

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

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S.C. Supreme Court

AARON SMALLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000217

APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS
COURT:**

COURT'S EXHIBIT #1 (AUDIO CD)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) COURT OF GENERAL SESSIONS
) 09-GS-10-3225, 3226, 3227

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF.)
)
 vs.) TRANSCRIPT OF RECORD
) **ORIGINAL**
AARON SMALLS,)
)
 DEFENDANT.)

OCTOBER 5, 2011
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE.

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

GREGORY K. VOIGT, ESQ.,
Attorney for the State.

EDWARD M. BROWN, ESQ.
Attorney for the Defendant.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

I-N-D-E-X
OCTOBER 5, 2011
(THE STATE v. AARON SMALLS)
(PLEA HEARING)
(09-GS-10-003225; 09-GS-10-03226; 09-GS-10-03227)

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EXHIBITS

IDENTIFICATION

ENTERED

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

P R O C E E D I N G S

(CASE NO.: 09-GS-10-3225; 09-GS-10-3226; 09-GS-10-3227)

(OCTOBER 5, 2011 - 10:19 A.M.)

THE COURT: Mr. Brown, you-all decided what you want to do?

MR. BROWN: Uh -- my client has decided that he wants to, uh, proceed forth with the trial.

THE COURT: Okay.

MR. BROWN: We -- we're still, uh, waiting to get---

MR. VOIGT: I'm trying to get the computer to work in this courtroom. I'm having some technical issues; I've got the disc.

THE COURT: I need you to bring him in though so I can question him for P-C-R purposes to make sure that the offer was conveyed to him and he's freely and voluntarily rejecting it.

MR. BROWN: Want him to step here -- stand right here, Your Honor?

THE COURT: He can -- yes, sir, that's fine.

(WHEREUPON, EDWARD BROWN, ESQ. LEFT THE COURTROOM.)

(WHEREUPON, AARON SMALLS AND EDWARD BROWN, ESQ. ENTERED THE COURTROOM.)

THE COURT: Sir, raise your right hand to be sworn.

(WHEREUPON, AARON ORLANDO SMALLS WAS DULY SWORN AND TESTIFIED AS FOLLOWS:)

1 THE COURT: You can put your right hand down. Sir,
2 state your full name for the -- for the record.

3 MR. SMALLS: Aaron Orlando Smalls.

4 AARON ORLANDO SMALLS, EXAMINATION BY THE COURT:

5 Q Sir, how old are you?

6 A Forty-one.

7 Q How far have you gone in school?

8 A Tenth grade.

9 Q Do you have your G-E-D?

10 A No -- no, ma'am.

11 Q Can you read and write?

12 A Yes, ma'am.

13 Q What do you do for a living?

14 A I do A-C and refrigeration.

15 Q You are represented by Mr. Brown, is that correct?

16 A Yes, ma'am.

17 THE COURT: What is his record, Mr. Voigt?

18 MR. VOIGT: (After pause) Just a second, Your Honor.

19 THE COURT: Uh-huh.

20 MR. VOIGT: Um -- (after pause) he has convictions, Your
21 Honor, from 1999 for, uh, manufacturing cocaine.

22 Um -- a PWID Prox. in 2000.

23 THE COURT: Of what substance?

24 MR. VOIGT: Oh, it's -- it's crack cocaine, Your Honor.

25 THE COURT: Uh-huh.

1 MR. VOIGT: And -- I actually have the certified, Your
2 Honor.

3 (After pause) In 1994 he pleaded guilty to PWID.

4 THE COURT: You said '94?

5 MR. VOIGT: '94.

6 THE COURT: PWID what?

7 MR. VOIGT: Uh -- PWID crack cocaine.

8 And '99, uh, Possession with the Intent to Distribute --
9 and that looks to be crack cocaine as well -- as well as a
10 proximity.

11 THE COURT: Okay, you told me in '99 he had a
12 manufacturing cocaine and a PWID crack prox.?

13 MR. VOIGT: I think it's the same statute.

14 THE COURT: And then '94, a PWID crack?

15 MR. VOIGT: And he also has a possession of crack
16 cocaine in 1994.

17 Um -- in 1997 he also has a PWID crack cocaine.

18 I'm not aware of any crimes of dishonesty or violence,
19 Your Honor.

20 THE COURT: So what would these be?

21 MR. VOIGT: These would be third, Your Honor.

22 Q Sir, do you agree or disagree with your criminal record?

23 A I -- I disagree.

24 Q Okay; what is it -- what's wrong with it?

25 A In '94 I had a simple possession charge, not the---

1 Q He said that.

2 A And -- and the -- the manufacturing, I ain't never had
3 no manufacturing charge in '99.

4 Q Okay.

5 A I had a with intent to distribute (sic) in '99.

6 Q Okay.

7 A And, uh -- and, um, proximity to school zone.

8 Q Okay.

9 A And -- and now, then he said I had a with intent to
10 marijuana. (Sic)

11 Q Not crack?

12 A No. No -- no crack.

13 Q Sir, do you understand, if convicted, these would be
14 third offenses?

15 A Yes, ma'am.

16 Q And do you understand, as third offenses, on the -- that
17 you would face certain minimum mandatory time that this Court
18 cannot suspend or give probation?

