

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Abbeville County

R. Lawton McIntosh, Circuit Court Judge

2009-CP-01-00105

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OCT 21 2014

S.C. Supreme Court

MARSHALL MILLER, #249557,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2013-001076

APPENDIX

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VOLUME V OF V

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The Supreme Court of South Carolina

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June 21, 2002

Deborah L. Dusseljee, RPR
President, CompuScripts, Inc.
Post Office Box 7172
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Dear Debbie:

This is in response to your letter dated May 20, 2002 to me concerning your company's contract with the Office of the Attorney General to provide transcripts of Statewide Grand Jury proceedings. As I understand from research conducted by my staff, your company lost revenue when a circuit court judge ordered the Attorney General to provide a copy of a transcript to the defense without payment to you. I certainly understand this presents a problem, since both Judicial Department and private court reporters count on copy costs as provided in Rule 607 (h) (1), SCACR as part of their compensation for transcript production. In response to your concern, I have issued a memorandum to all Circuit Court judges instructing them of this arrangement. A copy of this memorandum is attached for your reference. I hope this will assist you in your work with the Statewide Grand Jury.

Sincerely,


Jean Hofer Toal
Chief Justice

Enclosure

cc: Rosalyn W. Frierson

Robert Bogan
Chief, Statewide Grand Jury

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STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
(HEARD IN COUNTY OF LAURENS)

COURT OF COMMON PLEAS
2009-CP-01-00105

MARSHALL RAY MILLER)
PLAINTIFF,)
vs.)
THE STATE OF SOUTH CAROLINA)
DEFENDANT.)

TRANSCRIPT OF RECORD

(ORIGINAL)

NOVEMBER 30, 2012
LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH, JUDGE.

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

JOHN D. COMPTON, III, ESQ.,
Attorney for The Applicant.

ASHLEY A. McMAHAN, ESQ.,
Attorney for The State.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

NOVEMBER 30, 2012
(MARSHALL RAY MILLER v. STATE OF SOUTH CAROLINA)
(PCR HEARING)
(CASE NO. 2009-CP-01-00105)

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E X H I B I T S

IDENTIFICATION

ENTERED PG.

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(NOVEMBER 30, 2012 - 10:03 A.M.)

(CASE NUMBERS: 2009-CP-01-00105)

MR. COMPTON: Your Honor, may it please the Court. My name is John Compton.

THE COURT: Yes, sir.

MR. COMPTON: I represent Marshall Miller in the next case that's on the docket. I just received, this morning, a copy of some, uh, Grand Jury transcripts and I would beg The Court's indulgence for a little bit of time to -- to look through them if I may?

THE COURT: Are you asking for time for this morning or are you asking for a continuance?

MR. COMPTON: Well, I also have a discovery motion on the docket that may need to be heard, uh, that I'd ask---

THE COURT: Well, the case is set for a merits hearing today. Did -- when was the discovery motion filed?

MS. McMAHAN: Your Honor---

MR. COMPTON: Uh -- it's been several months ago, Your Honor.

THE COURT: Really? And it hasn't been heard?

MR. COMPTON: No, Your Honor.

MS. McMAHAN: ---Your Honor, it was filed, um -- when was it -- back in March; we replied in April.

Uh -- basically this -- I'm not really sure what they

1 were asking for.

2 Let me back up just a little bit. It was a State Grand
3 Jury prosecution; I wasn't there. I got the file probably
4 about a month and a half, two months ago. At that time, I was
5 flipping through trying to see what was going on. There is
6 generally no discovery in a PCR. And -- and---

7 THE COURT: There is if The Court orders it---

8 MS. McMAHAN: Yes, sir---

9 THE COURT: ---in non-capital cases.

10 MS. McMAHAN: ---exactly, Your Honor.

11 THE COURT: And that's what he made a motion for it
12 sounds like to me; is that correct?

13 MS. McMAHAN: However---

14 MR. COMPTON: That is correct, Your Honor.

15 MS. McMAHAN: ---however, usually I will always oppose
16 these because we are not possessors of the -- the Solicitor's
17 office copies. But---

18 THE COURT: You know, I don't really care what your
19 procedure is. I'm gonna -- if -- if he's entitled to
20 discovery, then it should be heard by The Court not before a
21 merits hearing.

22 MS. McMAHAN: Your Honor, actually, I've given him all of
23 the discovery. I've given him everything related to this
24 right now PCR. I went out of my way; I got him the protective
25 order so they could view those records. I mailed them to him;

1 he has them. These are The State Grand Jury testimony
2 transcripts. I am not allowed by Justice Toal's memorandum to
3 give him copies of those. He can either view them -- come to
4 the office and view them.

5 When I spoke to Mr. Compton on the phone about a month
6 ago, we agreed that I would just bring them this morning and
7 he could sit and review them. There's not many.

8 THE COURT: Okay; all right. Let me see the memorandum.
9 And then, what is it that you think you don't have? Just the
10 transcript proceedings? I know that certain of that is
11 somewhat privileged.

12 MR. COMPTON: Well, there -- there are a couple of
13 issues, Judge. Uh -- and -- and this -- my -- my, uh, seeking
14 discovery is a little broader than just what is in the hands
15 of the Attorney General. There was a trial counsel and
16 appellate counsel in this case.

17 This is a little bit of an unusual PCR in that, uh, the
18 applicant, Mr. Miller, who is standing here with me, has
19 sought relief both against his trial counsel and his appellate
20 counsel. And out of an abundance of caution, I have sought
21 file materials from both -- or, I've sought the files from
22 both trial and appellate counsel. And what I received back
23 from trial counsel is, is that he didn't even maintain his
24 file; that he sent it all up to appellate counsel. And what I
25 got back from appellate counsel was just a file full of

1 letters. I didn't receive any briefs, I didn't receive any of
2 the trial counsel's materials. Uh -- basically, I was told to
3 just go ask for things that were matters of public record, uh,
4 from the Supreme Court. But, uh, I'm getting two different
5 stories.

6 I'm getting a story from trial counsel that says that I
7 didn't maintain the integrity of my file. I sent it all up to
8 appellate counsel. And then appellate counsel is just giving
9 me letters that are internal to his office and makes no
10 reference at all to the trial counsel's materials that were
11 allegedly sent to him.

12 I would like to see those things. I think it's central
13 to the amount of preparation and, uh -- that trial counsel
14 made in this case.

15 Uh -- I have not had an opportunity -- had -- there is a
16 protective order. Uh -- there are two protective orders in
17 this case. The first protective order that, uh, the Attorney
18 General references is one from Justice Toal that, uh,
19 references, uh, not producing transcripts because it takes
20 money out of the pocket of court reporters. And I'm
21 proceeding in forma pauperis, and all I want is copies of
22 them. And I would even be willing to take a scanned copy of
23 them so that I can pour over them and study them instead of
24 having to -- to view through them, uh, at the last instance.

25 THE COURT: (To gallery) Sit down, please.

1 MR. COMPTON: Uh -- you know, we did have a cordial
2 conversation and I agreed to look at them today, but quite
3 frankly, that's not enough time.

4 And then secondly, there's a, uh -- a -- an order of
5 Judge Saunders that limits the disclosure of discovery
6 materials to counsel, uh, and his client during the scope of
7 the criminal defense of the case at -- at trial. And I've
8 received those materials from, uh, the Attorney General on
9 C-D with instructions to return those back. Uh -- I have not
10 made copies of those. I've only viewed them on the C-D in --
11 in -- but very briefly because I've -- I've only had a -- a
12 few days -- about three weeks or so -- to look at those
13 materials.

14 I would submit to The Court that the need for that
15 protective order, roughly eight years since the trial, is no
16 longer necessary and I would ask for relief from that order
17 so that I can have my client have copies and study them and
18 be able to help work with me for the prosecution of this case
19 at bar. Thank you.

20 THE COURT: Yes, ma'am?

21 MS. McMAHAN: Um -- Your Honor, Mr. Dudek and Mr. Varner
22 are both here today. Mr. Dudek has brought his files with
23 him. Um -- as far as -- I'm not sure what he's referencing in
24 regards to appellate material, but all of the trial
25 transcripts and all of the appellate material are attached to

1 his return to this PCR and have been given to Mr. Compton.

2 Um -- as far as the transcripts go of just the Grand Jury
3 testimony -- what was given -- my hands are tied. I am not
4 allowed to give copies of those out.

5 THE COURT: I understand that.

6 MS. McMAHAN: Okay.

7 MR. COMPTON: And may it please The Court, I would note,
8 uh, for the record, there is a letter from appellate counsel
9 to, uh, Mr. Miller dated November the 2nd of 2006, that it was
10 his understanding that the protective order of Judge Saunders
11 would not end until all appellate courts have ruled on the
12 appeal. I think that's happened in this case. So, the---

13 THE COURT: I think the Attorney General is referring to
14 the -- the -- the statute which protects the transcripts.
15 That's -- isn't that right, counsel?

16 MS. McMAHAN: Yes, Your Honor. And -- and, also, just by
17 way of procedure, when the appeal is over, we do get all the
18 discovery material back and we store it. And we have this
19 scary room in the parking garage that we keep all of this
20 stuff in. And I've seen it, but we've had it scanned in since
21 then and that's how I produced it to Mr. Compton instead of
22 mailing giant boxes of stuff.

23 But, when the appeal was over, um, it -- the remittitur
24 came back, um, November of 2008. While the -- before the
25 briefs were filed and all of that, Mr. Miller was allowed to

1 have the discovery material at Lieber where he was housed.
2 Now, with Mr. Dudek visiting, they were allowed to view it.
3 The same while he was housed in Abbeville County. And all
4 those materials were then returned to us, which was part of
5 Mr. Varner and Mr. Dudek's files as well.

6 MR. COMPTON: Uh -- Your Honor, according to
7 Mr. Miller---

8 THE COURT: Just -- just one second. I want -- let's --
9 I want to go off the record. I'm not quite sure what I'm
10 dealing with. Y'all come on back to my chambers to talk to me
11 please.

12 (WHEREUPON, HEARING RECESSED TO CHAMBERS AT 10:12 A.M.)

13 (WHEREUPON, HEARING RESUMED AT 10:50 A.M.)

14 THE COURT: All right, Mr. Compton, have you had
15 sufficient time to look through the, uh, various files in this
16 matter?

17 MR. COMPTON: No, Your Honor, I have not. And, uh, we
18 briefly had a conference in chambers just a few minutes ago
19 and discussed this.

20 One of the things I did not make The Court aware of is in
21 July I ruptured two discs in my neck and I've -- I've been out
22 of the office a lot also, which is one of the reasons that I
23 have not been able to fully prepare, uh, and read through all
24 of these things. I've been under a doctor's care and I'm --
25 I'm also on medication for that. But---

1 THE COURT: Let -- let me say this in response to that.
2 One of the things that I -- I will point out that Judge
3 Addy's, uh, notice for the roster says, all continuances, um,
4 requests should go to Judge Addy as a -- as the Administrative
5 Judge.

6 Um -- that being said, I still have the right to continue
7 the case. Um -- but I'm not sure that I'm inclined to, quite
8 frankly. Uh -- tell me what do you think in -- in this
9 file -- I mean, what is it there that you feel like you need
10 more time to look at?

11 MR. COMPTON: Well, a couple of things, Your Honor. This
12 Grand Jury testimony is copious, and, uh, I -- I simply have
13 not had a chance to -- to roll through it.

14 THE COURT: Well, let -- let me -- let me tell you why
15 I -- I hesitate on that. I've looked at the petition in this
16 matter and that's the issues that you framed or your client
17 has framed for this hearing.

18 And those issues are, uh, ineffective of trial counsel,
19 ineffective assistance of trial counsel, ineffective
20 assistance of appellate counsel.

21 Um -- and in reading through the petition, uh, the
22 basis -- the various bases asserted by Mr. Miller would be --
23 was the counsel ineffective for conceding petitioner's guilt
24 at trial?

25 MR. COMPTON: I'm sorry, Your Honor, I couldn't hear.

1 THE COURT: Was -- was, uh, counsel ineffective for
2 conceding the Petitioner's guilt during trial, during the
3 opening or closing statements?

4 So, with regard to that issue, I don't see how anything
5 in the file of either the appellate counsel or trial counsel
6 is gonna help you or lead to anything that may help you, okay?

7 Um -- the next issue, was counsel ineffective for failing
8 to object to the highly prejudicial opinion testimony of The
9 State's witness who had not been qualified as an expert by the
10 Trial Court?

11 Again, I don't see how any, uh, matter contained in the,
12 uh, trial counsel's file or appellate counsel's file, uh,
13 could help you or may lead to something that can help you on
14 that issue. Uh -- and that's contained within the transcript
15 and you have that.

16 Um -- the next issue is, was counsel ineffective for
17 failing to object to the highly prejudicial opinion testimony
18 of The State's witness who had not been qualified as an expert
19 by The State? That's the same thing again.

20 Uh -- the next issue, was counsel ineffective --
21 ineffective for failing to object to the erroneous reasonable
22 doubt instructions?

23 Again, you know, I -- I fail to see how anything
24 contained within the trial counsel's file or appellate
25 counsel's file would shed light or may lead to anything that

1 could shed light on that issue.

2 Um -- was counsel ineffective for failing -- for failing
3 motion in limine challenging the admissibility of the alleged
4 evidence retrieved from the State of Georgia due to improper
5 chain of custody for the alleged evidence as well as
6 unreliability of the evidence?

7 And again, was appellate counsel ineffective for failing
8 to raise the issue of jurisdiction during the alleged evidence
9 that was introduced at trial due to its unreliability and the
10 jurisdiction and the chain of custody?

11 All right; I still don't see how the contents of the file
12 can address or lead to something that may address those
13 issues.

14 I'm gonna hear you on 'em, but I'm just -- this is my
15 thoughts on 'em.

16 Um -- was counsel ineffective for failing to object to
17 the Trial Court's instructions to the jury that impermissibly
18 commented on the facts of the case and thus in doing so,
19 prematurely directed a verdict for The State? Again, that's
20 an issue that's contained in the record.

21 Uh -- next, was counsel ineffective for failing to object
22 to deficiencies in the indictment prior to trial as mandated
23 by, uh, 17-19-90?

24 Was counsel ineffective for failing to motion The Court
25 for a bill of particulars based on the vagueness of the

1 indictment?

2 Um -- those are the issues that have been raised by your
3 client. Those are the issues before The Court today. Um --
4 and I'm curious what -- whatever is in those files, um, either
5 the appellate counsel's file or trial counsel's file, would be
6 relevant or could lead to information with regard to those
7 issues?

8 MR. COMPTON: Your Honor, I think also the -- the
9 comments, that -- that Your Honor's comments also point to the
10 issue raised by my motion for discovery since we're talking
11 about what is relevant material or could lead to relevant
12 material information. And, uh---

13 THE COURT: Well, I'm gonna ask you to answer my
14 questions before you raise another issue, if you don't mind.

15 MR. COMPTON: Yes, Your Honor.

16 THE COURT: And my question is, the issues that are
17 before this Court, as raised by yourself or your -- your --
18 the Applicant, um, how could anything contained in the
19 attorney file -- at the trial counsel or the appellate
20 counsel's file -- be relevant or help you at all on those
21 issues?

22 MR. COMPTON: Well, (after pause) when it comes to
23 preparation for trial, certainly things like motions in limine
24 should have been anticipated by trial counsel prior to being
25 called to trial. And I don't know whether or not anything was

1 prepared or any -- any of that was even considered prior to
2 trial without looking at trial counsel's file.

3 THE COURT: Well, wouldn't that be a matter of
4 cross-examination of Mr. Varner?

5 MR. COMPTON: Well, yes, Your Honor. But -- but those --
6 whether or not there was anything in the file pointing to that
7 would be relevant to, and -- and also helpful to me preparing
8 my cross-examination, whether or not that was in there.

9 THE COURT: Where is his file?

10 MR. COMPTON: Well, he doesn't know. My -- my
11 correspondence with Mr. Varner was that he didn't have---

12 THE COURT: I thought -- just -- just -- just one second.
13 I don't mean to cut you off, but let me ask the Attorney
14 General; I thought you told me that he had his file?

15 MS. McMAHAN: Um -- Your Honor, they're all over here on
16 this table.

17 THE COURT: Then -- then, did you not take a minute to
18 look at it?

19 MR. COMPTON: Your Honor, when I---

20 THE COURT: Did you or not -- did you not take a minute
21 to look at it?

22 MR. COMPTON: I haven't had time to look at it. I was
23 looking at the Grand Jury transcripts, Your Honor---

24 THE COURT: Okay, why?

25 MR. COMPTON: ---and I have not had time to get to it.

1 THE COURT: Okay; um, where are you with -- in the
2 transcripts?

3 MR. COMPTON: I guess I'm about a fourth of the way
4 through them, Judge.

5 THE COURT: You know, let me tell both sides, one of the
6 things that -- that -- that kind-a gets under my craw is that
7 this matter comes to me as a -- a -- a matter of merits, and
8 this discovery stuff should have been made available to him.
9 You should have gone down and got it done. And have come to
10 Court and -- and it's not been done. And it just doesn't
11 suit.

12 I -- I'm gonna give you some more time, but I'm not
13 inclined to continue this case, I'll be -- I'll be quite frank
14 with you, based on the issues that this Applicant has raised
15 himself, okay?

16 MR. COMPTON: Okay.

17 THE COURT: Now, uh, that being said---

18 MR. COMPTON: Your Honor, I do have a -- another issue or
19 two that my client has asked that I raise before The Court.

20 THE COURT: Okay. Let me tell you as well that you --
21 when you raise issues, you're -- you have Rule 11 out there
22 that you are -- you are -- must abide by. You understand
23 that; correct?

24 MR. COMPTON: Yes, Your Honor.

25 THE COURT: Okay; go right ahead.

1 MR. COMPTON: My client has advised that when he was
2 allowed -- when he was brought up for court today, he was not
3 allowed to get his materials for this case. He got materials
4 for his federal case. And he believes that he is not able to
5 proceed without his materials regarding the -- the case before
6 The Court. Uh -- now, why he was not able to get those
7 materials, I don't know.

8 THE COURT: Where are those materials?

9 MR. COMPTON: They're at -- at -- in Lieber.

10 MS. McMAHAN: Your Honor, I have no objection---

11 THE COURT: Please sit down. I'm gonna hear you but
12 I've -- I -- I'm a little frustrated with both sides of this
13 case right now. I'm not sure what I'm gonna do.

14 What material specifically is it?

15 MR. COMPTON: Well, Your Honor, uh, Mr. Miller maintained
16 files for both his federal case and his state case. And
17 according to Mr. Miller, uh, employees at Lieber just gathered
18 up some stuff out of his---

19 THE COURT: What specific information does he contend
20 that's not here that he needs for this case?

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
22 CONFERENCE, OFF THE RECORD.)

23 (WHEREUPON, PROCEEDINGS CONTINUED.)

24 MR. COMPTON: A couple of things, Your Honor. He says
25 that he had notes in preparation for the hearing that he was

1 not allowed to bring that would refer to places in the
2 transcript that he finds relevant to his petition. Also---

3 THE COURT: How does that differ from his petition?
4 Because, he's very articulate throughout his petition where he
5 cites the transcript and particular references in his, uh, in
6 his petition, which is forty-two pages?

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
8 CONFERENCE, OFF THE RECORD.)

9 (WHEREUPON, PROCEEDINGS CONTINUED.)

10 MR. COMPTON: He -- he just doesn't believe that he can
11 fully vet his issues because he's made additional notes and
12 comments that would amplify his remarks in his petition.

13 THE COURT: Well, I'm not very inclined with that. Uh --
14 what else -- other issues do you have?

15 MR. COMPTON: Well, Your Honor, he also wanted to amend
16 his petition to allege that---

17 THE COURT: I disallow that.

18 MR. COMPTON: Okay; thank you, Your Honor.

19 THE COURT: Yes, sir. Okay; now -- and, Mr. Compton, I
20 understand you are doing what you're supposed to do as a -- as
21 an Officer of the Court---

22 MR. COMPTON: Thank you, Your Honor.

23 THE COURT: ---and -- and as an advocate for your client.
24 Uh -- I'm gonna give you some time to go through these
25 transcripts, okay? Um -- these court files, the attorney's

1 files. Mr. Dudek, is your file up here as well?

2 MR. DUDEK: That's the large one from The State archive;
3 yes, Your Honor.

4 THE COURT: Okay; Mr. Varner, your file's up here as
5 well?

6 MR. VARNER: Your Honor, what remains -- I don't know---

7 THE COURT: I know that some went to appellate counsel,
8 but if you add the two together, that would be the entire
9 contents of the files?

10 MR. VARNER: Assuming he was the initial appellate
11 attorney. I've got -- as I recall, he was not the initial
12 appellate attorney. It was all sent to that individual to
13 begin with.

14 MR. DUDEK: Your Honor, let me say this if I could?

15 THE COURT: Please.

16 MR. DUDEK: Um -- Mr. Varner said that he had sent the
17 file up to Appellate Defense, now the Appellate Division of
18 Indigent Defense. As far as I know, I was the only attorney
19 for Mr. Miller. I can't swear to that, but I can say I never
20 got trial counsel's file. I had no need for trial counsel's
21 file. And, I routinely tell my clients I don't have Rule 5, I
22 don't have witness statements, I don't need it. If it's not
23 in the transcript, if it's not an exhibit, I can't help you
24 out on that.

25 THE COURT: Right; right. Thank you, Mr. Dudek, that's

1 quite correct.

2 All right. Um -- with -- I'm gonna ask both of the, uh,
3 attorneys -- and this is a little bit -- gonna be a little bit
4 unusual. If Mr. Compton asks you to try to locate in- --
5 information in the file, do you mind assisting him for that
6 purpose only? Do you mind doing that?

7 MR. DUDEK: Not at all, Your Honor, but I'm---

8 THE COURT: I don't know what you -- I don't know what it
9 is either guys, but I'm just asking you maybe help him
10 expedite his review.

11 I'm trying to keep -- keep from having to continue this
12 case to another time. You know, I'd rather go forward with it
13 if we can, if it's at all possible. Do you mind doing that?
14 You don't have to.

15 MR. DUDEK: Well, what specifically are you asking me to
16 do?

17 THE COURT: I -- I'm -- I'm just saying if Mr. Compton
18 says, uh, Mr. Varner could you show me in your file where
19 X-Y-Z is. I'm not asking him to question you about it, I'm
20 just asking you to go physically point it out if you can for
21 him so we can kind of expedite through the process.

22 MR. DUDEK: I'll -- I'll try and help him any way I can,
23 sure.

24 THE COURT: Okay; I appreciate that greatly. Um --
25 remember, the issues before The Court are those that are

1 raised in the return -- I mean, the petition, okay?

