

THE SUPREME COURT OF SOUTH CAROLINA

R. James Miller, Jr.,
Appellant

V.

State of South Carolina,
Respondent.

Appellate case No. 2014-002102

RECEIVED

OCT 31 2014

S.C. SUPREME COURT

CERTIFICATE OF SERVICE

I certify that I served a copy of the Appellant's Response to Dismissal of PCR on the Attorneys for the Respondent by placing a copy in the U.S. Mail, postage pre-paid, on October 28, 2014 addressed to:

J. Anthony Mabry
Asst. Attorney General
P.O. Box 11549
Columbia, SC 29211

Robert James Miller Jr.
Robert James Miller, Jr.

THE SUPREME COURT OF SOUTH CAROLINA

RECEIVED

R. James Miller, Jr.

OCT 31 2014

Petitioner

Appellate case No. 2011-000102

S.C. SUPREME COURT

v.

State of South Carolina

Respondent.

Appellant's Response to
Order of Dismissal
(State PCR)

After waiting an unreasonable two years, Petitioner was granted an evidentiary hearing on his Application for Post-Conviction Relief. The PCR Court denied me relief and I have filed an appeal.

The PCR Court should have used this opportunity to correct the State's errors and multitude of Constitutional violations. However, the State neglected to do so and erred by not finding that violations of my rights had occurred. The State also erred by not considering any of the evidence I had submitted to the court and denied me a full and fair opportunity to raise my Fourth Amendment claims.

The PCR Court was objectively unreasonable in not finding Constitutional errors. The Court's analysis and reasoning was flawed, as well as its conclusion, which is contrary to established Supreme Court precedent.

In addition :

1) "Counsel testified he took Applicant's case after Applicant and his prior appointed attorney had a falling out" (page 4).

- This is not true. The Public Defender was unable to represent me because of a possible conflict of interest. He was, at that time, also representing the victims family. They were charged with Financial Transaction Card Fraud also.

2) "Counsel testified that he obtained discovery and went over it with Applicant" (page 4).

- Counsel DID NOT request discovery (See attached) and failed to provide any when I requested it.

3) "Counsel testified that Applicant claimed he only took around \$20,000. and that he was locked up before his wife stole the rest of the funds" (page 4).

- This Statement is not correct. I had no way of knowing how much money had been stolen. I told the public defender that I had committed the crime and my wife had nothing to do with it only to keep her from going to Jail as our son was only two months old. Later, it was determined that I was incarcerated at the time of the crime, then the indictments were illegally altered and the dates of the offenses were changed. (See attached "Rap Sheets", "Warrants" and "Indictments")

4) Counsel testified the evidence was overwhelming due to recordings of telephone calls made by the Applicant to the trading companies (page 4).

- First off, there was only one single phone call to E*Trade (See ^{plea} transcript pg 21 lines 21-25 and pg 22 lines 1-6). Secondly, I WAS NOT convicted for anything related to E*Trade. The charge was dismissed. Thirdly, the state acknowledged that, even if the voice did match mine, South Carolina DID NOT have any Jurisdiction over an alleged offense in New York.

Most importantly, there was absolutely no evidence whatsoever that I committed the crime because I didn't.

5) Counsel testified he did not have concerns about Applicant's mental health (page 5).

6) Counsel testified he had no concerns about the indictments or whether the court had Jurisdiction to hear Applicant's plea (page 5).

7) Counsel testified the Solicitor withdrew the seven year plea offer prior to Applicant's decision to plead guilty (page 5).

This is NOT true. The Solicitor withdrew the plea offer AFTER he instructed the bondsman to pick me up and

put me in Jail, two days AFTER the public defender called him (in my presence) and indicated that I would plead guilty the following week.

Obviously, I would not have traveled the 550 miles to South Carolina if I had not planned on going to Court.

8) Counsel testified he never told Applicant he would only get four years (page 5).

- Yes, he most certainly did say that if I pled guilty I would get anywhere from probation to NOT more than four years. Remember, the seven year plea was for four counts, the solicitor dismissed one (because of Jurisdiction), I was asked to plead to 3 charges. Obviously, less charges amounts to less time. And that is exactly what he said.

9) Counsel testified that once the Solicitor dismissed all of the charges except for what Applicant admitted to doing, there was no need to hire a forensic accountant (page 5).

- The problem with this Statement is that the charges were not dismissed until April 3, 2012. The plea offer to dismiss the charges was made two weeks prior to that. I was arrested on November 3, 2010 and the AGREEMENT to hire a forensic accountant was made in December 2010. (See also page 5, "Counsel testified that he did

receive the funds to hire an accountant but ultimately deemed it unnecessary.") Therefore, counsel had more than 15 months to hire an accountant but chose not to and deprived me of my Constitutional Right to an expert witness. Counsel's actions deprived me of a fundamentally fair trial.

As a result of Counsel's errors, I was Ordered to pay \$30,000.00 restitution, a \$6,000.00 Collection fee, and \$50.00 monthly probation fee for 36 months (or Seven 10 years in prison) for an offense in which I was NEVER arrested, indicted, or convicted !!!

The United States Supreme Court has stated many times that restitution MUST be tied to the offense of conviction. See Hughey v. United States. My restitution is illegal and Contrary to clearly established federal law. Hughey v. United States, 495 U.S. 411, 418 (1990)

Also, (and the reason for my Civil lawsuit (tort) against the Solicitor and Sheriff's office) my illegally Seized Vehicle, \$9882.00 cash and a brokerage account containing \$66,312.93 was supposedly given to the so-called victim. No forfeiture hearings were ever held. According to the plea transcript, pages 22 and 327, the victim was reimbursed his entire loss with the exception of the Stock sale in New York that South Carolina had no Jurisdiction over and I was never arrested or convicted.

My cash and property was unlawfully given to this person, the bank reimbursed him, and I still owe him?

Ineffective Assistance of Counsel

- 10) The PCR Court erred in not finding Counsel's performance deficient.
- 11) The Court failed to consider the evidence Applicant had submitted, including: Applicants Declaration, Supplement to pending claims, Petition for Writ of Error Coram Nobis, Application to Certify Question of Law and Etc.
- 12) (page 7) "This court finds that the evidence against Applicant was Overwhelming..." Once again, there was absolutely NO EVIDENCE whatsoever. None. Not even a Statement. I do not recall anyone ever saying there was any evidence.
- 13) "This court further finds there was no reason for Counsel to. Challenge the legality of the indictments in this case." (page 7) The Honorable Judge Young acknowledged at the PCR hearing that the dates on the indictments had been altered. Indictments are defective, insufficient and illegal. Even the type of offense has been altered (See attached information). See also South Carolina Constitution Art. I, §11 2. Where the defendant was tried and convicted upon an indictment which was a nullity, it follows that he was convicted in violation of this section. State v. Funderburk, (S.C. 1972) 259 S.C. 256, 191 S.E. 2d 520.
Also, Conviction on amended indictment substituting different offense is invalid. State v. Sowell, (S.C. 1910) 85 S.C. 278, 67 S.E. 316. And
S.C. Code §17-13-141 & §17-19-20 (3).

Subject Matter Jurisdiction

14) "This court can find no credible evidence to support a finding the plea court lacked any type of Jurisdiction to accept Applicant's plea." Again, the Court has erred and clearly failed to consider the evidence.

- Subject matter Jurisdiction may be raised at any time (Brown v. State, 343 S.C. 342, 540 S.E. 2d 846 (2001)), and thus, the Supreme Court was able to review defendant's claim that trial court lacked subject matter Jurisdiction on ground that indictment was insufficient, even though he failed to raise the issue until his petition for Certiorari.

- Lack of Subject matter Jurisdiction, on basis that indictment failed to contain necessary elements of charged offense, was a Jurisdictional defect not covered by the Statute which required that objections be made...

Hooks v. State, (S.C. 2003) 353 S.C. 48, 577 S.E. 2d 211

- The Court in which I was convicted did not have the power to convict me because it did not have Jurisdiction. See Butler v. King, 781 F. 2d 486, 490 (5th Cir. 1986).

- The General Sessions Court did not have Jurisdiction and violated the Due Process Clause of the 5th and 14th Amendments.

See Sunal v. Large, 332 U.S. 174, 178-79, 67 S. Ct. 1588, 1591; Lowery v. Estelle, 696 F. 2d 333, 336-38.

Involuntary Guilty Plea

15) "Finally, this Court finds no reason to believe Applicant was led to believe the State would refrain from...

making a Sentencing recommendation." (page 9) How could the PCR Court possibly overlook this obvious fact? Even the Sentencing Sheets indicate that the plea is "without negotiations or recommendation" and it is signed by the Solicitor, myself, and the public defender. The Solicitor broke the agreement, the public defender failed to object (because he was ineffective) and the PCR Court erred by not finding that a violation of my Constitutional Rights had occurred.

See: Fontaine v. United States, 411 U.S. 213-15, 93 S. Ct. 1461-63; Machibroda v. United States, 368 U.S. 487, 494, 82 S. Ct. 510, 514 (1962) holding that petitioner was entitled to a hearing on the issue of...unkept promises...

Santobello v. New York, 404 U.S. 257, 262, 92 S. Ct. 495, 499 (1971) holding that when pleas rest on an implied promise or an agreement by a prosecutor that he will make no sentencing recommendations, such promises must be fulfilled.

Also, Defendant was entitled to postconviction relief (PCR) based on ineffective assistance of counsel during his guilty plea; defendant's attorney's failure to object when Solicitor recommended maximum sentence in violation of negotiated plea agreement fell below professional norms, and fact that defendant was unsure whether to plead guilty, coupled with fact that he was under impression that Solicitor would not make a sentencing request, demonstrated that he would not

have pled guilty but for attorney's ineffective assistance.
Thompson v. State, (S.C. 2000) 340 S.C. 112, 531 S.E. 2d 294.

- A defendant's counsel was ineffective during the guilty plea proceeding where the defendant initially insisted on proceeding to trial, the defendant only agreed to plead guilty when he believed the Solicitor would neither oppose nor recommend probation, and (when the Solicitor disregarded the plea agreement) the defendant's attorney failed to draw the Judge's attention to the bargain and then failed to move to withdraw the defendant's guilty plea.

Jordan v. State, (S.C. 1988) 297 S.C. 52, 374 S.E. 2d 683.

All other allegations

16 X) The Court has failed to consider some claims such as illegal Search and Seizure (defective search warrant) and Conviction on defective/altere^d indictments (in which the type of offense and date of offense has been changed). The PCR court did not review or consider the evidence submitted.

Applicant does not waive or abandon any claims just because the court failed to consider them.

17 X) Applicant believes that the PCR court unreasonably applied Strickland (Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L. Ed. 2d 674) when it failed to consider the cumulative effect of Counsel's errors. Please See :

• Mackey v. Russell, No. 02-4237, 148 Fed. Appx. 355, 369 (6th Cir. August 9, 2005) (unpublished)

In addition to "actual ineffectiveness", the PCR court should have found "constructive ineffectiveness" because my public defender failed "to subject the prosecution's case to meaningful adversarial testing". see Cronic Standard - United States v. Cronic, 466 U.S. 648, 658, 104 S.Ct. 2039, 80 L.Ed.2d 657, 667-68 (1984) (recognizing a right where performance of Counsel deprived defendant of a fair trial). Counsel put up no opposition or defense whatsoever.

See Edens v. Hannigan, 87 F.3d 1109, 1116 (10th Cir. 1996) holding actual conflict of interest existed when counsel made no effort to present a defense for client because it would have harmed co-defendant.

18 X) The Court was objectively unreasonable in not finding that Constitutional error's had occurred. The court's decision is contrary to clearly established Federal Law. Applicant's entire plea hearing was full of errors that worked to my actual and substantial disadvantage, infecting the entire hearing with error of Constitutional dimensions.

See Wiggins v. Smith, 539 U.S. 510, 528, 123 S.Ct. 2527, 2538, 156 L.Ed.2d 471, 489 (2003) finding that a "clear factual error" in a State Court's analysis "highlight[ed]

the unreasonableness" of the court's decision. See also Rompilla v. Beard, 545 U.S. 374, 389, 125 S.Ct. 2456, 2467, 162 L.Ed.2d. 360, 376 (2005) finding that the State Court's "fail[ure] to answer the considerations [the Supreme Court] ha[s] set out" amounted to an unreasonable decision on a claim of ineffective assistance of Counsel.

19 ✕) The PCR Court's decision would have been different if the Court had properly considered all of the relevant facts and had they not ignored the evidence.

See Mask v. McGinnis, 233 F.3d. 132, 140 (2nd Cir. 2000) (refusing to give the State Court's "factual findings" a presumption of correctness because they were not factual findings but only conclusions).

See also Taylor v. Maddox, 336 F.3d. 992, 1000-01 (9th Cir. 2004) (finding that a state court's determination of facts is unreasonable if no finding was made and the court "should have made a finding of fact but neglected to do so").

20 ✕) The State erred when it denied me a full and fair opportunity to raise my Fourth Amendment claims. The State court never considered my claim.

See Capeilan v. Riley, 975 F.2d 67, 70-71 (2nd Cir. 1992)

The State has provided no corrective procedures at all to redress the Fourth Amendment violations.

21 ~~19~~) The PCR Court also erred by not permitting me to raise all of my Constitutional Violations at the PCR hearing (See page 2 of the Order of Dismissal).
According to Williams v. OZmint, (S.C. 2008) 380 S.C. 473, 671 S.E.2d 600, In a proceeding for postconviction relief, a defendant collaterally attacks his conviction and MAY RAISE ANY CLAIMS OF CONSTITUTIONAL VIOLATIONS relating to his conviction.

Again, the State denied me my right to a full and fair opportunity to be heard and present my claims.

