asked him about his
15 confession.

16 THE COURT: Overruled.

17 Q (MS. GOLDBERG) Go ahead.

18 A Cops came to me and was like -- they said if you
19 make a confession, we'll let her go. That's the only
20 reason why I did it.

21 Q Mr. Holt, this was all prior to retaining Mr.
22 Axelrod, correct?

23 A Yes.

24 Q So he wouldn't have been a part of any of these
25 conversations?

KEVIN HOLT - REDIRECT EXAMINATION

1 A No.

2 THE COURT: Any questions, Mr. Thomas?

3 MR. THOMAS: Nothing from the State.

4 THE COURT: Step down. He understands that if
5 his relief is granted, he'll be facing 25 years on the
6 trafficking, minimum?

7 MS. GOLDBERG: Yes, Your Honor. I told him that.
8 The only thing I'm not clear on is -- I'm not entirely
9 clear if the solicitor's office would have the
10 authority to bring back the other charges that were
11 dismissed as well. The disposition --

12 THE COURT: Certainly, they would.

13 MS. GOLDBERG: The disposition sheets do not say
14 they were null processed in exchange for the plea.
15 They say null processed and nothing else.

16 THE COURT: So he would be facing in the
17 neighborhood of 50-something years.

18 MS. GOLDBERG: I believe it is possible, yes.

19 THE COURT: And how about in Georgetown, another
20 20 or so?

21 MR. THOMAS: Give or take.

22 THE COURT: All right. Any additional reply?

23 MS. GOLDBERG: No, Your Honor.

24 THE COURT: Anything you want to put on the
25 record before we recess this case?

KEVIN HOLT - REDIRECT EXAMINATION

1 MS. GOLDBERG: Yes, Your Honor. I just want to
2 point out, just to sum up Mr. Holt's case, he
3 testified that the reason he pled guilty is because he
4 believed only one person could be convicted of
5 possessing the drugs. He did not want his codefendant
6 convicted. She was convicted and received a prison
7 sentence. I didn't bring any documentation with me,
8 but it was less than 12 years, I'll say that.

9 THE COURT: What did she get?

10 MS. GOLDBERG: I think seven, but I can't say for
11 positive. Do you think it was seven? I think it was
12 seven. Mr. Holt testified that if he would have known
13 that she would have been taking responsibility for the
14 drugs and pleading guilty, he would not have pled
15 guilty. He would have wanted a trial.

16 He's furthered argued that he did not have full
17 information regarding the case prior to the plea, so
18 it was an uninformed decision and, therefore, he
19 didn't voluntarily make this decision to plea because
20 he didn't have all of the information. Finally, I
21 would still argue that the --

22 THE COURT: The incomplete information was the CI
23 about the cases dismissed?

24 MS. GOLDBERG: Two ways of looking at it. One
25 was that the reason he pled was because of what he

KEVIN HOLT - REDIRECT EXAMINATION

1 understood was happening to the codefendant, so that
2 was incorrect information about the circumstances of
3 his plea. Then, as far as the discovery goes, yes,
4 Your Honor, the CI is not mentioned in the incident
5 report. That was offered as an exhibit. It is
6 nowhere in the discovery. There may have been some
7 oral conversations that Mr. Axelrod had with
8 individuals, but Mr. Holt was not aware. He testified
9 he never heard a confidential informant was involved
10 in this particular case.

11 THE COURT: There wasn't in this particular case?
12 It was in the cases that led to the surveillance that
13 led to this case?

14 MS. GOLDBERG: I think based on the transcript
15 and what the Solicitor says, there was one in this
16 particular case. Mr. Holt said if he had known all of
17 this information prior, if he had known there was a
18 confidential informant, that possibly could have been
19 addressed.

20 The issue with the chemical analysis, the issue
21 with the stop, which he believes was an improper stop,
22 and if he had known the codefendant's charges were not
23 dismissed, he would have requested a trial rather than
24 pled guilty.

25 THE COURT: Mr. Thomas.

KEVIN HOLT - REDIRECT EXAMINATION

1 MR. THOMAS: Just as far as the codefendant issue
2 goes, Your Honor, you know, there was a break in the
3 trial, she was sentenced. At no point during the plea
4 in the record is there anything here about his
5 understanding that her charges would be dismissed.
6 Obviously, he knew she was getting sentenced. Nobody
7 objected after her sentence that their anticipation
8 was that she would not be. As far as the info about
9 the CI goes, I think Your Honor is correct, that the
10 CI was unrelated in this case, it was about the stop.

11 THE COURT: Anything else?

12 MS. GOLDBERG: No, Your Honor.

13 THE COURT: Mr. Holt, what I will do -- I have a
14 lot to review. I have detailed notes about what
15 everybody said, and I have these records. I will make
16 a decision. If I grant the relief that you want,
17 which I assume is a new trial, you will be back in
18 front of a judge or jury, or both, and all of the
19 charges would conceivably be reinstated, including the
20 trafficking of 100 grams, which is a minimum of 25
21 years; you understand that?

22 MR. HOLT: Yes.

23 THE COURT: All of the other charges I can't
24 recall off the top of the potential sentences would
25 be, but you would be facing a lot more time than 12

KEVIN HOLT - REDIRECT EXAMINATION

1 years. If I grant your request, the State can appeal.
2 If I issue an order that dismisses your application,
3 Ms. Goldberg can discuss with you your appeal rights
4 or move for reconsideration, or whatever you two think
5 is the appropriate thing. You will get a copy of that
6 order, and you can confer with her as to what your
7 decision will be.

8 I will note that, in my mind at least, and I will
9 review all of this, but if he had known of the
10 existence of a confidential informant, would that not
11 have made all the cases stronger, not something weaker
12 that he would want to step back and explore? In
13 addition to that, I do not have a clue, and I'm not
14 going to find out what the codefendant said in her
15 plea, maybe she said something at the plea, Yeah,
16 these were his, and if he goes to trial, I'll say they
17 were his. I don't know.