2 MR. COMPTON: Yes, Your Honor.

3 THE COURT: All right. Now, uh, I'm gonna see -- I'm
4 gonna go back and do some other reading of these transcripts.
5 Would you please, uh, Mr. Compton, go through this information
6 and, uh, give me word when you're ready to proceed?

7 MR. COMPTON: If it pleases the Court, I -- I am also
8 going to take the liberty of a brief conversation with
9 Mr. Miller to see if we can't, uh, get a little focus.

10 THE COURT: Okay. And -- and what I -- just F-Y-I, how I
11 was gonna conduct the hearing was basically I was just gonna
12 follow down the issues raised by this gentleman in his
13 petition and hear, um, evidence along those lines and
14 arguments or just testimony and just -- just go through it
15 that way. That seems to be the orderly way to do it.

16 Now, um, on to Ms. McMahan.

17 MS. McMAHAN: Yes, Your Honor?

18 THE COURT: You were gonna say something and I stopped
19 you?

20 MS. McMAHAN: Oh; no, we're good. Thank you.

21 THE COURT: Are you sure?

22 MS. McMAHAN: We are, uh-huh.

23 THE COURT: Okay; thank you. All right, we'll be in
24 recess. Gentlemen, I'm sorry for the delay. Um -- I
25 appreciate your patience.

1 (WHEREUPON, HEARING RECESSED AT 11:05 A.M.)

2 (WHEREUPON, HEARING RESUMED AT 11:46 A.M.)

3 THE COURT: All right; Mr. Compton, are you ready to
4 proceed?

5 MR. COMPTON: Uh -- yes, Your Honor.

6 THE COURT: Okay. Is The State ready to proceed?

7 MS. McMAHAN: Yes, Your Honor.

8 THE COURT: Okay; would you give me the background,
9 please?

10 MS. McMAHAN: Um -- Your Honor, this is 2009-CP-01-105.

11 This is *Marshall Miller versus The State of South Carolina*.

12 He went to trial in absentia that ended on January 30th,
13 2004 in front of Judge Saunders. He was found guilty of
14 conspiracy to traffic methamphetamine and was sentenced to
15 twenty-five years.

16 THE COURT: Okay. Any -- any question of timeliness of
17 the petition?

18 MS. McMAHAN: None, Your Honor.

19 THE COURT: Thank you very much. All right,
20 Mr. Compton?

21 MR. COMPTON: May it please the Court, I'd call Marshall
22 Miller to the stand.

23 THE COURT: Okay; come around, please, sir.

24 CLERK: Left hand on the Bible, raise your right hand.

25 (WHEREUPON, MARSHALL RAY MILLER, BEING FIRST DULY SWORN,

1 TESTIFIED AS FOLLOWS:)

2 THE COURT: Okay; come around and have a seat.

3 MR. COMPTON: Thank you, Your Honor. May it please the
4 Court?

5 THE COURT: Yes, sir.

6 MARSHALL RAY MILLER, DIRECT EXAMINATION BY MR. COMPTON:

7 Q. Mr. Miller, would you state your full name for the
8 record, please, sir?

9 A. Marshall Ray Miller.

10 Q. Are you currently incarcerated?

11 A. Yes, sir.

12 Q. Where are you incarcerated?

13 A. Lieber Correctional.

14 Q. All right. And why are you there?

15 A. Uh -- conviction on conspiracy to traffic
16 methamphetamine.

17 Q. And how long are you supposed to be there?

18 A. Twenty-five years.

19 Q. And that's what you were sentenced to?

20 A. Yes, sir.

21 Q. If you'll bear with me, if there's anything I ask you
22 that you don't understand, let -- you gotta slow down and let
23 me know. If The Court asks you any -- or, if The Court
24 interrupts and asks a question, stop and -- and listen to The
25 Court; answer anything they have. Or -- or -- that The Court

1 may have of you. And if you see opposing counsel -- if you
2 see Ms. McMahan stand up and object, I want you to stop what
3 you're saying and let her have a chance to talk; do you
4 understand?

5 A. Yes, sir.

6 Q. All right; thank you. Now, um... You filed a motion for
7 post-conviction relief; is that right?

8 A. Yes, sir.

9 Q. And you heard the -- you heard the Attorney General say
10 that there was no problems with the timeliness, so it's
11 properly before the Court; is that right?

12 A. Yes, sir.

13 Q. All right. And -- but you've -- you've ask for relief
14 both from your trial counsel and your appellate counsel; is
15 that correct?

16 A. Yes, sir, I have.

17 Q. Just briefly, without going into detail, can you tell us
18 why you asked for relief based on what your trial counsel did?
19 What -- what in -- in a thumbnail sketch, what is it that
20 you're saying about your trial counsel that he didn't do or
21 did do that you disagree with?

22 A. All right. If you turn to trial transcript page 253---

23 THE COURT: I'm sorry; would you, uh, step a little bit
24 back from the microphone so it doesn't reverberate, please,
25 sir?

1 MR. MILLER: Okay; is that better?

2 THE COURT: Thank you.

3 Q. All right, and Mr. Miller, I've -- without going through
4 all those transcripts, what I'm asking you is can you just
5 give us your -- your short version of what it is you're
6 complaining about?

7 A. Well---

8 Q. We'll go into the detail in just a minute. I just kind-a
9 want you to verbalize it.

10 A. Well, he, uh, didn't do a very good job I thought, to
11 start with.

12 Q. When you say "he," who are you talking about?

13 A. Kim Varner. Uh -- and like I say, in -- in the opening,
14 at a critical stage, he kind-a let me down, I thought.

15 Uh -- the -- the issues I have are not all on Mr. Varner,
16 it's also on appellate counsel.

17 Q. And what about appellate counsel do you have a problem
18 with?

19 A. Well, on appeal the issue of a negotiated plea was -- was
20 a appeal issue itself. Uh -- the way that it was addressed
21 was, was, the -- uh, the enforcement of the plea agreement.
22 And I tried getting 'em -- the appellate counsel -- to -- to
23 add to the brief the fact that it was not only the enforcement
24 of it, it was the fact that it was -- he never -- Kim Varner
25 never got it in writing as he should have to, you know,

1 enforce -- to make it an enforceable plea agreement.

2 And I never could get those -- you know, I -- they wanted
3 to do it the -- the way that they done it. They would not
4 address the brief or add to the brief as I asked.

5 And then, the other thing was, was I tried making them
6 aware of Ms. Evans, which was the Attorney General at the time
7 of -- of all this. Um -- she -- she stated that they had a
8 Jackson and Denno hearing on this and she stated during this
9 hearing that they have a special procedure that they follow on
10 all Statewide Grand Jury cases. And that was the procedure
11 followed in my case.

12 THE COURT: All right, let me -- I'm gonna interject
13 here, Counsel. The issues that we raised that were raised in
14 the petition are the issues that we were gonna hear about in
15 Court today. I mean, Jackson/Denno was not raised in his
16 petition; okay, sir?

17 Q. Mr. Miller, if you would, please, confine yourself to the
18 issues that were raised in your petition.

19 A. Okay.

20 Q. Thank you. All right, why don't we just do this; why
21 don't we just go through the issues one at a time? And I
22 think that might help us all focus, okay?

23 A. All right.

24 Q. Now, attached to your petition -- in your petition
25 itself, you -- you refer to a brief that you attached; is that

1 correct?

2 A. (Nod.)

3 Q. And -- and in that brief is where you actually raise all
4 of your issues?

5 A. Correct.

6 Q. And you consider that brief incorporated as part of your
7 petition; is that correct?

8 A. Yes, sir.

9 Q. All right.

10 THE COURT: And for the record, that's the way the
11 Court's treating it; it's been incorporated.

12 MR. COMPTON: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 Q. So, if we start with issue A, and the first thing you
15 look -- the question you raise is was your lawyer -- that is,
16 Mr. Varner -- ineffective because he conceded your guilt
17 during trial? Is that right?

18 A. Yes, sir.

19 Q. And you ex- -- you include some excerpts from the
20 hearing; is that correct?

21 A. Yes, sir, I do.

22 Q. Are there specific statements that you point to that you
23 say Mr. Varner conceded your guilt?

24 A. Yes, sir. I have -- I have---

25 Q. And what -- what are those statements?

1 A. Well, on trial transcript page 253, lines 18 through 25,
2 in his opening summary to the jury he -- he says, I don't
3 think anybody's gonna get up here and tell you that Marshall
4 Miller was a Boy Scout. He wasn't trying out for his merit
5 badge or was doing the -- or was doing the -- what he was
6 doing was appropriate or good or part of the quote, close
7 quote, synergy, or that even some of his activities were
8 legal. They were illegal and nobody's going to argue that.

9 Q. Okay.

10 A. And then he went on to the next page, and he said, lines
11 four through eight on page two-fifty-four, he says, but there
12 are other things that could happen in which you have got --
13 which you have got to say, particularly in a drug case, yes, I
14 did drugs or yes, I might have sold drugs.

15 Q. All right.

16 A. That's -- that was in his opening summary to the jury.

17 Now, I'm -- I'm on trial for drugs so -- and it's a
18 conspiracy case, which incorporates buying, selling,
19 manufacturing, delivering and -- and all that is part of the
20 statute which I was being tried for. And at this point, from
21 the opening of my trial, he's told them I might have sold
22 drugs, I might have did drugs, which is all part of the
23 statute.

24 And then he goes into saying that my activities were
25 illegal and nobody's going to argue with that. Okay, so that

1 was---

2 Q. So that's the opening statement?

3 A. ---that's the very opening statements when he was
4 supposedly laying out his case for the -- for the trial.

5 Q. All right. Uh -- were there any other statements?

6 A. Yes, in closing.

7 Q. Okay. What were the statements that he made in closing
8 that you take issue with?

9 A. Okay. There's a few of them. On trial transcript page
10 sixteen-eighty-nine, lines twenty-five; and page sixteen-
11 ninety, lines one through six.

12 He stated, I submit to you but what does this mean, evil
13 Marshall do, this drug lord? He bought one of them a Toyota.
14 He did buy a Trans Am and a Z-71. He paid for Tina's bond,
15 Tina's lawyer. Martha's bond, Martha's lawyer. Darlene's
16 fine, Jeff Horne's bond. He paid for a dead girl's funeral.
17 It certainly wasn't to buy her silence.

18 And then he went on, lines seven through ten, on page
19 sixteen-ninety. Why would this mean -- this evil, mean drug
20 lord, who controlled these people, pay for somebody's funeral?
21 He was also giving them dope, fronting it, loaning it, and it
22 came out how much money these people owed him.

23 On six -- on page sixteen-ninety, lines sixteen through
24 nineteen, he also said, and you go through Jason's bond,
25 bought Paul a camper, Jason -- Julie's kids' Christmas, Lisa's

1 kids' Christmas. Then Ronnie Suttles. And, is that
2 consistent with a big-time drug lord?

3 He went on up to the next page, sixteen-ninety-one, lines
4 eleven through eighteen, and you know this big drug lord who
5 made hundreds of thousands of dollars and these are mansions
6 he lived in, this apartment complex. I think there is his
7 shop, a trailer, a place on two-fifty-two. This guy who is
8 doing kilos of crystal meth, making hundreds of thousands of
9 dollars, gone. He gave it away if quote -- quote he made it.
10 But he's a dangerous person.

11 He -- he continued on, on page sixteen-ninety-five in
12 closing, lines sixteen through twenty-one, he says, you can
13 look at all this other stuff, these baggies that somehow
14 didn't become baggies, but they are evidence, clearly, the
15 same as words. Evidence of these things that Marshall Miller
16 was engaged in criminal activities, no ifs, ands, or buts.
17 The question, is there a conspiracy?

18 And he -- he, uh, went to page sixteen-ninety-seven,
19 lines one and two. According to The State's proof -- The
20 State's evidence -- it sure was plentiful. Okay?

21 And I have to get the -- get the book on this one. It
22 ain't actually on the petition. (After pause.) And lines four
23 through six on page sixteen-ninety-seven, he says, is Marshall
24 guilty of manufacturing crystal meth? Probably so. Is he
25 guilty of distribution? Yeah, probably so.

1 That -- and then you can -- you can carry it to the
2 next -- to the same page, lines nineteen through twenty-five,
3 and you can find that Marshall Miller and Earnest Covan and
4 Ray Powell for that matter, and possibly Tracy, did at some
5 point in time enter into a conspiracy. If you believe they
6 had the intent to enter into an agreement and did, in fact,
7 have an agreement -- but, a conspiracy among those four or
8 five is not sufficient.

9 Page sixteen-ninety-eight, six through ten, he told them,
10 and even if you find there was several conspiracies, people
11 working together, unless there is a common goal amongst those,
12 he is not guilty. He may not -- he may be guilty of other
13 crimes but not the conspiracy.

14 In line seven -- page seventeen-o-two, thirteen through
15 fifteen, I'm not asking you to look at whether or not Marshall
16 Miller is innocent. He is certainly by no means that.

17 Q. Okay. Let's stop there.

18 A. Okay. Uh -- I have---

19 Q. Do you know that closing argument, sometimes people,
20 uh -- sometimes lawyers, uh, raise questions in order to
21 defeat them? You understand that don't you, Mr. Miller?

22 A. Yes, sir.

23 Q. But do you have -- is there anything about---

24 A. Yeah, I have---

25 Q. ---uh, these commentaries earlier where he talks about

1 the relationships and the gifts and the buying and all of
2 that, uh, are -- is it your testimony that, uh, you're saying
3 that he bolstered the -- the -- the cons- -- the -- the
4 relationships between all those parties and your -- and you?

5 A. In my view on this issue, when Kim -- there's just one
6 thing. Let me find it, I've got to find it on the transcript
7 since I don't have my notes. I did put everything on there.

8 On page seventeen-thirty-eight, this closing was so
9 damaging even the Attorney General picked this out in his
10 closing. And on page seventeen-thirty-eight in lines thirteen
11 through twenty, the Attorney General said, now remember
12 Mr. Varner's closing arguments? He said Mr. Marshall Miller
13 may have been in a conspiracy with Tracy Davis, Earnest Covan
14 and Ray Powell. Stop. That's enough. Remember, he doesn't
15 have to know all nineteen people; he doesn't have to agree
16 with all nineteen. He's only got to agree with one -- with
17 two and if he agrees with one other person, he's in it. He's
18 guilty.

19 Q. He's calling the jury's attention to the fact that---

20 A. Exactly.

21 Q. ---Mr. Varner admitted your guilt?

22 A. Yes, sir. And it was so damaging that it -- he used it
23 in his closing argument, the last thing the jury heard before
24 they went in to deliberate. So when Kim done this, he
25 abandoned me. Now, I -- I mean, he just, he told the jury --

1 if you listen to the opening and the closing, there was really
2 no need for this trial. Because of -- if you're an attorney
3 and you're -- you're a juror, the man's done told his own
4 client that he's not a nice person, that his activities are
5 illegal, and he's -- he's doing all this with dope and he's on
6 trial for dope. Nine times out of ten, they're -- they're not
7 gonna do nothing but convict. I mean, it just takes all the
8 reasonable doubt out of the -- out of the situation.

9 Q. So your testimony though -- based on what you just said,
10 your testimony is, is that he completely destroyed the
11 reasonable doubt standard and basically gave the jury
12 permission to convict you?

13 A. Yeah. And he give 'em an endorsement to convict me, more
14 or less. You know, and he -- he -- he took everything that
15 would have been a defense and just throwed it out the window.
16 I mean, the charge was drugs, conspiracy -- which
17 incorporates, as you can see through the Judge's charge in --
18 in -- in my case, that it's buy, sell, even when the Judge --
19 uh, bring into the state, distribute, possession, constructive
20 possession. So if you're telling the jury that I had anything
21 to do with drugs, you're conceding guilt to some part of that
22 statute. I mean, it's -- it's -- it's -- it's plain. So
23 they, when they -- when they did the trial, they already had a
24 pre- -- preconceived notion of my guilt from my own attorney.

25 Q. That was at the beginning and then at the end, he -- he

1 basically told them that you were guilty?

2 A. Yes, sir. I mean, as can be seen from the Attorney
3 General's own closing statement, uh, in reference to
4 Mr. Varner's statements. And that -- and that was very
5 prejudicial to me because it denied me my right to a fair
6 trial, my Sixth and Fourteenth Amendment Rights. Prejudice
7 occurred when he took all reasonable doubt out of the
8 situation and there was no -- no -- no way to find me
9 innocent.

10 Q. And you -- are you asking the -- do -- do you think that,
11 uh, there was no way that you could -- well, you just said it.
12 I -- I -- you couldn't get a fair trial after that?

13 A. No, sir. I mean---

14 Q. Are you asking The Court for relief---

15 A. On the -- on the conceding it to the jury. And, I -- you
16 know, it -- I -- I'd never -- I -- there's no way I could-a
17 got a fair trial.

18 Q. Well, if the Attorney General comes up and asks you
19 about, uh, all the evidence that they put up against you, how
20 would you, you know, what's your -- how do you feel about
21 that? I mean, relative to what your lawyer said, what do you
22 feel about, you know, his statements versus all the evidence?

23 A. All the evidence they had was just alleged co-defendants'
24 testimonies, which all of them had made plea agreements to
25 testify. So their credibility's in question at best because

1 they're convicted drug dealers. They're convicted, uh,
2 criminals. So their credibility is in question from the
3 start. So all the evidence is is statements.

4 And that was one of the reasons that I was trying for
5 discovery was for the contradiction that these people give
6 multiple statements. But yet, when they testified, their
7 testimony could have been different and their credibility
8 would have been in question.

9 Q. So what effect do you think that opening and closing --
10 uh, the opening argument -- the opening statement and the
11 closing argument of Mr. Varner, what effect do you think it
12 had relative to -- to those -- that statement of evidence that
13 you're talking about?

14 A. It -- it -- between that and -- and the inconsistencies
15 in the -- in the statements and the -- and the testimony, it
16 just bolstered The State's case that, you know, I was guilty.

17 The thing -- the thing about it though, all the
18 evidence -- alleged evidence -- was, it was all testimony from
19 alleged co-defendants which had received plea bargains, and
20 the other people that had received the plea bargains was --
21 the plea deal was we will take in consideration what you --
22 what you say at a trial. And that was through Jennifer Evans'
23 own testimony, which is on page one-thirty-nine. She lays
24 out, lines one through six, the operations of -- of what she
25 does with her, uh, witnesses -- her---

1 Q. Okay, I think you -- you're -- Jennifer Evans was the
2 attorney---

3 A. She was -- at first she was the Attorney General---

4 Q. All right, well let's stop there.

5 A. ---over the case.

6 Q. Let's stop there. I think The Court has asked us not to
7 stray into---

8 A. Okay.

9 Q. ---into that issue because that's a *Jackson v. Denno*
10 issue and it's not raised in your PCR.

11 A. Okay.

12 Q. All right?

13 A. All right.

14 Q. So let's don't -- let's don't get into that. But you're
15 saying it was -- you're say- -- but let me make sure -- let me
16 summarize what I think you're saying.

17 You're -- you're making the argument, uh -- or, you're
18 making the case to The Court that that's -- those statements
19 that were made by your lawyer were so prejudicial that it
20 outweighed any -- any evidence, uh, that tended to show guilt
21 to the point that, uh, you could not possibly get a -- a fair
22 trial, that -- that it was overwhelming; is that right?

23 A. His comments overrode everything in the trial.

24 Q. All right.

25 A. It was that -- that's how critical that was.

1 Q. And you're asking The Court to give you a new trial on
2 that basis?

3 A. Yes, sir, I am.

4 Q. All right.

5 A. Because like I say, the -- the prejudice, I -- I could
6 not receive a fair trial after the -- the opening and closing
7 of my own attorney.

8 Q. All right. Let's go to issue B. You raise the question
9 whether or not Mr. Varner was ineffective for failing to
10 object to opinion testimony of the people who had not been
11 qualified as experts by the Trial Court. And I think that's
12 also the same issue that you raise in part C.

13 So let's take these two together if you -- if you would,
14 Mr. Miller.

15 A. All right.

16 Q. In Part B, you're talking about testimony that came in
17 about a tank that allegedly had anhydrous ammonia in it; is
18 that right?

19 A. In C.

20 Q. That's in C?

21 A. C.

22 Q. Okay; in -- in B, it's a container that allegedly was a
23 five-gallon gas container that had, quote/unquote, some
24 chemicals in it. And your arguing that there was no
25 foundation that was laid to establish that were (sic) -- there

1 was anything in it; is that correct?

2 A. Well, what it is is -- is, the person giving this
3 testimony is, uh, Connie Sonnefeld, which is a SLED Agent.
4 She's, uh -- she's just a regular agent. And, she testified
5 to a five-gallon gas -- well, on three-o-five, nineteen
6 through thirty-five -- twenty-five, she testified this is a
7 five-gallon -- I believe a five-gallon gas container
8 containing some chemicals. There is a bag containing more
9 chemicals. This red bottle right here -- right here you can
10 see a little better down here -- but right here there is a
11 coffee bean grinder and it has some residue in it.

12 And she goes on, on three-o-six, in lines ten through
13 twelve, and says, and this is a box of salt. And this was a
14 plastic container that had some -- some chemicals in it.

15 Also, on line twenty-one, we just identified it as what I
16 thought it was. When she made this statement -- when she
17 testified, she was -- she kept testifying to chemicals. She's
18 not qualified, according to South Carolina Rules of Evidence,
19 sub-section C, as to testify to chemicals. Because, it's a
20 nov- -- novelty scientific (sic) and she's -- she's -- when
21 she's testifying to this, she's putting it in front of the
22 jury when this whole case is about manufacturing of drugs,
23 that one of the things you've got to have is chemicals. And
24 she's bolstering The State's case when she's doing this,
25 saying that there's chemicals here, there's chemicals here.

1 And, she's not qualified to do that. She's not qualified to
2 testify to what it was as she did on three-o-six. She was --
3 injected her personal opinion there; I just identified it as
4 what I thought it was.

5 Q. Well, if she had said, here's a container with some stuff
6 in it, would that have bothered you?

7 A. Would it have bothered me? Uh -- that would not have
8 bothered me as much as chemicals.

9 Q. Well what is it about---

10 A. When she injected chemicals into it, she -- now she's
11 getting into a -- a field that she's not qualified to be in.

12 Q. Was she established as an expert in chemicals?

13 A. No, she was not.

14 Q. Was she estab- -- established as an expert lab
15 technician?

16 A. No, she was not.

17 Q. Did she testify as to any tests that were done on the
18 residue to establish what it was?

19 A. No, she did not.

20 Q. Uh---

21 A. She, uh -- she wasn't, like I say, she wasn't qualified
22 by The Court. She was nothing but a -- just a regular layman
23 testifying.

24 Q. Well, certainly, she knows what salt is; doesn't she?

25 A. Well, she might know what salt is, but this plastic

1 container that had some chemicals in it? Salt is not one --
2 it's where she testified about the chemicals. She testifies
3 about chemicals in a -- in a five-gallon gas can, a bag
4 containing more chemicals, then she does residue. Here is a
5 coffee bean grinder with residue in it. And then she goes on
6 to a plastic container had some more chemicals in it.