22 ~~20~~) The PCR Court proved itself to be inadequate, unfair, and ineffective by failing to find that Counsel's performance was deficient and his representation (or lack of) fell below professional standards.

Counsel was clearly Constitutionally defective because he:

I. Did not raise issue of Jurisdictional defects.

See United States Constitution, Amendment VI;
Butler v. King, 781 F.2d 486, 490 (5th Cir. 1986);
Hooks v. State, (S.C. 2003) 353 S.C. 48, 577 S.E.2d 211

II. Did not challenge the defective Search warrant.

See United States Constitution, Amendment IV;
Woods v. United States, 279 F 706 (1922);
State v. Hill, 245 SC 76, 138 S.E.2d 829 (1964)

III. Failed to investigate, gather evidence, or interview witnesses.

See Brown v. Myers, 137 F.3d 1154, 1156-58 (9th Cir. 1998); Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997); Wiggins v. Smith, 539 U.S. 510, 535-38, 123 S.Ct. 2527, 2542-44 (2003); People v. LaBree, 34 N.Y.2d 257, 259-61, 313 N.E.2d 730, 731-32, 357 N.Y.S.2d 412, 413-15 (1974).

IV. Did not hire forensic accountant (expert witness) as agreed.

See Pavel v. Hollins, 261 F.3d 210, 216-26, 223, 228 (2nd Cir. 2001); United States Constitution, Fourteenth Amendment; Starr v. Lockhart, 23 F.3d 1280, 1287 (8th Cir. 1994).

V. Did not honor my request (Right's) for a restitution hearing.

See Amendment VII to the United States Constitution and State v. Gullledge, (S.C. 1997) 485 S.E.2d 923; Bowie v. City of Columbia, (U.S.S.C. 1964) 84 S.Ct. 1697, 378 U.S. 347. See also S.C. Code §16-3-1515(B) and §17-25-322.

VI. Did not object when plea agreement was broken. Failed to

enforce plea agreement and refused to withdraw guilty plea.

See Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 499 (1971); Custodio v. State, (S.C. 2007) 373 S.C. 4, 644 S.E.2d 36; Thompson v. State, (S.C. 2000) 340 S.C. 112, 531 S.E.2d 294; Jordan v. State, (S.C. 1988) 297 S.C. 52, 374 S.E.2d 683; Johnson v. Beto, 466 F.2d 478, 479-80 (5th Cir. 1972); Davis v. Zant, 36 F.3d 1538 (11th Cir. 1994);

Fontaine v. United States, 411 U.S. 213-15, 93 S.Ct. 1461-63;
Machibroda v. United States, 368 U.S. 487, 494, 82 S.Ct. 510,
514 (1962).

VII. Did not object when the Solicitor inappropriately commented on my Post-arrest Silence.

See United States Constitution, Fifth Amendment and Gravley v. Mills, 87 F.3d 779 (6th Cir. 1996) (holding that a prosecutor violated due process by repeatedly making references to petitioners post-arrest silence; also finding that defendant had ineffective assistance of counsel because counsel had not objected...). Alston v. Garrison, 720 F.2d 812, 815-16 (4th Cir. 1983); State v. Robinson, 238 SC 140, 119 S.E.2d 671 (1961); Franklin v. Duncan, 70 F.3d 75.

VIII. Did not request discovery, lied about it and failed to raise a claim (or objection) when prosecution withheld exculpatory evidence. See Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97 (1963); United States v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 3381-82 (1985); Kyles v. Whitley, 514 U.S. 419, 421-22, 435, 115 S.Ct. 1555, 1567 (1995); Once Brady disclosure rule violation is established, REVERSAL IS REQUIRED. State v. Kennerly, (S.C. App. 1998) 331 S.C. 442, 503 S.E.2d 214; Walker v. Lockhart, 763 F.2d 942 (8th Cir. 1985) 478 U.S. 1020 (1986) (prosecutorial suppression of exculpatory evidence); United States v. Agurs, 427 U.S. 97, 103-08, 96 S.Ct. 2392, 2397-99 (1976).

IX. Failed to raise a claim of insufficient evidence. See United States v. Desena, 260 F.3d 150, 154-56 (2nd Cir. 2001); Juan H. v. Allen, 408 F.3d 1262, 1276 (9th Cir. 2005); and Jackson v. Virginia, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 2789 (1979). Also see Patterson v. New York, 432 U.S. 197, 215, 97 S.Ct. 2319, 2329 (1977).

X. Failed to investigate defendant's mental condition as possible mitigating factor at sentencing, Hendricks v. Calderon, 64 F.3d 1340 (9th Cir. 1995); See also Starr v. Lockhart, 23 F.3d 1280, 1287 (8th Cir. 1994) holding that the denial of petitioner's request for appointment of a mental health expert to develop evidence of diminished capacity and mitigating circumstances violated his due process rights; Torres v. Prunty, 223 F.3d 1103.

23) ~~X~~ Petitioner had a Constitutional right to effective counsel (Sixth and Fourteenth Amendments of the U.S. Constitution). This right is clearly established. Adequate counsel was not provided and I was deprived of a fundamentally fair trial with a "reliable result."

Petitioner was denied a fair trial by the gross incompetence of his attorney and there is a reasonable probability that, but for counsel's errors, he would not have pled guilty, would have insisted on going to trial and the outcome would have been different. Very different.

24) ~~24~~) The State court was Unreasonable in not finding a violation of my rights. The state court's decision "resulted in a decision that was contrary to, and involved an unreasonable application of, clearly established Federal Law."

In rejecting my claims, the state court's decision was contrary to established Supreme Court precedent because it confronted facts that are materially indistinguishable from numerous other Supreme Court decisions but arrived at a different result. See Williams v. Taylor, 529 U.S. 362, 406, 120 S.Ct. 1495, 1519-20 (2000), Randass v. Angelone, 530 U.S. 156, 165-66, 120 S.Ct. 2113, 2119-20 (2000), Lockyer v. Andrade, 538 U.S. 63, 73, 123 S.Ct. 1166, 1173 (2003).

25) ~~25~~) The State court also applied federal law in an objectively unreasonable manner. The state court's analysis and reasoning was flawed, as well as its conclusion. The Court's point of view is very different from how most people would see the situation and it would be difficult for a reasonable person to understand how the State Court came to its decision. See:

Jermyn v. Horn, 266 F.3d 257, 312 (3rd Cir. 2001) (finding that defendant's counsel had been ineffective for failing to conduct adequate investigation and the State court's decision to the contrary was objectively unreasonable); See also Rompilla v. Beard, 545 U.S. 374, 389, 125 S.Ct. 2456, 2467 (2005); Washington v. Hofbauer, 228 F.3d 689, 707 (6th Cir. 2000).

26) ~~24~~) The State Court also ignored legally relevant facts that it needed to consider in order to reach the correct result. The court's decision would have been different if the court had properly considered and applied all of the relevant facts. Additionally, the PCR court's determinations of fact were unreasonable and the fact-finding procedure the court used was inadequate because they made conclusions without looking at the evidence I presented. See Torres v. Prunty, 223 F.3d 1103, 1109 (9th Cir. 2000); Mask v. McGinnis, 233 F.3d 132, 140 (2nd Cir. 2000); Caliendo v. Warden of Cal. Men's Colony, 365 F.3d 691, 698 (9th Cir. 2004). The PCR Court's determination of facts was unreasonable and not at all supported by the evidentiary record. See Hooks v. Ward, 184 F.3d 1206, 1231 (10th Cir. 1999).

27) ~~25~~) Clearly, I was denied my 6th Amendment right to assistance of counsel. Obviously, the inadequate representation that I received prejudiced the outcome of my case and the PCR Court erred by not finding (multiple) violations of my rights. See Coleman v. Thompson, 501 U.S. 722, 754, 111 S.Ct. 2546, 2567 (1991) ("[I]t is not the gravity of the attorney's error that matters, but that it constitutes a violation of petitioner's right to counsel."); Pavel v. Hollins, 261 F.3d 210, 216-26, 223, 228, (2d Cir. 2001) (finding ineffective assistance where trial counsel did not prepare a defense, failed to call two important fact witnesses, and did not call a medical expert); Brown v. Myers, 137 F.3d 1154,

1156-58 (9th Cir. 1998) (finding ineffective assistance when Counsel failed to investigate and present testimony supporting petitioner's alibi); Tosh v. Lockhart, 879 F.2d 412, 414-15 (8th Cir. 1989) (finding defense Counsel's failure to procure alibi witnesses was ineffective assistance of Counsel).

Conclusion

Based on the foregoing, Petitioner has established (by clear and convincing evidence) that his entire plea and PCR hearing was full of Constitutional violations and deprivations that require this Court to grant relief.

Petitioner is able to demonstrate a "Sufficient probability that [the court's] failure to review his federal claim will result in a fundamental miscarriage of Justice."

Reaffirmed after the passage of AEDPA in Edwards v. Carpenter, 529 U.S. 446, 451, 120 S.Ct. 1587, 1591 (2000).

Also, see Neder v. United States, 527 U.S. 1, 7, 119 S.Ct. 1827, 1833 (1999) stating that there is a "limited class of fundamental constitutional errors that... are so intrinsically harmful as to require automatic reversal..."
My case was full of such errors.

Respectfully Submitted,
Robert James Miller Jr.

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Robert J. Miller, Jr., #316047

Case No. 2012-CP-20-0352

2012 SEP 10 PM 2 10
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM
Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

EXcessive delay in
receiving a ruling

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 30, 2012. Respondent made its return on October 31, 2013. An evidentiary hearing into the matter was convened on July 28, 2014, at the Lancaster County Courthouse. Applicant was present at the hearing and was represented by W. Michael Hemlepp, Jr., Esquire.

Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

See

Calhoun v. Farley, 913 F. Supp. 1218, 1221 (1995)
Montgomery v. Meloy, 90 F.3d 1200, 1205-06 (1996)
Lane v. Richards, 957 F.2d 363, 365 (1992)

PROCEDURAL HISTORY

State remedies ineffective

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Fairfield County Clerk of Court's orders of commitment. The Applicant was indicted at the February 2011 term of the Fairfield County Grand Jury for three counts of financial identity fraud (2011-GS-20-035, 036, 037). Mike Lifsey, Esquire represented the Applicant.

On April 3, 2012, the Applicant pled guilty before the Honorable Casey Manning.¹ Applicant was sentenced to two concurrent terms of ten (10) years each. On the third charge,

¹ As a result of his plea, approximately eight other charges were dismissed. (Tr. p. 3, lines 6-9.)

↓

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→ for LACK OF JURISDICTION

had NOTHING
to do with Plea

see Plea Transcript

(Tr. p. 22, lines 6-13)

* See "Affidavit - plea agreement"
(EXHIBIT #33)

"it's a Jurisdictional issue"

Applicant was sentenced to a consecutive term of ten (10) years, provided that upon the service
of three (3) years, the balance would be suspended with probation Restitution of \$30,000.00 was
also ordered. The Applicant did not appeal. Yes he did. Direct Appeal # 2012-211446
Filed April 11, 2012
Dismissed July 18, 2012
Reinstatement denied

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on the following grounds:

1. Ineffective assistance of counsel.
 - a. Counsel misled the Applicant by telling him he would receive a lesser sentence than he did.
 - b. Counsel failed to hire a forensic accountant and did not present defendant's request for a restitution hearing.
2. Lack of subject matter jurisdiction.
 - a. The solicitor and the court lacked authority because the offense happened outside the state of South Carolina.
3. Involuntary guilty plea.
 - a. "Defendant pled guilty with the expectation that the solicitor would refrain from making a recommendation to the judge and that he would not oppose any request for leniency by the defendant."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Mike Lifsey, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Fairfield County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified that he was represented at his plea by Mike Lifsey, Esquire. Applicant testified he has filed a lawsuit against the solicitor and the investigators involved in his case. Applicant testified that he understands *PCR is solely for attacking the representation of his plea counsel. Applicant testified he was initially appointed *But See Williams v. Ozmint, (S.C. 2008) 380 S.C. 473, 671 S.E.2d 600. another attorney before Counsel took his case. Applicant testified he did not remember all of the charges he faced prior to his plea. Applicant testified there were initially ten charges filed against

him, all relating to financial transactions. Applicant testified he had some charges dismissed. Applicant testified he spoke with Counsel several times by telephone, but they mostly communicated through email. Applicant testified that once he posted bond, it was easier for him

~~to meet with Counsel. Applicant testified he met at Counsel's office the week before court.~~

Applicant testified they never met in Fairfield County. Applicant testified he and Counsel discussed his medications, but they never discussed any possible defenses. Applicant testified he wanted Counsel to hire a forensic accountant because he disputes the amount of restitution he was ordered to pay. Applicant testified that expert testimony from a forensic accountant would have helped him. Applicant testified Counsel told him not to ask for a restitution hearing.

Applicant testified he was never charged with the crime for which restitution was ordered.

Applicant testified that Counsel got approval to hire a forensic accountant, and that Counsel discussed two different candidates to hire. Applicant testified this occurred fifteen months prior to his plea. Applicant testified that some of the crimes for which he was indicted occurred outside Fairfield County, and the court did not have subject matter jurisdiction. Applicant

testified Counsel never raised that issue. Applicant testified he pled guilty because he wanted to get it over with. Applicant testified the solicitor offered him a seven year plea offer but revoked

it prior to Applicant's plea. Applicant testified Counsel told him he was only pleading to three counts, not four. Applicant testified he asked for an appeal, but it was dismissed because a challenge of subject matter jurisdiction was not preserved. Applicant testified Counsel should

have objected to a lack of subject matter jurisdiction. Applicant testified that he believes the indictments are illegal because he claims they contain different charges than those for which he was initially arrested. Applicant testified he did not discuss the indictments with Counsel.