18 In any event, I'll look at everything. Thank
19 you.

20 (Whereupon, the proceedings concluded.)
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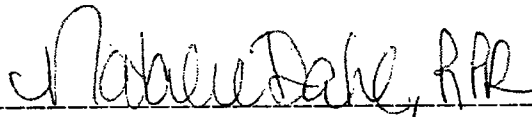
CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for 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 matter of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 17th day of March, 2014.

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

May 27, 2014



Natalie Dahl, RPR
Court Reporter

MYRTLE BEACH POLICE DEPARTMENT

Report Date/Time 02/04/2010 19:26

Incident Report

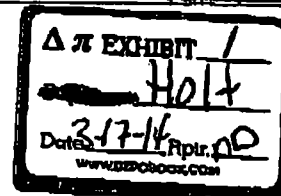
File # 01-10-010900

I	File #	Report Date/Time	Occurred From	Occurred To	Report Type
N	01-10-010900	02/04/2010 19:28	02/04/2010 19:26	02/04/2010 19:26	Original
C	Incident Type	Case Status	Case Status Date	Cleared	
I	COCAINE; TRAFFICKING	CLEARED BY ARREST	02/04/2010	02/04/2010 20:29	
D	Incident Location Information				
E	KINGS/FARROW - S OCEAN BL AND S KINGS HW MYRTLE BEACH, SC 29577 (HORRY County)				
N	Dispatched : 02/04/2010 19:28		Alcohol Related : NO		
T	En Route : 02/04/2010 19:28		Drug Related : YES		
	Arrived : 02/04/2010 19:26		Total Damaged Property Value : \$0.00		
	Census Tract : E		Total Stolen Property Value : \$0.00		
	Premise Type : HIGHWAY/ROAD/ALLEY/INCLUDES STREETS		Total Recovered Property Value : \$0.00		
	Patrol Area : LONG SOUTH				

O F F E N S E 1	State Classification	Attempted/Completed
	DRUG/NARCOTIC OFFENSES	COMPLETED
	Statute/Ordinance	Disposition Date
	HIGHWAY/ROAD/ALLEY/INCLUDES STR	02/04/2010
KEVIN HOLT (SUSPECT/ARRESTEE, Primary Role); ELIANA KING (SUSPECT/ARRESTEE, Primary Role) Hate Bias : NONE (No Bias) Weapon 1 (Assault Offenses) : N/A Forced Entry : NO Computer Theft : NO Criminal Activity 1 (Assault/Drug/Gang Offenses) : DISTRIBUTION/SELLING		Evidence Collected : YES Case Disposition : CLEARED BY ARREST Exceptional Clearance : NOT EXCEPTIONALLY CLEARED Arrest Case Number : 01-10-010900 # of People Arrested : 2

O F F E N S E 2	State Classification	Attempted/Completed
	DRUG/NARCOTIC OFFENSES	COMPLETED
	Statute/Ordinance	Disposition Date
	HIGHWAY/ROAD/ALLEY/INCLUDES STR	02/04/2010
KEVIN HOLT (SUSPECT/ARRESTEE, Primary Role); ELIANA KING (SUSPECT/ARRESTEE, Primary Role) Hate Bias : NONE (No Bias) Weapon 1 (Assault Offenses) : N/A Forced Entry : NO Computer Theft : NO Criminal Activity 1 (Assault/Drug/Gang Offenses) : DISTRIBUTION/SELLING		Evidence Collected : YES Case Disposition : CLEARED BY ARREST Exceptional Clearance : NOT EXCEPTIONALLY CLEARED Arrest Case Number : 01-10-010900 # of People Arrested : 2

O F F E N S E 3	State Classification	Attempted/Completed
	DRUG/NARCOTIC OFFENSES	COMPLETED
	Statute/Ordinance	Disposition Date
	HIGHWAY/ROAD/ALLEY/INCLUDES STR	02/04/2010
KEVIN HOLT (SUSPECT/ARRESTEE, Primary Role); ELIANA KING (SUSPECT/ARRESTEE, Primary Role) Hate Bias : NONE (No Bias) Weapon 1 (Assault Offenses) : N/A Forced Entry : NO Computer Theft : NO Criminal Activity 1 (Assault/Drug/Gang Offenses) : DISTRIBUTION/SELLING		Evidence Collected : YES Case Disposition : CLEARED BY ARREST Exceptional Clearance : NOT EXCEPTIONALLY CLEARED Arrest Case Number : 01-10-010900 # of People Arrested : 2



Reporting Officer	Department	Report Status:
CPL BRIAN CARL TRUEX (6921)	MYRTLE BEACH POLICE DEPT	Approved
Officer Name		Date/Time
Approving Officer	Department	Date / Time
CPL BRIAN CARL TRUEX (6921)	MYRTLE BEACH POLICE DEPT	02/05/2010 01:08

01-10-010901

90

MYRT : BEACH POLICE DEPARTM

Report Date/Time 02/04/2010 19:26

Incident Report

File # 01-10-010900

P E R S O N 1	Person Type VICTIM	Business/Person Name SOCIETY/PUBLIC			Daytime Phone
	Evening Phone	Person Address			Census Trac
	Other Phone	Employer Address			Census Trac
	Race UNKNOWN	Sex Unknown	SSN	DL Exp. Date	DL Number
	Birth Date	Birth Location			
	Ethnic Origin : UNKNOWN Adult/Juvenile : UNKNOWN Relationship : 851 KEVIN HOLT, 851 ELIANA KING Victim Type : SOCIETY/PUBLIC			Will File Charges : NO Can Identify Offender : YES Sobriety of Victim : SOBER Residency Type : JURISDICTION	