7 Q. Are you suggesting to---

8 A. I---

9 Q. ---to The Court that when she uses the words chemicals,
10 she's insinuating meth?

11 A. I'm insinuating just what a layman would think. Any
12 layman that knows nothing about drugs and you -- you -- you're
13 on the jury in a drug trial, and it's about -- mostly, the
14 trial so far has been about manufacturing, and you hear
15 chemicals, you kind of put them two together as -- as one.
16 You can't have a -- a lab without chemicals. You can't have
17 manufacturing without chemicals. So when you connect them two
18 together, it -- it -- it kind of -- it bolsters The State's
19 case that there's actually manufacturing going on because
20 here's someone's lab. Here's someone's chemicals. Here's
21 part of -- okay.

22 She's -- she was not qualified, period, by The Court, you
23 know, to make any analysis. And rules of evidence is plain;
24 you're not to inject your personal opinion in any field you're
25 not qualified. And she was not qualified in chemical fields.

1 Q. So when she said, it's just the stuff that I said that I
2 thought it was---

3 A. That's, uh---

4 Q. ---that's what you're saying?

5 A. ---she -- she left -- left the inference to the jury
6 that -- that, you know, there was actual chemicals for a lab
7 is the way she left it.

8 Q. Meth. chemicals?

9 A. Yes.

10 Q. All right. Now, let's -- Mr. Ronnie McCallister has
11 testified as to a tank and that's what you talk about in part
12 C; correct?

13 A. That's correct. He -- he -- well, he -- yeah, he, uh,
14 here is Ronnie McCallister; he -- I think he was employed by
15 Greenwood Sheriff's Department for about thirty years.

16 Q. Well let -- let me stop you a second. In the trial, to
17 your knowledge, was there a red tank, I mean a red -- I mean a
18 red, uh, bottle and a five-gallon container introduced into
19 evidence?

20 A. I think so; I'm not sure.

21 Q. Okay. To your knowledge, was there a tank that -- the
22 tank that Mr. McCallister testified to, was that entered into
23 evidence?

24 A. No, that wasn't. They, uh -- well, a picture of it was.

25 Q. A picture of it?

1 A. A picture of it was; the actual tank was not. Uh -- as
2 it turned out, the tank had been stolen from Hazmat for --
3 that they let---

4 Q. It disappeared?

5 A. It -- their words, it was stolen. They say they made
6 a -- a report, but I've never seen the report. I don't know
7 if it was in discover or -- or not, you know.

8 Q. Well, to your knowledge, was any, uh, chemical analysis
9 performed on that tank?

10 A. Uh -- matter of fact, uh, according to SLED -- let's see.
11 SLED testified -- I can find it right quick if you give me
12 just a second.

13 In trial transcript, page six-o-six, on re-cross, I
14 believe it was, uh, Quincy Ford, lines, uh, six through
15 fifteen. He said, generally, we do not bring anhydrous
16 ammonia tanks and analyze them at SLED. We can only do a
17 presumptive test. There is no way to confirm that. No, not
18 at -- not at that particular time, no. But subsequently it
19 could have -- could have been tested to confirm it. We're not
20 allowed to bring anhydrous ammonia tanks to SLED. Therefore,
21 we will not even perform an analysis on that tank.

22 Q. So to your knowledge, no analysis was ever done of the
23 contents of that tank?

24 A. According to SLED's own testimony, there was no analysis
25 done on that tank.

1 Q. And the tank wasn't in evidence because it was gone?

2 A. The tank was not available; it was not there. It was --
3 the only thing that they had was a picture.

4 Q. Was there any objection to the introduction of the
5 picture?

6 A. Uh -- no, there wasn't.

7 Q. Okay. And then Mr. McCallister -- or, Officer
8 McCallister testified, uh, about the container; is that right?

9 A. Yeah; he did.

10 Q. And what did he have to say?

11 A. Um -- Major -- he's a major for the Sheriff's Department.
12 Major McCallister testified on page four-forty-five, lines
13 twenty through twenty-three, SLED was contacted and analysis
14 was conducted by SLED and it was deemed to be anhydrous
15 ammonia contained in the tank.

16 Then you have on---

17 Q. Wait a minute; he said there was an analysis done by
18 SLED?

19 A. Yes, sir.

20 Q. But then SLED says, we don't do an analysis?

21 A. Correct.

22 Q. Was there any objection to that?

23 A. No, there wasn't.

24 Q. All right; uh, go ahead.

25 A. And then he went on to say, uh this is the black -- on

1 four-forty-nine, line seven through eight -- this is the black
2 Chevrolet pickup truck that contained the anhydrous ammonia
3 tank I described earlier.

4 Then he goes, down in -- on lines -- uh, page four-fifty
5 and he talks about -- lines fifteen through seventeen -- this
6 bag contained a number of pills; ephedrine-based pills such as
7 Sudafed and other antihistamines and cold tablets.

8 Then he goes down a little further on nineteen through
9 twenty-two on the same page, this is another, uh -- uh,
10 photograph, a little more descriptive of the same container.
11 You can see the pills, the red pills -- some of them are red,
12 some of them are white.

13 He goes on, on four-fifty-eight, twenty through
14 twenty-five, directly behind the shop on the ground there was
15 some charred remains, obvious -- obviously, a fire. Upon
16 close inspection of that you could tell that batteries had
17 been burned, some medicine containers, ephedrine-based
18 medicine containers had been burned.

19 And then on four-fifty-nine, page (sic) five through
20 seven, Mr. Varner objected to -- to, uh -- he said, objection,
21 Your Honor, to his qualifications as to how a fire burns
22 unless he is in forensics or is qualified on that.

23 Q. But he didn't extend that objection to chemical testing
24 of ammonia, uh---

25 A. Correct.

1 Q. ---chemical testing of pills allegedly containing
2 ephedrine or pseudoephedrine?

3 A. That's correct.

4 Q. Okay.

5 A. So it can't be said that he wasn't familiar with the
6 rules of evidence because he had just objected as to how a
7 fire had burned and to the forensics.

8 Q. Well let's go back to -- let's go back to -- all were --
9 all of these containers that you talk about in B and C. How
10 do they relate to you?

11 A. Uh---

12 Q. What -- what -- what in the transcript ties them to you?

13 A. Their testimony is all.

14 Q. Well, how do they say that you had anything to do with
15 it?

16 A. They tied it through -- they tried tying it through the
17 alleged co-defendants' testimony that I had been there.

18 Q. Well, were -- were these items found on your property?

19 A. No, sir.

20 Q. They were found on co-conspirators' -- alleged
21 co-conspirators' property?

22 A. They was found in Billy Moore's, uh, shop.

23 Q. So---

24 A. His -- his -- his, uh, go-cart racing shop and auto
25 mechanic shop.

1 Q. So it's the testimony -- they -- they hung all of this
2 around you through, first of all, testimony you say is
3 objectionable?

4 A. Exactly; questionable at best.

5 Q. And then through the testimony of Mr. Moore that says he
6 was your conspirator?

7 A. It -- through law enforcement bolstering, just bolstering
8 the fact that, uh, there was very -- both of these law
9 enforcement or laymen, they're -- neither one is qualified in
10 any -- in chemicals or -- or labs.

11 Q. So---

12 A. They -- they just bolstered The -- The State's case
13 that -- about residue, pills, stuff that they're not
14 qualified -- he was not qualified by The Court either as an
15 expert. So, I mean, all this was opinionated testimony
16 to start with and it was all linked through alleged
17 co-defendants, which give (sic) numerous statements, depending
18 on what -- I guess, what they needed at the time.

19 Q. You said co-defendants but you meant co-conspirators?

20 A. I meant co-conspirators, yeah. Alleged -- well,
21 co-conspirators, alleged co-defendants.

22 Q. So you're making the case that failure to object to the
23 introduction of these items, due to a lack of foundation, was
24 overwhelmingly prejudicial to you?

25 A. Yes, sir. The -- the lack of the foundation, and -- and

1 alluding to the jury that there's a reasonable probability
2 that there could have been a meth. lab at that by the way that
3 they laid out the testimony.

4 Q. And so you're -- you're making the argument that the
5 failure to object is evidence of ineffective assistance at
6 trial?

7 A. Yes, sir; definitely. I mean, they should -- and like I
8 say, he did object to how a fire burns. But he -- he didn't
9 go on with the objection about the tank and -- and -- and...

10 Who even says what kind of tank or if there's anything in
11 the tank? I mean, nobody knows. Nobody knows where the tank
12 is. And my thing -- that was part of why I wanted discovery,
13 to know if that was an issue on them or -- or my attorney.
14 That was one of the issues that I couldn't brief until seeing
15 discovery to know if there was a police report in there or not
16 of when he knowed the tank had been gone. And that's why I
17 was trying to -- another reason that I was doing that.

18 Q. So you're saying they couldn't establish a meth. lab
19 without establishing the tank? And the tank wasn't there and
20 all they had was a picture of a tank they alleged was
21 involved?

22 A. Correct. They -- they set the scene up showing it to be
23 a meth. lab. You had a SLED agent testifying to chemicals and
24 residue. Then you have a Major of -- of the county testifying
25 to pills, chemicals and a tank.

1 Well, later on -- two -- two witnesses later in -- in the
2 transcript, uh, Michael Miller, which is a expert from SLED on
3 meth. labs, testified that that is all the main ingredients
4 for a lab. So when they -- when they put this out there to
5 the jury that there was all this together at this one site,
6 and then they bolstered it when they put an expert on from
7 SLED saying this is the main ingredient, anhydrous ammonia,
8 and it's hard to get. So if you got that, it ain't nothing to
9 have the rest of it.

10 So the jury, with these three testimonies, could have
11 inferred that there was actually a meth. lab at that place.

12 Q. But if he would have objected to the tank coming --
13 coming in, because it wasn't -- they couldn't produce it---

14 A. Correct.

15 Q. ---do you think you had a reasonable chance of excluding
16 that evidence?

17 A. Well, it -- it should have been excluded on the fact that
18 we couldn't test it. They -- they alleged that it was
19 anhydrous ammonia, which we know through other testimony that
20 it wasn't even analyzed.

21 Q. Well, even more simple than that, they said they had a
22 tank, but they didn't have a tank?

23 A. Exactly. So if you -- if you would-a excluded that
24 out---

25 Q. Then there's no lab?

1 A. ---then there's no lab. Then there's nothing but red
2 pills and white pills in a bag that you can't testify that you
3 know what they are. They could have been red hots or, you
4 know, nobody knows. Because to my knowledge, they was never
5 even analyzed. There's no SLED report on them. There's no --
6 you know, all we know is they was red and white pills in a
7 bag, according to his testimony.

8 Q. That's---

9 A. And that's -- and see -- see, that's very prejudicial if
10 you're on trial for manufacturing or -- or, like I say,
11 conspiracy, because now you've alluded to the jury that not
12 only from opening statements -- you know, he's a bad person
13 and all -- now he's got everything that it takes for a meth.
14 lab.

15 Now, with that being said and then you have an expert --
16 finally you get an expert on the stand that's qualified by
17 SLED -- testify anhydrous ammonia is the main thing, the one
18 thing you should have objected to and excluded is still in
19 this statement.

20 Now, this anhydrous ammonia tank, if you read this
21 discov- -- uh, this transcript, was referred to anhydrous
22 ammonia over forty-eight to fifty times during this trial.

23 Q. Yet there was no evidence that any anhydrous ammonia
24 existed?

25 A. And that was very prejudicial all through this case. If

1 you refer to the main ingredient, which is a controlled
2 ingredient that you have to specially buy, all through the
3 case, it's very prejudicial. Because, now you -- you've got
4 the main ingredient being trickled through the whole -- whole
5 thing where it should have never been. So it's very
6 misleading to a jury. And it was very prejudicial.

7 And by that, there's no way I could-a got a fair trial
8 so -- by the Sixth or Fourteenth Amendment Rights. Both of
9 'em was violated. The fair trial and the ineffective
10 assistance of trial counsel for not objecting to and excluding
11 the highly prejudicial, uh, tank that was never there to start
12 with.

13 Now, it---

14 Q. All right---

15 A. ---there -- there should have been a lot of, uh -- if you
16 read it, they -- no -- nobody was never qualified, and the
17 ones that was didn't have much to say against me. It was all,
18 you know, opinionated testimony.

19 Q. Well, SLED said they didn't even test it. So they don't
20 know either.

21 A. Yeah, they didn't; they don't have a clue either.

22 Q. All right. Let's go to issue E (after pause) and F.
23 Both of these are jurisdictional issues that relate to chain
24 of custody of alleged evidence.

25 A. Let me skip these; I'd like to address D very briefly.

1 It won't take but just a second. On the reasonable doubt
2 instruction, I know we talked about it being---

3 Q. Well, where -- where are you now? I talking about---

4 A. I'm at D.

5 Q. You're on D?

6 A. Yeah.

7 Q. All right, go ahead.

8 A. It -- on, uh, seventeen-seventy-two, lines one through
9 three I believe it is. It's -- yeah, okay. So the burden of
10 proof is upon The State to establish by evidence to your
11 satisfaction the guilt of one or both of the defendants here
12 on trial, and The Court will not attempt to define for you
13 what is meant by reasonable doubt in your mind. This is up to
14 you. A reasonable doubt is simply a doubt---

15 THE COURT: I don't need you to read that; I've read it.

16 MR. MILLER: Okay, okay.

17 THE COURT: Just point out the problems that you said.

18 MR. MILLER: The problems?

19 THE COURT: Yes, sir.

20 MR. MILLER: All right.

21 A. Uh -- when -- when you ask somebody to -- to their
22 reasonable doubt, it's a moral certainty of something. You --
23 you inject it upon them to have a -- a like moral turpitude
24 towards the -- you know, do you feel like what he done was
25 moral, you know. So -- and by me being tried in my absence,

1 that was -- that was hard to do because now you're just
2 waiting for a reasonable explanation to the evidence, or -- or
3 what you call is evidence, and I'm not there to give you none.
4 So, uh, reasonable jurors could -- could allow the -- find him
5 a little suspect feeling I guess you could say. That, you
6 know, well, I don't have no, uh, moral reasoning for him doing
7 that. That just don't sound -- to allow them to put their
8 personal feelings into it.

9 And -- and, to me, that -- that was just a -- an enormous
10 charge that should -- that not have been -- under moral
11 certainty should not have been in the charge itself.

12 Q. Okay; let's go on to F.

13 A. Now, E and F?

14 Q. Uh-huh.

15 A. Okay.

16 MR. MILLER: Excuse me. Your Honor, on -- on this one
17 there's a lot of -- a lot of transcript quotes. What-cha want
18 me to -- to do the quotes, or?

19 THE COURT: You know, I -- I've read your entire
20 transcript from your trial.

21 MR. MILLER: Okay. Just to save some time, unless you
22 just could tell me---

23 THE COURT: I'm -- I'm not worried about saving time; we
24 have plenty of time. I just -- I just don't need you to read
25 it. I have read it from the, um, first page to the end of it,

1 okay?

2 MR. MILLER: Yes, sir.

3 THE COURT: All right.

4 Q. Let -- let me ask it this way. Is there anything, other
5 than what's in your brief, that you think would amplify to The
6 Court why you think, uh, there's problems with chain of
7 custody or jurisdiction, uh, rela- -- related---

8 A. Certainly, yeah. Yeah, on this, certainly.

9 Q. Okay. What -- what -- what is it about the -- the
10 jury -- the way the evidence was obtained that causes you
11 problems?

12 A. Okay. Well, first of all, it was -- it was -- this is
13 alleged evidence of a meth lab in Georgia not -- I'm in South
14 Carolina, not Georgia. If there was a crime committed and
15 that was evidence of a crime, then the crime was committed in
16 Georgia, not South Carolina. So that evidence should have
17 never come back from Georgia to South Carolina to be used in a
18 trial.

19 THE COURT: I'm denying your motion on those grounds.
20 Uh -- I'm -- I disagree with that. So I'm asking you to move
21 forward from the jurisdictional argument. Okay?

22 MR. MILLER: Okay.

23 A. So, all right. The other thing is, when they went to --
24 or, when SLED, I -- I'm thinking, went to Georgia to retrieve
25 these items, they -- according to the transcript, they -- they

1 took some and left some. I don't know what they took or
2 left -- or, what they left. But, according to them, they --
3 from the time they was retrieved to the day of court, nobody
4 knows where this stuff went. There's -- there was no chain of
5 custody done on it. There's no -- no -- no paperwork. All I
6 know is they was in -- allegedly in the woods in Georgia and
7 retrieved by the SLED officers and, uh, Abbeville County. And
8 the next time they were seen was in the courtroom.

9 THE COURT: Let me -- let me ask you the -- the -- the
10 particular items that you're saying there's no chain of
11 custody on. It has to do with the jug, the five-gallon jug,
12 plastic containers, the storage cases; is that correct? And a
13 black bag, a duffle bag, and a red five-gallon jug; is that
14 correct?

15 MR. MILLER: Yeah. The same jugs that Ms. Sonnefeld
16 mentioned---

17 THE COURT: Any other evidence, other than that, that you
18 feel like had to be, uh, established by a chain of custody?

19 MR. MILLER: The, uh, ammonia tank, the anhydrous --
20 alleged anhydrous tank.

21 THE COURT: Okay.

22 MR. MILLER: Uh -- I'm trying to think. Could you give
23 me just a moment to think about it?

24 THE COURT: Okay.

25 MR. MILLER: Thank you.

1 THE COURT: I'm sorry; excuse me.

2 MR. COMPTON: No, uh...

3 MR. MILLER: (After brief period.) Only the -- I think
4 they said there was jars -- I think there's jars in his
5 testimony.

6 THE COURT: All right; okay.

7 MR. MILLER: And -- really, anything that -- that was
8 brought back from there, I would object to it, you know.
9 Because, there's -- like I said, there was -- there was no
10 chain of evidence. And that was very damaging, because now
11 you've not only -- you've -- you've actually put components to
12 a lab in front of the jury. So now they're not only hearing
13 about a lab, now they've actually seen components to a lab,
14 and that -- that was very damaging when that should have never
15 even been there.

16 Q. Well, that was being introduced to help support the
17 theory of criminal conspiracy; is that right?

18 A. Uh -- to be honest with you, I -- I don't know because
19 Mr. Saylors, his wife was involved in it allegedly, but
20 Mr. Saylors was never charged in it. So -- and he lived in
21 Georgia, so I -- I, you know, I don't -- I don't know what his
22 purpose was with this or -- or -- or what went on.

23 But the thing was, was he, uh -- everything that he done
24 and -- and -- and -- and sent, when they went to his house --
25 supposedly, according to the trial transcript, he called

1 Abbeville County from Georgia and told them he had a lab on
2 the side of the road at his house; to come and get it. Okay?
3 That it was my -- allegedly my lab, that I had left with him.
4 So the next day, according to the transcript, SLED went with
5 Abbeville County to retrieve the lab. When they got there he
6 told them, wait a minute, I -- I put it on the side of the
7 road. So it's no longer at his house; now it's been moved.
8 So now it's on the side of the road for a couple of days or
9 whatever. So---

10 Q. And so you're -- you're saying, who knows what happened
11 to it during that time?

12 A. Well, there's -- first off, it's not reliable no more
13 because he's -- he's moved it his self. He's admitted to law
14 enforcement, I moved it. The only person it's been linked to
15 is him through his own testimony.

16 Q. And he wasn't brought in as a conspirator?

17 A. Correct. And -- and -- and so the only -- the only thing
18 that -- and when they went up, there was like five or six
19 latent fingerprints inside the vat and they checked them
20 against mine and they did not match mine. They're not my
21 fingerprints.

22 So, you know, I don't know where or -- they should
23 have never been brought in into the case as a -- as my -- as
24 my lab.

25 Q. So really, what you're saying in these objections here is

1 not -- it's not really a jurisdictional comment, you're really
2 saying that this is just another reason that that evidence
3 should have been objected to and not allowed in the trial; is
4 that right?

5 A. Exactly.

6 Q. All right.

7 A. For the purpose of, like I say, the chain of custody.
8 Nobody knows where it was for nine months but whoever had it,
9 I reckon. And that was -- it's -- like I say, it was very
10 prejudicial when you -- you put me on trial for manufacturing
11 and all, and now you put in front of the jury a lab and said
12 it was mine. And that's -- there's no way to get a fair trial
13 if you put prejudicial evidence in front of me that should not
14 have been there to start with.

15 Q. But they're also charging you with conspiracy in South
16 Carolina?

17 A. That's the only place I'm charged. I wasn't charged in
18 Georgia for conspiracy.

19 Q. All right. So you would say that that would be, if
20 anything, evidence of a conspiracy in Georgia, not -- not
21 evidence of anything in South Carolina?

22 A. What I'm saying is you'd probably have to ask Junior
23 Saylor, 'cause he's the only one that knows what he's --
24 what he's doing with it. I mean, there's -- there is --
25 there's no evidence whatsoever from nobody else to where'd

1 that stuff come from, other than him. And he's not reliable.
2 He's -- his -- his credibility's in question at best because
3 he's a convicted drug dealer his self. So his -- he -- his
4 credibility's not that good.

5 Q. Now, we've already talked about your objection G, about
6 the jury instruction. Is there anything else that you want to
7 add to that?

8 A. (After pause) On -- on -- you're talking about on G?

9 Q. On the jury instruction, yes.

10 A. Okay.

11 MR. MILLER: Uh -- I'm sure Your Honor has read this too.

12 A. I -- the only thing that I would add to this, would --
13 would -- with this jury instruction would be that he -- The
14 Court simply told the jury they had completed the testimony of
15 The State witnesses and no further evidence was needed to
16 convict. This -- when you said that directly after the
17 closing arguments of The State, it was like an endorsement to
18 all co-de- -- of the alleged co-defendants' testimony because
19 in actuality, that's all this case was.

20 Q. Well -- well, as a- -- as attached to what your lawyer
21 said, do you think that has any affect?

22 A. I'm sorry, I didn't hear you.

23 Q. Once your lawyer made a closing argument like he did, do
24 you think that instruction has any affect?

25 A. Not really; but, when you -- when you said that, after

1 the closing arguments that he give, and then The State
2 refer -- referring to 'em, you know, that hey, you gotta look
3 no further than that's in his closing argument to convict, and
4 then the Judge telling 'em that you don't need nothing but
5 what you hear, you know, it's pretty much a sealed deal there.

6 I mean, they, you know, you had -- you had the prosecutor
7 backing my attorney, Mr. Varner. You had the Judge actually
8 backing him. So if you're on the jury and everybody says you
9 don't need nothing but to, you know, to hear it, then it don't
10 have to be corroborated. Then everything that my -- my
11 attorney said was like the gospel. And like I say, it was --
12 that was very prejudicial, especially after the closing
13 arguments. And there is no way that I got -- could get a fair
14 trial with all of that.