Applicant testified that he was in jail during the original date on the indictments. Applicant

testified he pled guilty because Counsel told him to. Applicant testified he was not being truthful with the plea judge during the plea colloquy, and he was just repeating what Counsel told him to say.

~~Following Applicant's testimony, Mike Lifsey, Esquire (Counsel), testified. Counsel~~
testified he has been practicing law since 1991. Counsel testified he is the Circuit Public Defender for the Sixth Judicial Circuit. Counsel testified he took Applicant's case after Applicant and his prior appointed attorney had a falling out. *→ he was representing victims family* Counsel testified he met with Applicant a couple of times at the Fairfield County Detention Center, and then after Applicant was released on bond, Applicant moved to Pennsylvania, so they communicated via email most of the time. Counsel testified that Applicant returned to South Carolina prior to the plea, and Counsel met with Applicant three to five times in person. Counsel testified that he obtained discovery and went over it with Applicant. *→ NO He did not - see attached memo from Clerk of Court* Counsel testified Applicant admitted to accessing the accounts from which the money and funds were stolen. Counsel testified that Applicant claimed he only took around \$20,000.00 and that he was locked up before his wife stole the rest of the funds. Counsel testified that Applicant pled guilty to only those crimes which he admitted doing, which were theft of funds from the victim's Bank of America, Schwab, and E-Trade accounts. *→ Dismissed after State stole the money!!* Counsel testified the other charges against Applicant were dropped. Counsel testified Applicant had no defenses to the charges to which he pled. Counsel testified the evidence was overwhelming due to recordings of telephone calls made by the Applicant to the trading companies. *this is not true and this is not even what was said* Counsel testified he understood Applicant's argument concerning the amount of restitution, but Counsel did not think it would be a good strategy to argue that Applicant only stole part of the money, when Applicant was the one who masterminded the operation. Counsel testified that but for Applicant's actions, none of the money would have been stolen. Counsel testified he thought the

better strategy was for the Applicant to throw himself at the mercy of the court. Counsel testified he did not have concerns about Applicant's mental health. Counsel testified he discussed the constitutional rights that Applicant was waiving by pleading guilty. Counsel testified he went over the elements of the charges and possible penalties with Applicant. Counsel testified he had no concerns about the indictments or whether the court had jurisdiction to hear Applicant's plea. Counsel testified the solicitor withdrew the seven year plea offer prior to Applicant's decision to plead guilty. Counsel testified he never promised Applicant he would receive a particular sentence. Counsel testified he never told Applicant he would only get four years. Counsel testified that once the solicitor dismissed all of the charges except for what Applicant admitted to doing, there was no need to hire a forensic accountant. Counsel testified the only potential reason to hire a forensic accountant at that point was to make a restitution argument, but Counsel did not think the argument would resonate well with a judge or jury. Counsel testified Applicant's wife also had pending charges stemming from the incidents. Counsel testified that he did receive the funds to hire an accountant but ultimately deemed it unnecessary.

INEFFECTIVE ASSISTANCE OF 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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

15 months difference
↑
December 2010

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.
he is a LIAR

This Court finds that Counsel met with Applicant multiple times prior to the guilty plea. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. **I have proven that he didn't** This Court finds Counsel's belief that Applicant's restitution argument would not resonate with a judge or jury was reasonable. Accordingly this Court holds Counsel's decision not to hire a forensic accountant was reasonable, especially considering the fact that the charges to which Applicant did not admit his guilt were dropped. This Court finds Counsel's belief that

Applicant had no competency issues was reasonable. This Court finds that the evidence against

Applicant was overwhelming, and Counsel did everything he could reasonably have done to
→ **What Evidence?** There wasn't any!!!
obtain a favorable outcome for Applicant. This Court further finds that Counsel thoroughly

~~prepared Applicant's case. This Court further finds that because Applicant admitted to lying to~~

the plea court, his testimony to this Court is not credible. This Court further finds there was no

reason for Counsel to challenge the legality of the indictments in this case. This Court further

finds that Applicant waived any challenges he may have had by pleading guilty. This Court can

find no evidence to support Applicant's allegation that Counsel advised him he would receive a

specific sentence by pleading guilty. Accordingly, This Court finds Applicant's argument in that

regard to be without merit.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

SUBJECT MATTER JURISDICTION

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. *See See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, "[c]ircuit courts obviously have

subject matter jurisdiction to try criminal matters.” Gentry, *supra*, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside.

~~-----~~ This Court finds that Applicant’s arguments regarding the plea court’s lack of jurisdiction are wholly without merit. This Court can find no credible evidence to support a finding the plea court lacked any type of jurisdiction to accept Applicant’s plea. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

INVOLUNTARY GUILTY PLEA

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. *See Boykin v. Alabama*, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. *Id.* at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers. *Id.* Moreover, a criminal defendant entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

But
they
did
not

This Court finds Applicant has failed to demonstrate that his guilty plea was entered involuntarily. Once again, this Court finds Counsel's testimony to be credible and Applicant's testimony to be not credible.

This Court finds Applicant was aware of the nature of the charges he was facing and the possible penalties. This Court finds Applicant was well aware that by pleading guilty he was waiving his ability to challenge the evidence against him. This Court further finds Applicant was well aware of the constitutional rights he was waiving by pleading guilty. This Court further finds that Applicant pled guilty voluntarily and of his own free will. Furthermore, this Court is not convinced by Applicant's claims that he only pled guilty because Counsel forced him to, or the claims that Counsel promised him a certain sentence. Accordingly, those claims are without merit. Finally, this Court finds no reason to believe Applicant was led to believe the State would refrain from opposing Applicant's request for leniency or making a sentencing recommendation.

Accordingly, those claims are without merit.

See attached proof
Plea was "without negotiation or recommendation"

Accordingly, this Court finds Applicant's guilty plea was knowingly and voluntarily entered. This Court finds that the evidence presented at the evidentiary hearing as well as contained within the guilty plea transcript clearly supports a finding that the guilty plea was not coerced or involuntary; rather, it was freely, knowingly, and voluntarily entered. This Court finds Applicant was informed of the nature and elements of the offenses with which he was charged and to which he pled guilty. This Court further finds that Applicant was fully apprised of the

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 28th day of Aug, 2014.



W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit

Sumter, South Carolina

Memorandum

OFFICE OF CLERK OF COURT
FAIRFIELD COUNTY

P.O. DRAWER 299
WINNSBORO, SC 29180
Telephone: 803-712-6526
Fax: 803-712-1506

TO: Robert James Miller Jr. #316047
FROM: Betty Jo Beckham, Clerk of Court
Subject: MOTION OF DISCOVERY *BJB*

DATE: 10-22-13

I HAVE CHECKED ALL YOUR FILES IN MY OFFICE AND THERE IS NOT A MOTION OF DISCOVERY RULE 5 IN ANY OF YOUR FILES. YOU NEED TO GET IN TOUCH WITH THE ATTORNEY THAT REPRESENTED YOU TO SEE IF HE RECEIVED THE MOTION.

~~Exhibit #7~~

72

STATE OF SOUTH CAROLINA :

County of Fairfield :

Robert James Miller, Jr. :

Petitioner :

IN THE COURT OF GENERAL SESSIONS

Sixth Judicial Circuit ⁴/₂₄

Case No.: 2012-CP-20-352

2014 JAN 24 AM 10 34

FAIRFIELD COUNTY

CLERK OF COURT

BETTY JO BECKHAM

V.
State of South Carolina :

Respondent :

MOTION FOR PRODUCTION OF
COMPLETE CASE FILE PURSUANT

To Brady v. Maryland, 373 U.S. 83

(1963) SC. CODE ANN. § 30-4-10

§ 30-4-165 (1991-Supp. 2005)

Comes now Petitioner, Robert James Miller, Jr., respectfully
requesting this Honorable Court to help petitioner obtain a complete
case file with financial records, bank statements, receipts, motions,
letters, notes, emails, and ALL investigation reports in RE. Matter of Haddock
5 S.E.2d 601 (1986); Sup. Ct. Rule 32 Code of Prof. Resp. Dr 6-101
(A)(3) and Rules of disciplinary procedure § 7 Subd. (A)(3).

The petitioner respectfully contends that he never received a complete
Discovery Rule 5 package from the State nor his appointed counsel, pursuant
to the law of this State and the Sixth and Fourteenth Amendments of the
U.S. Constitution. Petitioner respectfully requests a full and complete
case file pursuant to Brady v. Maryland 373 U.S. 83 (1963) SC. Code Ann.
§ 30-4-10 § 30-4-165 (1991-Supp. 2005)

Sworn to and subscribed before me

this 24th day of January, 2014

Susan H. Frye
Notary Public

My Commission Expires
March 5, 2018

My commission expires: _____

Respectfully Submitted,

R. James Miller, Jr.
Robert James Miller, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

Robert James Miller, Jr.

petitioner

v.

Case No. 2012-cp-20-352

State of South Carolina

respondent

FAIRFIELD COUNTY
CLERK OF COURT
BETTY J. BECKHAM

JAN 24 AM 10:34

COPY

PROOF OF SERVICE

I certify that I have served the "Motion For Production of Case File" on the Respondents by depositing a copy of it in the U.S. Mail, postage prepaid, on January 23, 2014, addressed to Alan Wilson, Attorney General, P.O. Box 11549, Columbia, SC 29211.

Robert James Miller, Jr.

Robert James Miller, Jr.

January 23, 2014

(d) There is also Substantial evidence that Investigator Jeff Talbert of the Fairfield County Sheriff's Office (either alone or with the assistance of the Solicitor) destroyed exculpatory evidence that, had it been turned over to petitioner, would have completely exonerated him on all charges (i.e., ATM surveillance photo's of two of his relatives withdrawing cash from various ATM's, and a statement acknowledging fraudulent use of the cards).

Upon information and belief, Talbert and Solicitor Maxwell may have destroyed additional information, documents, evidence, photograph's, and etc.

Petitioner was never provided with any Discovery or other information and kept completely in the dark until November 2013 - THREE (3) YEARS After being arrested. Most information did not come until After petitioner withdrew his PCR on February 3, 2014 (and filed an action pursuant to 42 U.S.C. §1983 in the United States District Court, District of South Carolina).

The State intentionally prejudiced petitioners Criminal Case.

72

SIXTH JUDICIAL CIRCUIT
PUBLIC DEFENDER'S OFFICE

104 North Main Street * Post Office Box 1809
Lancaster, South Carolina 29721
Telephone No.: (803) 285-5585
Fax No.: (803) 285-6085

March 21, 2014

R. James Miller, SCDC # 316047
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

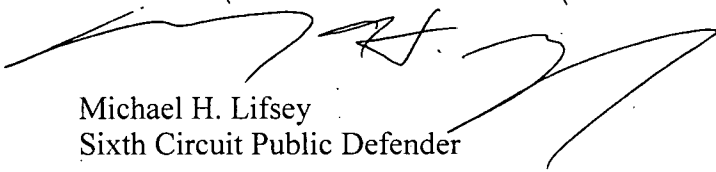
Re: Your letter

Dear Mr. Miller:

I am writing in response to your letter dated March 10, 2014. I do not understand what what else you want from me. I have given you a copy of every piece of paper in your file. With your permission, I gave the CDs to your attorney in the PCR case, Michael Hemlepp, for him to copy.

→ As far as answering questions is concerned, I am no longer your attorney. I can not give you legal advice. You filed a PCR action in which you alleged ineffective assistance of counsel. I believe you later withdrew that application. If you have complaints about or questions concerning my representation, it seems to me that the PCR action would have been the proper place to raise those. Perhaps you should write Mr. Hemlepp with these questions.

Sincerely,


Michael H. Lifsey
Sixth Circuit Public Defender

2. Lack of subject matter jurisdiction.

- a. The solicitor and the court lacked authority because the offense happened outside the state of South Carolina.

3. Involuntary guilty plea.

- a. Defendant pled guilty with the expectation that the solicitor would refrain from making a recommendation to the judge and that he would not oppose any request for leniency by the defendant.

On information and belief, a hearing was scheduled into the matter in February or March of this year; and at that hearing, Petitioner indicated he wished withdraw his PCR application if it had no effect on his pending federal lawsuit [1983] and his federal habeas action. Subsequently, an Order of Dismissal was not entered, because Petitioner had been informed withdrawing his PCR application would not affect his federal habeas petition. Petitioner did not withdraw his PCR action, and another hearing is scheduled in the future [July] regarding Petitioner's state PCR application.¹ As a result, Petitioner's state PCR action is still pending, and Petitioner has failed to exhaust his state remedies at this time. This petition should be dismissed without prejudice for failure to exhaust state remedies or held in abeyance until such time as Petitioner's state PCR action is withdrawn or completed.

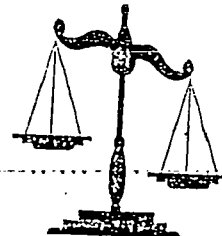
PETITIONER'S PRIOR CRIMINAL RECORD

In addition to the charges to which Petitioner pled guilty, Petitioner was previously convicted of uttering a false document (2 counts in 1992), and writing bad checks. Petitioner was convicted 2005 of burglary in the 2nd degree. Petitioner was convicted in 2006 of grand

¹ Via e-mail of June 15, 2014, Petitioner's counsel has informed Respondent's attorney that Petitioner will not withdraw his PCR application at the next hearing and will go forward with the same.