19 A Yes, ma'am.

20 Q Do you also understand that they will be classified as
21 serious, which means they are strikes?

22 A Yes, ma'am.

23 Q Do you understand that on the P-W-I-D cocaine base you
24 would face a minimum mandatory of fifteen years, a maximum of
25 thirty, and/or a minimum fine of fifty thousand dollars?

1 A Yes, ma'am.

2 Q On the P-W-I-D cocaine base within proximity of a
3 school, do you understand the minimum mandatory is ten years,
4 the max. is fifteen and a fine of ten thousand dollars?

5 A Yes, ma'am.

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BRIEF
7 JUDGE/LAW CLERK CONFERENCE, OFF THE RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 Q And the manufacturing is the same as the P-W-I-D
10 cocaine, which is a minimum of fifteen years?

11 A Yes, ma'am.

12 Q Has your lawyer fully explained to you the offer
13 which The State tendered to you? That is, to reduce your,
14 uh, P-W-I-D cocaine base charge to a second; to reduce the
15 proximity to a first; and to nol pros the manufacturing
16 charge?

17 A Yes, ma'am.

18 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A JUDGE/LAW
19 CLERK CONFERENCE, OFF THE RECORD.)

20 (WHEREUPON, COURT RESUMED.)

21 Q Sir, do you understand that The State has agreed to
22 reduce your P-W-I-D cocaine base to a second; the proximity
23 to a first; and, have a negotiated plea of eight years?

24 A Yes, ma'am.

25 Q Has your lawyer fully explained that to you?

1 A Yes, ma'am.

2 Q And do you understand that once you reject this offer
3 that there will be no further offers and that that is a final
4 decision?

5 A Yes, ma'am.

6 Q Do you understand that after we have these Motions that
7 your lawyer, uh, has indicated to The Court, that if you do
8 not succeed on them that that offer would no longer be
9 available to you?

10 A Yes, ma'am.

11 Q Are you doing this freely and voluntarily and of your
12 own will?

13 A Freely; yes, ma'am.

14 Q Are you under the influence of any drugs or alcohol or
15 suffering from any mental disabilities?

16 A No, ma'am.

17 Q Are you under any duress?

18 A No, ma'am.

19 Q Do you believe this is in your best interest?

20 A Yes, ma'am.

21 THE COURT: Mr. Brown, have you fully explained the
22 offer to your client?

23 MR. BROWN: I have, Your Honor.

24 THE COURT: Do you believe he understand it?

25 MR. BROWN: I think he -- I -- I'm sure he thoroughly

1 understand. I've explained all---

2 THE COURT: And do you have any concern about his
3 ability to communicate with you or to cooperate in his, uh --
4 uh, defense?

5 MR. BROWN: No, ma'am.

6 THE COURT: Do you believe that, uh -- is he doing this
7 with or against your advice?

8 MR. BROWN: Uh -- it's really against my advice.

9 THE COURT: Okay. And I ask these questions for post
10 conviction relief because people's memories always are
11 different.

12 MR. BROWN: Yeah; no -- no, it's -- it's---

13 THE COURT: And I -- and I ask these questions because
14 after having heard many, many post conviction reliefs I just
15 think that it's better to have a contemporaneous record of
16 exactly what happened and what people were thinking than what
17 they thought -- think five years from now.

18 MR. BROWN: Well, it -- it is definitely---

19 THE COURT: Because memory gets hazy.

20 MR. BROWN: ---it is definitely---

21 THE COURT: And -- and the other thing, the reason I ask
22 is because often times people want to roll the dice and they
23 want to get the benefit of pre-trial rulings and then once
24 the rulings don't go their way then they want the deal back
25 and I need them to be clear that the deal will not be

1 available anymore after that.

2 Of course, I don't know how I would rule on them, but
3 sometimes people roll the dice...

4 Are you hot?

5 MR. SMALLS: Yes, ma'am.

6 THE COURT: You must be having a flash 'cause I'm
7 usually hot and I'm not. Are you okay?

8 A It's -- it's kind-a hot right now.

9 Q Okay; think you're having a panic attack or something?
10 Is it anxiety?

11 A Um -- I'm not sure what it is.

12 Q Okay; you're not having any chest pains or anything like
13 that? Any pains in your arms or gums?

14 A It's right here; the chest and the---

15 Q You might be having an anxiety attack. Do we have any
16 brown paper bags anywhere around here in case he
17 hyperventilates? Can we find one?