15 Q. In issue H and I you raise, uh, problems with the
16 indictment and said that -- that your trial counsel should
17 have asked for a bill of particulars?

18 A. Correct.

19 Q. What do you mean -- what do you mean by that?

20 A. Well, I -- I understand that a bill of particulars is --
21 is optional; it's discretionary in this State. Uh -- but --
22 and you've heard me through my whole testimony through -- and
23 to reiterate back to the fact that a conspiracy charge is so
24 broad, okay? You can -- you -- it's like a shotgun blast at
25 the world. If I can't prove you sold drugs, I just got to

1 prove you had drugs or you moved drugs or you done drugs.

2 It -- it -- it's hard to defend everything in the
3 statute.

4 If you -- when you come to a jury trial and you're trying
5 to defend yourself, it's a -- it's -- it's a lot different.
6 Like murder, you know you're defending yourself against
7 killing somebody. But when you come with this conspiracy
8 statute and there's no, uh, bill of particulars to it, then
9 you've -- you got to defend the whole statute, which is buy,
10 sell, bring into the state, traffic, you -- you know.

11 So, if I'm the Attorney General, I take a shot at you for
12 selling it. If I can't prove that, I'll just prove you had
13 it. I mean, you know, there's so many outlets for her to --
14 to go off on and you can't defend all of them; there's just no
15 way.

16 And -- and that's why I think the bill of particulars
17 should have been in that -- on -- on -- on there. Because,
18 they -- like I say, it was just so hard to defend. Because,
19 it started out as a -- a trafficking and then by the middle of
20 the third witness, it was more about manufacturing. And then
21 by the -- toward the end, it was more about constructive
22 possession and possession, people doing drugs. So, you know,
23 it was -- there was just so many things that you had to try to
24 defend.

25 Q. You wanted to know which leg of the octopus you had to

1 deal with; is that what you're saying?

2 A. More or less.

3 Q. All right. Is there anything else you'd like to bring to
4 The Court's attention at this time?

5 A. Well, I don't -- I -- I know earlier there was, uh---

6 Q. Now, based on your petition now, okay?

7 A. That's---

8 Q. Anything that I left out that you think I should have
9 addressed?

10 A. On the petition itself?

11 Q. Yes.

12 A. Well, not -- not on the petition, but I -- I would like
13 to say something to the Judge if I may. I mean---

14 Q. Well, I think the Judge would---

15 THE COURT: Go ahead.

16 MR. COMPTON: Okay.

17 MR. MILLER: I mean, I -- I tried -- I have letters, you
18 know, to prove it, but I -- I tried for like two years. I --
19 Mr. Compton is like my second attorney and -- to do an
20 amendment, okay? And I know I can't do it today. Uh -- but,
21 I just wanted it part of the record that I did try. And --
22 and one of the amendments I was waiting to look at discovery
23 to know how to bring it as an issue. Because, I'm sure you're
24 aware if I -- I bring an issue and if -- if I bring it as a
25 I-A-C issue and it's a -- a Brady violation, then it excludes

1 the issue because it was not brought properly. And that was
2 one of the -- one of the reasons I was very adamant about
3 trying to amend.

4 Uh -- they had oral arguments in this case. I've never
5 had access to the transcript. I've tried -- they sent a tape,
6 but SCDC will not let you have a tape. So I -- I -- I really
7 don't know what was said there, other than -- than, uh, the
8 record had been silent on my behalf because I was tried in
9 absentia.

10 Uh -- my -- my thing is, I want-a-- I know I can't bring
11 it as an issue, but there's factual issues in the record that
12 I would like to try to point out to -- to The Court for -- not
13 as an issue, but as a material -- in case I don't get a
14 favorable ruling here -- that the Federal Courts will have
15 something to look at on that -- on that side of that issue.

16 THE COURT: Well, let me just tell you this, uh,
17 Mr. Miller. Uh -- if it's not an issue raised in your, uh,
18 petition then I've ruled that it's not admissible in that
19 case, sir.

20 MR. MILLER: Yes, sir---

21 THE COURT: So, um---

22 MR. MILLER: ---I just -- just---

23 THE COURT: ---for the record, you---

24 MR. MILLER: ---yeah.

25 THE COURT: ---you attempted to do so and I limited you

1 to the actual materials in your petition; okay, sir?

2 MR. MILLER: Okay, sir.

3 THE COURT: All right.

4 MR. MILLER: I thank you for that.

5 THE COURT: Yes, sir.

6 Q. Well, but you are asking the Court to grant you a new
7 trial in this case based on what we've already discussed and
8 the representations of your attorney in particular; is that
9 correct?

10 A. Yes, I am. I'm -- I mean, the issues that I have raised
11 that I did put in my petition initially I think are all good.
12 They're all overturnable issues.

13 Uh -- I -- I do not feel like I was given a fair trial.
14 Uh -- and I hope I've -- I've set forth the facts to prove
15 that. And it's -- it's -- it's kind-a you -- you're denied
16 your Sixth and Fourteenth Amendment when you -- when you --
17 your counsel's ineffective for doing certain things at
18 critical stages in your -- in your trial. And my counsel done
19 that on -- on numerous occasions and it prejudiced me because
20 it -- it -- it just didn't leave a jury no other options other
21 than to find me guilty with some of the mistakes that he made.

22 And -- and for -- I -- for that I -- I would pray that
23 you would give me relief on the issues that I've raised.

24 THE COURT: Okay; thank you, sir.

25 Q. Thank you, Mr. Miller. Answer any questions---

1 THE COURT: Hang on; let me ask everybody, um,
2 particularly The Court staff. It's a-quarter-to-one;
3 I assume that The State's cross-examine will take --
4 cross-examination will be a little while?

5 MS. McMAHAN: (Negative nod.)

6 THE COURT: No? All right; let's go ahead then.

7 MS. McMAHAN: Nothing from The State, Your Honor.

8 THE COURT: Nothing from The State?

9 MS. McMAHAN: No, Your Honor.

10 THE COURT: Thank you, sir; you may step down.

11 MR. COMPTON: I believe that's the shortest cross-
12 examination I've ever seen in a---

13 THE COURT: I'm shocked.

14 MR. COMPTON: I'm sure the Court is -- is grateful.

15 THE COURT: No; no, listen, I'm glad to work all day.

16 MR. COMPTON: Your Honor, that's the Plaintiff's case.
17 At this time we would like to reserve the right to call
18 witnesses in response to anything that The State may allege.

19 THE COURT: Thank you, Mr. Compton. Does The State want
20 to proceed?

21 MS. McMAHAN: Um -- yes, Your Honor. The State would
22 like to call Mr. Varner.

23 THE COURT: Well, let me -- let me ask you-all. I don't
24 want to interject, but it seems to me that Mr. Dudek, um, has
25 the more limited issues in this case. I've already ruled that

1 jurisdiction is not an issue.

2 So, if I understand the petition, that it has to do with
3 failure to raise the chain of custody and reliability of
4 this evidence of the jars and duffle bags and et. cetera,
5 can we do Mr. Dudek and decide where we want to go? Do you
6 mind if we call him?

7 MS. McMAHAN: Sure; no problem, I -- I'll -- I'll be
8 happy to---

9 THE COURT: Let's do it that way---

10 MS. McMAHAN: ---call Mr. Dudek.

11 THE COURT: ---if you don't mind.

12 MS. McMAHAN: The State calls Mr. Dudek.

13 THE COURT: Mr. Compton, am I right that the only
14 allegation as to, uh, appellate counsel is the failure to
15 raise jurisdiction that I've ruled on? Also, the reliability
16 of the evidence and the chain of custody; is that correct?

17 MR. COMPTON: I believe so, but let me have just a moment
18 with my client please.

19 THE COURT: Okay; I'm specifically looking at issue
20 number six according to my numbers.

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
22 CONFERENCE, OFF THE RECORD.)

23 (WHEREUPON, PROCEEDINGS CONTINUED.)

24 (WHEREUPON, ROBERT M. DUDEK, BEING FIRST DULY SWORN,
25 TESTIFIED AS FOLLOWS:)

1 THE COURT: Thank you, sir; if you'll step around?

2 MS. McMAHAN: Your Honor, issue number six, is that a
3 letter -- does it have a letter? Of course, I used letters.

4 THE COURT: Yeah, it is -- excuse me, I -- I've used
5 numbers instead of letters. It was issue F. And it's kind
6 of -- E and F were kind of combined; one was directed to the
7 trial counsel and one was appellate counsel. I don't see---

8 MS. McMAHAN: It's on page twenty-two?

9 THE COURT: ---in my notes any other---

10 MS. McMAHAN: Page twenty-two?

11 THE COURT: Yes, ma'am.

12 MS. McMAHAN: Okay.

13 ROBERT M. DUDEK, DIRECT EXAMINATION BY MS. McMAHAN:

14 Q. Do you mind stating your name for the record, please sir?

15 THE COURT: Hang -- hang on.

16 MR. COMPTON: I believe that is correct, Your Honor.

17 THE COURT: Okay; thank you very much.

18 MS. McMAHAN: I'm sorry.

19 THE COURT: Okay.

20 Q. Could you please state your name for the record?

21 A. Sure; um, Robert M. Dudek, D-U-D-E-K.

22 Q. And Mr. Dudek, where do you -- uh, where are you
23 employed?

24 A. Um -- the -- I'm the Chief Appellate Defender for the
25 Appellate Division of the Office of Indigent Defense.

1 Q. And, uh, how long have you worked there?

2 A. Twenty-two years.

3 Q. How many appeals have you handled in your twenty-two
4 years?

5 A. I -- I -- I could only guess; probably close to three
6 thousand.

7 Q. So -- and you handle mostly direct appeals? Do you
8 handle any PCR appeals or anything like that?

9 A. I handle, uh -- I handle both. Probably the -- the
10 majority of PCR's -- about the only PCR's I do now are mostly
11 capital.

12 Q. Okay. And do you recall, um -- I mean, I -- I realize
13 that you handle hundreds of cases a year. Do you recall
14 Mr. Miller's case at all?

15 A. I -- I do recall.

16 Q. And, um, I think Mr. Miller was specifically complaining
17 that, um, there were some issues not raised on appeal that
18 you would have liked raised on appeal. How do you go about
19 deciding what you're going to argue and what you're not?

20 A. Well, what I do, very briefly, is I, um, read the entire
21 record. I -- I take notes as I go along each witness, page
22 numbers, so I can write my statement of facts for my argument.
23 I note each objection that's gone on. If it's something I
24 think might be significant later on, when I have the case in
25 context, I, you know, put a yellow line or circle or something

1 around the, um, objection.

2 And then, you know, you come up to -- with the appellate
3 lawyer you try and come up with the theme to the Appellate
4 Court of what, um, would be appealing to it as far as the
5 theme on reversible error.

6 Q. And what were the themes in this appeal; do you remember?

7 A. Yes, I do. If you could hand me my brief, I'll...

8 Um -- but certainly what I focused on, um, was the fact
9 that Marshall gave a statement to law enforcement. My
10 argument was, was obviously in -- well, I shouldn't say -- is
11 there a reliance upon promises of, um, leniency? And as such,
12 regardless, um, his statements were given in -- in
13 anticipation down the road, like of him being a State's
14 witness or of a guilty plea and under now rule 410, that
15 shouldn't have been admissible.

16 The other one, was this under the eight-to-twelve-year
17 sentence, um, in the plea offer, uh, which -- which our
18 argument is, um, Ms. Evans had offered to Kim Varner a, uh,
19 eight-to-twelve-year sentence if Marshall would have
20 cooperated.

21 So that the attack was essentially two-fold. Marshall
22 cooperated. They went, picked him up, as I recall, repeated
23 times in the Abbeville or Greenwood -- whatever county jail it
24 was -- took him to a hotel, as I recall, and he spilled his
25 guts, named all these, um, accomplices.

1 And this -- once he did that, regardless of whether you
2 honored the plea agreement or found the plea agreement to be
3 binding, his statements should not have been admitted.

4 It's the issue too, it was, um, this is the eight-to-
5 twelve-year sentence. Um -- it was promised, should have been
6 offered. And as you see in the Court of Appeals opinion where
7 they went off was they said well, that was never, quote,
8 memorialized, unquote.

9 Q. Uh-huh?

10 A. And that Jennifer Evans had testified the only offers of
11 the, um, Statewide Grand Jury were in writing. And she said
12 that was fifteen. And, um, that was the only offer.

13 Um -- but again, it was once Marshall gave the
14 statements, um, you know, it is my view he was sunk, unless
15 those statements could be kept from the jury, because they
16 were given in return for a promise of an eight-to-twelve, um,
17 year sentence. And that the eight-to-twelve-year sentence
18 should have been, uh, enforced.

19 And, frankly, my view was every -- everything else really
20 doesn't make any difference.

21 Q. That it, um -- any of the other issues that you heard
22 Mr. Miller speak about earlier were not---

23 A. I -- I mean as far as appellate issues, no. I mean,
24 you-all -- we -- you know, if you wanted to go through one of
25 'em -- ev- -- every one of them, was there an objection? What

1 specifically was the objection? I mean, I -- I can respond,
2 but I think the big picture in this case was his statements,
3 his cooperation and, uh, you know, the statement being used
4 against him and the plea agreement not being honored. I
5 didn't view anything else as terribly significant.

6 Q. And so ultimately The Court of Appeals disagreed with you
7 and you, um, even attempted to petition the Supreme Court; is
8 that correct?

9 A. Well, I did petition The State Supreme Court for
10 Certiorari on these two issues and Cert. was ultimately
11 denied. I don't have the exact date for it.

12 MS. McMAHAN: The Court's indulgence, Your Honor?

13 THE COURT: Okay.

14 MS. McMAHAN: (After pause.) Nothing further.

15 MR. COMPTON: May it please the Court?

16 THE COURT: Yes, sir.

17 ROBERT M. DUDEK, CROSS-EXAMINATION BY MR. COMPTON:

18 Q. Mr. -- is it Dudek?

19 A. Yeah; Dudek's fine; in Milwaukee it'd be Dudek, so either
20 one's correct.

21 Q. Dudek? Is---

22 A. Either -- either way.

23 Q. ---you have no preference?

24 A. Dudek -- Dudek is the way I pronounce it.

25 Q. Dudek; okay. Uh -- Mr. Dudek, you felt strongly that

1 Mr. Miller was coerced into, or -- or -- or put in a position,
2 a no-win situation over this plea arrangement?

3 A. Well, what I -- what I -- what I thought was -- I mean,
4 you know, Kim Varner's always been very strong on Jennifer
5 Evans offered him an eight-to-twelve-year sentence if Marshall
6 would cooperate.

7 Now, The Court of Appeals found fault in the opinion with
8 the failure to, again, memorialize that. You know, whether
9 they meant, Dear Ms. Evans, this is -- is to confirm our
10 conversation of today that you will offer an eight-to-twelve-
11 year sentence in return for Marshall's cooperation, blah,
12 blah, blah, polygraph, whatever else.

13 My -- go with it, my -- my view of what was unfair in
14 this case was that Marshall cooperated, he spilled his guts
15 out, and got nothing in return to it. His statement was used
16 against him and then the plea agreement ultimately wasn't
17 honored because they, uh, said that, uh, you know, the only
18 plea agreements were in writing and Jennifer Evans said those
19 were -- the only one in writing was, um -- was fifteen years.

20 And I think, frankly, in the opinion, if you, you know,
21 you read the opinion, they kind of used Marshall's not being
22 present at trial against him a little bit. Because, you know,
23 they said the only testimony we had was the two SLED agents,
24 as I recall, saying we don't remember any numbers being thrown
25 around, we remembered his -- he would -- his cooperation would

1 be taken into account.

2 Well, even taking that into account, what did he get?
3 You know, in the final analysis, nothing. He got the maximum
4 sentence, twenty-five years.

5 I find it -- you know, again, going about it as an
6 appellate theme, that's what I thought was unfair and that's
7 the way I went about handling Marshall's case.

8 Q. So you -- you feel that he should have gotten a new trial
9 based on that?

10 A. Well, I mean, I -- I -- you know, warrant there's several
11 possible remedies that were talked about. One was a new trial
12 on page twenty-six of the final brief. In the alternative,
13 his case should be remanded for enfor- -- enforcement of the
14 plea offer that was accepted. Again, the eight-to-twelve. So
15 the relief was pled in the alternative.

16 Q. I understand. But either of those would have been
17 sufficient if The Court had ruled in your -- let -- in your --
18 in your favor?

19 A. That's what we---

20 Q. Or, in Mr. Miller's favor?

21 A. ---that's what we asked for at the time.

22 Q. You didn't raise the issue of opening and closing
23 arguments and the admission of guilt. Is there a reason for
24 that?

25 A. Well, I mean, a- -- a- -- again, I mean, I -- I take it

1 obviously, since the opening and closing came from Mr. Varner,
2 there's no objection. So I mean, you know, those aren't
3 appellate issues. We have a contemporaneous objection rule
4 you're not gonna object.

5 And I'm not trying to be flip about this, don't get me
6 wrong.

7 Q. I'm not taking it that you are.

8 A. But you're not -- you're not gonna object to your own
9 opening or closing.

10 Q. Well, my question---

11 A. And you know, what if---

12 Q. ---my question to you is different.

13 A. Okay.

14 Q. How -- how can a -- how can -- you're an experienced
15 appellate attorney, you look for, uh, anything that you can
16 hook into that is substantive enough -- substantial enough
17 to -- to get The Court's attention is basically what you're
18 saying. You don't -- you don't appeal issues that you think
19 are tertiary or, uh, just too far removed to have any effect.

20 But, the things that you think might be substantial, you
21 would want to argue; isn't that true?

22 A. Probably not. I mean, um, I, you know, again, I -- I --
23 I -- you know, I -- I think the art of being an appellate
24 lawyer is narrowing it down to, uh, winning issues. Sometimes
25 that's one issue, sometimes it's two.

1 For example, Justice Toal says really it's never more
2 than four. So there may -- I might view an issue as possibly
3 meritorious, but if I don't think it's a winning issue, I'm
4 not gonna raise it. I mean, I'm not going to raise something
5 just because it's in the ballgame. There's -- Appellate
6 Courts aren't going out of their way looking for ways to help
7 criminal defendants get a new trial.

8 Q. Well, that's a rather cynical view.

9 A. I don't think so; I think it's a very realistic view.

10 Q. And you don't think -- do you think -- let me -- let's
11 say you were on trial for murder and your lawyer gets up and
12 says---

13 THE COURT: Just one second. The issue with the
14 appellate counsel is the chain of custody and reliability
15 of the evidence, okay? And the failure to raise that in
16 the, uh, appellate case, okay? Or on appeal.

17 I've already ruled that jurisdiction is not part of this
18 case. So, if you would kind of confine your questions to
19 that, I would appreciate it, okay sir?

20 MR. COMPTON: If it pleases The Court, I -- I was taking
21 this in -- in -- in -- in a little bit of a different
22 direction.

23 THE COURT: Okay. But---

24 MR. COMPTON: And -- and---

25 THE COURT: ---and let -- let me just say this. The

1 issues -- and I've went over it with everyone several times --
2 raised by the Applicant himself and before this Court is, as
3 to appellate counsel -- and I clarified this before we -- we
4 put, uh, Mr. Dudek -- and I said Dudek, it's Dudek -- on the
5 stand, is that was appellate counsel ineffective for failing
6 to raise the issue of jurisdiction concerning the alleged
7 evidence that was introduced at trial due to its unreliability
8 and jurisdiction and chain of custody? That's the issue,
9 okay? And I said jurisdiction was not an issue. I've ruled
10 against that petition, that aspect of that allegation.

11 So, that leaves the reliability of the chain of custody
12 of evidence that -- that should allegedly have been raised,
13 uh, by appellate counsel as I read that, uh, argument.

14 MR. COMPTON: And that would be as to any ineffective
15 assistance of Mr. Dudek.

16 THE COURT: Uh-huh.

17 MR. COMPTON: But there are also other issues that are
18 before The Court. And Mr. Dudek is also very experienced, and
19 I was seeking to elicit an opinion as to other issues raised
20 in---

21 THE COURT: You're asking him to give a legal opinion
22 about other persons' performance?

23 MR. COMPTON: No, just about a legal issue. Whether or
24 not---

25 THE COURT: Well, he can't give a legal issue; that's for

1 me to decide. That's the ultimate issue for The Court; okay,
2 sir?

3 I'm not trying to be quarrelsome with you but that's just
4 evidentiary rules as I understand them.

5 MR. COMPTON: And I'm simply trying to make our case,
6 Judge. And I -- I don't think that---

7 THE COURT: I understand. And, Mr. Compton, you're doing
8 a very zealous job. I'm just trying to tell you that---

9 MR. COMPTON: I---

10 THE COURT: ---he's not allowed to give a legal opinion
11 on, uh -- as -- as to the -- it -- it's in- -- invading my
12 province. And if you're trying to do that, I'm gonna
13 disallow it.

14 And the issue raised by this -- I understand -- if I
15 understand what you're trying to say, you're gonna ask him to
16 critique, uh, trial counsel's performance.

17 MR. COMPTON: That -- that would be correct, Judge.
18 And -- and I am not trying to try The Court's patience.

19 THE COURT: I'm not -- you're not trying my patience.
20 I'm just -- you know, I'm just ruling.

21 MR. COMPTON: I understand.

22 THE COURT: Okay.

23 MR. COMPTON: Then I won't go any further on that
24 issue---

25 THE COURT: Okay.

1 MR. COMPTON: ---and I don't have any further questions.
2 Thank you very much.

3 THE COURT: Thank you very much, Mr. Compton.

4 MS. McMAHAN: Nothing further of him.

5 THE COURT: All right, any reason why Mr. Dudek can't be
6 excused?

7 MS. McMAHAN: Absolutely not.

8 THE COURT: I want to ask you, you've been keeping
9 possession of the file; is that correct?

10 MR. DUDEK: That -- that's what I was gonna ask you, Your
11 Honor, what do you want to do about that?

12 THE COURT: Any reason why he can't keep it in his file?
13 If there's somehow a reason for it, if you'll just keep it
14 under your possession and then somebody could get a Court
15 Order to get it later that'd be fine? Any reason there's
16 no -- that's not agreeable?

17 MR. COMPTON: Your Honor, I don't foresee any reason it
18 would come up; but, if it does in any subsequent proceedings,
19 then I think on behalf of Mr. Miller it should be preserved.
20 And I have no objection.

21 THE COURT: Then as an Officer of the Court Mr. -- if you
22 will keep it under your control?

23 MR. DUDEK: Um -- Your Honor, did you want me, I -- I
24 guess, just to -- to leave the file?

25 THE COURT: I would rather you keep it in your normal

1 course of business and then if it comes back up, a Court Order
2 would be given to -- to either get it or whatever needs to
3 done.