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**FAIRFIELD COUNTY
SHERIFF'S OFFICE**



350 Columbia Road, Winnsboro, S. C. 29180
Phone: 803-635-4141 FAX: 803-635-3325

Sheriff Herman W. Young

Fax

Attention: Stephanie Bautista

To: All South

Fax No.: 803-790-4296 Date: 10/19/10

Pages (including cover sheet) _____

From: Inu Talbert

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

Stephanie, I need the pictures from the
Winnsboro ATM on 9/12/10 @ 22:33:40
and 9/12/10 @ 22:34:33 The Card #
is

440017770676

My Email is Italbert@fairfieldSC.com

Thank for your help,

Jeff

Prosecutorial Suppression of Evidence

- Kyles v. Whitley, 514 U.S. 491 (1995) "Because the net effect of the evidence withheld by the State in this case raises a reasonable probability that its disclosure would have produced a different result, [petitioner] is entitled to a new trial."
- Walker v. Lockhart, 763 F.2d 942 (8th Cir. 1985) 478 U.S. 1020 (1986) prosecutorial suppression of exculpatory evidence.
- Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed.2d 215, 218 (1963) (holding that the prosecution must turn over evidence to the defense if evidence is exculpatory...)
- United States v. Garza, 435 F.3d 73, 75-76 (1st Cir. 2006) - ruling that the destruction of evidence is a violation of due process if the exculpatory value of the evidence was apparent before its destruction and if the evidence is of such a nature that the defendant cannot obtain comparable evidence.

There is a "reasonable probability that, had the evidence been disclosed to the defense, the result

of the proceeding would have been different."

In fact, absent these errors and Constitutional violations, petitioner would not have pleaded guilty and would have insisted on going to trial and the outcome would have been different. No reasonable Jury would have ever convicted the petitioner. Especially considering that there was insufficient evidence (NO EVIDENCE, actually) to support a conviction or that any crime had ever occurred.

V. Numerous Extraordinary Circumstances Exist.

Petitioner is able to prove by "Clear and Convincing evidence" at least 40 instances of obstruction of Justice, the wholesale suppression of exculpatory evidence, the fabrication of inculpatory evidence by the Solicitor and investigator, prosecutorial and law enforcement misconduct and Constitutional violations which resulted in a case that was corrupted from start to finish and convicted an INNOCENT man.

The Solicitor's actions exhibited callous and

COUNTY OF Fairfield
STATE VS.

Robert James Miller Jr

AKA: _____

RACE: WHITE Sex: M Age: 40DOB: 1971 SS#: 7228Address: Cito RJCity, State, Zip: McConellsburg, PA 17233

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of other unlawfullyin violation of § 16-13-0510 of the S.C. Code of Laws, bearing CDR Code # 2813☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Maxwell, Riley J 74878 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 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/3/12 2011GS2037

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 _____

Recipient: _____

*Fine: \$ _____

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

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

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

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

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003rd County (if paid in installments) \$ 3.90Total: \$ 133.90INDICTMENT/CASE#: 2011-GS-20-35A/W#: M400779Date of Offense: 9/7/2010S.C. Code § : 16-13-0510CDR Code #: 2813SENTENCE SHEET 0-10 yrs.Presiding Judge: W. M. Murray
Judge Code: 2061
Sentence Date: 4-3-12Clerk of Court/ Deputy Clerk: Betty J. BeckmanCourt Reporter: Mike Washington

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF Fairfield
STATE VS.Robert James Miller Jr

AKA:

Race: WHITE Sex: M Age: 40DOB: 1971 SS#: 7228Address: 610 RdCity, State, Zip: Mc Connellsburg, PA 17233DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: FinanTC / Financial identity fraud, obtains/records identify, info., access/att. access finan. records of other unlawfullyin violation of § 16-13-0510of the S.C. Code of Laws, bearing CDR Code # 2813☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Maxwell, Riley J 74878 SC Bar# Defendant Attorney for Defendant 015154 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years
and/or to pay a fine of \$ 30,000; provided that upon the service of 3 days/months/years and/or payment
of \$ 30,000; plus costs and assessments as applicable*; the balance is suspended with probation for 3months/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: 4/3/12 2011GS2037 & 2011GS2035
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

b. 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 ☒ OrderedTotal: \$ 30,000 plus 20% fee: 6,000 \$ 36,000

Payment Terms:

☐ Set by SCDPPPS

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	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% County (if paid in installments)	\$	\$ <u>18.90</u>
TC	\$	\$ <u>648.90</u>

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-20-36A/W#: M400780Date of Offense: 9/2/2010S.C. Code §: 16-13-0510CDR Code #: 2813

SENTENCE SHEET - 10 yrs.

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☒ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge Judge Code: 2061Sentence Date: 4-3-12Clerk of Court/ Deputy Clerk Betty J. BeckharCourt Reporter: Mike Wathen

SCCA/217 (03/2011)

COUNTY OF Fairfield
 STATE VS.
Robert James Miller Jr
 AKA:
 I WHITE Sex: M Age: 40
 DOB: 1971 SS#: 7228
 Address: Cit Rd
 City, State, Zip: Mc Connellsburg, PA 17233
 DL#: SID#:

INDICTMENT/CASE#: 2011-GS-20-37
 A/W#: M400781
 Date of Offense: 8/28/2010
 S.C. Code §: 16-13-0510
 CDR Code #: 2813

SENTENCE SHEET 0-10 yrs.

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of other unlawfully

in violation of § 16-13-0510 of the S.C. Code of Laws, bearing CDR Code # 2813
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Maxwell, Riley J 74878 7. James Miller 015154
 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 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/3/12 2011GS2035
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by 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 pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund

Other: _____

*Fine:
 § 14-1-206 (Assessments 107.5 %; \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114 (BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 1% County (if paid in installments) \$ 3.90
 TC: \$ 133.90

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation

Clerk of Court/ Deputy Clerk

Court Reporter: Betty J Beck
Mike Walker

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2061

Sentence Date: 4-3-12

1 MR. MAXWELL: This is Robert James Miller, Mr. Miller
2 is represented by Mr. Mike Lifsey. Mr. Miller has been
3 indicted for three counts of financial identity fraud, those
4 are docket numbers 2011-GS-20-35, 36, and 37, he is entering
5 guilty pleas to all three charges, that is the 10 year
6 statute. He has a host -- I think eight other charges all
7 related to those identity fraud charges, those indictments
8 will be dismissed per his guilty plea to these first three
9 charges.

10 THE COURT: All right.

11 MR. MAXWELL: This is a straight-up plea, the State is
12 asking for a ten to 15 year sentence. Of course, anything
13 above ten years we would be asking for at least one of the
14 charges to be run consecutive to the first charge. I have
15 handed up a restitution order, it's a lot of money. The
16 victim, Mr. Bundrick, is out of roughly \$29,000 and some
17 change.

18 THE COURT: This is Mr. Bundrick over here to my left?

19 MR. MAXWELL: Yes, sir.

20 THE COURT: How much is he out of?

21 MR. MAXWELL: He is out of 29,000 and some change,
22 there's also some banks that are out of some money because
23 of these transactions. Of course, the State's position is
24 if he gets a ton of time we realize that probation and
25 paying the money back may not be -- may be just kind of a

1 MR. MAXWELL: Your Honor, me and Mr. Lifsey have
2 discussed this case at length. We at different points in
3 time had talked about -- there was an offer on the table of
4 seven years at some point with really no set agreement to
5 the restitution. I don't think Mr. Lifsey disagrees with
6 the amount I've put forward but in the manner of how -- of
7 structuring Mr. Miller making the payments we haven't really
8 talked much about how -- or haven't really agreed to how
9 that's going to happen. It's the State's position that he's
10 pleading straight-up today and we think he deserves a lot of
11 time. * Without Negotiations or Recommendation

12 THE COURT: And you will drop additional charges I
13 think you mentioned earlier. What are those charges?

14 MR. MAXWELL: Those charges relate to the use of
15 financial cards that were used to access these accounts
16 after they were set up and the money was moved to the
17 fraudulent accounts. There was two counts of financial card
18 fraud, there were three more counts of criminally receiving
19 goods. Basically when I was working with the sheriff's
20 department and we were figuring out what to charge

21 Mr. Miller with prior to his arrest we wanted to make sure
22 we covered all of our bases, everything is related to the
23 financial identity fraud essentially. I think the card
24 fraud of actually using the cards after the fraud was
25 perpetrated, the moving of money to these accounts we

opportunity to be heard and to defend [his] substantive right." Bowie v. City of Columbia, (U.S.S.C. 1964) 84 S.Ct. 1697, 378 U.S. 347.

See also Brown v. Malloy, (S.C.App. 2001) 345 S.C. 113, 546 S.E.2d 195; S.C. Dept. of Labor, Licensing and Regulation v. Girgis, (S.C.App. 1998) 332 S.C. 162, 503 S.E.2d 490.

* Although trial court is allowed broad discretion in conducting restitution hearing, defendant must receive notice of a hearing and evidence intended to be used to prove amount of restitution, during hearing defendant must be given opportunity to be heard and to cross-examine witnesses, and evidence admitted during restitution hearing must be reliable and trustworthy.

State v. Gullledge, (S.C. 1997) 485 S.E.2d 923

* once Brady disclosure rule violation is established, reversal is required. State v. Kennerly, (S.C.App. 1998) 331 S.C. 442, 503 S.E.2d 214.

For the reasons set forth in this Memorandum, Petition for Writ of Habeas Corpus, Declaration in Support of Petition, Supplement, Traverse and all other documents on file, Petitioner is entitled to the requested relief.

Robert James Miller, Jr.

1 transactions hadn't gone through yet from moving it from the
2 Provident account to the E-trade account. Fairly clearly
3 you can tell, at least in my opinion, that it was

4 [REDACTED] that phone and that's certainly
5 something we would put forth at trial that his voice matched
6 [REDACTED] An additional thing
7 Mr. Miller did that he's not actually pleading guilty to
8 because I think it's a jurisdictional issue but it's part of
9 the restitution and I think it's something important for you
10 to know about, is Mr. Bundrick owned some stock in I believe
11 it is some type of oil or energy company out of New York, I
12 believe the holding or the financial company managing the
13 stocks was in New York. [REDACTED]

14 [REDACTED]
15 [REDACTED] E-trade that was then put into
16 the E-trade account. The only thing I guess that was
17 positive out of this is a lot of this money when Mr. Miller
18 and Kayla Miller was caught a lot of money was still in the
19 accounts. A lot of money was gone but a good bulk of it was
20 still in these accounts and Mr. Bundrick was made whole on
21 the Provident account, he was not made whole on the stock
22 sale. After the Provident account was I guess made whole
23 back --

24 THE COURT: So Mr. Bundrick got \$139, or was it
25 \$139,000?

1 MR. LIFSEY: No, sir.

2 THE COURT: Solicitor, one question. Now, Mr. Bundrick
3 is actually out of the \$29,025.75?

4 ~~MR. MAXWELL: That's correct, Your Honor.~~

5 THE COURT: He has been made whole by insurance and
6 banks or whatever. Help me out a little bit.

7 MR. MAXWELL: The money that was in the checking
8 account the initial fraud was coming from, ~~xxx, xxx~~ the banks
9 made him whole. Where he is out of the money is after
10 Mr. Bundrick (sic) had liquidated that account he liquidates
11 the stocks in this company up in New York for \$~~xx, xxx~~ and
12 that is the bulk of what Mr. Bundrick is out of because
13 those stocks were sold. Of course, when the fraud was
14 caught they just don't give him the stocks back, and luckily
15 there was still \$19,000 of that money still in one of the
16 accounts that he was able to get back. And then he got cash
17 back --

18 THE COURT: So once again he was out of about \$30,000
19 basically.

20 MR. MAXWELL: Yes, sir, that he is out.

21 THE COURT: Anything further?

22 MR. LIFSEY: No, sir.

23 THE COURT: Mr. Miller, on indictment number 2011-35,
24 State versus Robert J. Miller, it's an indictment for
25 financial identity fraud, I sentence you to ten years. On

Exhibit H

Sheriff

Herman W. Young



FAIRFIELD COUNTY SHERIFF'S OFFICE

October 30, 2013

Mr. Miller,

I am in receipt of your letter and your requests contained therein. I conferred with Riley Maxwell, 6th Circuit Assistant Solicitor, about your requests. Records indicate that the vehicle (2002 Saturn, VIN 1G8ZH52892Z120291) and all US Currency recovered in this investigation were released to the victim, Robert Bundrick, per court order by Judge Brooks Goldsmith. Other items taken from the storage unit include credit cards, checkbooks, and miscellaneous papers deemed evidence to this investigation.

All of your other personal belongings were secured and left in the storage unit. To determine their status, you are advised to contact the storage unit manager.

Regards,

A handwritten signature in black ink that reads "Brad Douglas".

Captain Brad Douglas

Exhibit P

PAGE 1 OF 14

September 1, 2010 - September 30, 2010

Account Number: 6394

Account Type: INDIVIDUAL

E*TRADE Securities LLC
PO Box 1542
Merrifield, VA 22116
1-800-ETRADE-1 (1-800-387-2331)
etrade.com Member FINRA/SIPC

Customer Update:

NOTICE OF CUSTOMER AGREEMENT

UPDATES - Effective September 1, 2010,

E*TRADE has updated its Brokerage Customer Agreement and Margin Agreement. To review agreements go to etrade.com. If you have questions, please call 1-800-ETRADE-1 (1-800-387-2331) anytime 24/7.

E*TRADE Securities
Investment Account

IMPORTANT INFORMATION:

NEED HELP? Visit our Online Service Center.
The fastest way to get the answers you need.
Go to etrade.com/servicecenter.



BUNDRICK ROAD
WINNSBORO SC 29180-8503

Account At A Glance

\$61,897.22

\$66,312.93

As of 08/31/10

As of 09/30/10

Net Change:

\$4,415.71

Securities products and services are offered by E*TRADE Securities LLC, Member FINRA. Your account is carried by an affiliate, E*TRADE Clearing LLC, Member NYSE/FINRA/SIPC, which maintains your funds and securities. Please promptly report any inaccuracy or discrepancy in your account to both E*TRADE Securities LLC at 1-800-ETRADE-1 and E*TRADE Clearing LLC at 201-499-6247. You should re-confirm any oral communication in writing to further protect your rights, including rights under the Securities Investor Protection Act (SIPA).