18 MR. BROWN: Can he -- can he sit down, Your Honor?

19 THE COURT: Yes; absolutely. Okay; uh, because
20 sometimes people roll the dice and they want to have the
21 pre-trial motions. And then when they don't go their way
22 then they say, well I want my deal back. And I just need him
23 to know that it is not available; that once it is rejected it
24 is gone. And that, if convicted -- 'cause I always have to
25 look at worse case scenario -- that the deal ain't coming

1 back either, and I need him to make sure that he understands
2 what the minimum mandatory he is -- that he is facing.

3 MR. BROWN: Can I ask him---

4 THE COURT: And so, I just need him to be clear about
5 that 'cause, like I said, if he has peace about it I have
6 peace about it 'cause his decision doesn't affect me but it
7 does -- it drastically affects him.

8 And so I just want to make sure that -- I always need to
9 be -- feel, uh, at peace that he made a free and voluntary
10 decision and that he wasn't forced in any way or coerced or
11 otherwise.

12 MR. BROWN: I -- I -- may I have a few minutes?

13 THE COURT: Absolutely.

14 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR AN
15 ATTORNEY/DEFENDANT CONFERENCE AND JUDGE/LAW CLERK CONFERENCE,
16 OFF THE RECORD.)

17 (WHEREUPON, COURT RESUMED.)

18 THE COURT: Yes, sir?

19 MR. BROWN: Your Honor, my client needs to speak with
20 his wife a few minutes.

21 THE COURT: Sure; absolutely.

22 MR. SMALLS: Girlfriend.

23 MR. BROWN: Girlfriend; I'm sorry, girlfriend.

24 THE COURT: Well, don't make that distinction; she's
25 standing by you, you might as well claim her as a wife. I

1 don't know too many girlfriends that will stand by you
2 through the thick and the thin. You might as well talk to
3 her.

4 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR AN
5 ATTORNEY/DEFENDANT/GIRLFRIEND CONFERENCE AND JUDGE/LAW CLERK
6 CONFERENCE, OFF THE RECORD.)

7 (WHEREUPON, COURT RESUMED.)

8 MR. BROWN: Your Honor---

9 THE COURT: Yes, sir?

10 MR. BROWN: ---may I be excused for a minute?

11 THE COURT: Yes.

12 (WHEREUPON, COURT RECESSED.)

13 (WHEREUPON, COURT RESUMED.)

14 MR. BROWN: Judge, he -- he -- he said he needed a few
15 more minutes to talk to his---

16 THE COURT: Okay.

17 MR. BROWN: ---girlfriend. One way or the other we'll
18 move on.

19 THE COURT: Okay; then we -- yeah, 'cause I -- I do need
20 to go ahead and pick if I'm gonna to that.

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR CONTINUED
22 ATTORNEY/DEFENDANT/GIRLFRIEND CONFERENCE, OFF THE RECORD.)

23 (WHEREUPON, COURT RECESSED.)

24 (WHEREUPON, COURT RESUMED.)

25 MR. BROWN: Your Honor?

1 THE COURT: Yes, sir.

2 MR. BROWN: Your Honor, after some, uh, extensive and
3 serious deliberations, uh, my client has a change of heart
4 and we are---

5 THE COURT: Okay.

6 MR. BROWN: ---about to execute a -- a -- the, uh---

7 THE COURT: So he wishes to change his plea from not
8 guilty to guilty?

9 MR. BROWN: Yes, ma'am.

10 THE COURT: Okay; and you just need some time to fill
11 out the forms?

12 MR. BROWN: Yes, ma'am. If I could execute the form---

13 THE COURT: Then the same deal will stand, correct?

14 MR. VOIGT: It---

15 THE COURT: The P-W-I -- the manufacturing will be nol
16 prossed?

17 MR. VOIGT: Your Honor, the manufacturing I believe is
18 the -- is -- I believe it's the P-W-I-D will be nol prossed
19 and the manufacturing---

20 THE COURT: The 09-3226?

21 MR. VOIGT: I believe---

22 THE COURT: Let's be clear; I want to make sure.

23 MR. VOIGT: ---let me -- I've got these two right in
24 front of me. Uh -- the Indictment number is 3225---

25 THE COURT: Uh-huh?

1 MR. VOIGT: ---and 3227.

2 THE COURT: Those are the ones he's pleading to?

3 MR. VOIGT: Those are the ones he's pleading to.

4 THE COURT: And 3226 is gonna be nol prossed?

5 MR. VOIGT: Well, those are all first too, so...

6 THE COURT: So manufacturing is the same as P-W-I-D?

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

9 (WHEREUPON, COURT RESUMED.)