P E R S O N 2	Person Type SUSPECT/ARRESTEE	Business/Person Name KEVIN LASHON HOLT			Daytime Phone
	Evening Phone	Person Address			Census Trac OJ
	Other Phone	Employer Address			Census Trac
	Race	Sex	SSN	DL Exp. Date	DL Number
	Birth Date	Birth Location			
	Age : 028 DL State : SC Ethnic Origin : NON-HISPANIC Min. Height : 5'10"			Min. Weight : 185 lbs Adult/Juvenile : ADULT Arrest Number : 01-10-010900 Residency Type : STATE	

P E R S O N 3	Person Type SUSPECT/ARRESTEE	Business/Person Name ELIANA NATALIE KING			Daytime Phone
	Evening Phone	Person Address			Census Trac
	Other Phone	Employer Address			Census Trac
	Race WHITE	Sex Female	SSN	DL Exp. Date	DL Number
	Birth Date	Birth Location			
	Age : 020 Ethnic Origin : NON-HISPANIC Min. Height : 5'02" Min. Weight : 118 lbs			Adult/Juvenile : ADULT Arrest Number : 01-10-010900 Residency Type : OUT OF STATE	

P R O P E R T Y 1	Category SEIZED	Property Type DRUG-COCAINE	Make	Model	
	Serial #	Color	Description WHITE POWDER SUBSTANCE	Condition	
	UCR Type : DRUG/NARCOTIC Associations : 970 KEVIN HOLT Relationship to Offense(s) : 970 Offense 3 Quantity/Weight : APX 108 GR Value : \$, . 00 Rec. Officer : TRUEX, BRIAN C.		Amount : \$. . 00 Drug Activity : DISTRIBUTION/SELLING Drug Type : COCAINE (ALL FORMS EXCEPT "CRACK") Drug Quantity : 00.106.000 GRAM(S) Legal Drug Value : \$, , 0.00 Recovery Value : \$. . 00		

Reporting Officer CPL BRIAN CARL TRUEX (6921)	Department MYRTLE BEACH POLICE DEPT	Report Status: Approved
Officer Name		Date/Time
Approving Officer CPL BRIAN CARL TRUEX (6921)	Department MYRTLE BEACH POLICE DEPT	Date / Time 02/05/2010 01:06

01-10-010900

MYRTLE BEACH POLICE DEPARTMENT

Report Date/Time 02/04/2010 19:26

Incident Report

File # 01-10-010900

P R O P E R T Y 2	Category SEIZED	Property Type DRUG-HEROIN	Make	Model
	Serial #	Color	Description BROWN POWDER SUBSTANCE	Condition
	UCR Type : DRUG/NARCOTIC Associations : 970 KEVIN HOLT Relationship to Offense(s) : 970 Offense 1 Quantity/Weight : APX 2.3 G Value : \$, . 0.00 Rec. Officer : TRUEX, BRIAN C.		Amount : \$, .00 Drug Activity : DISTRIBUTION/SELLING Drug Type : HEROIN Drug Quantity : 00,002.300 GRAM(s) Legal Drug Value : \$, . 0.00 Recovery Value : \$, .00	
P R O P E R T Y 3	Category SEIZED	Property Type DRUG-CRACK	Make	Model
	Serial #	Color	Description OFF WHITE ROCK SUBSTANCE	Condition
	UCR Type : DRUG/NARCOTIC Associations : 970 KEVIN HOLT Relationship to Offense(s) : 970 Offense 2 Quantity/Weight : APX 4.6 G Value : \$, . 0.00 Rec. Officer : TRUEX, BRIAN C.		Amount : \$, .00 Drug Activity : DISTRIBUTION/SELLING Drug Type : CRACK COCAINE Drug Quantity : 00,004.600 GRAM(s) Legal Drug Value : \$, . 0.00 Recovery Value : \$, .00	

Reporting Officer CPL BRIAN CARL TRUEX (6921)	Department MYRTLE BEACH POLICE DEPT	Report Status: Approved
Officer Name		Date/Time
Approving Officer CPL BRIAN CARL TRUEX (6921)	Department MYRTLE BEACH POLICE DEPT	Date / Time 02/05/2010 01:05

01-10-010900

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MYRTLE BEACH POLICE DEPARTMENT

Report Date/Time 02/04/2010 19:26

Incident Report

File # 01-10-010900

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Topic ORIGINAL

ON 02-04-10, OFFICERS WITH THE MYRTLE BEACH POLICE DEPARTMENT WERE CONDUCTING SURVEILLANCE ON A SUSPECTED DRUG DEALER STAYING AT THE CROWN REEF MOTEL. OFFICERS OBSERVED THE SUSPECT VEHICLE 2008 BLACK CHEVROLET IMPALA (SC [REDACTED]) DRIVEN BY A BLACK MALE WITH DREADLOCKS PULLED BACK IN A PONYTAIL DRIVING, LEAVE THE MOTEL AND HEAD NORTH ON OCEAN BLVD. THE VEHICLE THEN PULLED IN THE GAZEBO INN STAYED FOR JUST A FEW MINUTES AND THEN PULLED BACK ONTO OCEAN BLVD AND HEADED SOUTH. THE VEHICLE THEN PULLED BACK INTO THE CROWN REEF AND PICKED UP A WHITE MALE AND A WHITE FEMALE. THE VEHICLE THEN PULLED BACK ONTO OCEAN BLVD AND HEADED SOUTH. THE VEHICLE THEN TURNED LEFT ONTO KINGS HWY AND HEADED SOUTH TOWARDS SURFSIDE. THE VEHICLE THEN TURNED RIGHT ONTO HWY 544 AND HEADED WEST. THE SUSPECT VEHICLE THEN TURNED RIGHT ONTO BEAVER RUN BLVD AND CAME OUT AT THE LIGHT ON HWY 17 BYPASS. THE VEHICLE CROSSED HWY 17 BYPASS AND PULLED INTO THE TACO BELL PARKING LOT.