DETACH HERE

BUNDRICK ROAD
WINNSBORO SC 29180-8503

DETACH HERE

Use This Deposit Slip

Acct: 6394-

Please do not send cash

Make checks payable to E*TRADE Clearing LLC.

Mail deposits to:



E*TRADE CLEARING LLC
P.O. Box 1542
Merrifield, VA 22116-1542

TOTAL DEPOSIT

Dollars	Cents

093020100001 1116394

E*TRADE
FINANCIAL
Banking
Investing
Trading

Exhibit B

35

F.C.S.O. IMPOUNDED VEHICLE CARD

Year 2001 Make Saturn Model _____ CASE NO. 10-8284
 Tag No. GAL-408 VIN 1G8ZM52X927120291 Color Burg
 Registered Owner & Address JAMES MILLER JR
 Towed From Washington St. Date/Time 3 MAY 2010
 Towed To FPOD impound lot (Old Alimony) Tow Fee \$250.00
 Reason Towed _____ Wrecker Driver Wesley Bonal
 Tow Service Wesley's Wrecker Driver's Signature Wesley Bonal
 Damage To Vehicle _____ Officer's Signature Maggie Boyd
 Certified Letter Sent (Date) _____ Response (Date) _____
 Hold for Evidence _____ Release to Owner _____
 Date/Time Released _____ To _____
 Date/Time Sold _____ To _____
 Amount Sold For \$ _____ Signatur _____
 Signatur _____

INVENTORY AND CONDITION OF VEHICLE WHEN IMPOUNDED

DOORS AND TRUNK: LOCKED ☐ KEYS IN CAR ☐ KEYS IN PROPERTY ROOM ☐
 OTHER _____
 (USE CONDITION SYMBOL: 1 - EXCELLENT; 2 - GOOD; 3 - FAIR; 4 - POOR; 5 - CONSTRUCTIVE TOTAL)

	Damaged	Condition	✓		Damaged	Condition	✓		Damaged	Condition
FRONT END				ENGINE				SPARE TIRE		
LF 1/4				RADIATOR				LR TIRE		
LF DOOR				ALTERNATOR				RR TIRE		
LR DOOR				BATTERY				RF TIRE		
LR 1/4				A/C				LF TIRE		
REAR END				RADIO				GLASS		
RF 1/4				TAPE DECK				CB RADIO		
RF DOOR				HUB CAP				CB ANTENNA		
RR DOOR				WHEEL COVER						
RR 1/4				DRIVE TRAIN						
HOOD				JACK						
TOP				TOOLS						
TRAILER LID				GASOLINE						

PROPERTY INVENTORY ON REVERSE SIDE

Exhibit I

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	
	)	ORDER
STATE OF SOUTH CAROLINA	)	INDICTMENT(S)
2012 APR -5 A 11:09	)	
-versus-	)	
FAIRFIELD COUNTY	)	2011 -GS-20-0035
CLERK OF COURT	)	2011 -GS-20-0036
Robert James Miller, BETTY JO BECKHAM	)	2011 -GS-20-0037
Defendant.	)	

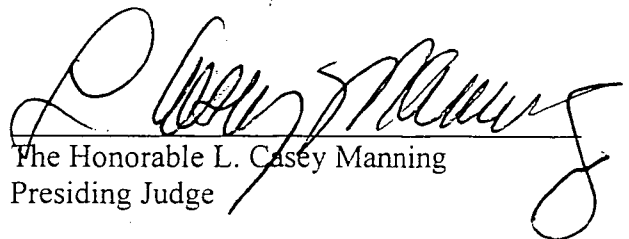
The Defendant came before the Court on April 3, 2012 and entered guilty pleas to three counts of Financial Identity Fraud. The Court sentenced the Defendant to ten years on two of the counts to be run concurrent. On the third indictment, the court imposed a probationary sentence to be run consecutive to the other charges. As a condition of probation, the Court ordered the Defendant to pay \$29,025.75 in restitution to the William Bundrick. During the plea and on the record, the Defendant consented to the forfeiture of a 2002 Saturn vehicle (VIN #1G8ZH52892Z120291) to offset the amount of restitution. The vehicle is currently in the possession of the Fairfield County Sheriff's Office.

The Court finds it appropriate that the vehicle be transferred to the ownership of William Bundrick to satisfy part of the restitution and the amount of restitution be offset in the amount of \$2750.00.

The South Carolina Highway Department is directed to issue a clear title vesting title to the above described vehicle in the name of William Bundrick.

AND IT SO ORDERED.

Date: April 5, 2012


The Honorable L. Casey Manning
Presiding Judge

1 he's charged with. It was our view that she was mainly
2 guilty of using the cards to deplete the accounts at several
3 different locations of the ATM's. There was a car seized by
4 the sheriff's department that we believe that was bought
5 with the stolen funds that was basically seized when Kayla,
6 the girlfriend, was arrested. That car is still in
7 possession of the sheriff's department, it's a 2002 Saturn,
8 I believe. Mr. Bundrick has also agreed to take --
9 basically take that as partial payment of the restitution.
10 I think we first may have to work that out with Kayla
11 Miller's case first, that's only going to be worth about
12 \$3,000, I believe, I Kelly Blue Booked it last week and
13 roughly about that amount. If that did occur I would just
14 write a letter to the probation department noting that this
15 amount was set off from the initial amount. I think that's
16 all I have. I think Mr. Bundrick would like to speak at the
17 appropriate time.

18 THE COURT: All right. Now, Mr. Lifsey and Mr. Miller,
19 you heard the presentation by the solicitor's office, is all
20 of that substantially accurate and correct?

21 MR. LIFSEY: Yes, sir.

22 THE COURT: Is that fair enough, Mr. Miller?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very well, sir. I find there's a
25 substantial factual basis for your plea, I further find the

38 21

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

May 7, 2014

Robert James Miller, #316047
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina 29210

Dear Mr. Miller,

I am responding to your request of May 5, 2014, made pursuant to the Federal Freedom of Information Act (USFOIA), 5 U.S.C.A. 552, in which you have requested a printout of all payments received by this agency towards restitution in your case.

Please be advised that because your probation has not started and you are currently not being supervised by our Department, no payments have been received. I would suggest that you contact the attorney who represented you in this matter regarding who to contact for information concerning any overpayment of restitution.

Sincerely,

A handwritten signature in dark ink, appearing to read "Matthew C. Buchanan", written over a horizontal line.

Matthew C. Buchanan
General Counsel

MCB:dn

①

1 transactions over the period of time that Mr. Miller had
2 them in his possession and Mr. Bundrick was away in Alaska.
3 The sheriff's department was able to determine not where
4 every transaction occurred but transactions occurred
5 throughout the eastern seaboard, parts of Myrtle Beach,
6 Columbia, between Columbia and Myrtle Beach up into
7 Pennsylvania and up the eastern seaboard. These are places
8 that we knew Mr. Miller -- Mr. Miller I think is originally
9 from Pennsylvania, at one point in time we had some
10 information that he was living in Myrtle Beach so basically
11 we were able to match up the use of these cards with where
12 Mr. Miller or Kayla Miller were -- where they were located
13 at that period of time back in September and October of
14 2010. I don't know if Mr. Miller ever gave an exact
15 statement admitting to everything to the investigators but I
16 think he has made statements admitting to some type of
17 responsibility before. Of course, he is pleading guilty
18 today but I don't think there was ever any full confession,
19 full statement taken by the investigators. I do believe his
20 girlfriend did give information to investigators admitting
21 to the knowledge --

22 THE COURT: She has charges pending?

23 MR. MAXWELL: She has charges pending.

24 THE COURT: Same charges or --

25 MR. MAXWELL: I think she's charged with a bulk of what

MEMORANDUM IN SUPPORT OF PETITION
FOR WRIT OF ERROR CORAM NOBIS

I. Factual Background

Petitioner is a prisoner at the Broad River Correctional Institution in Columbia, SC pursuant to the Fairfield County Clerk of Court's orders of commitment. Petitioner was indicted at the February 2011 term of the Fairfield County Grand Jury for three counts of financial identity fraud (2011-GS-20-035, 036, 037).

HOWEVER, petitioner, according to "Rap Sheet" was arrested for three counts of Financial Transaction Card Forgery, S.C. Code § 16-14-40(E) - FIVE YEAR MAXIMUM PENALTY. The "Rap Sheet" (and warrants) indicate that the alleged offenses occurred on 8/28/2010, 9/15/2010 and 10/06/2010.

Warrant number M400779 is indictment 035, Warrant number M400780 is indictment 036, and Warrant number M400781 is indictment 037.

27

Sometime AFTER my arrest on November 3, 2010 and 11/08/10 when the warrants were filed with the Clerk of Court, the warrants were illegally altered and the alleged offense was changed to FinanTC / Financial Identity Fraud... S.C. Code § 16-13-510, with a TEN YEAR maximum Penalty (twice the maximum penalty for what I was originally charged).

Petitioner received 10 years on each count. Please note that the "description of offense" on the warrants (and Sentencing Sheet's) begins with the prefix FinanTC. The South Carolina Code of Laws defines FinanTC as Financial Transaction Card (See § 16-14-10 Definitions). Therefore, according to the Financial Transaction Card Crime Act, § 16-14-100, the maximum possible penalty under this Section would be "... fined not less than three thousand dollars nor more than five thousand dollars or imprisoned not more than five years, or both."

Petitioner believes his sentence of ten (10) years on each count is in violation of the law.

Additionally, after proving to his public defender that the petitioner had spent five days in jail and could not - DID NOT - commit a crime on 9/15/10, and was in Pennsylvania on 10/6/10, official documents were once again altered and the dates of the alleged offense's was changed. Unlawfully and without any notice.

Petitioner was indicted for one count of Financial Identity Fraud occurring on September 2, 2010 (Indictment 2011-GS-20-036, Warrant M400780). However, petitioner was arrested for Financial Transaction Card Forgery occurring on October 6, 2010.

Petitioner was indicted for one count of Financial Identity Fraud occurring on September 7, 2010 (Indictment 2011-GS-20-035, Warrant M400779). However, petitioner was arrested for Financial Transaction Card Forgery occurring on September 15, 2010.

Had petitioner Not been denied his Constitutional right to counsel for his first appeal, this fundamental miscarriage of justice would have been made known and resolved.

- South Carolina Constitution Art I, § 11
2. Where the defendant was tried and convicted upon an indictment which was a nullity, it follows that he was convicted in violation of this section.
State v. Funderburk, (S.C. 1972) 259 S.C. 256, 191 S.E. 2d 520.
- Conviction on amended indictment substituting different offense is invalid. State v. Sowell, (S.C. 1910) 85 S.C. 278, 67 S.E. 316.
- S.C. Code § 17-13-141
(b) Any person who alters or fails to keep... records, warrants, and documents... shall be guilty of a misdemeanor and...
- § 17-19-20 (3)

An indictment must not allege the date of Commission of the crime posterior to the finding of the indictment.
State v. Ray, (1838) 24 SCL 1.

MILLER, ROBERT JAMES JUNIOR
SC0200000 FAIRFIELD CNTY SO
CASE-108284
ATN-200000007265
WARR-M400779
CIT-16-14-40(E)-FELONY

11/03/2010

Exhibit # 20

4

ARREST CHARGE 01-FINANCIAL
TRANSACTION CARD FORGERY
OFFENSE DATE-09/15/2010
PALM PRINTS AVAILABLE

END OF PAGE

01 - PAGE 02 TO FOLLOW

NI-400779

STATE OF SOUTH CAROLINA
☒ County/ Municipality of
Fairfield

THE STATE 10-8294
against
Robert James Jr Miller
2019 NOV 16
FAIRFIELD COUNTY
CLERK OF COURT
2869 Greenbriar Mossydale
Winnsboro, SC 29180-

one: SSN: 888-88-8888
x: M Race: W Height: 5 10 Weight: 155
State: SC DL #: 999999999
DOB: 10/11/1971 Agency ORI #: SC0200000
Issuing Agency: Fairfield County Sheriff
Issuing Officer: J Talbert - 1086
Cause: FinanTC / Financial identity fraud, obtains/records
identify. info., access/att. access finan. records of
Cause Code: 2813
Re/Ordinance Sec: 16-13-0510

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

Signature of Judge
(L.S.)

RETURN
copy of this arrest warrant was delivered to
endant Robert James Miller Jr
11-3-10
Bill D
Signature of Constable/Law Enforcement Officer

TURN WARRANT TO:
General Sessions
101 South Congress St
PO Drawer 299
Winnsboro, SC 29180

ORIGINAL ORIGINAL

County/ Municipality of
Fairfield

Personally appeared before me the affiant J Talbert
being duly sworn deposes and says that defendant
did within this county and state on or about 09/15/2010
State of South Carolina for ordinance of County/ Municipality of
in the following particulars: Fairfield

DESCRIPTION OF OFFENSE: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of
other unlawfully

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:

That on or about September 15, 2010, in the county of Fairfield, one Robert James Jr Miller, without the permission of the victim,
William Bundrick, and with the intent of unlawfully appropriating the financial resources of the victim, did obtain and use Bundrick
identity, social security number, bank account numbers and personal information. With this information the defendant did take
money from the victim's account and deposit into an account fraudulently opened with HSBC Bank. This incident is based on an
investigation by the Fairfield County Sheriff's Office.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ Municipality of
Fairfield
Affiant's Address P. O. Box 387
Winnsboro, SC 29180-
Affiant's Telephone (803)635-4141

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 9/15/2010 defendant Robert James Jr Miller
did violate the criminal laws of the State of South Carolina for ordinance of
County/ Municipality of Fairfield) as set forth below:

DESCRIPTION OF OFFENSE: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of
other unlawfully
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 11/01/2010
Judge's Address 115-B South Congress Street
Winnsboro, SC 29180-
Judge's Telephone (803)635-4525
Signature of Issuing Judge
Russell Durant Price
Judge Code: 7107
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL ORIGINAL ORIGINAL

ORIGINAL

AFFIDAVIT

Exhibit # 22
6

DOCKET NO. 2011-GS-20-035

The State of South Carolina

County of Fairfield

2011 FEB -1 P 4:45

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

THE STATE
vs.