10 THE COURT: The proximity will be a first and the
11 manufacturing will be a second; is that correct?

12 MR. VOIGT: That's correct, Your Honor.

13 THE COURT: And what do you show is the range of penalty
14 on the P-W-I-D proximity first?

15 MR. VOIGT: Uh -- zero to ten, Your Honor.

16 THE COURT: So you're gonna give him the benefit of the
17 Omnibus?

18 MR. VOIGT: Uh -- oh, is it -- I will give him the
19 benefit on that. I'm -- I'm -- I'm sticking with the eight
20 years.

21 THE COURT: As long as you-all agree with it that's
22 fine.

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A JUDGE/LAW
24 CLERK CONFERENCE, OFF THE RECORD.)

25 (WHEREUPON, COURT RESUMED.)

1 THE COURT: Yes, sir?

2 MR. SMALLS: Well, um, so the -- the manu- -- I -- the
3 manufacturing and, uh -- would that be---

4 THE COURT: I can't hear you, sir; I need you to repeat
5 what you're saying to me.

6 MR. SMALLS: So the manufacturing, would that count as
7 violent?

8 THE COURT: Um---

9 MR. VOIGT: Serious but not violent.

10 THE COURT: ---it's serious but not violent.

11 MR. SMALLS: So it would split; so when I, um, I take---

12 THE COURT: Sir, I can't make any assurances to you
13 about how your sentence is gonna be calculated. You will
14 have to talk with your caseworker at the Department of
15 Corrections. I stopped trying to figure out how they
16 calculate sentences a long time ago.

17 Um -- they have a formula that they use, and so I don't
18 want you making a decision based on anything I will tell you,
19 because I have no clue.

20 Um -- you'd get credit for any time that you've served
21 which they will calculate. And as I've indicated, they --
22 sometimes, and they -- within their authority, they can let
23 people out early. They do it all the time.

24 I've given somebody seven years and they serve four
25 months. I have no idea what they do, so I'm not even gonna

1 try to tell you that I know what they do 'cause I don't. So
2 the best thing you can do is assume that you'll serve it day-
3 for-day; you should assume the worst-case scenario.

4 But, when you get to the Department of Corrections they
5 will sit down with you and they will tell you exactly the --
6 what your -- they'll go over your -- your, um, sentence with
7 you, how much time you're entitled to, all of that and
8 they'll give you your projected max-out date.

9 MR. SMALLS: And -- and assuming that it -- that it day-
10 for-day, I would have five -- eight years?

11 THE COURT: You're having a negotiated plea of eight
12 years.

13 And also, I need to tell you that The State is giving
14 you the benefit of the new Omnibus Reconciliation Act, which
15 is the new law on the Proximity because the old Proximity had
16 a mandatory minimum of ten years and a maximum of fifteen,
17 none of which could be suspended. So you're getting the
18 benefit of the new law because of the agreement.

19 And as long as you-all agree to it and make it
20 retroactive, I don't have a problem with it. But if they
21 didn't agree to it I would have to impose the old law.

22 MR. SMALLS: Okay.

23 THE COURT: Okay? So you are getting the additional
24 benefit of that at well.

25 MR. SMALLS: All right.

1 THE COURT: Okay?

2 MR. BROWN: Uh -- he signed the original but I -- I gave
3 him a pencil. He's just got to resign it with a pen.

4 THE COURT: That's fine. Do you need -- do we need to
5 get a pen for him?

6 MR. BROWN: I -- I -- I got one.

7 THE COURT: You've got one? Okay.

8 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR AN
9 ATTORNEY/DEFENDANT CONFERENCE WHILE SIGNING THE SENTENCING
10 SHEET, OFF THE RECORD.)

11 (WHEREUPON, COURT RESUMED.)

12 THE COURT: Do we need to publish the agreement again
13 for the record or are we all clear on the terms of the
14 agreement of the negotiated plea? Which is, um, he will
15 plead guilty to 09-3225, which is Manufacturing Cocaine Base,
16 which will be reduced to a second; and, 09-3227, P-W-I-D
17 Cocaine Base Proximity, which will be reduced to a first; and
18 09-3226, P-W-I-D Cocaine Base will be nol prossed with a
19 negotiated penalty of eight years. Is that correct from
20 The State?

21 MR. VOIGT: Yes, Your Honor.

22 THE COURT: From the Defense?

23 MR. BROWN: That is correct, Your Honor.

24 THE COURT: The record should reflect that all
25 Indictments have been true billed. And, sir, I will remind

1 you that you're still under oath.