THE VEHICLE THEN SAT THERE FOR LESS THEN FIVE MINUTES AND HE WAS MET BY A BURGUNDY CROWN VICTORIA THE BLACK MALE THEN GOT OUT AND LEANED IN THE PASSENGER SIDE OF THE CROWN VICTORIA FOR JUST A FEW SECONDS AND THE CROWN VICTORIA LEFT. A FEW MINUTES LATER A SMALL SILVER CAR PULLED UP ON DRIVERS SIDE OF THE BLACK CHEVY AND THE BLACK MALE GOT OUT AND GOT INTO THE PASSENGER SIDE OF THE SILVER CAR. AND THE SILVER CAR THEN DROVE OFF AND THE BLACK CHEVY FOLLOWED. VEHICLE WENT NORTH ON FRONTAGE RODE AND STOPPED AT HE STOP SIGN. THE BLACK MALE THEN GOT OUT OF THE SILVER CAR AND GOT BACK INTO THE DRIVER SIDE OF THE BLACK CHEVY. THE BLACK CHEVY THEN RETURNED TO THE TACO BELL. A FEW MINUTES LATER A GREY PONTIAC GRAND PRIX PULLED NEXT TO THE CHEVY MET WITH THE SUBJECTS FOR JUST A SECOND AND BOTH VEHICLES LEFT. OFFICERS THEN FOLLOWED THE VEHICLE BACK TOWARDS MYRTLE BEACH THE SAME WAY HE TRAVELED TO THE TACO BELL.

PFC. MANN CONDUCTED A TRAFFIC STOP ON THE BLACK CHEVY FOR NOT HAVING AN ILLUMINATED TAG LIGHT ON THE VEHICLE AT KINGS HWY JUST SOUTH OF OCEAN HWY. AN NCIC CHECK OF THE DRIVER (KEVIN HOLT) REVEALED THAT HE WAS WANTED OUT OF GEORGETOWN COUNTY FOR NUMEROUS OFFENSES. THE DRIVER WAS DETAINED PENDING A HIT CONFIRMATION FROM GEORGETOWN. THE FRONT PASSENGER (ELAINA KING) WAS REMOVED FROM THE VEHICLE AND INTERVIEWED BY CPL. TRUEX. AFTER HAVING BEEN READ MIRANDA BY CPL. TRUEX, MS. KING ADMITTED TO HAVING NARCOTICS IN HER PANTS. MS. KING THEN REMOVED THE NARCOTICS FROM HER PANTS AND GAVE THEM TO CPL. TRUEX. MS. KING STATED THAT WHEN THEY LEFT THE CROWN REEF HE GAVE HER A QUANTITY ON NARCOTICS TO PLACE IN HER PANTS. KING STATED THAT HOLT HAD HER PUT THE NARCOTICS IN HER PANTS UNTIL THEY GOT TO TACO BELL AND MET WITH THE FIRST VEHICLE. KING STATED SHE THEN REMOVED THE BAG, GAVE IT TO HOLT, AND HE REMOVED NARCOTICS FROM IT BEFORE MEETING WITH THE DRIVER OF THE MAROON CROWN VIC. KING STATED HE GAVE THE BAG BACK TO HER TO PUT IN HER PANTS AFTER THE TRANSACTION WAS COMPLETED. MS. KING FURTHER STATED THAT AFTER THEY LEFT THE TACO BELL THE SECOND TIME HE GAVE HER A LARGER QUANTITY OF NARCOTICS TO PLACE IN HER PANTS AND HOLD FOR HIM WHICH SHE IDENTIFIED AS THE THREE LARGE

Reporting Officer CPL BRIAN CARL TRUEX (6921)	Department MYRTLE BEACH POLICE DEPT	Report Status: Approved
Officer Name		Date/Time
Approving Officer CPL BRIAN CARL TRUEX (6921)	Department MYRTLE BEACH POLICE DEPT	Date / Time 02/05/2010 01:08

01-10-010900

MYRTLE BEACH POLICE DEPARTMENT

Incident Report

Report Date/Time 02/04/2010 19:26

File # 01-10-010900

BAGGIES OF POWDER COCAINE.

BASED ON THE FACT THAT THE MR. HOLTS AND MS. KINGS BEHAVIOR WAS CONSISTENT WITH STREET LEVEL DRUG SALES, KINGS ADMISSION OF POSSESSING THE NARCOTICS FOR HOLT BOTH WERE ARRESTED FOR BEING IN POSSESSION OF THE NARCOTICS.

THE NARCOTICS WERE WEIGHED AND TESTED AT THE MYRTLE BEACH POLICE DEPARTMENT BY CPL. TRUEX. THERE WERE 4 CLEAR PLASTIC BAGGIES CONTAINING A WHITE POWDER THAT TESTED POSITIVE FOR THE PRESENCE OF COCAINE. THE FOUR BAGGIES WEIGHED 28.9, 29.1, 29.2, 17.8 GRAMS TOTALING 106 GRAMS. THERE WERE ALSO SEVERAL SMALLER CLEAR PLASTIC BAGGIES CONTAINING AN OFFWHITE ROCK LIKE SUBSTANCE THAT TOALED 4.8 GRAMS. ANOTHER PLASTIC BAGGIE CONTAINED 9 DIFFERENT COLORED BALLOONS AND A SMALL PIECE OF TIN FOIL THAT CONTAINED A BROWN POWDER THAT TESTED POSITIVE FOR THE PRESENCE OF HEROIN (TOTAL WEIGHT WAS 2.3 GRAMS) ALL NARCOTICS WERE PLACED IN HORRY BEST PACKET H-011977 AND DROPPED IN THE DRUG DROP BOX IN THE MYRTLE BEACH JAIL BY CPL TRUEX.

WARRANTS WILL BE OBTAINED ON KEVIN HOLT AND ELAINA KING FOR TRAFFICKING COCAINE, PWID CRACK COCAINE AND PWID HEROIN.