Robert J. Miller, Jr.

Indictment for
Financial Identity Fraud

SC Code: § 16-13-510
CDR Code: 2813
Class: Felony, E

WITNESSES

Talbert-FCSO

Boyd

ARREST WARRANT NUMBER/DOA

M400779 (DOA-11-03-10)

ACTION OF GRAND JURY

FILED 2/1/2011

Mesa Windham
Foreperson of Grand Jury
Date: 2/1/11

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

INDICTMENT

At a Court of General Sessions, convened on February 1, 2011, the Grand Jurors of Fairfield County present upon their oath:

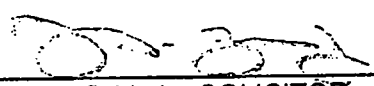
FINANCIAL IDENTITY FRAUD

That Robert J. Miller, Jr. did in Fairfield County on or about September 7, 2010, without the authorization or permission of the victim, William Bundrick and with the intent to unlawfully appropriate the financial resources of the victim to the defendant's own use or the use of a third party did access the financial resources of the victim through the use of identifying information in violation of §16-13-0510, *Code of Laws of South Carolina, (1976), as amended.*

was 9/15/2010

changed to September 7, 2010
on indictment & sentence sheet

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



Douglas A. Barfield, Jr., SOLICITOR

ARREST WARRANT

M-400779

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

THE STATE

against

Robert James Jr Miller

Address:

Phone:

Sex: M

Race: W

Height: 5'10"

Weight: 155

DL State: SC

DL #: 99999999

DOB: [REDACTED]

Agency ORI #: SC0200000

Prosecuting Agency: Fairfield County Sheriff

Prosecuting Officer: J Talbert - 1086

Offense: Finan TC / Financial identity fraud, obtains/records

identify, info., access/att. access finan. records of

Offense Code: 2813

Code/Ordinance Sec: 16-13-0510

This warrant is

CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

Fairfield

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Robert James Miller Jr

11-3-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

101 South Congress St

PO Drawer 299

Winnsboro, SC 29180

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STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Personally appeared before me the affiant J Talbert

being duly sworn deposes and says that defendant Robert James Jr Miller

did within this county and state on or about 09/15/2010

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Fairfield

in the following particulars:

DESCRIPTION OF OFFENSE Finan TC / Financial identity fraud, obtains/records identify, info., access/att. access finan. records of

other unlawfully

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:

That on or about September 15, 2010 in the county of Fairfield, one Robert James Jr Miller, without the permission of the victim,

William Bundrick, and with the intent of unlawfully appropriating the financial resources of the victim, did obtain and use Bundrick

identity, social security number, bank account numbers and personal information. With this information the defendant did take

money from the victim's account and deposit into an account fraudulently opened with HSBC Bank. This incident is based on an

investigation by the Fairfield County Sheriff's Office.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Affiant's Address P. O. Box 387

Winnsboro, SC 29180-

Affiant's Telephone (803)635-4141

ARREST WARRANT

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

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

on or about 9/15/2010

defendant Robert James Jr Miller

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

☒ County/ ☐ Municipality of

Fairfield

) as set forth below:

DESCRIPTION OF OFFENSE: Finan TC / Financial identity fraud, obtains/records identify, info., access/att. access finan. records of

other unlawfully

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 11/01/2010

Judge's Address 115-B South Congress Street

Winnsboro, SC 29180-

Judge's Telephone (803)635-4525

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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violate the criminal laws of the

Fairfield

Fairfield

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the crime set forth and that probable cause is based on the following facts:

That on or about September 15, 2010 in the county of Fairfield, one Robert James Jr Miller, without the permission of the victim,

William Bundrick, and with the intent of unlawfully appropriating the financial resources of the victim, did obtain and use Bundrick

identity, social security number, bank account numbers and personal information. With this information the defendant did take

money from the victim's account and deposit into an account fraudulently opened with HSBC Bank. This incident is based on an

investigation by the Fairfield County Sheriff's Office.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

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

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

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on 11/01/2010

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other unlawfully

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the crime set forth and that probable cause is based on the following facts:

That on or about September 15, 2010 in the county of Fairfield, one Robert James Jr Miller, without the permission of the victim,

William Bundrick, and with the intent of unlawfully appropriating the financial resources of the victim, did obtain and use Bundrick

identity, social security number, bank account numbers and personal information. With this information the defendant did take

money from the victim's account and deposit into an account fraudulently opened with HSBC Bank. This incident is based on an

investigation by the Fairfield County Sheriff's Office.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Affiant's Address P. O. Box 387

Winnsboro, SC 29180-

Affiant's Telephone (803)635-4141

ARREST WARRANT

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

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

on or about 9/15/2010

defendant Robert James Jr Miller

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

☒ County/ ☐ Municipality of

Fairfield

) as set forth below:

DESCRIPTION OF OFFENSE: Finan TC / Financial identity fraud, obtains/records identify, info., access/att. access finan. records of

other unlawfully

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Sworn to and subscribed before me

on 11/01/2010

Judge's Address 115-B South Congress Street

Winnsboro, SC 29180-

Judge's Telephone (803)635-4525

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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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:

That on or about September 15, 2010 in the county of Fairfield, one Robert James Jr Miller, without the permission of the victim,

William Bundrick, and with the intent of unlawfully appropriating the financial resources of the victim, did obtain and use Bundrick

identity, social security number, bank account numbers and personal information. With this information the defendant did take

money from the victim's account and deposit into an account fraudulently opened with HSBC Bank. This incident is based on an

investigation by the Fairfield County Sheriff's Office.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Affiant's Address P. O. Box 387

Winnsboro, SC 29180-

Affiant's Telephone (803)635-4141

ARREST WARRANT

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

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

on or about 9/15/2010

defendant Robert James Jr Miller

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

☒ County/ ☐ Municipality of

Fairfield

) as set forth below:

DESCRIPTION OF OFFENSE: Finan TC / Financial identity fraud, obtains/records identify, info., access/att. access finan. records of

other unlawfully

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 11/01/2010

Judge's Address 115-B South Congress Street

Winnsboro, SC 29180-

Judge's Telephone (803)635-4525

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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DESCRIPTION OF OFFENSE Finan TC / Financial identity fraud, obtains/records identify, info., access/att. access finan. records of

other unlawfully

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:

That on or about September 15, 2010 in the county of Fairfield, one Robert James Jr Miller, without the permission of the victim,

William Bundrick, and with the intent of unlawfully appropriating the financial resources of the victim, did obtain and use Bundrick

identity, social security number, bank account numbers and personal information. With this information the defendant did take

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PAGE-02 DATE-11/18/2010 TIME-12:15:36
REQ ORI-SC0200000 FAIRFIELD CNTY SO
SID-SC01603793 FBI-114027LA9

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

WARR-M400780
CIT-16-14-40(E)-FELONY ←

ARREST CHARGE 02-FINANCIAL
TRANSACTION CARD FORGERY
OFFENSE DATE-10/06/2010 ←

WARR-M400781
CIT-16-14-40(E)-FELONY ←

ARREST CHARGE 03-FINANCIAL
TRANSACTION CARD FORGERY
OFFENSE DATE-08/28/2010 ←

WARR-M400788
CIT-16-14-60-MISDEMEANOR

ARREST CHARGE 04-FINANCIAL
TRANS CARD FRAUD <\$500 IN
6MTHS
OFFENSE DATE-08/28/2010

WARR-M400789
CIT-16-14-60-MISDEMEANOR

ARREST CHARGE 05-FINANCIAL
TRANS CARD FRAUD <\$500 IN
6MTHS
OFFENSE DATE-10/06/2010

WARR-M400790
CIT-16-14-60-MISDEMEANOR

ARREST CHARGE 06-FINANCIAL
TRANS CARD FRAUD <\$500 IN
6MTHS
OFFENSE DATE-09/15/2010

WARR-M400791
CIT-16-14-60-MISDEMEANOR

ARREST CHARGE 07-FINANCIAL
TRANSACTION CARD FRAUD
GENERALLY
OFFENSE DATE-09/15/2010

WARR-M400793
CIT-16-14-60-MISDEMEANOR

ARREST CHARGE 08-FINANCIAL
TRANSACTION CARD FRAUD
GENERALLY
OFFENSE DATE-10/06/2010

WARR-M400795 @
CIT-16-13-30(B)(1)-FELONY

ARREST CHARGE 09-GRAND LARCEN
Y, VALUE >\$1,000 BUT <\$5,00
0
OFFENSE DATE-08/28/2010

- WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

M-400780

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

THE STATE

against

10-8284

Robert James Jr Miller

Address: 2869 Greenbriar Mossydale

Winnsboro, SC 29180-

None: SSN: 888-88-8888

Sex: M Race: W Height: 5 10 Weight: 155

L State: SC DL #: 999999999

DOB: 1971 Agency ORI #: SC0200000

Prosecuting Agency: Fairfield County Sheriff

Prosecuting Officer: J Talbert - 1086

Offense: FinanTC / Financial identity fraud, obtains/records

identify. info., access/att. access finan. records of

Offense Code: 2813

Order/Ordinance Sec: 16-13-0510

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

to be arrested and brought before me to be

all with according to the law.

Signature of Judge (L.S.)

RETURN

copy of this arrest warrant was delivered to

endant

Signature of Constable/Law Enforcement Officer

TURN WARRANT TO:

General Sessions

101 South Congress St

PO Drawer 299

Winnsboro, SC 29180

DEFENDANT COPY

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STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Personally appeared before me the affiant J Talbert

being duly sworn deposes and says that defendant Robert James Jr Miller

did within this county and state on or about 10/06/2010

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars: Fairfield

DESCRIPTION OF OFFENSE: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of

other unlawfully

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:

That on or about October 6, 2010 in the county of Fairfield, one Robert James Jr Miller, without the permission of the victim,

William Bundrick, and with the intent of unlawfully appropriating the financial resources of the victim, did obtain and use Bundrick

identity, social security number, bank account numbers and personal information. With this information the defendant did take

money from the victim's account and deposit into an account fraudulently opened with Bank Of America. This incident is based on

an investigation by the Fairfield County Sheriff's Office.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Affiant's Address P. O. Box 387

Winnsboro, SC 29180-

Affiant's Telephone (803)635-4141

ARREST WARRANT

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

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

on or about 10/06/2010 defendant Robert James Jr Miller

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

☒ County/ ☐ Municipality of Fairfield

DESCRIPTION OF OFFENSE: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of

other unlawfully

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 11/01/2010

Signature of Issuing Judge (L.S.)

Russell Durant Price

Judge Code: 7107

Judge's Address 115-B South Congress Street

Winnsboro, SC 29180-

Judge's Telephone (803)635-4525

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

8

Exhibit #2

DOCKET NO. 2011-GS-20-036

WITNESSES

Talbert-FCSO

Bord

The State of South Carolina

County of Fairfield

2011 FEB -1 P 4:45

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

ARREST WARRANT NUMBER/DOA

M400780 (DOA-11-03-10)

THE STATE

vs.

Robert J. Miller, Jr.

ACTION OF GRAND JURY

TRUE BILL

2/1/11

Lisa Windham

Foreperson of Grand Jury

Date:

2/1/11

VERDICT

Indictment for

Financial Identity Fraud

SC Code: § 16-13-510

CDR Code: 2813

Class: Felony, E

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

INDICTMENT

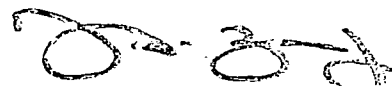
At a Court of General Sessions, convened on February 1, 2011, the Grand Jurors of
Fairfield County present upon their oath:

FINANCIAL IDENTITY FRAUD

September 2,

That Robert J. Miller, Jr. did in Fairfield County on or about _____, 2010,
without the authorization or permission of the victim, William Bundrick and with the
intent to unlawfully appropriate the financial resources of the victim to the defendant's
own use or the use of a third party did access the financial resources of the victim
through the use of identifying information in violation of §16-13-0510, *Code of Laws of
South Carolina, (1976), as amended.*

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



Douglas A. Barfield, Jr., SOLICITOR

IM-400781

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

Fairfield

2011 NOV -8 P 2:54

THE STATE

against

10-8284

FAIRFIELD COUNTY

CLERK OF COURT

Robert James Jr Miller

Address: 2869 Greenbriar Mossydale

Winnsboro, SC 29180-

Phone:

Sex: M Race: W SSN: 888-88-8888

DL State: SC Height: 5' 10 Weight: 155

DOB: 10/19/1971 DL #: 99999999

Agency ORI #: SC0200000

Resolving Agency: Fairfield County Sheriff

Resolving Officer: J Talbert- 1086

Offense: FinanTC / Financial identity fraud, obtains/records

identify. info., access/att. access finan. records of

Offense Code: 2813

Order/Ordinance Sec: 16-13-0510

This warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

to be arrested and brought before me to be

halt with according to the law.

The accused

Signature of Judge

(L.S.)