2 Mr. Brown have you explained to your client the charges
3 contained within the Indictments, the possible punishment,
4 and his constitutional rights?

5 MR. BROWN: I certainly have, Your Honor.

6 THE COURT: Do you believe he understands the charge,
7 the punishment, and his rights?

8 MR. BROWN: He does, Your Honor.

9 THE COURT: And does your client wish to plead guilty or
10 not guilty?

11 MR. BROWN: He wishes to plead guilty, Your Honor.

12 THE COURT: Do you agree with that decision?

13 MR. BROWN: I certainly do agree with that decision.

14 THE COURT: To your knowledge, has he ever had to be
15 evaluated to determine his competency?

16 MR. BROWN: No, Your Honor.

17 THE COURT: Sir, state your full name for the record.

18 MR. SMALLS: Aaron Orlando Smalls.

19 THE COURT: And, sir, you are forty-one; is that
20 correct?

21 MR. SMALLS: Yes.

22 THE COURT: You've gone to the tenth grade and you do
23 not have your G-E-D; is that also correct?

24 MR. SMALLS: Yes, ma'am.

25 THE COURT: But you can read and write---

1 MR. SMALLS: Yes.

2 THE COURT: ---is that also correct?

3 MR. SMALLS: Yes, ma'am.

4 THE COURT: And, sir, you work in A-C and refrigeration?

5 MR. SMALLS: Yes, ma'am.

6 THE COURT: And are you married?

7 MR. SMALLS: No, no.

8 THE COURT: Do you have any children?

9 MR. SMALLS: Yes.

10 THE COURT: What are their ages?

11 MR. SMALLS: Seventeen, fifteen, two thirteen, um,
12 six-years-old, four-years-old, and three? Five.

13 THE COURT: You said five?

14 MR. SMALLS: Yes, five-years-old.

15 THE COURT: Sir, are you currently on probation or
16 parole?

17 MR. SMALLS: No, ma'am.

18 THE COURT: Have you ever been treated for the abuse of
19 alcohol, drugs, or mental illness?

20 MR. SMALLS: No, ma'am.

21 THE COURT: Have you had any drugs, alcohol, or
22 medication in the last seventy-two hours?

23 MR. SMALLS: No, ma'am.

24 THE COURT: Are you aware of any physical, emotional, or
25 nervous problem that might keep you from understanding where

1 you are or what you are doing?

2 MR. SMALLS: No, ma'am.

3 THE COURT: (After pause) Yeah, the sentence sheet on
4 the P-W-I-D...

5 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A JUDGE/LAW
6 CLERK CONFERENCE AND ATTORNEY/DEFENDANT CONFERENCE, OFF THE
7 RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 THE COURT: Three-two-two-five should be Manufacturing
10 Cocaine Base, correct? Not P-W-I-D crack third?

11 MR. VOIGT: That's correct.

12 THE COURT: So this is inaccurate; it needs to be
13 corrected.

14 MR. VOIGT: What---

15 THE COURT: It has P-W-I- -- yeah, it has P-W-I-D
16 Distribution of Meth. 3rd, which is inaccurate; it should be
17 Manufacturing Cocaine Base 2nd.

18 MR. VOIGT: Yes, Your Honor; that's correct.

19 THE COURT: Is the -- are the C-D-R Codes correct?

20 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A JUDGE/LAW
21 CLERK CONFERENCE, OFF THE RECORD.)

22 (WHEREUPON, COURT RESUMED.)

23 MR. BROWN: Your Honor, is it okay if my client sit down
24 again?

25 THE COURT: Yes, he can sit down. Pardon me?

1 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A JUDGE/LAW
2 CLERK CONFERENCE, OFF THE RECORD.)

3 (WHEREUPON, COURT RESUMED.)

4 THE COURT: Sir, on the charge of Manufacturing Cocaine
5 Base 2nd, how do you plead?

6 MR. SMALLS: Guilty.

7 THE COURT: Do you understand that that carries a
8 minimum of five years, a maximum of thirty years, and/or a
9 maximum fine of fifty thousand dollars?

10 MR. SMALLS: Yes, ma'am.

11 THE COURT: Do you understand that no probation can be
12 given nor sentence suspended?

13 MR. SMALLS: Yes, ma'am.

14 THE COURT: Do you understand it's classified as a
15 serious offense?

16 MR. SMALLS: Yes, ma'am.

17 THE COURT: And on Indictment 09-3227, which is
18 Possession with the Intent to Distribute Cocaine Base
19 Proximity 1st, how do you plead?