4 MR. DUDEK: But for purposes of the rest of the hearing,
5 if I'm excused, do -- do you just want me to leave this is
6 what I'm asking you see.

7 THE COURT: Oh; well, can -- can you get it to him in --
8 down in Columbia?

9 MS. McMAHAN: I can get it to him.

10 MR. COMPTON: I have no objection to him taking it.
11 Ultimately---

12 THE COURT: Okay; that's fine.

13 MR. COMPTON: ---I don't see anything coming into -- into
14 evidence out of the file.

15 I did have one letter I wanted to discuss, but The
16 Court's prior rulings narrowed my ability to discuss that, and
17 so I'm not going have anything---

18 THE COURT: I know; I'm tying your hands to the
19 pleadings, okay?

20 Um -- all right, you can carry the file with you.

21 MR. DUDEK: Okay. Thank you, Your Honor.

22 THE COURT: Thank you so much---

23 MR. DUDEK: I appreciate it.

24 THE COURT: ---yes, sir. All right, guys, let me ask.
25 It's one o'clock; um, you-all want to take a fairly quick

1 lunch break and come back and finish this up or do you want to
2 go -- I've got Court people here who need to eat as well,
3 and I---

4 MR. COMPTON: If the Court personnel are hungry then I --
5 I certainly want them to eat.

6 THE COURT: What would you-all rather do? Would you-all
7 rather go forward or do you want to stop and go have a lunch
8 break?

9 CLERK OF COURT: A restroom break would be good.

10 THE COURT: Ma'am?

11 CLERK OF COURT: A restroom break would be good.

12 MR. COMPTON: Could we have ten/fifteen minutes, Judge,
13 just to---

14 THE COURT: Well, uh, yeah. Excuse me; all right,
15 let's -- let's take about a fifteen minute break.

16 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
17 CONFERENCE, OFF THE RECORD.)

18 (WHEREUPON, PROCEEDINGS CONTINUED.)

19 THE COURT: Let's take about a fifteen-minute break.
20 That way we can end earlier and -- all right.

21 MR. COMPTON: Thank you.

22 THE COURT: Mr. Compton; you're not trying me. I
23 appreciate you -- you doing what you're doing.

24 (WHEREUPON, HEARING RECESSED AT 1:05 P.M.)

25 (WHEREUPON, HEARING RESUMED AT 1:24 P.M.)

1 BAILIFF: Okay, Court come back to order, please.

2 THE COURT: We're back on the record in the case of
3 *Miller versus The State of South Carolina*.

4 MS. McMAHAN: Your Honor, The State calls Kim Varner.

5 THE COURT: Okay, Mr. Varner, would you come around,
6 please, sir?

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
8 CONFERENCE, OFF THE RECORD.)

9 (WHEREUPON, PROCEEDINGS CONTINUED.)

10 (WHEREUPON, KIM R. VARNER, BEING FIRST DULY SWORN,
11 TESTIFIED AS FOLLOWS:)

12 THE COURT: Thank you, sir; would you step around please?

13 KIM R. VARNER, DIRECT EXAMINATION BY MS. McMAHAN:

14 Q. Would you please state your name for the record?

15 A. My name is Kim R. Varner.

16 Q. V-A-R not V-E-R?

17 A. V-A-R-N-E-R.

18 Q. Sorry, there's a V-E-R around here too.

19 A. That's okay.

20 Q. And did you represent Mr. Miller?

21 A. Yes, I did.

22 Q. And what can you tell me about this case?

23 A. Uh -- I have known Mr. Miller previously; I think I'd
24 represented him before. I know his family. I've represented
25 other members of his family. Uh -- a long story short, we

1 anticipated this was coming. Mr. Miller and I met many times,
2 uh, prior to the actual issuance of the warrant.

3 Um -- there were discussions about the amount of
4 evidence. If I'm not mistaken -- again, this was eight years
5 ago -- but there were twenty-two or twenty-three people who
6 were prepared to testify against him. Some of whom he didn't
7 even know, uh, some of whom he did know.

8 Uh -- we had discussed the evidence, uh, the type of
9 evidence, uh, the testimony of the potential witnesses. And
10 we had explored the possibility of if we could negotiate some
11 type of a deal.

12 Uh -- where I think the main problem came in was this;
13 uh, they had Mr. Miller -- I think they transported him I
14 think from Abbeville to Laurens County one day. I got a phone
15 call that he was there. Now, whether that was something he
16 instigated or whether they just came and got him, I don't know
17 the answer to that. But, I had received a call one afternoon
18 saying they had him in Laurens and I needed to be there.

19 Uh -- on the way down there I called, uh, Jennifer Evans.
20 I probably had about a twenty-minute telephone call with her.
21 Uh -- during the course of that conversation, we discussed the
22 possibility of Mr. Miller cooperating, being debriefed. Uh --
23 I'd call it standard protocol, lie detector test, being
24 completely honest, things of that nature.

25 And, what we agreed upon -- and I will take this to my

1 grave -- but we agreed that if he cooperated, did what he was
2 supposed to, passed the lie detector test -- in other words if
3 he did do full compliance -- he would receive a sentence
4 between eight and twelve years -- in that range.

5 Thereafter, I went to the Laurens County Detention
6 Center -- I think it was the -- the -- the Sheriff's Office
7 maybe -- uh, met with Mr. Miller in front of Chester Bragg and
8 Frank -- Frank---

9 Q. O'Neal?

10 A. ---what?

11 Q. O'Neal?

12 A. Frank O'Neal; there we go. Uh -- we were in a fairly
13 small room. I advised Mr. Miller that I had just finished
14 about a twenty-minute con- -- telephone conference with, uh,
15 Ms. Evans and that she had given an oral offer of eight to
16 twelve years. That was the range, depending on what he did
17 say or didn't say, and assuming it was truthful and, you know,
18 the protocol; we went through that.

19 And I explained to him that he did not have to give any
20 statements, that was his right. Uh -- and that it was not
21 gonna be eight to twelve, it was gonna be twelve; plan on a
22 twelve-year sentence. And that was done in front of two SLED
23 agents, and I said at that point in time, you know, it's your
24 call. If you want to be debriefed, that is your choice. If
25 you don't, I understand that.

1 Mr. Miller, in reliance upon what I told him, did give a
2 full confession statement. Uh -- he gave a full debriefing,
3 uh, based upon my conversation with Ms. Evans and my
4 conversations with him that he would receive a twelve-year
5 offer. An eight-to-twelve-year offer, but we expected -- you
6 know, an eight-to-twelve basically means twelve in -- in my
7 view.

8 Q. Um -- (after pause) hold on one sec.; I apologize.
9 (After pause) So, you get to -- that -- that wasn't a plea
10 date, was it?

11 A. No, that was, uh, substantially prior to the plea date.
12 Subsequent to that, Mr. Miller was brought, I believe, from
13 Abbeville to here, to Laurens County Court. We were presented
14 a written plea agreement -- or a plea offer -- of fifteen
15 years.

16 Uh -- to be honest with you, there was a great deal of,
17 um -- discussion might be the polite word for it, but there
18 was a great deal of animosity about that, both from Mr. Miller
19 and myself. Uh -- Ms. Evans, as I recall, was not here; there
20 was another one from the AG's office here. I explained to
21 them what my position was, that Mr. Miller had agreed on
22 twelve; we were willing to take the twelve and that we would
23 not do the fifteen. I talked with Mr. Miller; that was his
24 opinion, that was his understanding.

25 And I asked him would he please get in touch with

1 Ms. Evans to see if we could modify the -- the plea agreement.
2 Uh -- the response was, from her -- which I disagree with and
3 always will -- was fifteen years is between eight and twelve.
4 And I distinctly recall a conversation I had with the AG that
5 was here and told him where I come from, eight to twelve is
6 eight, nine, ten, eleven, twelve. And I'm not trying to be
7 silly, but fifteen is not between eight and twelve. She took
8 the position that fifteen was between eight and twelve.

9 So, it was take it or leave it. He rejected that offer
10 and we got ready for a trial at that stage.

11 Q. So at that point, Ms. Evans had moved over to handle a
12 different case and Mr. Hood and Mr. Croute (phonetic) had
13 taken over the---

14 A. I believe she's moved into insurance; if I'm not
15 mistaken, insurance fraud. And Mr. Hood -- and I've forgotten
16 the other gentleman's name.

17 Q. John Croute?

18 A. Yes, I believe that is the correct name.

19 Q. Had taken over the handling of the prosecution, correct?

20 A. Correct.

21 Q. So then you get -- it -- it gets called for trial and
22 everybody shows up and then you made a motion regarding the
23 eight-to-twelve offer; correct?

24 A. Well, everybody didn't show up. Uh -- Mr. Miller didn't
25 show up. Uh -- I was there, attorney Rob Wise, who had a

1 co-defendant was there with me. Uh -- we were at the counsel
2 table together.

3 Uh -- I made a motion to recognize and enforce the plea
4 agreement. Uh -- since Mr. Miller wasn't there, I was not
5 allowed to call him as a witness. Uh -- I got up and
6 testified, and to be honest with you -- I've been doing this
7 thirty-four years -- I've never blatantly said an attorney did
8 or didn't say something, but I was very adamant that that was
9 our plea agreement. That I had a twenty-minute -- I think I
10 had my cell phone records with a twenty-minute conversation;
11 we had to talk about something. Uh -- my recollection --
12 again, this was eight years ago -- uh, the Judge ruled that
13 because Mr. Miller wasn't there, there was nothing to show
14 that he relied upon that representation.

15 Uh -- I further objected, stating that was putting the
16 burden on him of having to prove that; that the burden should
17 be on The State to establish that deal was not offered, uh,
18 and that it would not be enforced.

19 Uh -- his ruling, which I objected to, and noted on the
20 record -- uh, was that he was putting the burden on Mr. Miller
21 to prove his reliance when, in fact, uh, and I think part of
22 the argument was, this gentleman had done time in jail before,
23 he knew what the rules were. He wouldn't make a confession if
24 there wasn't something in it for him, the same as everybody
25 else involved in this case. Uh -- and that he's -- he's -- I

1 think it's pretty evident that he's a pretty smart fellow. He
2 wasn't just -- he wasn't gonna give 'em something for nothing.
3 That there was a promise made.

4 Uh -- nonetheless, uh, the Judge ruled that his statement
5 and, I guess, confession for lack of a better term, would
6 come in.

7 Uh -- subsequent to that, in chambers with Mr. Hood there
8 was -- and me there, uh, the Judge made me aware if I could
9 get a word to my client, if he would come, that he would honor
10 a twelve-year -- he would give him a twelve-year sentence
11 despite the recommendations of the AG's office.

12 Uh -- I did tell both his mother and father and I think
13 his sister, if they could please get in touch with him, that
14 the Judge had said he would give him the twelve years if he
15 would show up.

16 Uh -- they indicated to me they had no way of getting in
17 touch with Marshall, that they did not know where he was. So,
18 I don't know if he ever did or did not get that message; I
19 don't know.

20 Uh -- that did -- I won't say it altered the strategy of
21 the trial itself, but I will tell you, I've listened to what
22 Mr. Miller said. I've listened to the examination. What is
23 being critiqued is the strategy that was taken at this trial.
24 I knew before I got up and did an opening statement that,
25 number one, they were gonna use Mr. Miller's full confession.

1 I knew they had potentially twenty-something witnesses and
2 literally a mountain of evidence. Uh -- there was no question
3 in my mind they were going to be able to show that Mr. Miller
4 was involved in drug activity.

5 Uh -- what the whole trial strategy was, and it was said
6 in the opening statement, nobody was gonna argue he was a Boy
7 Scout, he was not looking for his merit badge. Nobody's gonna
8 say everything he did was polite, appropriate, or even legal.
9 But what we're trying here is a conspiracy. The objective in
10 the trial strategy was to convict him of a lesser-included
11 offense, uh, because they had not only his statement, which
12 pretty much sealed the deal, but they had a mountain of other
13 evidence.

14 Uh -- there were a lot of things that were -- if you read
15 the opening statement in context, I'll let anybody stand
16 behind that because the argument was, it's not a conspiracy.

17 I think one of the analogies I used was, if we were all
18 going home and four of us were speeding, we might all be
19 speeding, we might be all together, but that doesn't mean
20 there's a conspiracy to speed. And many of these people,
21 Mr. -- Mr. Miller didn't even know some of these people. And
22 there was no question these people were drug users; they were
23 crystal meth. users. Uh -- some of 'em had used crystal meth.
24 to the point they didn't know how to tie their shoes.

25 But that's what their case relied on; that these people

1 were not reliable. Or, I think I made the statement that
2 these were the kind of people who were sold another soul. And
3 they were being offered rewards, and now they're all of a
4 sudden the darlings of the Attorney General's Office but they
5 were dirt bags yesterday, how could you trust them? That was
6 the -- the strategy of the trial to proceed with that.

7 And I wanted them, to a certain extent, to have all these
8 other people involved in drug activity. I didn't have a
9 problem with all these other people having drugs in their
10 possession.

11 It was part and parcel of not only the opening, the
12 closing, the trial itself. They never found one iota of drugs
13 on Mr. Miller. They didn't find the apparatus on Mr. Miller.
14 What they had was evidence that he was friends with them; they
15 had plenty of evidence he had used drugs with him. They
16 were -- I think even his alleged partner, a Mr. Powell, was
17 gonna testify he had cooked with Mr. Miller. Uh -- there were
18 many people who were gonna say Mr. Miller was involved in
19 drugs.

20 But the point is, these people were so messed up they
21 couldn't tie their shoes; they're not capable of forming a --
22 a conspiracy.

23 Uh -- one of the things I used for my closing was -- and
24 I know what the record says, but you had to be there. The
25 irony of it, Mr. Miller's a big drug lord. It wasn't an

1 admission he was a drug lord, it was a -- an ironical,
2 rhetorical statement of, the AG's office alleges he's a drug
3 lord but yet, look where he lived. I mean -- and we had the
4 pictures; I'm holding pictures up. He lived in a very, very,
5 very meager situation. He was not living in, like you see
6 the -- I've forgotten the -- the movie, but you know, like the
7 drug pins. That's what they were trying to make him to be.

8 He gave money for a friend's funeral. He bought people's
9 Christmas presents. This was a nice guy, not some evil drug
10 lord. That was the -- the irony of it. And some of it was
11 rhetorical and -- and ironic in terms of -- of, he's a big
12 drug lord, yet, take a look at this. Because, uh, the
13 pictures showed that he was very -- living a very meager
14 existence. This guy was not driving around in Rolls Royces
15 and Lamborghinis, he was helping his friends which meant he
16 was a nice guy. That was the contradiction of what I wanted
17 the jury to pick up is, this is a nice guy who's helped
18 people. But, because they got in trouble, they're gonna dump
19 on him.

20 Q. So your---

21 A. That was the strategy.

22 Q. ---so your trial strategy was essentially you have to
23 prove conspiracy. Even if he was using drugs, you would still
24 have to show that he had conspired with all these giant groups
25 of people to -- to make -- to make meth.

1 A. Correct; I -- in all -- in all honesty, I would have been
2 happy had they convicted him of using drugs or selling drugs.
3 That carried a lot less than twenty-five years, uh, because I
4 knew I had a confession I had to deal with once the Judge
5 ruled against it. Uh -- I was going for the lesser of several
6 evils. That was the only chance I thought Marshall had at
7 that stage.

8 Q. You know -- you don't -- you heard Mr. Miller's testimony
9 earlier too, um, about Ms. Sonnefeld talking about she thought
10 there were chemicals in these gallon jugs. Did you feel that
11 that was any kind of thing that you should have to object to?

12 A. If anything, I thought it was helpful to Mr. Miller for
13 several reasons.

14 First, what she testified to was chemicals. She didn't
15 say what kind of chemicals they were. Uh -- that goes to lack
16 of evidence. On top of that, had I drawn attention to it,
17 first, I may have had the -- the legal problem of before I can
18 argue about chain of custody or admissibility of certain
19 evidence, at the very least that's gonna look like it belonged
20 to Marshall.

21 These drugs or these chemicals were never found in
22 Marshall Miller's possession; he never had them. Part of my
23 strategy was, these people around him were using drugs to the
24 point they were nuts. That it wasn't Marshall Miller, that it
25 was them. And the more chemicals or the more whatever they

1 put on other people, that, if you do the comparison, that made
2 it less likely that Marshall was involved in it. 'Cause one
3 of the arguments in closing -- or at some point in time during
4 the trial -- was, they had been on Marshall for about two
5 years. They knew everything he did, everywhere he went. They
6 had license plate numbers, they had names of everybody
7 involved. And all these other people had drugs because
8 they're drug heads. I mean, they were not smart. But you
9 know, out of two years, they never found Marshall with any of
10 that stuff. And if it was there, in two years of looking for
11 it, they would have found it. Because, they sure found it on
12 everybody else, but they couldn't find it on Marshall.

13 I thought that was a -- obviously not a -- not ultimately
14 effective, but I thought that was the best strategy that could
15 be used at this particular case, looking at the mountain of
16 evidence and the -- the confession that I had to deal with.
17 And the fact that I had an empty chair.

18 Q. And the issue about the, um, anhydrous ammonia tank, did
19 you think that was an issue at all? Do you recall Mr. Ford's
20 testimony at all?

21 A. In all candor, I don't specifically recall who said it,
22 but I remember it being brought up. But, again, uh, they had
23 photographs. Uh -- if I'm not mistaken, some of them were
24 marked anhydrous. If I'm not further mistaken, I think they
25 had somebody who they didn't ultimately use, some guy who was

1 going to testify that Marshall had allegedly paid him money to
2 go steal anhydrous ammonia tanks I think at a BI-LO Warehouse.
3 I did not want that coming in.

4 Uh -- but again, if it -- they had tanks. Uh -- they
5 testified they were anhy- -- anhydrous ammonia. To be honest
6 with you, I don't remember. I was a little surprised when I
7 heard the tanks were stolen. I don't think I was aware of
8 that at the time of trial; I don't think that was disclosed.
9 Uh -- but, anhydrous tanks and ammonia -- other -- it -- a
10 manufacturing facility, these are the people who are gonna say
11 Marshall's involved, but yet they don't have him there and
12 they -- it was not his property.

13 Q. Would you dispute the record if it indicates that
14 Mr. Ford worked with SLED, came out to -- to the anhydrous
15 ammonia tank and tested it with a presumptive test and that
16 you, um, cross-examined him regarding that?

17 A. I don't really recall that either. I can't dispute it.

18 Q. But if it is in the record, you're -- you're not gonna
19 dispute that?

20 A. Oh, absolutely not.

21 Q. Did you see any issue of the reasonable doubt instruction
22 that was given to the jury? Particularly the moral certainty
23 aspect of it?

24 COURT REPORTER: I'm sorry; particularly?

25 Q. Particularly the moral certainty aspects of it?

1 A. No. As a matter of fact, I viewed that to be beneficial.
2 And again, sometimes you have to hear the intonation because,
3 uh, what Judge Saunders said -- and I have had cases before
4 him, uh, before -- the way he's -- he gave his instruction on
5 moral certainty, you have to be convinced of someone's doubt
6 to a moral certainty. Not according to morals, but to a moral
7 certainty. I use both words together.

8 That means a very firm, heartfelt, and moral conviction
9 that there is a doubt there or that he is -- excuse me --
10 guilty. And for someone to be morally convinced someone is
11 guilty to me is a higher standard than an average charge. I
12 thought it was a favorable charge.

13 Q. Is there pretty standard charges given for reasonable
14 doubt in trials?

15 A. Back then, I can't -- I -- to be honest with you, I don't
16 really know. I know some Judges used to charge that
17 reasonable doubt is that kind of doubt which would cause a
18 reasonable person to hesitate in the most important of their
19 affairs and they elaborate. Some Judges don't. I think the
20 Supreme Court has addressed that and it's changed. But at
21 that particular point in time, I don't know. And to be honest
22 with you, I thought it was a positive charge when he said
23 moral certainty because I thought that was -- required a
24 higher burden to convict him.

25 Q. And, uh, what was the issue with the stuff that was

1 brought from Georgia; do you remember?

2 A. Yes. Uh -- I've forgotten the guy's name. Uh -- his
3 wife, I think, was part of this conspiracy, uh -- this guy
4 testified, uh, because he had the stuff. And his wife was
5 involved in it, but he was, again, one of these people blaming
6 it -- blaming it on Marshall. As to its admissibility, uh,
7 (after pause) still my position is they could have gotten it
8 in either way.

9 And you do make decisions at trial as to how much you
10 object to something because that draws the jury's attention to
11 it. This was something that was, again, in another state, not
12 in Marshall's possession, not on any property that he owned.
13 And sometimes you try to not draw attention to particular
14 matters. Again, that's a strategy call.

15 You know, if a lawyer really raises sand about every
16 single issue, the jury gets the idea it's an important fact
17 and that, obviously, my guy had something to do with it since
18 I'm so upset about it.

19 Sometimes you -- it's kind of like the appellate lawyer
20 said, sometimes you give up those things that are obvious.
21 Uh -- you let them go to focus on the -- the main part of the
22 case which is, they didn't find anything on him. They didn't
23 have him cooking. They didn't have him manufacturing. After
24 two years of watching him, they didn't have one shred of
25 evidence except the word of people who were cooking drugs,

1 doing drugs, and had been promised everything. And again, I
2 think the analogy I used, they were so messed up, they
3 couldn't tie their shoes let alone know what the truth was.

4 Q. So, as far as the testimony that went where the guy --
5 and I can't remember his name either at this point -- said
6 that he got -- he lived in Georgia but he had gotten these
7 materials from Mr. Marshall, um, and that that's what they
8 were attempting to get in with this stuff from this guy in
9 Georgia? So your strategy then was to not draw attention to
10 it because, again, it wasn't found on Mr. Marshall, it was by
11 some guy in Georgia who claimed he got it from him?

12 A. Correct. I thought that was the -- a -- an appropriate
13 strategy move because they were getting ready to hear, uh, you
14 know, Marshall's own confession and his own statements of what
15 he had done and who he'd been involved with.

16 And I -- part of the -- the strategy was these people got
17 caught doing bad things but they want to lighten their
18 load and blame it all on him. And he was -- again I say
19 ironically -- he was the drug pin but yet he's the one that
20 didn't have any evidence against him and he's the one that
21 helped all those people.

22 Q. Now let's just go back to the jury instructions just for
23 a little bit. Did -- if you was (sic) to have a problem with
24 a jury instruction, is it your practice to object at that
25 time?

1 A. Oh, very much so.

2 Q. And did you see any issues with any of these jury
3 instructions?

4 A. I did not.

5 Q. They were pretty standard in your opinion?

6 A. I thought they were very standard.

7 Q. Okay. And then also, um, did you see any issues with the
8 indictments? Even though there was a superseding one, if you
9 recall?