Reporting Officer CPL BRIAN CARL TRUEX (6921)	Department MYRTLE BEACH POLICE DEPT	Report Status: Approved
Officer Name		Date/Time
Approving Officer CPL BRIAN CARL TRUEX (6921)	Department MYRTLE BEACH POLICE DEPT	Date / Time 02/05/2010 01:06

01-10-01090

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CITY OF MYRTLE BEACH

Towing Report

Complaint No. 01-10-010908 Officer(s) MANN / Irving
 Driver Incarcerated: YES NO Towed by: ADW Towed to: ADW
 Date: 2-4-10 Time: 1930 Towed from: Kings & Ocean NCIC check:
 Reason for tow: Driver Accosted
 Registered Owner: Kevin Holt Address: _____
 Vehicle Description: YR 10 Make Chery Model Impala Body Style 4dr Color(s) Black
 LIS SC LTY 10 LIN 10000 VIN 1G3A716E130971A74
 Odometer Reading: 170677 Over 100,000 miles: YES NO UNKNOWN

DAMAGE / REMARKS:

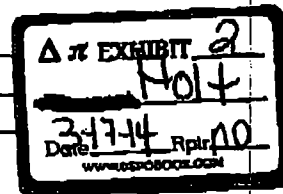
Vehicle dented, misc scratches & dents
* Keys w/ vehicle *

VEHICLE INVENTORY:

Passenger Area: misc trashy pack of open cigarettes, Armorall, misc clothing, large purse containing (misc papers, wallet containing misc change, 21 dollars in cash, misc jewelry)
 Glove Box and / or Console: misc change, misc keys, misc clogs, nokia cell phone, misc paper work
 Trunk: Pioneer Subwoofers, misc stereo equipment, misc electronic chords, misc mp3 equipment, basket containing misc clothes, jumper cables

ITEMS REMOVED FROM VEHICLE:

Property sheet no.: _____ Reason for Removal: _____

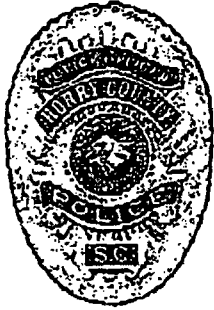


Time Wrecker called 2008 Time Wrecker Arrived 2015
 Officer's Signature: [Signature] Print Name R. Irving Date 2-4-10
 Wrecker Driver's Signature: [Signature] Print Name Hyman Nelson Date 2-4-10

VEHICLE TO BE HELD BY POLICE: YES NO

Officer requesting hold on vehicle: B. Trux Badge No. 244 Rank _____
 Reason for vehicle being held: Seizure for Narcotics
 Release Authorized by: _____ Date _____

VEHICLE RELEASED TO _____ BY _____ DATE _____
 (SIGNATURE) (SIGNATURE)
 WHITE: POLICE • PINK: WRECKER COMPANY • CANARY: OWNER / OPERATOR

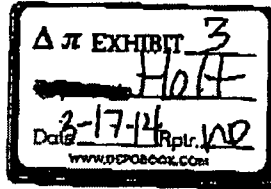


Horry County Police Department Regional Drug Analysis Laboratory

Johnny E. Morgan, Chief

10-
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B. Truex
Myrtle Beach PD
1101 Oak Street
Myrtle Beach
SC 29577



DRUG ANALYSIS DEPARTMENT

Date: 4/29/2010
Lab Number: L100170
Incident Date: 02/04/2010
Case/Control #: 01-10-010900/H011977

(S): Holt, Kevin

(S): King, Eliana

The items submitted for analysis were examined with your assurance that the submitted specimens have not nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE:

L100170

Item 1: Powdery tan rock substance in a piece of plastic inside a foil ball in impulse-sealed plastic "A" with items 2-5	
Results: Heroin found	0.0273 grams (0.42 grains) C-I
Item 2: Powdery tan rock substance in a piece of white plastic in a foil ball inside a bright pink balloon segment	
Results: Heroin found	0.0866 grams (1.33 grains) C-I
Item 3: Powdery tan rock substance in each of two pieces of plastic in foil balls inside red balloon segments	
Results: Heroin found	0.1127 grams (1.74 grains) C-I
Item 4: Powdery tan rock substance in each of three pieces of plastic in foil balls inside dark orange balloon segments	
Results: Heroin found	0.2007 grams (3.09 grains) C-I
Item 5: Powdery tan rock substance in each of three pieces of plastic in foil balls inside blue balloon segments	
Results: Heroin found	0.2041 grams (3.14 grains) C-I
Item 6: Off-white rock substance in plastic in impulse-sealed plastic "B" with items 7 and 8	
Results: Cocaine base found	0.85 grams (13.11 grains) C-II
Item 7: Off-white rock substance in plastic	
Results: Cocaine base found	0.56 grams (8.64 grains) C-II
Item 8: Off-white rock substance in a sandwich baggie	
Results: Cocaine base found	1.59 grams (24.53 grains) C-II

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ITEMS OF EVIDENCE:

L100176

Item 9: White powder substance in a sandwich baggie in impulse-sealed plastic "C" with Items 10-12

Results: Cocaine found 17.16 grams (+263.55 grains) C-II

Item 10: Powdery white rock substance in a sandwich baggie

Results: Cocaine found 28.30 grams (+438.05 grains) C-II

Item 11: Powdery white rock substance in a sandwich baggie

Results: Cocaine found 28.13 grams (+434.04 grains) C-II

Item 12: Powdery white rock substance in a sandwich baggie

Results: Cocaine found 27.80 grams (+428.95 grains) C-II

I am a Chemical Analyst employed by the Horry County Police Department, certified through the Spartanburg County Sheriff's Office Forensic Lab as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this state by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environment Control

I used the following legally reliable forensic laboratory procedures in this analysis:

- Chemical Test
- Microscopic Test
- Infrared Spectroscopy
- Ultraviolet Spectroscopy
- Gas Chromatography
- Mass Spectrometry
- Liquid Chromatography
- Published Literature
- Other

Place: Horry
 Sworn before me on this 27th day of Sept, 2014
Lisa D. S. Floyd
 Notary Public for South Carolina
 My commission expires: 1-1-2015