20 MR. SMALLS: Guilty.

21 THE COURT: Do you understand that The State is giving
22 you the benefit of the old law---

23 MR. SMALLS: Yes, ma'am.

24 THE COURT: ---the new law rather, I apologize.

25 MR. SMALLS: Yes, ma'am.

1 THE COURT: And do you understand that that carries a
2 maximum penalty of ten years and/or a maximum fine of ten
3 thousand dollars?

4 MR. SMALLS: Yes, ma'am.

5 THE COURT: Do you understand that likewise this is
6 classified as serious?

7 MR. SMALLS: Yes, ma'am.

8 THE COURT: Do you understand, sir, that under the
9 two/three strikes law that if you receive another additional
10 serious offense you could face life without the possibility
11 of parole?

12 MR. SMALLS: Yes, ma'am.

13 THE COURT: Sir, are you aware of any physical,
14 emotional, or nervous problem that might keep you from
15 understanding where you are right now or what you are doing?

16 MR. SMALLS: No, ma'am.

17 THE COURT: I want you to listen carefully to the facts.
18 You may proceed, Mr. Voigt.

19 MR. VOIGT: May it please The Court, Your Honor. On
20 January 22nd 2009, North Charleston Narcotics Unit, uh,
21 executed a search warrant. The search warrant was based on
22 a, uh, confidential informant buy that had been conducted
23 within seventy-two hours of that date.

24 Uh -- they executed the warrant at Marietta Street
25 in North Charleston. That is a single-family residence that

1 has a detached garage. The C-I had actually gone to the
2 detached garage.

3 Uh -- materials both in the residence -- paperwork,
4 bills, and whatnot -- uh, were found indicating that
5 Mr. Smalls was in both locations.

6 Uh -- a small quantity of cocaine was found, uh, in the
7 privilege of the residence, uh, by a narcotics dog. Uh --
8 numerous guns were found in the residence as well. Uh --
9 they've all been seized by North Charleston.

10 These are all things that I would have presented to the
11 Jury in due course had I had the opportunity. As well as---

12 THE COURT: But he was not charged with any guns?

13 MR. VOIGT: He was not charged with any guns, Your
14 Honor.

15 THE COURT: Okay; so that would not have gone before the
16 Jury, correct?

17 MR. VOIGT: No.

18 THE COURT: All right.

19 MR. VOIGT: We would have had that -- we'd have had
20 the---

21 THE COURT: So is that -- is that necessary for him to
22 allocute---

23 MR. VOIGT: Uh -- also---

24 THE COURT: ---to the elements of the offense?

25 MR. VOIGT: ---in -- in -- in support of the

1 manufacturing there would also have been pots and pans that
2 contained the cocaine residue.

3 Uh -- he made statements on, uh, the record, uh, that
4 indicated that in dry times he kept a small quantity of
5 cocaine under the mulch near the house.

6 Uh -- this all occurred within half-a-mile of the
7 Matilda Dunstan Elementary School, which is located at
8 1825 Remount Road.

9 I believe I've gone over his record before, so...

10 THE COURT: Sir, do you agree or disagree with the
11 facts?

12 MR. BROWN: Your Honor, if -- if I may answer for him?

13 THE COURT: He can't; he has to -- you can't. You can
14 add if you'd like but he has to allocute to the -- to the
15 facts as they would be presented.

16 Sir, do you agree or disagree with the facts?

17 MR. SMALLS: The facts that what (sic) he said, um,
18 about the---

19 THE COURT: Ignore the things that really don't matter.
20 I need to know whether you admit you had possession with the
21 intent -- that you had the products to manufacture crack
22 cocaine and that it was within proximity of -- a quarter-mile
23 proximity of Matilda Dunstan Elementary. (After pause) The
24 stuff about the guns is immaterial.

25 MR. SMALLS: Yes, ma'am; um...

1 MR. BROWN: Your Honor...

2 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR AN
3 ATTORNEY/DEFENDANT CONFERENCE, OFF THE RECORD.)

4 (WHEREUPON, COURT RESUMED.)

5 MR. BROWN: Your Honor, if I -- I -- I think he said
6 yes.

7 THE COURT: Well, I have to have -- he has to allocute.
8 That's the only way I'm gonna be able to accept his plea.
9 And if he has any ambivalence about it we're gonna go ahead
10 and pick a Jury 'cause I don't want him doing something he
11 doesn't want to do. He has to be really clear in his mind
12 that he -- that he -- 'cause I don't want him coming back on
13 a P-C-R saying we forced him to do this.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: So I need to make sure, sir, do you agree or
16 disagree with the facts as they have been presented? And,
17 that these would be the facts presented at trial, except I
18 would not allow in anything about any guns because that's not
19 material to any of the elements of the offense.