RETURN

copy of this arrest warrant was delivered to

fendant Robert James Jr Miller

11-3-10

Signature of Constable/Law Enforcement Officer

TURN WARRANT TO:

General Sessions

101 South Congress St

PO Drawer 299

Winnsboro, SC 29180

ORIGINAL ORIGINAL ORIGINAL

County/ ☒ Municipality of

Fairfield

Personally appeared before me the affiant J Talbert

being duly sworn deposes and says that defendant Robert James Jr Miller

did within this county and state on or about 08/28/2010

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of

other unlawfully

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:

That on or about August 28, 2010 in the county of Fairfield, one Robert James Jr Miller, without the permission of the victim,

William Bundrick, and with the intent of unlawfully appropriating the financial resources of the victim, did obtain and use Bundrick

identity, social security number, bank account numbers and personal information. With this information the defendant did take

money from the victim's account and deposit into an account fraudulently opened with Charles Schwab Bank. This incident is based

on an investigation by the Fairfield County Sheriff's Office.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

Fairfield

Affiant's Address P. O. Box 387

Winnsboro, SC 29180-

Affiant's Telephone (803)635-4141

ARREST WARRANT

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

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

on or about 8/28/2010 defendant Robert James Jr Miller

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

County/ ☐ Municipality of Fairfield) as set forth below:

DESCRIPTION OF OFFENSE: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of

other unlawfully

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 11/01/2010

Signature of Issuing Judge

Russell Durant Price

(L.S.)

Judge Code: 7107

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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AFFIDAVIT

Exhibit # 24

ORIGINAL

WITNESSES
Talbert-FCSO

DOCKET NO. 2011 JS-20-037

The State of South Carolina
County of Fairfield

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

ARREST WARRANT NUMBER/DOA

M400781 (DOA-11-03-10)

ACTION OF GRAND JURY

THE STATE
vs.

Robert J. Miller, Jr.

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

Indictment for
Financial Identity Fraud

SC Code: § 16-13-510
CDR Code: 2813
Class: Felony, E

Exhibit # 27

12

13

1 Sheriff's Department you may have given some type of
2 incriminating statements, that is made some admissions or
3 confessions about your guilt, you need to realize by
4 pleading guilty here today you waive your right to contest
5 if you gave any statements whether or not they were taken or
6 obtained from you freely and voluntarily in accordance with
7 your constitutional rights. Do you understand that, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So Mr. Miller, I'll ask you once again, did
10 you commit these offenses?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: So once again, Mr. Miller, you're telling
13 me you're pleading guilty to indictments 2011-35, 2011-36
14 and 2011-37 because you did, in fact, in Fairfield County
15 back on September 7th of 2010, September 2nd of 2010 and
16 August 28th of 2010 you accessed the financial information
17 of Mr. William Bundrick and you used it for purposes of
18 getting money through the bank or something like that, you
19 understand all of that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You're pleading guilty because you are, in
22 fact, guilty, is that correct, sir?

23 THE DEFENDANT: That's correct, sir.

24 THE COURT: Very well. Solicitor, have there been any
25 plea negotiations?

IV.

An Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

The Applicant’s assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel’s advice was not “within the range of competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

State v. Leopard, (S.C. App. 2002) 349 S.C. 467, 563 S.E.2d 342.

- When the Supreme Court is called upon to interpret the South Carolina Constitution, it is guided by the ordinary and popular meaning of the words used. Richardson v. Town of Mount Pleasant, (S.C. 2002) 350 S.C. 291, 566 S.E.2d 523.

* What is the meaning of FinantC/Financial Identity Fraud?

- Supreme Court cannot construe a statute without regard to its plain and ordinary meaning and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. Horry County School District v. Horry County, (S.C. 2001) 346 S.C. 621, 552 S.E.2d 737.

- * →
-
- In a proceeding for postconviction relief, a defendant collaterally attacks his conviction and MAY RAISE ANY CLAIMS OF CONSTITUTIONAL VIOLATIONS relating to his conviction. Williams v. Ozmint, (S.C. 2008) 380 S.C. 473, 671 S.E.2d 600.

- * →
- Plea counsel was ineffective in failing to have plea agreement between defendant and Solicitor's office enforced... Solicitor withdrew the plea offer... Custodio v. State, (S.C. 2007) 373 S.C. 4, 644 S.E.2d 36.

29

**SIXTH JUDICIAL CIRCUIT
PUBLIC DEFENDER'S OFFICE**

104 North Main Street * Post Office Box 1809
Lancaster, South Carolina 29721
Telephone No.: (803) 285-5585
Fax No.: (803) 285-6085

June 1, 2012

Mr. James Robert Miller, SCDC # 316047
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your recent letter

Dear Mr. Miller:

I am writing in response to your recent letter dated "May 2012" that I just received yesterday. You have asked a number of different questions and I will try to address them in the order that you asked them.

You first ask "What are the next steps?" and if it is possible for you to withdraw your guilty plea. I do not know of any legal basis for you to withdraw your guilty plea. As to the next steps, I have filed an appeal as you requested. If your appeal is denied, your next procedural step would be to file an application for Post-Conviction Relief, commonly known as PCR. In a PCR application, you argue that you are entitled to a new trial because you did not receive effective representation of counsel. A lawyer (obviously not me) would be appointed to represent you and eventually a hearing would be held. If a judge decided that you did not receive effective representation of counsel and that the ineffective representation made a difference in the outcome of your case, that judge could grant you a new trial.

You ask about whether or not the sentence on indictment 2011-GS-20-2036. The notes I took the day of the hearing reflect that the judge did order ten years suspended to three years probation. My notes also reflect that he ordered \$30,000.00 in restitution. I do not have a transcript but I believe the sentence sheet accurately reflects what the judge ordered. As to the restitution amount, the judge heard from both sides and made his decision on the amount. I believe he took into account the fact that money was taken from you and that your car was seized. If you remember, that State alleged you stole significantly more money than just \$30,000.00. I believe your only way to challenge this amount would be to file a PCR application as I mentioned above and request a new trial.

Supplement to paragraph #9

- 1) § 16-13-520, S.C. Code - Venue
...the crime is considered to have been committed in a county in which a part of the financial identity fraud took place...
- 2) Accused must be tried in county where offense committed. This section establishes common law rule that criminal prosecution shall be tried in county in which offense committed. State v. Gasque, 241 S.C. 316, 128 S.E.2d 826 (1957).
- 3) Investigator Talbert is without excuse and clearly would have known that he lacked authority to initiate prosecution because the alleged offenses occurred outside his territorial jurisdiction and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).
- 4) United States Constitution, Amendment VI
- 5) General Sessions Court did not have jurisdiction, and violated the Due Process Clause of the 5th and 14th Amendments.
See Sunal v. Large, 332 U.S. 174, 178-79, 67 S.Ct. 1588, 1591; Butler v. King, 781 F.2d 486, 490 (5th Cir.); Lowery v. Estelle, 696 F.2d 333, 336-38 (5th Cir.).

I. Factual and Procedural Background

Plaintiff alleges that Talbert arrested Plaintiff's wife on November 3, 2010, for multiple counts of financial transaction card fraud. [Entry #1 at 3]. According to the complaint, Dove and Westfall arrested Plaintiff later that day at a storage unit, where he consented to a search of the premises. *Id.* Plaintiff indicates that he "was taken to the Fairfield County Detention Center where defendants seized \$882.00 cash he had on his person." *Id.* Plaintiff alleges Westfall obtained a search warrant to re-inspect the storage unit without probable cause, and Talbert, Westfall, Dove, and Boyd located and seized an additional \$9000 in cash. *Id.* Plaintiff also alleges that Talbert and Boyd unlawfully seized and impounded his vehicle. *Id.*

Plaintiff indicates that he did not receive a bond hearing for over three days and believes that Talbert "requested the delay and intentionally postponed the hearing." *Id.* Plaintiff claims that a state court granted his wife a personal recognizance bond; however, a judge denied bond for him, allegedly pursuant to Talbert's request. *Id.* Plaintiff states that he received a bond review hearing in February 2011 and "was granted a \$125,000 bond which was posted on February 28, 2011." *Id.* at 4. Plaintiff alleges that this "excessive and unnecessary bond was imposed at the request of Defendant Maxwell." *Id.*

Plaintiff states that he received permission from Maxwell to move to his parents' home in Pennsylvania in late 2011. *Id.* Plaintiff claims that he returned for court in April 2012, and Maxwell revoked Plaintiff's bond subjecting him to re-incarceration. *Id.* Plaintiff further alleges that Maxwell withdrew all plea offers prior to trial. *Id.* Plaintiff indicates that he entered a guilty plea to three counts of financial identity fraud on April

3, 2012, and was sentenced to two concurrent ten-year sentences of imprisonment. *Id.* Plaintiff also alleges he received a consecutive ten-year sentence for the third count, which the state court suspended upon the service of three years probation. *Id.*

In preparing for a post-conviction relief (“PCR”) hearing, Plaintiff alleges that he discovered “substantial evidence that Defendants Talbert and Maxwell concealed important information with the intent of depriving plaintiff of his rights under the Sixth Amendment of the U.S. Constitution.” *Id.* at 5. Plaintiff also asserts his money and vehicle were illegally confiscated. *Id.* Plaintiff alleges no knowledge of any forfeiture hearing regarding his property, *id.* at 6, and believes Defendants “charged the plaintiff for a crime with the intent of making the charge and the \$66,312.93 disappear.” *Id.* at 7. Plaintiff states that he has mailed letters to the South Carolina Law Enforcement Division (“SLED”) requesting an investigation into Defendants’ alleged “misconduct and theft of funds,” to no avail. *Id.* Lastly, Plaintiff alleges that Defendants have illegally obtained and confiscated a check “made payable to the plaintiff,” refused to provide him with discovery materials, and withheld or destroyed critical evidence in his criminal case. *Id.* at 9. Plaintiff seeks monetary damages for Defendants’ alleged violations of his constitutional rights. *Id.* at 11.

II. Discussion

A. Standard of Review

Plaintiff filed his complaint pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the

his person and the keys to his storage unit
(See Exhibit's 50 and 52).

- 5) Also on November 3, 2010, at 4:55 pm, after already having had searched the storage unit and become familiar with its contents, Westfall, without sufficient probable cause, obtained a defective search warrant to re-inspect the premises (Exhibit C pages 1-6).
- 6) Search warrant is defective, violates State law and the plaintiff's Fourth Amendment Right that guarantees "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures... no warrants shall issue, but upon probable cause... and particular describing the... persons or things to be seized." Most noticeably, "Attachment B" to the search warrant (Exhibit C, page 6) does not match any of the other search warrant pages. It is the only page NOT initialed by the judge and the type and font is different, CLEARLY indicating it was added after - the - fact or switched.
- 7) The warrant was served at 5:30 pm by Investigator's Jeff Talbert, Jeff Westfall, Bill Dove, and Maggie Boyd (Exhibit D). Again, no computers were

Supplement to paragraph #6

Illegal Search and Seizure.

Defective Search Warrant.

"Warrant must describe objects with particularity.
— An affidavit for a warrant to search for property held in fraud upon revenue of the United States, which is substantially in the language of the statute authorizing such search warrant, but which does not particularly describe the person or things to be seized, does not conform to the requirements of this Amendment. A warrant issued thereon and following its language is VOID."
Woods v. United States, 279 F 706 (1922)

Effect of insufficient affidavit —

Where the affidavit does not disclose anything which the issuing officer can consider in arriving at a determination of whether there is probable cause for the issuance of a warrant, this, in effect, leaves the determination of probable cause to the judgment and discretion of the police officer rather than to the issuing officer; therefore, the affidavit is totally insufficient and a warrant issued thereupon is a nullity.
State v. Hill, 245 SC 76, 138 SE2d 829 (1964).

EXhibit C Page 1

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STATE OF SOUTH CAROLINA }

COUNTY OF FAIRFIELD }

SEARCH WARRANT

Form approved by SC

General - Section 17

March

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPAL
OF

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

See Attachment A

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and seize such property if found:

DESCRIPTION OF PROPERTY

See Attachment B

This Search Warrant shall not be valid for more than ten days from the date of issuance.
A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a cc of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Winnsboro, S.C.

11-03-
4:55 PM

2010

[Signature]

(LS)

STATE OF SOUTH CAROLINA }

COUNTY OF FAIRFIELD }

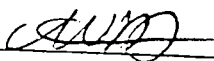
AFFIDAVIT

Personally appeared before me, one Inv. Jeff Westfall who, being duly sworn, says that there is probable cause believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

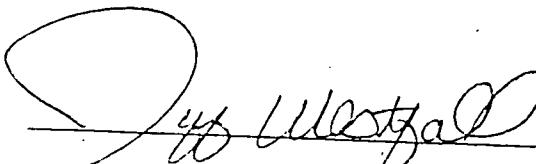
See Attachment BDESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHEDSee Attachment AREASON FOR AFFLANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISESSee Attached Affidavit

Sworn to and Subscribed before me

this 3rd day of Nov, 2010

(LS)

Signature of Judge



Affiant

Address Fairfield County Sheriff's Office350 Columbia Rd., SC 29180Phone (303) 635-4141

Exhibit C page 3

State of South Carolina)

)

)

County of Fairfield)

AFFIDAVIT

In support of the attached Application for Search Warrant, Affiant, being duly sworn, deposes and says:

I, Jeff Westfall, am a criminal investigator with the Fairfield County Sheriff's Office. In connection with my duties, I investigate and make arrests for violations of criminal offenses. I have been a criminal investigator with the Fairfield County Sheriff's Office for approximately 2 years. Prior to that, I was a patrol deputy with the Fairfield County Sheriff's Office for 1 year and a patrol officer with the Town of Winnsboro for 2 years. During this time, I have investigated numerous criminal investigations which have led to numerous arrests and convictions.