Signature: Lisa D. S. Floyd
Lisa D. S. Floyd
9/27/14
 Date

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Kevin L. Holt, #343450,)
Applicant,)

Case No. 2011-CP-26-8926

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

14 APR 15 PM 1:25
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 25, 2011. Respondent made a timely Return on or about November 23, 2011. The Court convened an evidentiary hearing into the matter on March 17, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Stuart M. Axelrod, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. In July 2010, the Horry County Grand Jury indicted Applicant for trafficking cocaine, 100-200 grams (2010-GS-26-2915). Stuart M. Axelrod,

Esquire ("plea counsel"), represented Applicant. On November 1, 2010, Applicant entered a negotiated plea of guilty to the lesser offense of trafficking cocaine, 28-100 grams. The Honorable Steven H. John sentenced Applicant to twelve (12) years incarceration. As part of the negotiations, the State dismissed indictments for possession with intent to distribute cocaine (2010-GS-26-2916) and possession with intent to distribute cocaine base (2010-GS-26-2917). Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "Ineffective Assistance of counsel - counsel encouraged client to plea based upon false information,"
 - a. "Counsel did not explain a 'negotiated plea' to client and informed client part of his plea bargain was that the co-defendant's charge would be dismissed."
2. "Ineffective Assistance of counsel - counsel did not properly advise client as to triable issues related to his charges."
 - a. "Counsel did not inform client properly in regards to the issues that may arise during a jury trial including but not limited to issues surrounding his statement the confidential informant jurisdictional issues, and whether the initial stop was proper."

Applicant, through counsel, filed an amendment to his application on December 31, 2012. In that amendment, Applicant added the following allegation:

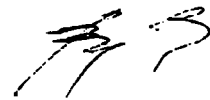
3. "Violation of SCRCrim Rule 5 and Brady by Solicitor's Office."
 - a. "The Solicitor's office stated detailed facts on the record during the plea which were not mentioned or accounted for in the Discovery provided. This includes but is not limited to information regarding a confidential informant. Accordingly, Applicant was not fully informed as to the evidence against him prior to his decision to plead guilty and his decision to plead was involuntarily made."

Applicant, through counsel, filed a second amendment to the application on May 6, 2013, setting

forth the following grounds for relief:

1. "Ineffective assistance of counsel - Trial counsel encouraged Applicant to plea guilty based on incorrect and incomplete information. Applicant was coerced into entering an involuntary plea."
 - a. "Trial counsel did not explain the effect of a "negotiated plea" to Applicant, and Applicant believed he could receive a lesser sentence during the plea. Trial counsel also incorrectly informed client that part of his plea bargain involved a promise of co-defendant's charges being dismissed. Further, trial counsel failed to withdraw Applicant's guilty plea when the Solicitor stated a factual basis for the plea that differed from the facts contained within the discovery provided."
2. "Ineffective assistance of counsel - Trial counsel failed to properly advise Applicant as to issues that could have been raised in trial, and therefore Applicant did not make an informed decision when he waived his right to trial."
 - a. "Trial counsel did not discuss with Applicant issues that may arise during a jury trial, including but not limited to: the requirement of the State to produce essential witnesses including the confidential informant and chemist and the ability to contest the credibility of witnesses such as law enforcement, the confidential informant and chemist."
3. "Violation of South Carolina Rules of Criminal Procedure Rule 5 and Brady by Solicitor's Office and/or insufficient assistance of counsel regarding failure to provide Applicant with all discoverable information prior to making a decision regarding whether to plead guilty or have a jury trial."
 - a. "The Solicitor's office stated detailed facts on the record during the plea which were not mentioned or accounted for in the Discovery provided to trial counsel. This includes but is not limited to information regarding a confidential informant. Accordingly, Applicant was not fully informed as to the evidence against him prior to his decision to plead guilty, and as a result his decision to plead was involuntarily made."

At the PCR hearing, Applicant proceeded on the allegations contained in the second amended application. Regarding the third ground for relief, Applicant did not pursue the allegation of a Rule 5/Brady violation, but rather argued counsel was ineffective or failing to stand down the plea after the solicitor's statements about a confidential informant.



III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Summary of Testimony

Applicant testified he retained plea counsel and met with him two weeks later to discuss taking a plea. He did not recall going over discovery with plea counsel. Applicant also did not recall discussing the legal concepts of constructive possession or probable cause. He further testified plea counsel did not explain the possibility of challenging at trial the traffic stop, the credibility of the police officers, or the chemical analysis of the drug evidence. Applicant testified he knew somebody had to be responsible for possessing the drugs, but believed his co-defendant would not go to jail. Applicant maintained he was under the impression his co-defendant's charges would be dismissed if he pled guilty. However, on cross-examination Applicant admitted he was present in the courtroom when the co-defendant pled guilty. Applicant also testified plea counsel promised him a seven (7) year sentence.

Applicant also testified the solicitor mentioned a confidential informant at the plea hearing, but that the incident report did not mention a confidential informant. However, on cross-examination Applicant admitted plea counsel corrected for the judge what Applicant's position was regarding the individual who implicated Applicant. Applicant reviewed Exhibit #2, a City of Myrtle Beach Towing Report, and testified the report does not indicate the vehicle had

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a burned-out tag light. He also testified Exhibit #3, a Horry County Police Department drug analysis report, was signed and notarized on different dates. Applicant stated he never discussed either of these documents with plea counsel.

Plea counsel testified he has sixteen (16) years of criminal law experience. He did not recall the specific number of meetings he had with Applicant, but felt it was sufficient to prepare for the plea. Plea counsel testified he reviewed with Applicant the discovery provided by the State. Plea counsel recalled the State had a strong case against Applicant because the search leading to the drugs appeared valid. He testified his experience with the officer involved led him to believe the traffic stop was legitimate based on the burned-out tag light. Plea counsel testified he reviewed the towing report prior to the plea, but placed no significance on its failure to mention the tag light. He also reviewed the drug report, and placed no significance on the discrepancy between the signature dates. He testified the State had a strong chain of custody relating to the drug evidence. Ultimately, plea counsel admitted a challenge to the stop or the drug evidence was unlikely to succeed.