20 MR. SMALLS: Yes, ma'am; um---

21 THE COURT: Do you feel anything needs to be changed or
22 added to the facts?

23 MR. SMALLS: Well, like you-all say, it don't matter --
24 it really don't matter, so---

25 THE COURT: You need to answer my questions. You need

1 to listen carefully to the question and you need to answer it.
2 to the best of your ability.

3 Do you feel anything needs to be changed or added to the
4 facts?

5 MR. SMALLS: (No response.)

6 THE COURT: You need to be honest; this is the only time
7 you're gonna get to say it. I don't want you looking in
8 hindsight saying I didn't get a chance to say it.

9 MR. SMALLS: Well, if -- 'cause if I say it needs -- if
10 I say it needs -- some things need to be changed would it --
11 would it make me go forward?

12 THE COURT: You need to tell me exactly what it is that
13 you feel needs to be changed or added to the facts.

14 MR. SMALLS: The -- the situation, um, that -- 'cause
15 I -- I didn't had -- I didn't had anything in the microwave.
16 Like, I didn't---

17 THE COURT: They didn't say you did; they didn't say you
18 did. They said there were pots with cocaine residue. They
19 didn't say you had anything in the microwave.

20 Did you listen carefully to what Mr. Voigt said?

21 MR. SMALLS: He -- well, excuse me, Your Honor.

22 THE COURT: Uh-huh?

23 MR. SMALLS: Um -- could I just talk to my attorney?

24 THE COURT: Absolutely.

25 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR AN

1 ATTORNEY/DEFENDANT CONFERENCE AND JUDGE/LAW CLERK CONFERENCE,
2 OFF THE RECORD.)

3 (WHEREUPON, COURT RESUMED.)

4 MR. BROWN: Um -- Your Honor, uh, do you mind---

5 MR. VOIGT: Your Honor, I'll -- I'll do the short---

6 MR. BROWN: ---if Mr. Voigt repeat (sic) the facts?

7 THE COURT: Not at all; Mr. Voigt, please repeat the
8 facts.

9 MR. VOIGT: All right. What -- what The State would---

10 MR. SMALLS: I want to speak to Mr. Voigt.

11 THE COURT: What -- what do you want to talk to
12 Mr. Voigt about?

13 MR. SMALLS: To -- what my -- my lawyer had told me---

14 THE COURT: Uh-huh?

15 MR. SMALLS: ---he told me that it wasn't -- like we
16 been to his office earlier. He said it was in the microwave.
17 And---

18 THE COURT: It doesn't matter, sir; that's not what
19 they're basing their case on. That's not what they're going
20 to present.

21 What they're gonna present is that somebody came there
22 and bought drugs from you and that person's gonna be able to
23 identify you. And as a result of that, the search warrant
24 was executed. And, the things that are necessary to make
25 crack cocaine were found in the detached garage. That being,

1 the pots with crack residue -- cocaine residue, and that it
2 was within a half-a-mile of the school, and that you made
3 certain admissions regarding the fact that you kept small
4 quantities of cocaine in hard times under the mulch of the
5 residence. That's the -- that's a very limited way of what
6 they're going to present.

7 So, it really doesn't matter what -- about whether there
8 was -- was there cocaine found in a -- in a microwave?

9 MR. VOIGT: It -- there was cocaine residue. I -- I
10 don't believe the microwave was ever tested, but, you know,
11 there -- there was cocaine residue on a whisk and some pots
12 and pans. Uh -- that's what I had tested at SLED; that's
13 what I'd be prepared to, uh, present to the Jury.

14 THE COURT: Okay, so does that provide the clarification
15 you need?

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

18 (WHEREUPON, COURT RESUMED.)

19 MR. SMALLS: Okay; yes, ma'am.

20 THE COURT: Sir, do you agree or disagree with the
21 facts?

22 MR. SMALLS: (No Response; looking toward girlfriend.)

23 THE COURT: She can't answer that question for you, only
24 you can answer it -- only you were there.

25 Do you agree or disagree with the facts?

1 MR. SMALLS: (Inaudible mumble.)

2 THE COURT: I can't hear you.

3 MR. SMALLS: Yes, ma'am.

4 THE COURT: Do you feel anything needs to be changed or
5 added to the facts?

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR AN
7 ATTORNEY/DEFENDANT CONFERENCE , OFF THE RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 MR. SMALLS: I don't---

10 THE COURT: Only you can answer that question.
11 Mr. Brown wasn't there, I wasn't there, Mr. Voigt wasn't
12 there. If there's something you feel needs to be changed or
13 added you need to tell us now.

14 MR. SMALLS: I -- I -- (after pause) I feel -- I'm --
15 I'm just -- I'll just go ahead -- I'm gonna go ahead.

16 THE COURT: Well, you need to speak your mind. It's
17 gonna be the only opportunity you have to do it. And if
18 there's something you feel -- you need to take your hands out
19 of your pockets; you're gonna make the Deputies nervous.