10 A. Uh -- (after pause) no. And we had many pre-trial
11 conferences. Uh -- if I'm not mistaken, there were probably
12 twenty to twenty-five lawyers involved in this and we all
13 talked about this as to which way to approach it, what each
14 one of us thought. And, no, I did not think that would --
15 would be beneficial whatsoever. I did not really see a
16 problem with it; it was certainly not a problem that couldn't
17 be cured rather quickly.

18 As a matter of fact, sometimes you, uh, sit back and let
19 it go with what they've got if they've made a mistake in it
20 and take advantage of it at trial or at a later date.

21 Q. Yes; I've had that happen to me. Um -- also, throughout
22 this whole investigation and in prepping for this trial, were,
23 uh -- were you given access to the discovery?

24 A. Yes, I went down to Columbia to -- I don't know what
25 building I went to, but---

- 1 Q. The Dennis Building?
- 2 A. Yes, it was the Dennis -- Rembert Dennis?
- 3 Q. Yes.
- 4 A. Right. Uh -- yes, I went down there and reviewed all the
5 stuff for many, many hours.
- 6 Q. So you were well versed in what -- what the evidence was
7 that they were gonna use against him?
- 8 A. At the time of the trial, I knew this case backwards and
9 forwards because I didn't have a defendant there to help me
10 with facts. I had to know it all.
- 11 Q. And prior to Mr. Miller's failure to show up for court
12 that day, had you met with him regarding all this discovery
13 and had gone over the materials and what---
- 14 A. Oh yes.
- 15 Q. Okay.
- 16 A. Yes; as a matter of fact, one of the things that we did,
17 because he was in jail during a part of this, uh, I went
18 before, I think, Judge Saunders if I'm not mistaken. He
19 required the Abbeville County Sheriff's and all the deputies
20 that worked at the detention center, he required them to be in
21 Court under a protective order. Each of them had to take an
22 oath. Mr. Miller was allowed to have his discovery documents.
23 The requirements were it had to be kept under lock and key,
24 that none of the people that worked at the jail could read any
25 of the materials. The Sheriff would ensure its safety.

1 Mr. Miller was allowed to go into a private room by himself,
2 uh, read it. And when he was through with it, he was required
3 to return it and they were required to put it under lock and
4 key.

5 And, yes, I made several visits down to the jail when he
6 was at the jail, talked to many of the co-defendants -- the
7 ones who didn't have attorneys -- as to what their testimony
8 would or would not be.

9 Um -- if I'm not mistaken, most of those were
10 unfortunately late at night. You know, like nine -- eight,
11 nine, ten o'clock, maybe eleven o'clock at night because they
12 were at the end of the day. And he and I have met before. He
13 was actually incarcerated on several occasions.

14 We knew basically what they had, who was gonna testify,
15 and basically what the people were going to say.

16 Q. All right.

17 MS. McMAHAN: Nothing further, Your Honor. Excuse me,
18 nothing further, Your Honor.

19 MR. COMPTON: Thank you, Your Honor. I -- may it please
20 the Court.

21 KIM R. VARNER, CROSS-EXAMINATION BY MR. COMPTON:

22 Q. Mr. Varner, I'm John Compton; I'm representing
23 Mr. Miller in this case. If you would, please, be patient
24 with me as I go through some things with you. And, unless
25 there's an objection, I'd like to stand here and -- so that we

1 can kind-a go through this a little more easily.

2 Um -- you were very confident in your preparation---

3 A. Yes, I was.

4 Q. ---for trial? And you -- in the letter to, uh,
5 Mr. Miller on November the 30th of 2006, you told Mr. Miller
6 that you were more than confident that your preparation in the
7 trial itself was of superior quality, and that you that had no
8 fear of scrutiny of your work; is -- isn't that true?

9 A. That's absolutely true.

10 Q. And that you were---

11 A. And the rest of the letter goes on to say that his family
12 was there, they were very satisfied with what went on. As a
13 matter of fact, I've represented a couple of members of his
14 family since then. There were people sitting in the gallery
15 who were telling their friends to come watch it.

16 You know, I mean, it was a dramatic trial. It was -- I
17 won't say fun, but it was a very interesting trial. As a
18 matter of fact, the -- the co-defendant's family came over and
19 talked to me afterwards. I -- I don't feel there was a
20 deficit in any way, shape or form.

21 Q. And that's why you said in the two paragraphs later that
22 you were more than amply prepared for trial?

23 A. Correct.

24 Q. Now, how long have you been practicing?

25 A. Thirty-four years. I'm an honors graduate of Furman

1 University; I graduated Emory Law School, one of the top ten
2 law schools in the country at the time. I've been on CNN,
3 Dr. Phil, ABC morning show, CBS morning show, Good Morning
4 America. I've been on every national TV show in this country.
5 I've been on Air America with Ron Reagan. I've been on Air
6 Canada. Yeah, I'm a good -- I think I'm a competent lawyer to
7 say the least.

8 Q. And you've handled hundreds or even thousands of criminal
9 matters; is that true? Or, how many would you say that you've
10 handled?

11 A. In thirty-four years, I've never kept -- kept count. But
12 I have tried many, many criminal cases and handled many, many
13 more.

14 Q. Um---

15 A. I have a very active practice.

16 Q. Motions in limine, they're not heard in front of juries,
17 are they?

18 A. No.

19 Q. So if you had a damning piece of evidence or a piece of
20 evidence that was ticklish, uh, one way to deal with that
21 would be making a motion in limine to try and get a ruling out
22 of the hearing of the jury; isn't that true?

23 A. It would depend on what the evidence was, whether it was
24 linked to my client or whether I wanted it in as a matter of
25 strategy. It would also depend on how a particular Judge

1 handled certain cases.

2 Q. I appreciate that. But in general, you -- a good
3 strategy would be to use a motion in limine if you had that
4 concern?

5 A. No, I don't think that's a good strategy considering all
6 the other factors. Not necessarily; it depends on the
7 particular case. It depends on the evidence. I don't---

8 Q. Okay.

9 A. ---I don't want to aggravate a Judge and make a motion in
10 limine on something that doesn't affect my client. Plus, I
11 was very familiar with Wyatt Saunders and how he handled
12 matters. And he was the kind of Judge you could talk to him
13 in chambers with both sides there. He would pretty much tell
14 you where you were gonna go.

15 Q. You knew the case backwards and forwards, according to
16 your testimony. What you just testified to?

17 A. Uh -- backwards and forwards. Did I know every single
18 word that was gonna be said before it was said? Absolutely
19 not. I knew what potentially was there and I knew what
20 potentially was going to be said, yes.

21 Q. You knew the case backwards and forwards, but you---

22 A. That's not what I said; I said I knew---

23 Q. Well, we can go back to the record---

24 THE COURT: Just one second; that's argumentative. Just
25 go ahead and ask the question again, please.

1 Q. You knew it backwards and forwards, but you didn't know
2 until today that the tank was stolen; isn't that true?

3 A. That was never revealed to me as I recall. Uh---

4 Q. Would you consider the loss or the theft of the tank to
5 be a potentially exculpatory fact?

6 A. No, because it wasn't tied to Mr. Miller, especially with
7 the fact he had a confession. A tank on someone else's
8 property that belonged to a co-defendant, who I clearly felt
9 was guilty along with everybody else, but not him? No, I
10 don't think that would be exculpatory but for anybody except
11 the person who had possession and was tied to it.

12 Q. Didn't The State use that to help convict Mr. Miller?

13 A. I don't know what The State intended, uh, on any
14 particular piece of evidence. But if they didn't think it was
15 beneficial, I would concede they wouldn't have put it in. But
16 there were other things in the photographs and there was
17 another -- there was a co-defendant being tried at the same
18 time. Which one that tied to eight years ago, I can't tell
19 you.

20 Q. Is the tank better evidence than a photograph?

21 A. No; I don't really see the difference. As a matter of
22 fact, I think wrangling in a tank, clanging around, and
23 letting the jury look at it has a lot more harmful effect than
24 looking at a picture for three seconds and putting it away and
25 forgetting it. Everybody's seen the tank but -- you know, you

1 can overplay a lot of things, and I have seen lawyers bring in
2 all these exhibits and get a jury all excited. No, I don't
3 think that would have been a smart move at all; I still
4 maintain that.

5 Q. Okay. So---

6 A. And if you want to draw attention to something that may
7 hurt your client, keep arguing about it, bring it in, and let
8 them look at it. I don't think that's smart.

9 Q. Well, if you'd used the motion in limine on that issue,
10 it wouldn't necessarily be in front of the jury?

11 A. Again, that was not to me, in the overall scheme of it,
12 tied to it. And that was such an insignificant piece of the
13 puzzle. If you've read the transcript, one of the things
14 they did, they tried to bring in on Mr. Miller, was they
15 brought -- and, you know, there was testimony there were only
16 co-defendants. No, there were independent people. There was
17 a girl from B.G.'s who was a -- or B.J.'s buying club. There
18 was videotape where Mr. Miller had bought all of this stuff.
19 I mean a whole slew of batteries. I mean, it was -- it
20 smelled to high heaven. Marshall and I had discussed that.

21 Marshall told me he was going to the beach, that he had
22 gone and bought all of this stuff in anticipation of a beach
23 trip. Uh -- so they had the -- the manager of the B.J.'s
24 buying club there and they tried to infer that -- and this was
25 directly related to Mr. Miller, not to anyone else -- that he

1 had bought all these batteries. Well, there's only one
2 conclusion. They're lithium batteries, which is an important
3 ingredient. And if you read the record, I challenged that man
4 and demanded to have the exact sales receipt and the documents
5 verifying they were lithium batteries. He didn't have it.
6 Judge Saunders excused him for the day and required him to
7 bring it back. When he brought 'em back the next day, they
8 were not lithium batteries. If you hold that in juxtaposition
9 of like a -- the tank that didn't belong to him -- the one
10 thing that was directly related to him, that tried to
11 implicate him, they got challenged on. And as a matter of
12 fact, they failed, which made their other evidence look even
13 weaker -- leak -- weaker.

14 Q. So all they had left were the -- were the oral -- was the
15 oral testimony that there was a conspiracy, just the word of
16 these drug users -- drug users?

17 A. No, they had -- they had a whole pile of people. I don't
18 think they called even one-tenth of them because of the way it
19 was going.

20 They had Mr. Miller's statement, uh, which I -- to me was
21 the most damning piece of evidence of it -- of all. And, you
22 know, I -- I wouldn't be so arrogant as to say all they had to
23 do was put his statement up and sit down, but that might have
24 been enough under those circumstances.

25 Q. Well, let's go back to your closing argument. You said

1 that your strategy was that you wanted to paint Mr. Miller as
2 leading a meager existence inconsistent with that of a drug
3 lord?

4 A. No, that's not what I said. What I said was they played
5 him out to be a drug lord. And what I'm comparing that to is
6 the, uh, the Miami movie where he shot everybody up; he lived
7 the high and affluent lifestyle.

8 Q. Scarface?

9 A. Scarface; there we go. Uh -- that, in turn, Mr. Miller
10 was a very caring person. When one of his friends died, he
11 went up -- and that was -- I think they had the funeral
12 director there that he'd come and paid cash with it. Well,
13 cash is not all that unusual. But that's the kind of person
14 he was. He helped his friends. He bought Christmas presents
15 for people as opposed to the Scarface drug lord. That was---

16 Q. You -- you said that on direct, but you also said he
17 lived in meager accommodations.

18 A. Yes. The pictures they have of where he lived, uh, it
19 was very meager. I mean, and one of the things I pointed out
20 was, you know, this wasn't some opulent place. It was like a
21 trailer with a shed out back and a couple of cars there. That
22 it -- it was -- it was a very meager existence especially for
23 a quote, quote, drug lord.

24 Q. That's inconsistent, though, isn't it, that someone with
25 a meager living existence has all this cash to go out and

1 buying, and gifts, and paying for funerals and things like
2 that? How can you be both?

3 A. If you give it all away and help your friends and you --
4 all of you live with the same standard, that's what people do
5 in small communities, particularly Abbeville. If there's a
6 problem, the family gets together. They don't spend the money
7 on themselves. So, no, I think that's entirely consistent and
8 coherent with them is that he didn't -- he wasn't this selfish
9 person who did stuff for himself. He was the giving, caring
10 person, even at the point of he gave when he probably couldn't
11 afford to give because he cared about other people. And these
12 people had turned on him. That was the -- the juxtaposition I
13 wanted the jury to pick up.

14 Q. You made reference in your closing that the ultimate
15 question was whether or not there was a conspiracy. So why
16 did you go on to say that you were not asking the jury to look
17 at whether or not Mr. Miller was innocent? He's certainly --
18 he is certainly by no means that. Why would you say such a
19 thing?

20 A. Because innocence is presumed and innocence is not even
21 a -- a quote, quote, question. The question is, and if you
22 refer back to the opening, a jury's job is like the little
23 lady in the Wendy's commercial is the analogy I used, where's
24 the proof. And to say he's -- he's not innocent, anybody who
25 was sitting in that courtroom, if you had said Mr. Miller is

1 innocent, being an innocent person, you would have lost every
2 ounce of credibility because it was obvious to everybody in
3 there he wasn't an innocent guy. I don't mean guilty of the
4 crime of conspiracy, but he was not an innocent guy.

5 He hung out with, he associated with people who used
6 drugs. Quite obviously that was -- there -- those people made
7 drugs. Uh -- he might have sold drugs. There was plenty of
8 evidence and testimony and potential testimony of that. But
9 that doesn't mean he's guilty of a conspiracy.

10 It's just like, and I think the analogy I used was
11 speeding, I may be guilty of speeding and the three cars
12 behind me may be guilty of speeding, but that doesn't mean
13 we're in a conspiracy. I may be a drunk driver and kill
14 somebody, but that doesn't mean that Lee Iacocca that
15 manufactures the car is guilty of conspiracy, nor the guy who
16 paves the highway is guilty of conspiracy, even though may --
17 that may be part of it.

18 That's -- that's the---

19 Q. So just to be---

20 A. ---the picture you're drawing.

21 Q. Yes, sir. Just to be clear, so then it was your trial
22 strategy to keep reminding a -- an -- a jury of average
23 people, a jury of Mr. Miller's peers, that he -- you -- you --
24 you wanted to remind them over and over that he was a mean
25 drug lord, that he was giving dope and fronting it, loaning

1 it, giving money away like it was growing on trees and that he
2 was guilty?

3 A. Absolutely untrue. There's twelve pages of opening
4 statement. You picked out two sentences. Read the whole
5 thing; read it in context.

6 And, you know, a lot of that was said ironically. Oh,
7 he's a drug lord. It wasn't he's a drug lord, I admit that.
8 It's oh, he's a drug lord. It was, perhaps, not the most
9 polite way of handling it. It was mocking what the -- the
10 AG's office said.

11 I very frequently walked over and stood -- stood in front
12 of my client and said, ladies and gentlemen of the jury,
13 you've got to look this man in the face and say, you're a drug
14 dealer, you're a liar, you're a thief, you're everything else.
15 And I'm right in front of my client's face. I'm making a
16 point. And it is rhetorical. It is not an admission. And to
17 read it as typed and misinterpret it if you weren't there, is
18 absolutely a misunderstanding of what was said and the context
19 it was said and the tone it was said in. And it's out of
20 context completely.

21 Q Well---

22 A You're questioning trial strategy.

23 Q. ---but that rhetoric of -- of pointing to your client and
24 saying he's this and he's that, is a little bit of a different
25 device than simply admitting guilt in front of a jury?

1 THE COURT: Let -- let me just say this. I've read the
2 opening and closing, so I'm familiar with it. Get to another
3 issue, please, sir.

4 MR. COMPTON: Okay; I have no further questions. And
5 thank you, sir.

6 MR. VARNER: Thank you, sir.

7 THE COURT: Thank you, sir. Redirect?

8 KIM R. VARNER, REDIRECT EXAMINATION BY MS. MCMAHAN:

9 Q. Is there anything else you would like to tell The Court
10 today?

11 A. Personal opinion, I liked Mario (sic) -- Marshall. I put
12 my heart and soul in this. I believe in him. And to be
13 honest with you, I think the guy got punished severely for not
14 showing up. And, like again, I'll say at the beginning, I'll
15 take it to my grave, he should have gotten the twelve-year
16 deal. I believe that and I know that. But other than that,
17 germane to this, no.

18 Q. But ultimately The Court of Appeals disagreed and said
19 that there wasn't any---

20 A. That's correct.

21 MS. MCMAHAN: I have nothing further, Your Honor.

22 THE COURT: Okay, thank you. May Mr. Varner be excused?

23 MS. MCMAHAN: Yes, sir, he may.

24 MR. COMPTON: No objection, Your Honor.

25 THE COURT: Thank you, sir.

1 MR. VARNER: Thank you very much.

2 THE COURT: Thank you for your patience today,
3 Mr. Varner.

4 MS. McMAHAN: Nothing further from The State, Your Honor.

5 THE COURT: All right. Let me -- let me, uh, rule.
6 I'm -- I'm ready to rule. I've read enough, I've seen enough,
7 and I've heard enough in this case. Uh -- I don't need to
8 hear or entertain any additional arguments of counsel.

9 Uh -- concerning this first stated issue, and that being
10 the conceded guilt in a -- in the -- in the closing and
11 opening statements, I've read those statements. I agree with
12 Mr. Varner's version of what he was trying to do. There's not
13 an admission of guilt on behalf of this, uh, Defendant in
14 those statements. Uh -- he was being rhetorical and it was
15 simply that. You read that, uh, from the four corners of the,
16 uh, transcript of the opening and closing statement, there is
17 no, uh, admission whatsoever. Uh -- quite frankly, uh, that
18 statement made by the Defendant -- that was admitted into
19 evidence; is that correct, counsel?

20 MS. McMAHAN: (After pause.) Oh; yes, sir.

21 MR. COMPTON: It was admitted into evidence, Your Honor.

22 THE COURT: And that that's -- that statement is, I
23 agree, uh -- I agreed was, uh, damning. You know, why -- why
24 Mr. Miller didn't show up, I -- I think I agree with the last
25 statement. He got hit hard for not showing up at the

1 courthouse. He -- he may have gotten the deal if he could.
2 have been there. That being the case, that's not what I'm
3 here about.

4 Uh -- failure to make a motion in limine as to the
5 admissibility of the evidence... Excuse me, I've jumped.

6 Failure to object to the opinion testimony, those would
7 be issues B and C.

8 Uh -- number one, there was sufficient overwhelming
9 evidence of those same materials argued in the record. Uh --
10 number one, the first has to do with chemicals. Uh --
11 granted, there may not be a -- a -- a -- an expert in
12 chemicals, but there's sufficient other evidence in the record
13 where that was just simply cumulative. The same thing with
14 anhy- -- anhydrous. Uh -- in fact, I just got through reading
15 your lengthy -- I've seen a lot of statements -- lots -- and
16 I've never seen one as detailed and as long as Mr. Rogers'
17 (sic) statement. And it is obvious what he was trying to do
18 was curry a good deal. I mean -- and -- and I understand the
19 circumstances of what he was doing. But, uh, it sets forth --
20 that, in and of itself, is sufficient to convict you or a jury
21 to find your guilty I think. That being said, so I'm going to
22 deny your grounds on B and C as to the, uh, admission of lay
23 testimony.

24 Failing to object to the erroneous reasonable doubt
25 charge. I read the -- the charge from the four corners.

1 Uh -- while in 2012 our charge was a little bit different, the
2 charge is not, uh, so deficient as to warrant a reversal in
3 this case. It is not seen as deficient, but it's just not the
4 ones we typically used in 2012. But that doesn't mean that it
5 was so, uh, incorrect as to warrant relief under post-
6 conviction relief if you read it from the four corners.
7 Therefore, I'm denying your, uh, petition on that.

8 Uh -- uh, issues E and F, was counsel ineffective for
9 failing to a motion in limine, the admissibility of the
10 alleged evidence retrieved from Georgia due to improper chain
11 of custody of the alleged evidence, as well as the reliability
12 of evidence. I'm looking at it from chain of custody. Number
13 one, these items, um, I think it's fairly questionable as to
14 whether or not you have a chain of custody issue at all.
15 Um -- my understanding of chain of custody is that you have to
16 follow that because you are, uh, worried about somebody
17 tampering with the evidence and it'd be -- and it would arrive
18 in Court in some condition other than it was at the time it
19 was taken. All that being said, uh, from the record, uh, the
20 man who said he had that, uh, evidence that he -- that this
21 gentleman allegedly took to Georgia, gave it to SLED, they
22 brought it to Court. That's all the chain of evidence that
23 you need. I don't think it's a chain of evidence case, but to
24 the extent that it is, there was sufficient chain of evidence.
25 The unreliability, uh, issue is without merit and I'm not

1 going to address that at all.

2 Uh -- as to appellate counsel, um, the jurisdiction issue
3 I've already raised. Uh -- it is not -- I am denying that
4 issue as The Court had jurisdiction in this case, whether
5 subject matter or personal jurisdiction, that's it.

6 As to the reliability of chain of custody, um -- uh,
7 failure to raise those on -- on appeal, I'd address that to my
8 former statements as to trial counsel. Uh -- those issues are
9 without merit and I don't think it's a chain of custody case.

10 Um -- failure to object to trial counsel's -- The Court's
11 instruction that impermissibly commented on the facts thereby,
12 uh, prematurely directing a verdict for The State, number one,
13 that's not a proper standard. But to the extent, uh, that the
14 applicant is seeking to say The Court impermissibly commented
15 on the facts, I read that charge again. It is not a
16 impermissible comment on the facts and -- and I read it from
17 the four corners of the entire charge and that specific aspect
18 of the charge and, therefore, I deny, uh, your motion -- or,
19 your petition on those grounds.

20 Uh -- the indictment has been read by The Court as well.
21 It sufficiently tracks the statute involved and so there's no,
22 uh, deficiencies in the indictment and through a bill of
23 particulars, I just think you're challenging the particulars
24 of the indictment. That being said and done, uh, Mr. Rogers
25 (sic) you're a fairly articulate gentleman. Unfortunately,

1 the facts are what they are. I am denying your petition.

2 I'm gonna ask The State to draft me an order consistent
3 with my oral instructions and with its, uh, return in this
4 matter if you don't mind.

5 MS. McMAHAN: No problem, Your Honor.

6 THE COURT: Okay. Thank you for both attorneys being
7 here and thank you for your patience. We are concluded.

8 (WHEREUPON, HEARING ENDED AT 2:12 P.M.)

9 *****END OF REQUESTED TRANSCRIPT*****
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STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
(HEARD IN COUNTY OF LAURENS)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS
AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR
ABBEVILLE COUNTY, SOUTH CAROLINA, HEARD IN LAURENS COUNTY,
SOUTH CAROLINA ON THE 30TH DAY OF NOVEMBER 2012.