Plea counsel testified he did not represent the co-defendant on any of her charges. However, he did explain on cross-examination that he discussed constructive possession with Applicant. Plea counsel also testified the only promise he made to Applicant regarding the plea was the negotiated twelve (12) year sentence. Plea counsel recalled Applicant's prior public defender received the twelve (12) year offer, and the State was unwilling to agree to a lower sentence. Plea counsel testified he attempted to get a lower offer, but he never promised Applicant a seven (7) year sentence.

Plea counsel further stated he was aware the police used a confidential informant to make

several other cases against Applicant. Plea counsel recalled that other cases were dismissed in exchange for Applicant's plea. However, he did not recall there being any allegation the confidential informant was involved in Applicant's trafficking plea. Rather, plea counsel recalled the trafficking charge was based on the independent traffic stop and search incident to arrest. Plea counsel asserted the trafficking charge stood on its own apart from the charges related to the confidential informant. Plea counsel also admitted he never forced Applicant to enter a plea and he would have been prepared for trial if Applicant had requested one.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

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

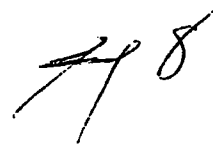
Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional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

The Court finds Applicant failed to meet his burden of proving plea counsel ineffective. The Court further finds plea counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Specifically, the Court finds Applicant's allegation plea counsel failed to explain the negotiated sentence to be without merit. On this issue, the Court finds plea counsel's testimony credible and Applicant's testimony not credible. The evidence establishes plea counsel told Applicant he hoped he could get a lower sentence on the lesser charge, but there is no credible evidence plea counsel guaranteed a seven (7) year sentence. Trial counsel explained to Applicant that the State only agreed to a twelve (12) year sentence. Furthermore, the transcript clearly indicates Judge John explained to Applicant the sentence he was facing as a result of the negotiation. (Trial Tr. 4:23-5:19). Therefore, he cannot now claim he expected to receive a seven (7) year sentence. Wolfe v. State,



326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible misconceptions about sentence length cured by colloquy at guilty plea hearing).

The Court also rejects Applicant's argument he pled because he thought only one person could be charged for the crime. The Court finds plea counsel's testimony on this issue to be credible, and Applicant's to be not credible. Trial counsel explained the concept of constructive possession to Applicant. See State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980) ("More than one person may possess the same personal property simultaneously." (citing State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976); State v. Wise, 272 S.C. 384, 252 S.E.2d 294 (1979); State v. Ellis, 263 S.C. 12, 207 S.E.2d 408 (1974); State v. Tabory, 260 S.C. 355, 196 S.E.2d 111 (1973))). Applicant has not presented credible evidence plea counsel advised him that only one person could be charged. He has also presented no credible evidence he would not have pled if he had known the co-defendant was also taking responsibility for the drugs. In fact, Applicant was in the courtroom while the co-defendant pled. (Trial Tr. 14:18-23). Applicant's failure to raise the issue of the co-defendant's plea to Judge John militates against a finding his plea was entered with the expectation the co-defendant's charges would be dismissed. See State v. Thrift, 312 S.C. 282, 296, 440 S.E.2d 341, 349 (1994) ([N]either the State nor the defendant will be able to enforce plea agreement terms which do not appear on the record before the trial judge who accepts the plea."); cf. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976))).



The Court also finds meritless Applicant's allegation trial counsel did not discuss issues that may arise during the jury trial. On this issue, the Court finds plea counsel's testimony credible and Applicant's not credible. Plea counsel discussed the evidence in the State's possession and all possible defenses to the charge. As to probable cause for the traffic stop, the evidence establishes the burned-out tag light formed probable cause to justify the stop and the outstanding warrant justified an arrest. State v. Jihad, 347 S.C. 12, 15, 553 S.E.2d 249, 251 (2001) (valid traffic stop for non-functioning brake light); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) ("In carrying out the stop, an officer 'may request a driver's license and vehicle registration, run a computer check, and issue a citation.'" (quoting United States v. Sullivan, 138 F.3d 126, 131 (4th Cir. 1998))). The Court agrees with plea counsel's assessment that the fact the towing report did not mention the burned-out tag light is of no significance. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Furthermore, Applicant introduced no evidence indicating the tag light was functional during the stop or that the wrecker company inspected the integrity of the vehicle lighting systems. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (applicant must produce allegedly favorable evidence at the PCR hearing).

The Court also agrees with plea counsel's assessment of the significance of the dates on the lab report. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. The fact the report was signed by the chemist on one date and notarized on a later date is in no way was improper. In many instances, people sign documents on a certain date and at a later date swear they signed the document



before a notary; the notary block merely reflect^Mthe date the signature was sworn before the notary. See 66 C.J.S. Notaries § 27 (“In certifying an acknowledgment, a notary must either have personal knowledge of the individual who makes it or be satisfied of the individual's identity by thorough precaution.”). Furthermore, Applicant has presented no evidence the preparation of the report was in any way improper. Bannister, 333 S.C. at 303, 509 S.E.2d at 809 (1998); see also Arthur v. Hollowell, 111 S.C. 444, 98 S.E. 202 (1919) (it is “presumed that notary did what he was required to do”). Furthermore, plea counsel discussed all of these possible issues with Applicant. Therefore, Applicant waived any potential defenses arising from the towing or lab report when he pled guilty. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)).

Finally, the Court finds Applicant's allegation regarding a confidential informant to be likewise without merit. The existence of a confidential informant is not relevant to Applicant's trafficking plea. Plea counsel testified the confidential informant was relevant only to Georgetown County charges that were dismissed in exchange for the trafficking plea. The Court finds credible plea counsel's testimony that he had no reason to believe a confidential informant had any relevant bearing on this case. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. Although a confidential informant may have provided information to cause police to place Applicant under surveillance, the valid traffic stop and outstanding warrant were independent grounds for the search that uncovered the drugs. Jihad, 347 S.C. at 15, 553 S.E.2d at 251. Therefore, plea counsel was not required to stand down when the solicitor referenced the confidential informant.