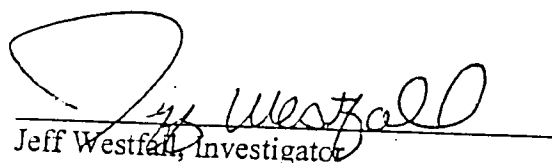
I am submitting this Affidavit in support of the belief that there is probable cause to establish the property and items enumerated herein are to be found at said storage unit #115 at Clarks Mini Storage located at 1470 US Hwy 321 Bypass area of Fairfield County in South Carolina. During the course of an investigation I have learned from an interview of Kayla Miller that Robert James Miller does rent this storage unit and it is in his name. The Fairfield County Sheriff's Office is conducting an investigation involving Robert James Miller and Kayla Miller where they were illegally obtained credit cards in



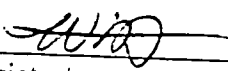
other persons (real and fictitious) names for the intent of committing the crime of identity theft.

On or about August 28th 2010, Robert James Miller and Kayla Hudson did illegally use the identity of the victim William Bundrick to open up fictitious bank accounts and transfer the monies out of Mr. William Bundrick account and place it in the fictitious accounts for the purpose of stealing the money. It is the belief of the affiant that the fraudulent credit cards and money may be inside of the storage unit located at 1470 US 321 Bypass, Winnsboro SC at Clarks Mini Storage.

Based on the above facts and circumstances, your Affiant believes that there is probable cause to believe that the items enumerated above are contained within this storage unit.


Jeff Westfall, Investigator
Fairfield County Sheriff's Office

Sworn to and Subscribed Before Me
This 30th Day of November 2010


Magistrate
Fairfield County


Defective on its face
"Affidavit set forth no facts as to why the police believed that..."

State v. Smith, (S.C. 1990) 301 S.C. 371, 392
S.E. 2d 182

ATTACHMENT A

~~RE: CLARKS MINI STORAGE~~
~~1470 US HWY 321 BYPASS~~
~~WINNSBORO, SOUTH CAROLINA~~

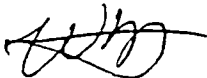
DIRECTIONS TO PROPERTY TO BE SEARCHED

From the intersection of Hwy 213 and US Hwy 321 Bypass travel North to Clarks mini warehouse behind City Laundry and Cleaner address 1470 US Hwy 321 Bypass. Fairfield County.

DESCRIPTION OF PROPERTY TO BE SEARCHED

Storage unit clearly mark with black number 115 with a white roll up door.

All items located inside storage unit such as suit cases, boxes, safes, any type of storage container stored within the storage unit.



ATTACHMENT B

DESCRIPTION OF PROPERTY SOUGHT

1. Any credit cards, bank cards, paper checks, US Currency, documents.
2. computer devices, cell phones
3. Any other items related to the crime.

Exhibit D

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RETURN

I received the attached Search Warrant 11 - 3, 2010, and have executed it as follow
On 11 - 3, 2010 at 5:30 o'clock P M, I search
(the person) described in the warrant and (the premises)

I left a copy of the warrant with Storage Unit #115
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

See attached list

This inventory was made in the presence of Inv. Jeff Talbert, Inv. Jeff Westfall
AND Inv. Maggie Boyd and Inv. Bill Dove

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 4th }

day of November, 2010 }

[Signature] (LS) }

Signature of Judge

Bill Dove
(Signature of Officer Executing Warrant)

IV. STATEMENT OF CLAIM - continued.

26) Plaintiff has been provided with information and evidence that the defendant's had been illegally going thru the plaintiff's mailbox without his knowledge or consent or any court order or search warrant. Defendant's unlawfully removed and opened mail clearly addressed to the plaintiff (EXhibit R). This check, made payable to the plaintiff, is still in their possession. Defendant Talbert has not responded to my numerous request's to return this and other items that were taken. This check has not been cashed.

27) Defendants have refused to provide plaintiff with requested Discovery Documents (see attachments 1-10 of plaintiff's Motion to Appoint Counsel).

28) Defendant Talbert has withheld and/or destroyed critical information, evidence, photographs and Etc. related to plaintiff's criminal case. Defendant Talbert has two family members that were involved in the alleged crime. Both were photographed receiving money from ATM machines and made statements. They were never charged, never mentioned in court and Defendant Talbert may have destroyed all relevant information.

Exhibit R

Security deposit for Motel Room.
Got locked up and couldn't get it.

© 2003 INTUIT INC. # 723 1-800-433-2810

GOLD CROWN MANAGEMENT, INC.
Yachtsman Credit Card Account
1304 N. Ocean Blvd.
Myrtle Beach, SC 29577

WACHOVIA BANK, NATIONAL ASSOCIATION
Myrtle Beach, SC 29577
67-11532

5355

PAY TO THE ORDER OF Robert Miller

10/22/2010

One Hundred and 00/100*****

\$*100.00

Robert Miller
933 Bundrick Rd
Windsboro, SC 29180

DOLLARS 

MEMO

1100535511 1053200019120014018471411

Sean Beatty

AP

II. Constitutional right to counsel on first appeal.

Petitioner was denied his right to counsel.

- Douglas v. California, 372 U.S. 353, 356-58, 83 S.Ct. 814, 816-17, 9 L.Ed.2d 811, 814-15 (1963) - establishing that the Constitution requires the State to pay for a lawyer for a defendant who cannot afford one for his first appeal.
- Halbert v. Michigan, 545 U.S. 605, 125 S.Ct. 2582, 2583, 162 L.Ed.2d 552, 556 (2005) - explaining that... the Douglas right applies to a first appeal even if the appeal requires permission under State law.
- Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821, 830 (1985) ("[A] first appeal as a right therefore is not adjudicated in accord with due process of law if appellant does not have the effective assistance of an attorney.")
- Swenson v. Bosler, 386 U.S. 258, 259, 87 S.Ct. 996, 997, 18 L.Ed.2d 33, 35 (1967) (holding that the right to counsel on direct appeal in State

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Courts cannot be denied to a defendant solely because he is unable to afford a lawyer).

- Mason V. Hanks, 97 F.3d 887, 902 (7th Cir. 1996)
"[W]hen we are convinced that a petitioner might well have won his appeal on a significant and obvious question of State law... we are compelled to conclude ... that the appeal was not fundamentally fair..."

- Per se prejudicial violation (Structural Error)
Boe V. Flores-Ortega, 528 U.S. 470, 484, 120 S.Ct. 1029, 1038, 145 L.Ed. 2d 985, 999 (2000) When the petitioner is effectively denied the right to an appeal due to ineffective assistance of counsel.

Even if this error were harmless, I would still be entitled to relief because the error was per se prejudicial violation that affected my substantial rights.

- Neder V. United States, 527 U.S. 1, 7, 119 S.Ct. 1827, 1833, 144 L.Ed. 2d 35, 46 (1999) Stating that there is a "limited class of fundamental constitutional errors that... are so intrinsically harmful as to require automatic reversal (i.e., affect substantial

rights) without regard to their effect on the outcome."

- Williams v. Taylor, 529 U.S. 362, 380, 120 S. Ct. 1495, 1506, 146 L. Ed. 2d 389, 410 (2000) finding that the defendant's constitutionally guaranteed right to effective assistance of counsel was "clearly established" by the time the state court heard his case.

III In the interest of Justice.

- Hoffman v. Arave, 236 F.3d 523, 531 (9th Cir. 2001)
"[I]f a state procedural rule frustrates the exercise of a federal right, that rule is 'inadequate'..."
- Mapes v. Coyle, 171 F.3d 408, 429 (6th Cir. 1999)
asserting that state procedural ground for denial of petition was not "adequate" because rulings resulted in "erroneous... refus[al] to consider" petitioner's ineffective assistance of appellate counsel claims.
- Jackson v. Shanks, 143 F.3d 1313, 1318-19 (10th Cir. 1998)
determining that state procedural rule procedurally barring claims not raised on direct appeal cannot be applied to ineffective assistance of counsel

claims because doing so would "deprive [petitioner] of any meaningful review of the ineffective assistance of counsel claim."

- Petitioner is able to demonstrate a "sufficient probability that [the court's] failure to review his federal claim will result in a fundamental miscarriage of Justice." Reaffirmed after the passage of AEDPA in Edwards v. Carpenter, 529 U.S. 446, 451, 120 S.Ct. 1587, 1591, 146 L.Ed.2d 518, 523 (2000).

IV. Cause and Prejudice NO Forfeiture Hearings

State Solicitor deliberately lied about and withheld material information. Solicitor and Sheriff's office concealed exculpatory evidence and altered/forged official documents to "cover up" their illegal actions which include:

- (a) Secretly obtaining a Court Order (in Lancaster County, NOT Fairfield), more than a year before petitioners plea, to release the funds held in a brokerage account - the balance on September 30, 2010 was \$66,312.93.

The criminal charge associated with this account was DISMISSED after the State stole the

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money and they acknowledge on the plea transcript pg 22 Lines 6-8 "An additional thing Mr. Miller did that he's not pleading guilty to because I think it's a Jurisdiction issue but..."

- (b) Secretly obtained a Court order on October 14, 2011 - Six Months BEFORE petitioners plea - ordering the release of \$9,882.00 cash that was illegally seized from the petitioner using an altered and defective Search warrant.

Solicitor did not notify or otherwise inform petitioner until November 2013, after a dozen inquiries.

- (c) The Solicitor, without petitioners knowledge or consent, also secretly obtained a Court order to transfer ownership of petitioners illegally seized vehicle.

No forfeiture hearings were ever held and petitioner was clearly denied his Constitutional right to due process.

Due process of law

- Procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross examine witnesses. Moore v. Moore, (S.C. 2008) 376 S.C. 467, 657 S.E. 2d 743.
- A party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. Brown v. Malloy, (S.C. App 2001) 345 S.C. 113, 546 S.E. 2d 195.
- Requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review. Ogburn - Matthews v. Loblolly Partners (Ricefields Subdivision), (S.C. App 1998) 332 S.C. 551, 505 S.E. 2d 598.
- Due process encompasses all rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice and includes procedural rights of citizens against government actions that threaten the denial of life, liberty, or

property. Ogburn - Matthews v. Loblolly Partners
(Ricefields Subdivision), (S.C. App 1998) 332 S.C. 551,
505 S.E.2d 598.

- Due process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal before any binding decree, order or judgment can be made affecting his rights to life, liberty or property. State v. Brown, (S.C. 1935) 178 S.C. 294, 182 S.E. 838, appeal dismissed 56 S.Ct. 750, 298 U.S. 639, 80 L.Ed. 1372.
- The State Constitution is more protective of due process rights than the United States Constitution because it specifically prohibits private property from being taken for solely private use, without the express consent of the owner. Main v. Thomason, (S.C. 2000) 342 S.C. 79, 535 S.E.2d 918.
- Due Process of Law is guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

Petitioner has been denied Due Process of Law (repeatedly).

deliberate disregard for the fundamental principles of truth and fairness that underlie our criminal Justice System.

- Murray v. Carrier, 477 U.S. 478, 495-96, 106 S.Ct. 2639, 2649, 91 L.Ed. 2d 397, 413 (1986) "[W]here a Constitutional violation has probably resulted in the conviction of one who is actually innocent..."

(b) As a result of the Solicitors false information, and ambiguous Statements, the Judge erroneously ordered petitioner to pay \$30,000. restitution (and a \$6,000. collection fee !!!) for an offense in which the petitioner WAS NOT even charged and the State admitted they did not have any Jurisdiction over.

- Davis v. Zant, 36 F.3d 1538 (11th Cir. 1994)
Prosecutor's "repeated and clearly intentional misrepresentations"... rendered trial fundamentally unfair in violation of the Due Process Clause.

(c) Petitioner's guilty plea was Unconstitutional because he pled guilty unvoluntarily and is entitled to a hearing.

- Fontaine v. United States, 411 U.S. 213-15, 93 S.Ct. 1461-63; Machibroda v. United States, 368 U.S. 487, 494, 82 S.Ct. 510, 514 (1962) holding that petitioner was entitled to a hearing on the issue of ... unkept promises...
- Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 499 (1971) holding that when pleas rest on an implied promise or an agreement by a prosecutor that he will make no sentencing recommendations, such promises must be fulfilled.

Petitioner's plea was "Without Negotiations or Recommendation" (please refer to Sentencing sheets signed by the Solicitor, public defender, and myself). Petitioner pled guilty with the expectation that the Solicitor would NOT make a sentence recommendation.

The Solicitor stated at the plea and on the record that:

"This is a straight-up plea, the State is asking for a ten to 15 year sentence" (plea transcript page 3, lines 11-12) and "It's the

States position that he's pleading straight-up today and we think he deserves a lot of time" (transcript page 15, lines 9-11).

This also raises a question as to the competency of the public defender for failing to object or effectively represent me.

- (d) Petitioner's entire case was infected with error's of Constitutional dimensions that caused actual and substantial disadvantages that can not be overlooked or excused.

As a result of the Solicitor's misconduct prior to and at the plea hearing, petitioner is entitled to relief "On the Law."

Petitioner is entitled to relief on the basis of legally insufficient evidence to support a conviction.

Petitioner is entitled to the requested relief in this action.

Dated:

Robert James Miller, Jr.

Timothy McKinney #287844
Turbeville Corr. Inst. TA 227
P.O. Box 252
Turbeville, SC 29162

~~XXXXXXXXXX~~ ~~XXXXXXXXXX~~
~~XXXXXXXXXX~~ ~~XXXXXXXXXX~~

Mr. Daniel E. Shearouse
Clerk of Court
The Supreme Court of S.C.
P.O. Box 11330
Columbia, SC 29211

RECEIVED
OCT 28 2014
MAILROOM
TURBEVILLE