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

OCTOBER 16, 2013

Vivian H. Cross
VIVIAN H. CROSS
CIRCUIT COURT REPORTER

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009- CP-01-00105

Marshall Miller,

State of South Carolina,

PLAINTIFF(S)

DEFENDANT(S)

ABBEVILLE COUNTY CLERK OF COURT

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Plaintiff's Motion for Reconsideration is denied without the necessity of oral argument. No formal order to follow.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge - R. LAWTON MCINTOSH

2155
Judge Code

SC Court of Appeals

Date

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of May, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of May, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

John DeVore Compton, III
212 Grace Street
Greenwood, SC 29649
ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Rutledge Johnson
PO Box 11549
Columbia, SC 29202
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT - RICHARD SHIRLEY

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

TRUE COPY
Emily McMahon
 ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 8TH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	Case No.: 2009-CP-01-00105
Marshall Miller, #249557,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

RECEIVED

APR 20 2013

Appeals

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 20, 2009. The Respondent made its Return on or about April 19, 2010. An evidentiary hearing into the matter was convened on November 30, 2012, at the Laurens County Courthouse. The Applicant was present at the hearing and was represented by John D. Compton, III, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Kim R. Varner, Esquire and Robert M. Dudek, Esquire. This Court also had before it a copy of the records of the Statewide Grand Jury Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Statewide Grand Jury Clerk of

Court. The Applicant was indicted On September 10, 2002 for Conspiracy to Traffick Methamphetamine (2002-GS-47-0032). A superseding indictment was returned on March 11, 2003. Kim R. Varner, Esquire, represented him. On March 25-27, 2002, the Applicant underwent trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable Edward B. Cottingham to confinement for a period of fifteen (15) years.

The Applicant proceeded to trial on January 20-30, 2004 and was convicted as indicted. The Applicant's sealed sentence was opened on August 24, 2004 at which time the Honorable Wyatt T. Saunders, Jr., sentenced him to confinement for a period of twenty-five (25) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence on October 19, 2007. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (2007). The Court of Appeals denied the Applicant's Petition for Rehearing on January 17, 2008. The Applicant subsequently filed a Petition for Writ of Certiorari to the South Carolina Supreme Court on April 21, 2008. The Supreme Court denied the petition on November 7, 2008, and the Remittitur was issued on November 10, 2008.

Motion for Discovery

Applicant filed a Discovery Motion on or about March 12, 2012. The Respondent made its reply on April 18, 2012. A Protective Order was filed with the Statewide Grand Jury Clerk of Court on October 26, 2012, granting Mr. Compton

access to the underlying investigative file. The contents of the investigative file were mailed to Applicant's attorney on November 13, 2012. Applicant and his attorney was also allowed access to the transcripts of the testimony presented to the Statewide Grand Jury at the PCR hearing. At the hearing Applicant indicated that he also wanted access to trial & appellate counsel's files. Both trial and appellate counsel were present in the courtroom with their files and the Court allowed the Applicant time to access and review these files. Therefore, the Applicant's Motion for Discovery is now moot as Applicant was given access to all material related to his conviction and sentence and the motion is dismissed.

ALLEGATIONS

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

1. Ineffective Assistance of Trial Counsel;
2. Ineffective Assistance of Appellate Counsel; and
3. "Denial of 5th, 6th, and 14th Amendment rights."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18,

386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant's particular allegations regarding ineffective assistance of counsel are set forth in the attachments to his application. They are:

1. Was counsel ineffective for conceding Applicant's guilt during the trial?
2. Was counsel ineffective for failing to object to the highly prejudicial "opinion testimony" of a State's witness who had not been qualified as an expert by the trial court? (re: Agent Sonnefeld.)
3. Was counsel ineffective for failing to object to the highly prejudicial "opinion testimony" of a State's witness who had not been qualified as an expert by the trial court? (re: McCallister.)
4. Was counsel ineffective for failing to object to the erroneous reasonable doubt instruction?
5. Was counsel ineffective for failing to make a motion *in limine* challenging the admissibility of the alleged evidence retrieved from the State of Georgia, due to improper chain of custody of the alleged evidence, as well as the unreliability of the evidence?
6. Was counsel ineffective for failing to object to the trial court's instructions to the jury that impermissibly commented on the facts of the case and thus in doing so prematurely directed a verdict for the state?
7. Was counsel ineffective for failing to object to deficiencies in the indictment prior to trial as mandated by SC Code §17-19-90?
8. Was counsel ineffective for failing to motion the court for a bill of particulars based on the vagueness of the indictment?

Conceding Applicant's Guilt During the Trial

Applicant contends that trial counsel was ineffective for conceding that he was guilty during trial counsel's opening and closing statements. Applicant particularly notes trial counsel's opening statement of "I submit to you that you won't hear that what he was doing was appropriate or good or part of the "synergy" or that even some of his activities were legal. They were illegal and nobody is going to argue that." Tr. p. 253, lines 18-25 – p. 254, line 1. As well as trial counsel's

closing statement of "...I submit to you, but what does this mean, evil Marshall do, this drug lord?" Tr. p. 1689, line 25 – p. 1690 line1; and "Why would this evil, mean drug lord who controlled these people pay for somebody's funeral? He was also giving them dope, fronting it loaning it, and it came out how much money these people owed him." Tr. p. 1690, lines 7-11. Applicant also notes several other statements given by trial counsel during his opening and closing statements. Those challenged statements are listed on page 3 of the attachments to the Applicant's PCR application.

Trial counsel testified at the PCR hearing that the goal of his opening and closing statements was to challenge the State's evidence that there was a drug conspiracy – it wasn't disputed that the case dealt with drug users, but rather that there was no evidence of a conspiracy to traffic the drugs. Trial counsel also stated that his opening statement must be read and taken as a whole.

This Court finds that trial counsel was not ineffective and did not admit that the Applicant was guilty in his opening and closing statements. Both statements must be read as a whole. This Court agrees with trial counsel that he was being rhetorical based on the Applicant's damning statement he gave to the police and the amount of witnesses that were drug users and buyers. This Court also finds that trial counsel's goal was to challenge the state's conspiracy evidence. Therefore this allegation is denied.

Failure to Object to "Opinion Testimony" of Agent Sonnefeld & Witness McCallister

Applicant contends in allegations 2 & 3, *supra*, that trial counsel was

ineffective for his failure to object to the testimonies of Agent Sonnefeld and witness McCallister because they offered opinion testimony and were not qualified as experts. Specifically he alleges trial counsel should have objected to Agent Sonnefeld's testimony regarding chemicals in containers and chemical residue left in a coffee grinder, as well as her testimony of "We just identified it as what I thought it was." Tr. p. 306, line 21.

Applicant also alleges trial counsel was ineffective for not objecting to witness McCallister's testimony regarding the anhydrous ammonia tank. (See page 14 of the attachments to the PCR application.)

This Court finds that trial counsel was not ineffective for his failure to object to the testimonies of Agent Sonnefeld and witness McCallister. This Court finds these allegations are also without merit. While Applicant claims that this testimony was prejudicial and an attempt to bolster the State's case, this Court finds that their testimonies were cumulative to the evidence presented in this trial. Therefore these allegations are denied.

Failure to Object to Reasonable Doubt Jury Instruction

Applicant alleges that trial counsel should have objected to the reasonable doubt instructions that were given to the jury. His particular grievance is with the part of the instruction that references "moral certainty" and "not an attempt to define for you what is meant by reasonable doubt." See page 19 of the attachments to the PCR application.

This Court finds that trial counsel was not ineffective in his failure to object

to the reasonable doubt instructions. While this charge has been modified since the Applicant's trial, that modification is not enough to warrant a reversal had trial counsel objected. Therefore this allegation is denied.

Failure to Move *in limine* Regarding Evidence Retrieved from Georgia

Applicant further alleges that trial counsel was ineffective for not making a motion *in limine* regarding the items that were seized from Gene Saylors house in Georgia and turned over to SLED. (The items include a trailer, a duffle bag, a red five-gallon jug, and a plastic container with mason jars in it. Tr. p. 538, line 22 – p. 539, line 13.) Applicant claims that the chain of custody of these items was in question because Mr. Saylors "tampered" with the evidence with he acknowledged that he moved it and when Agent Sonnefeld arrived "without contacting the Georgia authorities" to retrieve the items from Mr. Saylors. (See page 26 of the attachment to the PCR application.)

The record reflects that Agent Sonnefeld went to Georgia accompanied by agents from the Georgia Bureau of Investigation. Tr. p. 303. Mr. Saylors testified that he received the items from the Applicant and then hid them. He took the agents to where he hid them and Agent Sonnefeld transported them back to South Carolina. (See Tr. p. 538, line 22 – p. 544, line 10.) This Court finds this allegation is without merit and that trial counsel was not ineffective for not making a motion *in limine* regarding the chain of custody of these items because the chain of custody is complete. Therefore this allegation is also denied.

Failure to Object to Court's Instructions to the Jury
That Impermissibly Commented on the Facts of the Case

Applicant alleges that trial counsel was ineffective for not objecting to the trial court's jury instruction regarding the co-defendant's testimony (particularly tr. p. 1793, lines 8-24) because it "impermissibly commented on the facts of the case as well as the evidence." See attachments to the PCR application, page 31. This Court finds that this instruction was proper for this case and that there were no impermissible comments made by the judge on the facts of the case within the charge given. The charges must be considered as a whole. Therefore this allegation is also denied.

Failure to Object to Deficiencies in the Indictment &
Failure to Move for a Bill of Particulars

The last two issues have been combined in this order. Essentially the Applicant claims that the charges put forth in the indictment were too vague and that trial counsel was ineffective for not making a motion for a definitive statement regarding the charges enumerated within the indictment. What Applicant cites in his attachment on page 35, is actually taken from the order sealing the indictment not from the indictment or the superseding indictment. In determining whether an indictment meets the sufficiency standard, whether the indictment could be more definite or certain is irrelevant. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (S.C. 2005). The indictment and the superseding indictment both satisfy the requirements of SC Code §17-19-20 in that they included the time period and the place as well as charged the crime in the language of the statute.

This Court finds that counsel was not ineffective for failing to object to the indictment or request a bill of particulars since the indictment is sufficient and mirrors the statute under which the Applicant was charged. Therefore these allegations are denied.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, Id. at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003).

Applicant's issue regarding Mr. Dudek is found in the attachment to his PCR application. See page 22 of the attachment to the application – Issue F. Applicant alleges that appellate counsel was "...ineffective for failing to raise the issue of jurisdiction concerning the alleged evidence that was introduced at trial due to its unreliability and jurisdiction and chain of custody."

When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

"However, appellate counsel is not required to raise every non-frivolous issue

that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990): Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Mr. Dudek testified at the hearing that he felt the issue the Applicant complains of was a non-issue and that in his opinion, after reading through the record, the best issue was the one he raised on appeal regarding the plea offer. Mr. Dudek also stated that he wasn't going to raise an issue that wouldn't be "in the ball game."

Based upon a review of the record and Mr. Dudek's testimony, this Court finds that appellate counsel was not ineffective for his failure to raise the issue regarding the chain of custody on the evidence from Georgia on appeal. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Therefore, this allegation is denied.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel and ineffective assistance of appellate counsel, the Applicant's testimony is not credible, while also finding trial counsel and appellate counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in their representation, and that trial counsel's conduct does not fall below the objective standard of reasonableness. This Court also finds that appellate counsel was

thoroughly competent in their representation, and that his conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that either trial counsel or appellate failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel or appellate counsel committed either errors or omissions in their representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel or appellate counsel's performance. This Court concludes the Applicant has not met his burden of proving that either counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, the foregoing allegations are denied.

Allegations Regarding Constitutional Amendments

As to the allegations of "[d]enial of 5th, 6th, and 14th Amendment rights," which were raised in the application but not at the hearing in this matter and were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding these allegations. Accordingly, this Court finds that the Applicant waived these allegations and failed to meet his burden of proof regarding them. Therefore, they are denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant

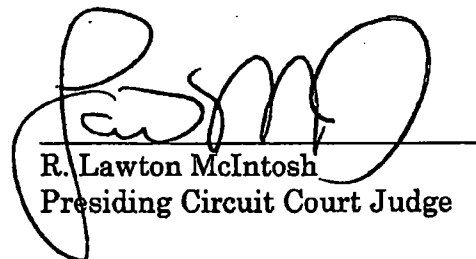
has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!


R. Lawton McIntosh
Presiding Circuit Court Judge

3-25, 2013
Anderson, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

Marshall Miller)

Plaintiff,)

vs.)

State of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS
8TH JUDICIAL CIRCUIT

CASE NO.: 09-CP-01-105

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

John DeVore Compton, III, Bar No. 13102

Address:

212 Grace Street

Greenwood, SC 29649

Phone: (864) 942-0518 Fax (864) 942-0815

E-mail: _____ Other: _____

Defendant's Attorney:

J. Rutledge Johnson, Bar No. _____

Address:

PO Box 11549

Columbia, SC 29202

Phone: (803) 734-3737 Fax (803) 734-4113

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Rule 59(e) Motion to Alter or Amend Judgment

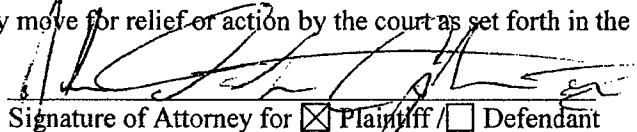
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

4/8/13
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☒ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: 4-8-13

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

TRUE COPY
Emely Y. Buchanan
ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

Marshall Miller #249557,)
Plaintiff,)
vs.)
State of South Carolina,)
Defendant.)

RULE 59(e) MOTION TO ALTER
OR AMEND JUDGMENT

09-CP-01-105

EMELY Y. BUCHANAN
CLERK OF COURT

2013/03/27 - 09:29:55

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

The Applicant, by and through his attorney, hereby moves this Honorable Court to Alter or Amend the Judgment of this Court dated March 25, 2013, based on the following grounds:

1. PCR Court failed to allow amendments of issues (1) trial counsel failed to secure plea agreement in writing, and (2) federal vs. state jurisdiction for sentence.
2. PCR Court refused to hear the issue regarding evidentiary jurisdiction and summarily denied relief.
3. PCR Court refused to hear the issue regarding the state's personal jurisdiction of Applicant and summarily denied relief.
4. PCR Court failed to rule upon the amended issue that trial counsel was ineffective for failing to memorialize the plea agreement in writing.
5. PCR Court denied Applicant the opportunity to review voluminous discovery from a state wide grand jury case prior to the evidentiary hearing.

Ground 1

PCR Court failed to allow amendments of issues (1) trial counsel failed to secure plea agreement in writing; and (2) federal vs. state jurisdiction for sentence.

The PCR Court is required by Rule 71.1(d), See Arnold v State, 420 SE 2d 834, (SC 1992) to allow counsel to amend the application where necessary,. Where our Supreme Court in Finklea v State 255 SE 2d 447 (SC 1979) held that the purpose of PCR is to incorporate all right available under federal habeas corpus (see S.C. Code § 17-27-20(a)(1), Applicant was entitled to timely amend [This] PCR to include issues alleging violation of the U.S. Constitution or federal law. Applicant shall be entitled to file an amended application if necessary and the Order should address all issues properly raised. See McCray v State, 405 SE 2d 241 (SC 1991); S.C. Code Ann. § 17-27-80.

Ground 2

PCR Court refused to hear the issue regarding evidentiary jurisdiction and summarily denied relief.

PCR Court refused to hear the issue of Applicant's evidentiary jurisdiction and dismissed the issue without hearing or making a factual finding pursuant to Rule 52(a) SCRPC, upon which an appeal may be based. This constitutes an inadequate state corrective process. The PCR Court is required to make a factual finding on each issue properly before the Court. See S.C. Code Ann. § 17-27-80; Church v McGee, 705 SE 2d 481 (SC

2011); Pruitt vs State, 423 SE 2d 127 (SC 1992).

Ground 3

PCR Court refused to hear the issue regarding the state's personal jurisdiction of Applicant and summarily denied relief.

PCR Court refused to hear the issue of Applicant's evidentiary jurisdiction and dismissed the issue without hearing or making a factual finding pursuant to Rule 52(a), SCRCP, upon which an appeal may be based. This constitutes an inadequate state corrective process. The PCR Court is required to make a factual finding on each issue properly before the Court. See S.C. Code Ann. § 17-27-80; Church v McGee, 705 SE 2d 481 (SC 2011); Pruitt v State, 423 SE 127 (SC 1992).

Ground 4

PCR Court failed to rule upon the amended issue that trial counsel was ineffective for failing to memorializing the plea agreement in writing.

The PCR Court is required by Rule 71.1(d) See Arnold v State, supra, to allow Applicant to amend the application where counsel deems necessary. Counsel sought to amend this issue and was denied. Applicant was entitled to amend the issue into the application and have the PCR Court make a factual finding, pursuant to Rule 52(a), SCRCP and State v Pruitt, supra.

Ground 5

PCR Court denied Applicant the opportunity to review voluminous discovery from a statewide grand jury case prior to

the evidentiary hearing.

Applicant was indicted in the state-wide grand jury case "Crankdown" in 2002. Although discovery was made available at the evidentiary hearing, Applicant was denied his one bite at the apple where there was insufficient time to research the materials for the purpose of amending the application and supporting the burden of proof.

Conclusion

Wherefore, based on the foregoing grounds, facts and arguments, Applicant respectfully prays this Honorable Court grant the relief prayed for in the original post-conviction application or order a new evidentiary hearing.

Respectfully Submitted.



John DeVore Compton, III
Compton Law Firm, P.A.
212 Grace Street
Greenwood, SC 29649
(864) 942-0518
Attorney for Applicant

Greenwood, South Carolina

4/8, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

TRUE COPY
Emily Y. McMahan
ABBEVILLE COUNTY CLERK OF COURT

Marshall Miller,)
Plaintiff,)
vs.)
State of South Carolina,)
Defendant.)

CERTIFICATE OF SERVICE

09-CP-01-105

I, Dana Jennings, Secretary for Compton Law Firm, P.A., do hereby certify that on the 8th day of April, 2013, I served a copy of the Rule 59(e) Motion to Alter or Amend Judgment along with a Certificate of Service in the above captioned matter via hand-delivery and by depositing a copy thereof in the United States Mail at Greenwood, South Carolina, with the proper postage affixed, directed to Defendant's attorney of record, Ashley McMahan, Esquire, at her address as follows:

Ashley McMahan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29202

EMILY Y. MCMAHAN
CLERK OF COURT

2013 APR -8 PM 2:55

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Dana Jennings
Dana Jennings, Secretary
Compton Law Firm, P.A.
212 Grace Street
Greenwood, SC 29646
Telephone: (864) 942-0518

Greenwood, South Carolina
April 8, 2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE) FOR THE 8TH JUDICIAL CIRCUIT
Case No.: 2009-CP-01-00105

Marshall Miller, #249557,

Applicant,

v.

State of South Carolina,

Respondent.

TRUE COPY

ABBEVILLE COUNTY CLERK OF COURT

RETURN AND MOTION TO DISMISS
MOTION TO ALTER OR AMEND
DENIAL OF PCR PETITION

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
JUL 1 2009
CLERK OF COURT

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCF, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCF. *See also, McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

Applicant's first four issues were never raised in the application nor were they raised at the PCR hearing. However, issues 1 and 4 are essentially the same claim related to a general claim of ineffective assistance of trial counsel. Mr. Varner testified that the Applicant refused to plead guilty to the underlying charges after several attempts at negotiations from the State. Since there was no guilty plea there would be no plea agreement to memorialize in writing.

III.

As to issue 5 presented by the Applicant, this issue was properly addressed in the Order of Dismissal under the subsection dealing with the Motion for Discovery filed by the Applicant.

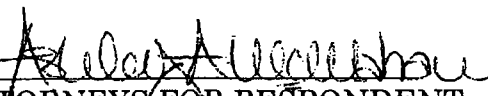
IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

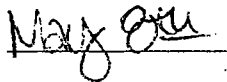
Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

 , 2013

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009- CP-01-00105

Marshall Miller,

State of South Carolina,

TRUE COPY

PLAINTIFF(S)

BY [Signature]
ABBEVILLE COUNTY CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Plaintiff's Motion for Reconsideration is denied without the necessity of oral argument. No formal order to follow.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge - R. LAWTON MCINTOSH

2155
Judge Code

S-7-13
Date

FILED

AUG 24 2004

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Abbeville

LISA C. DUNBAR,

CLERK, STATE GRAND JURY

INDICTMENT/CASE#:

Marshall Miller

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

2002 -GS- 47 - 32

11/99 to 3/03

44-53-375(C)(1)

0131618

CASE RESTORED

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Conspiracy to traffic more than 100 grams of methamphetamine in violation of § 44-53-375(C)(1) of the S.C. Code of Laws, bearing CDR Code # 0131618

☐ NON-VIOLENT

☒ VIOLENT

☒ SERIOUS

☐ MOST SERIOUS

☐ 17-25-45

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

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

ATTEST:

R. Hood
Solicitor

Triad in his absence
Defendant

L. R. Vaneer
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ 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)

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

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

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

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

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

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$ 100 -
\$100	\$
\$12	\$
\$500	\$
\$25	\$ 25 -
\$100	\$ 100 -
\$50	\$
\$40/ea	\$
\$	\$ 6.75
\$	\$ 231.75

SPECIAL CONDITIONS:

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

mnts. of \$ _____

\$ _____

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

DMV RECEIVED

SEP 20 2004

2142

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT General Sessions

FILED

JAN 21 2004

LISA C. DUNBAR,
CLERK, STATE GRAND JURY

State of South Carolina

vs.
Marshall Miller

Warrant/Case No. 2002-GS-47-32

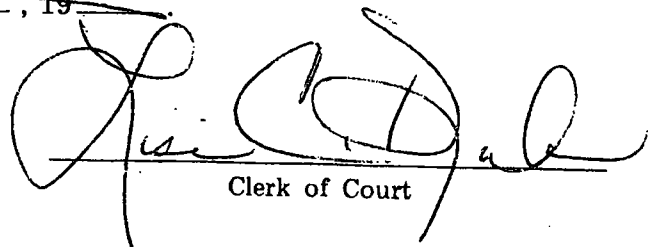
To all the Sheriffs, Deputy Sheriffs, Constables and other Peace Officers of the State:

WHEREAS, at the term of the aforesaid Court JANUARY 20, 2004, it was among other things ordered by Judge Saunders that a Bench Warrant should be issued for the arrest of Marshall Miller

It is, therefore, ordered that you make diligent search for the above named and take him to the county jail where he will be safely held until he may be brought before this Court, or otherwise discharged by due course of law.

It is further ordered that the county jailer notify the clerk of court immediately, during the normal operating hours of the office of the clerk of court, that the above named is in custody.

WITNESS, the Clerk of Court for the County of Abbeville,
on the 21st day of January, 192004.


Clerk of Court

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ABBEVILLE)

2002-GS-47-32

THE STATE,)

VS.)