Furthermore, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (no prejudice where there is overwhelming evidence of guilt). Police conducted a valid traffic stop on Applicant's car for having a burned-out tag light. A computer check revealed Applicant had outstanding warrants, and he was placed under arrest. The co-defendant in the car admitted to possessing a large quantity of drugs, which she indicated belonged to Applicant. The amount of drugs was well over the threshold for a trafficking charge. Applicant also confessed to possessing the drugs. In light of this overwhelming evidence, the Court agrees with plea counsel's advice that a guilty plea was in Applicant's best interest. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it").

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require the Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.




The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


IT IS THEREFORE ORDERED THAT:

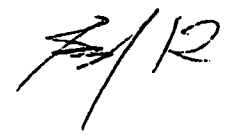
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent to complete the service of his sentence.

AND IT IS SO ORDERED this 9 day of April, 2014.



 THE HONORABLE GEORGE C. JAMES, JR.
 Presiding Judge

, South Carolina



STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
)
)
 KEVIN L. HOLT, #343450)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS


2011-CP-26-8926

AFFIDAVIT OF SERVICE BY MAIL

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 filed copy of the Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kristy Grafton Golden, Esquire
1720 Main St., Suite 301
Columbia, SC 29201

DATED this 24th day of April, 2014.


 Norma Bigbee, Legal Assistant
 For Respondent

110
STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

Kevin Leshon Holt

AKA: _____

Race: B Sex: M Age: 29

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Andrews, SC 29510

DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in cocaine, 28-100 g. 1st offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-26-2915

A/W#: M346507

Date of Offense: 2/4/2010

S.C. Code §: 44-53-0370(e)(2)(c)

CDR Code #: 0280

SENTENCE SHEET

in violation of § 44-53-0370(e)(2)(b)1 of the S.C. Code of Laws, bearing CDR Code # 2359
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense. Defendant Waives Presentation to Grand Jury. _____ (defendant's initials)

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

ATTEST: _____ 26948 _____ 12yrs.
Hucks, J. Scott 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 12 _____/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be paid in equal, consecutive weeks/monthly
pmts. of \$ 25.00 beginning 12/1/2022
\$ _____ paid to Public Defender Fund
Other: _____

Recipient:	
*Fine:	\$ _____
§ 14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 56-1-286 (DUI Breath Test)	\$25 \$ _____
§ 47.12 (Public Def/Prob)	\$500 \$ <u>25.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ <u>100.00</u>
§ 14-1-213 (Drug Court Surcharge) of 14/1/10	\$100 \$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
§ 90.7 (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ <u>6.90</u>
TOTAL	\$ <u>236.90</u>

Clerk of Court/ Deputy Clerk Nelanie Huggins-Ward
Court Reporter: Brenda Babba
SCCA/217 (11/2009)

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.
Presiding Judge _____
Judge Code: _____
Sentence Date: 11/11/10

111

WITNESSES

B Truex Myrtle Beach Police Department

DOCKET NO. 2010-GS-26-2915

The State of South Carolina

County of Horry

J. Scott Hucks

10H00619

COURT OF GENERAL SESSIONS

July, 2010 TERM

ARREST WARRANT NUMBER

M346507

CDR: 0280 44-53-0370(e)(2)(c)

DOA: 2/6/2010

THE STATE

vs.

Kevin Leshon Holt
B/ M

Andrews, SC 29510

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: Chrisco, William Edward

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUL 29 2010

VERDICT

Indictment for

TRAFFICKING COCAINE

ORIGINAL

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on July 29, 2010, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING COCAINE
(100 GRAMS OR MORE, BUT LESS THAN 200 GRAMS)

(CDR: 0280 44-53-370(e)(2)(c))

That Kevin Leshon Holt did in Horry County on or about February 4, 2010, knowingly, sell, deliver, purchase or bring in to this State, or aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of 100 grams or more, but less than 200 grams, the same being a controlled substance, a within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370(e)(2)(c), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

ARREST WARRANT

M-346507

STATE OF SOUTH CAROLINA

County/ Municipality of

Myrtle Beach

THE STATE 01-10-010900

against

Kevin Leshon Holt

Address: Andrews, SC 29510-

Sex: M Race: B Height: 5 10 Weight: 185

DL State: SC DL #:

DOB: Agency ORI #: SC0260600

Prosecuting Agency: Myrtle Beach Police Department

Prosecuting Officer: B Truex - 6921

Offense: Drugs / Trafficking in cocaine, 100 g or more, but less than 200 g

Offense Code: 0280

Code/Ordinance Sec: 44-53-0370(e)(2)

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Kevin Holt on 2/5/10

Signature of Constable/Enforcement Officer

RETURN WARRANT TO: General Sessions PO Box 677 1301 2nd Avenue Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Myrtle Beach

Personally appeared before me the affiant B Truex who

being duly sworn deposes and says that defendant Kevin Leshon Holt

did within this county and state on or about 02/04/2010 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Myrtle Beach)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in cocaine, 100 g or more, but less than 200 g

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Myrtle Beach

Affiant's Address 1101 Oak Street Myrtle Beach, SC 29577- Affiant's Telephone (843)918-1382

ARREST WARRANT

25,000 SURETY

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

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

on or about 2/4/2010 defendant Kevin Leshon Holt

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

County/ Municipality of Myrtle Beach) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 100 g or more, but less than 200 g

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

on 02/05/2010

Signature of Issuing Judge Amy Sutter (L.S.) Judge's Address 1101 Oak Street Myrtle Beach, SC 29577-

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2005 SCCA 318

FILED Horry County 2010 FEB 17 AM 8:09