VERDICT FORM

MARSHALL MILLER,)

BILLY MOORE,)

DEFENDANTS.)

FILED

JAN 30 2004

**LISA C. DUNBAR,
CLERK, STATE GRAND JURY**

AS TO CONSPIRACY TO TRAFFIC IN MORE THAN 100 GRAMS OF
METHAMPHETAMINE, ALSO KNOWN AS CRANK:

WE THE JURY FIND THE DEFENDANT, MARSHALL MILLER:

☒ GUILTY

☐ NOT GUILTY

WE THE JURY FIND THE DEFENDANT, BILLY MOORE:

☐ GUILTY

☒ NOT GUILTY

30th of January, 2004
Abbeville

Mary A. Hawa
FOREPERSON

STATE OF SOUTH CAROLINA
COUNTY OF Abbeville
STATE OF SOUTH CAROLINA

IN THE 2012-GS-47-32-01
() COURT OF GEN. L. SIONS
() MAGISTRATE'S COURT
() MUNICIPAL COURT OF

Marshall Miller
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Trafficking Methamphetamine (Conspiracy)

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.
This determination was based upon the following findings of fact:

FILED

MAY 16 2003

LISA C. DUNBAR,
CLERK, STATE GRAND JURY

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☒ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$100,000.00. His release to be obtained by payment to the court of TEN (10%) of this bond in cash, this amount being \$10,000.00. The defendant will be obligated to the State in the full amount of \$100,000.00 such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☐ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$_____.

3. That the defendant shall appear at (check one):

- ☒ the term of the court of general sessions beginning on [Date:] when scheduled by the court at [Time:] _____ o'clock, _____ M., at [Place:] _____
I remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☐ the session of magistrate/municipal (circle one) court beginning on [Date:] _____ at [Time:] _____ o'clock, _____ M., at [Place:] _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant MM

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

See attached order
Signature of Judge

Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

118 Camelot Dr.
Address

Anderson S.C. 29624
City/State/Zip

247-25-7446 / 864-296-1229
Social Security Number/Telephone No.

X Marshall Miller
Signature of Defendant

Date

Attorney Representing Accused (If known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original copy for the Trial Court - Copy for the Defendant
FORM CONTINUES ON BACK

SCCA/511 (3/90)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____

Name of person or organization _____

Address _____

City _____

State/Zip _____

Telephone _____

who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

Signature of Custodian (If Appointed) _____

Date _____

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ M. to _____ o'clock, _____ M. on _____ at _____ on condition that he return to the custody of _____ as designated.

d. ☒ Other Conditions. The defendant will comply with the following other conditions of release:

See attached order

APPEARANCE RECOGNIZANCE WITH SURETY

On the _____ day of _____, 19____, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina in the sum of \$ _____, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

Name of Surety (Printed or Typed) _____

Signature of Surety _____

Address of Surety _____

Signature of Judge _____

City/State/Zip _____

Date _____

Form Approved by
S.C. Attorney General
Section 17-15-40
March 7, 1990

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

On the 16th day of May, 2003, personally appeared before the Clerk of Court, for the State Grand Jury, the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 100,000.00, to be obtained by payment to the court of ten (10%) per cent of this bond in cash, this amount being \$ 10,000.00. The surety will be obligated to the state in the full amount of \$ 100,000.00, such sum to be levied on his/her real and personal property for the use of the state, should the defendant fail the conditions of the order.

Raymond Miller
Signature

Raymond Miller
Print Name

[REDACTED]
Address

[REDACTED]
City/State/Zip

[REDACTED]
Telephone

[REDACTED]

[Signature]
Clerk of Court
State Grand Jury

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

CASE NUMBER: 2002-GS-47-23-01

V.)

MARSHALL MILLER)

ORDER

Defendant.)

FILED

MAY 16 2003

LISA C. DUNBAR,
CLERK, STATE GRAND JURY

It is hereby ordered that Bond for the above Defendant is set at

\$100,000.00 - security - 10% (\$10,000.00)

with the following conditions:

- M.M.* 1. The Defendant is not to leave the State of South Carolina.
- M.M.* 2. The Defendant, at the request of the State, and at his/her own expense shall be subject to drug tests. Upon notification of a test, the Defendant shall appear at a facility designated by the State for drug testing, not to exceed one test per month.
- M.M.* 3. The Defendant shall have no contact with any co-defendant, either directly or indirectly, without the prior permission of the Court.
- M.M.* 4. The Defendant is obligated to advise the Court if he/she has a passport and shall surrender it to the Clerk of Court. (I do not have a passport)
- M.M.* 5. The Defendant shall not sell or encumber any property, personal or real, during the term of his/her bond, without the prior written permission of the South Carolina Law Enforcement Division.
- M.M.* 6. The Defendant shall, within ten days of the date of this Order, advise the Clerk of Court, State Grand Jury in writing whether he/she intends to represent himself/herself, to retain counsel, or whether he/she desires to have counsel appointed, assuming that he/she meets the indigency requirements. If the Defendant meets the indigency requirements, and desires to have counsel appointed, he/she should appear before the Clerk of Court and fill out appropriate forms to apply for court-appointed counsel. The Clerk of Court will then forward the necessary papers to the appropriate judge, who shall decide whether to appoint an attorney to represent the Defendant.
- M.M.* 7. The Defendant shall appear at all scheduled hearings and at the trials of the above Indictment(s).

HFF
#1

8. The Defendant shall keep the Clerk of Court advised of his/her home address and telephone number so that notices of court hearings and trials may be sent to the appropriate location.
9. The Defendant, understands that any future violation of any Federal, State, County, or Municipal Law will be considered a violation of the conditions of this bond and grounds for revoking bond.
10. The Defendant understands that he/she has the right to be present at the trial of his/her case that it is his/her responsibility to maintain contact with his/her attorney and the Clerk of Court in order to know the date that the trial of his/her case is scheduled for. The Defendant further understands that this Order acts as a notice of his/her right to be present at trial, and that the trial will proceed in his/her absence upon a failure to attend the Court.
11. The bond is set in the amount of ~~\$100,000.00~~ DENIED. Which shall be secured by sufficient surety in the form and matter prescribed and approved by the Clerk of Court. The underwriting insurance company, if any, shall list the collateral for the bond with the Clerk of Court in addition to providing an appropriate power of attorney between the bondsmen and the insurance company.

SO ORDERED.


CHIEF ADMINISTRATIVE JUDGE - CRIMINAL
FIFTH JUDICIAL CIRCUIT
PRESIDING JUDGE
SOUTH CAROLINA STATE GRAND JURY

Columbia, South Carolina

9-25-02

→ 10% down

ELECTRONIC MONITORING

#2

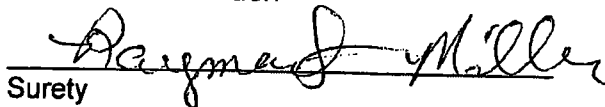
I have read and understand the terms and conditions of my release under this Order.

5-16-03
(Date)


Defendant

I have read and understand the terms and conditions of this Order.

5-16-03
(Date)


Surety

(Date)

Surety

(Date)

Surety

(Date)

Surety

STATE GRAND JURY
STATE OF SOUTH CAROLINA

-VS-

MARSHALL MILLER

) IN THE COURT OF GENERAL SESSIONS

) ^{2002-GS-47-32-01}
) INDICTMENT NO.: 2002-GS-47-23-01

FILED

SEP 25 2002

) ORDER SETTING BOND

) LISA C. DUNBAR,
) CLERK, STATE GRAND JURY

This matter came before the Court on September 25, 2002 for the purpose of setting bond.

The defendant was present. The following attorney appeared on behalf of the defendant: _____

The State was represented by Jennifer D. Evans
of the Attorney General's Office.

The defendant is charged with the following offense(s): Trafficking Methamphetamine
(Conspiracy)

After hearing from the defendant and the State, the Court finds it appropriate, and it is therefore Ordered, that:

(HFF)

✓ Bond is denied at this time with leave for defense counsel to file a written motion for bond.

_____ A Personal Recognizance Bond in the amount of \$ _____ is set at this time.

GTC
5.15.03

✓ A Surety Bond in the amount of \$ 100,000 is set at this time; and, the defendant is allowed to post 10%.

_____ A Surety Bond in the amount of \$ _____ is set at this time; and, the defendant is not allowed to post 10%.

_____ Bond is reduced from _____ to _____ and does/does not include other pending charges.

AND IT IS SO ORDERED.

FILED

MAY 15 2003

LISA C. DUNBAR,
CLERK, STATE GRAND JURY

September 25, 2002
Columbia, South Carolina

[Signature]
CHIEF ADMINISTRATIVE JUDGE - CRIMINAL
FIFTH JUDICIAL CIRCUIT
PRESIDING JUDGE
SOUTH CAROLINA STATE GRAND JURY

FILED

DEC 13 2002

LISA C. DUNBAR,
CLERK, STATE GRAND JURY

Motion to set bond 12/13/02 DENIED

Bond Granted -

- ELECTRONIC MONITORING - 2151

[Signature]

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VS.

MARSHALL MILLER,
TINA STEVENSON,
JULIE PRINCE,
MARTHA ELLIS,
DAVID CUMMINGS,
TONY HOWARD,
SANDRA JO HUGHES,
JASON DAVIS,
ERNEST COVAN,
BONNIE SAYLORS,
ASHLEY BANNISTER,
SCOTTY PRINCE,
TONYA LEE MICHELLE MADDEN,
SAMUEL McNEILL,
TRACY DAVIS,
RAY POWELL,
JEFF FRYE,
BILLY MOORE,
JEFF HORNE,

DEFENDANTS.

CASE NO. 2002-GS-47-32

SUPERSEDING INDICTMENT
FOR UNLAWFUL DRUGS

Trafficking Methamphetamine
(Conspiracy)

S.C. Code Ann. § 44-53-375(C)

FILED

MAR 11 2003

LISA C. DUNBAR
CLERK, STATE GRAND JURY

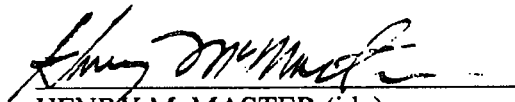
At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on March 11, 2003, the State Grand Jurors present upon their oath:

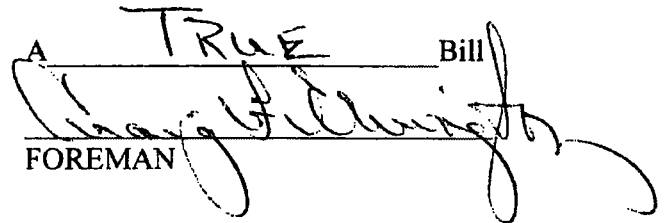
TRAFFICKING METHAMPHETAMINE (CONSPIRACY)
S.C. Code Ann. § 44-53-375(C)

That MARSHALL MILLER, TINA STEVENSON, JULIE PRINCE, MARTHA ELLIS, DAVID CUMMINGS, TONY HOWARD, SANDRA JO HUGHES, JASON DAVIS, ERNEST COVAN, BONNIE SAYLORS, ASHLEY BANNISTER, SCOTTY PRINCE, TONYA LEE MICHELLE MADDEN, SAMUEL McNEILL, TRACY DAVIS, RAY POWELL, JEFF FRYE,

BILLY MOORE and JEFF HORNE and other persons whose names are both known and unknown to the State Grand Jury, did in Abbeville County, Greenwood County and Anderson County of South Carolina, during the period of time extending from on or about November, 1999, until the present, conspire to sell, manufacture, deliver, purchase, or bring into this State, more than one hundred (100) grams of methamphetamine, a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

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


HENRY McMASTER (jde)
ATTORNEY GENERAL

A TRUE Bill

FOREMAN

STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

**WARRANT FOR ARREST
SUPERSEDING**

vs.

MARSHALL MILLER

CASE NUMBER: 2002-GS-47-32-01

**TO: Any Law Enforcement Officer of this State
or Any County or Municipal Officer Within his Jurisdiction**

**YOU ARE HEREBY COMMANDED to arrest Marshall Miller and bring him or her forthwith
before me to answer an Superseding Indictment of the State Grand Jury of South Carolina charging him
or her with**

(brief description of offense)

Trafficking Methamphetamine (Conspiracy)

**(A copy of the Superseding Indictment is attached for service on the Defendant.
For a description of the charges see the Superseding Indictment.)**

**in violation of 1976 Code of Laws of South Carolina, as amended, Section(s) 44-53-375(C). A copy of
this Warrant for Arrest shall be delivered to the defendant at the time of its execution, or as soon
thereafter as practicable.**

March 11, 2003

G. Thomas Cooper, Jr.

Date

Name of Presiding Judge

Columbia, SC

Signature of Presiding Judge

Location

RETURN

**This warrant was received and executed with the arrest of the above-named defendant at _____
_____. A Copy of this warrant was delivered to the defendant on
_____, 2003.**

Date Received

Name and Title of Arresting Officer

Signature of Arresting Officer

Date of Arrest

THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:

DEFENDANT'S NAME: Marshall Miller

ALIAS: M & M

LAST KNOWN RESIDENCE: [REDACTED]

LAST KNOWN EMPLOYMENT: _____

PLACE OF BIRTH: _____

DATE OF BIRTH: [REDACTED]

DRIVER'S LICENSE NUMBER: [REDACTED]

SOCIAL SECURITY NUMBER: [REDACTED]

HEIGHT: 5' 7" WEIGHT: 170

SEX: Male RACE: White

HAIR: Brown/Gray EYES: _____

SCARS, TATOOS, OTHER DISTINGUISHING MARKS: _____

FBI NUMBER: 995210CA1

COMPLETE DESCRIPTION OF AUTO: _____

INVESTIGATIVE AGENCY AND ADDRESS: _____

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VS.

MARSHALL MILLER,
TINA STEVENSON,
JULIE PRINCE,
MARTHA ELLIS,
DAVID CUMMINGS,
TONY HOWARD,
SANDRA JO HUGHES,
JASON DAVIS,
ERNEST COVAN,
BONNIE SAYLORS,
ASHLEY BANNISTER,
SCOTTY PRINCE,
TONYA LEE MICHELLE MADDEN,
SAMUEL McNEILL,
TRACY DAVIS,
RAY POWELL,
JEFF FRYE,
BILLY MOORE,
JEFF HORNE,

DEFENDANTS.

CASE NO. 2002-GS-47-32

VENUE ORDER

FILED

MAR 11 2003

LISA C. DUNBAR,
CLERK, STATE GRAND JURY

The State Grand Jury of South Carolina returned a True Bill of Superseding Indictment in the above case on March 11, 2003. The Superseding Indictment is within the authority of the State Grand Jury and is otherwise in accordance with the provisions of the State Grand Jury Act, found in S.C. Code Ann. §§14-7-1600 to -1820 (Law. Co-op. 1976). Venue is appropriate under South Carolina law in the County of Abbeville. Accordingly, it is hereby

ORDERED that the instant Superseding Indictment be returned to Abbeville County for

prosecution by the Attorney General or his designee.

A handwritten signature in black ink, appearing to read "G. Thomas Cooper, Jr.", written over a horizontal line.

G. THOMAS COOPER, JR.
FIFTH JUDICIAL CIRCUIT
PRESIDING JUDGE
STATE GRAND JURY OF SOUTH CAROLINA

Columbia, South Carolina

March 11, 2003

STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

WARRANT FOR ARREST

vs.

MARSHALL MILLER

CASE NUMBER: 2002-GS-47-32-01

TO: Any Law Enforcement Officer of this State
or Any County or Municipal Officer Within his Jurisdiction

YOU ARE HEREBY COMMANDED to arrest Marshall Miller and bring him or her forthwith
before me to answer an Indictment of the State Grand Jury of South Carolina charging him or her with

(brief description of offense)

Trafficking Methamphetamine (Conspiracy)

(A copy of the Indictment is attached for service on the Defendant.
For a description of the charges see the Indictment.)

in violation of 1976 Code of Laws of South Carolina, as amended, Section(s) 44-53-375(C). A copy of
this Warrant for Arrest shall be delivered to the defendant at the time of its execution, or as soon
thereafter as practicable.

September 10, 2002

Henry F. Floyd

Date

Name of Presiding Judge

Columbia, SC

Location

Signature of Presiding Judge

RETURN

This warrant was received and executed with the arrest of the above-named defendant at _____
_____. A Copy of this warrant was delivered to the defendant on
_____, 2002.

Date Received	Name and Title of Arresting Officer	Signature of Arresting Officer
Date of Arrest		

THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:

DEFENDANT'S NAME: Marshall Miller

ALIAS: M & M

LAST KNOWN RESIDENCE: [REDACTED]

LAST KNOWN EMPLOYMENT: _____

PLACE OF BIRTH: _____

DATE OF BIRTH: [REDACTED]

DRIVER'S LICENSE NUMBER: [REDACTED]

SOCIAL SECURITY NUMBER: [REDACTED]

HEIGHT: 5' 7" WEIGHT: 170

SEX: Male RACE: White

HAIR: Brown/Gray EYES: _____

SCARS, TATOOS, OTHER DISTINGUISHING MARKS: _____

FBI NUMBER: 995210CA1

COMPLETE DESCRIPTION OF AUTO: _____

INVESTIGATIVE AGENCY AND ADDRESS: _____

STATE GRAND JURY OF SOUTH CAROLINA

2002GS 47 32

STATE OF SOUTH CAROLINA)
)
VS.)
)
MARSHALL MILLER,)
TINA STEVENSON,)
JULIE PRINCE,)
MARTHA ELLIS,)
DAVID CUMMINGS,)
TONY HOWARD,)
SANDRA JO HUGHES,)
JASON DAVIS,)
ERNEST COVAN,)
BONNIE SAYLORS,)
ASHLEY BANNISTER,)
SCOTTY PRINCE,)
TONYA LEE MICHELLE MADDEN,)
SAMUEL McNEILL,)
TRACY DAVIS,)
)
DEFENDANTS.)
)

CASE NO. _____

INDICTMENT FOR
UNLAWFUL DRUGS

Trafficking Methamphetamine
(Conspiracy)

S.C. Code Ann. § 44-53-375(C)

FILED

SEP 10 2002

LISA C. DUNBAR,
CLERK, STATE GRAND JURY

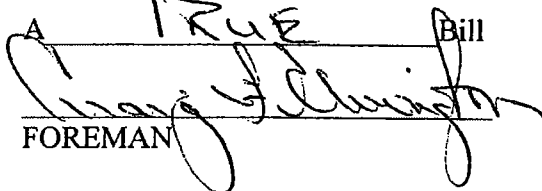
At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on September 10, 2002, the State Grand Jurors present upon their oath:

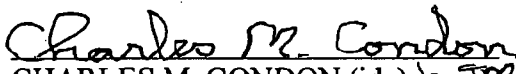
TRAFFICKING METHAMPHETAMINE (CONSPIRACY)
S.C. Code Ann. § 44-53-375(C)

That MARSHALL MILLER, TINA STEVENSON, JULIE PRINCE, MARTHA ELLIS, DAVID CUMMINGS, TONY HOWARD, SANDRA JO HUGHES, JASON DAVIS, ERNEST COVAN, BONNIE SAYLORS, ASHLEY BANNISTER, SCOTTY PRINCE, TONYA LEE MICHELLE MADDEN, SAMUEL McNEILL, and TRACY DAVIS, and other persons whose names are both known and unknown to the State Grand Jury, did in Abbeville County, Greenwood County and Anderson County of South Carolina, during the period of time extending

from on or about November, 1999, until the present, conspire to sell, manufacture, deliver, purchase, or bring into this State, more than one hundred (100) grams of methamphetamine, a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

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

A TRUE Bill

FOREMAN


CHARLES M. CONDON (jde) by 
ATTORNEY GENERAL

INMATE SEARCH DETAIL REPORT

MILLER, MARSHALL RAY (00249557)



INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	MALE	SCDC ID:	00249557
RACE:	WHITE	SID:	SC00452241
HEIGHT:	5' 07"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	181 lbs.	ADMISSION DATE:	06/07/2005
AGE:	51	LOCATION:	LIEBER
CITIZENSHIP:	CITIZEN - NATIVE BORN	SECURITY / CUSTODY:	3 / MINIMUM IN
BUILD:	LARGE	EWC LEVEL:	3F5
COMPLEXION:	FAIR	EEC LEVEL:	
HAIR COLOR:	BROWN	PROJECTED RELEASE DATE:	09/04/2024
EYE COLOR:	BLUE	PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
PICTURE DATE:	10/21/2013	SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
TRAFFICKING IN CRACK COCA	ADULT-STRAIGHT SENTENCE	25	0	0	ABBEVILLE	06/12/2003	V	4	02GS4732	ACTIVE

ESCAPES

ESCAPE DATE	ESCAPE TYPE	ESCAPE SEVERITY
06/07/2005	OTHER ESCAPE RELATED	

DISCIPLINARIES

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

NO DISCIPLINARIES DURING CURRENT INCARCERATION

MOVEMENT

MOVEMENT DATE	TO LOCATION	STATUS	REASON
12/03/2012	LIEBER	INCARCERATED	ADMINISTRATIVE
11/30/2012	KIRKLAND	INCARCERATED	RETURN FROM COURT
11/29/2012	ABBEVILLE CO	AUTH ABSENCE (AWL)	TO COURT
04/11/2011	LIEBER	INCARCERATED	ADMINISTRATIVE
04/07/2011	KIRKLAND	INCARCERATED	ADMINISTRATIVE
10/28/2010	LIEBER	INCARCERATED	ADMINISTRATIVE
10/27/2010	KIRKLAND	INCARCERATED	RETURN FROM COURT
10/26/2010	ABBEVILLE CO	AUTH ABSENCE (AWL)	TO COURT
03/23/2007	LIEBER	INCARCERATED	ADMINISTRATIVE
03/23/2007	KIRKLAND	INCARCERATED	MEDICAL
03/10/2006	LIEBER	INCARCERATED	RETURN FROM COURT
03/10/2006	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
07/06/2005	LIEBER	INCARCERATED	ADMINISTRATIVE
06/07/2005	KIRKLAND	INCARCERATED	NEW ADMISSION

EARNED WORK CREDITS

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
CLERK HELPER	05/16/2013			3F5
LIBRARY HELPER	12/04/2012	05/15/2013	LATERAL TRANSFER	3F5
LIBRARY HELPER	10/29/2010	12/03/2012	INSTIT TRANSFER	3F5
LIBRARY HELPER	09/25/2006	10/28/2010	INSTIT TRANSFER	3F5
WARDKEEPER ASSISTANT	11/16/2005	09/24/2006	INMATE REQUEST	3F5

INMATE SEARCH DETAIL REPORT

MILLER, MARSHALL RAY (00249557)

EARNED EDUCATION CREDITS			
EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 4-7 HRS/WK	01/02/2006	05/30/2006	INMATE REQUEST
BONUS 4-7 HRS/WK	12/05/2005	12/06/2005	INMATE REQUEST