20 If there's something you feel needs to be changed or
21 added to the facts, that -- this is the time to say it.
22 You're not gonna be able to say it any other time.

23 And I'm gonna tell you, on a P-C-R I'm gonna look at it
24 and I'm gonna say, you had a chance to open your mouth and
25 you didn't. So, as far as I'm concerned, you had nothing to

1 say then and you don't have anything to say at that time
2 either.

3 So if there's something you feel needs to be changed --
4 and it's another Judge -- when I say me I'm talking about
5 The Court figuratively. Me means another Judge as well.

6 If you feel there's something that needs to be changed
7 or added to the facts, this is the time to say it. Because,
8 you have to allocute -- that's a legal term meaning admit --
9 to what happened on that date.

10 MR. SMALLS: On that day, I didn't had -- I didn't had
11 anything in the microwave -- I mean, uh, in a Pyrex and --
12 and---

13 THE COURT: You understand, however, that those things
14 were found and they were tested at SLED and there was residue
15 of drugs on those items?

16 MR. SMALLS: Yes, ma'am.

17 THE COURT: Okay.

18 MR. SMALLS: But, um -- (after pause) and -- and I never
19 told, um, Police Officer that I had -- I -- I -- I buried
20 things for hard times. And---

21 THE COURT: Okay.

22 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BRIEF
23 ATTORNEY/DEFENDANT CONFERENCE , OFF THE RECORD.)

24 (WHEREUPON, COURT RESUMED.)

25 MR. SMALLS: Dry times -- dry times.

1 THE COURT: Okay.

2 MR. SMALLS: And, I'm just -- like, my record, I -- I --
3 I feel that with my record and me trying -- have to defend
4 myself, under these -- under the -- under the situation that
5 I feel I'm under -- in a situation that I have no choice.

6 THE COURT: You always have a choice.

7 MR. SMALLS: That's---

8 THE COURT: It's whether you can live with the
9 consequences of the choice, but you always have a choice.

10 MR. SMALLS: ---yes; yeah, that's what I said, the
11 consequences.

12 THE COURT: And me, Mr. Brown, and Mr. Voigt can live
13 with whatever choice you make. Our lives will not be altered
14 by it; yours, however, will be. And I live by this very
15 simple adage; if you can live with it, I can live with it.

16 So, you have to have peace with it. It doesn't affect
17 me; I'm gonna go home this afternoon and wash dishes and wash
18 clothes and probably water my plants.

19 MR. SMALLS: Yes, ma'am.

20 THE COURT: So it's not gonna affect me. It's gonna
21 affect -- and I don't mean to sound pejorative or I don't --
22 or flip about it, but it's the reality of it.

23 MR. SMALLS: Yes, ma'am.

24 THE COURT: Your life, however, is altered. You just
25 need to make the informed decision as to whether that is a

1 consequence you can live with.

2 There is a drastic difference in what is being
3 negotiated or what you would face at conviction. None of us
4 can make that decision for you; only you can make that
5 decision. None of us were there; we don't know what
6 happened. Only you can search your heart and know what you
7 did or didn't do.

8 I'm a great believer in the trial system. That's why I
9 do this job; I do it every day. There's not one single Jury
10 verdict I would ever reverse, 'cause I think -- I -- every
11 Jury verdict I have sat in for fifteen years -- well, not
12 fifteen, ten years 'cause I was on Family Court for five
13 years -- I think the Jury did the right thing.

14 MR. SMALLS: Okay, so---

15 THE COURT: So I sleep very well at night. So, you need
16 to make sure that you can. So whatever decision you make we
17 will honor. But, don't feel that you are being forced or
18 compelled; you are not.

19 However, I do have a Jury downstairs, and if you keep
20 equivocating I'm gonna pick a Jury because that will tell me
21 that you are not secure in your decision.

22 Okay? 'Cause you're not serving any purpose by going---

23 MR. SMALLS: Back and forth.

24 THE COURT: Either you're gonna plead guilty and you
25 admit to the elements of the offense or you're not gonna

1 plead guilty and let a Jury decide it. Only you can decide
2 whether the weight of the preponderance -- or, the weight of
3 the evidence will convict you or not. I don't know; I can't
4 make that assessment.

5 But, whatever decision you make, as long as you can live
6 with it, I can live with it. I don't take a position one way
7 or the other.

8 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR AN
9 ATTORNEY/DEFENDANT CONFERENCE, OFF THE RECORD.)

10 (WHEREUPON, COURT RESUMED.)

11 MR. BROWN: I think he's ready to answer the question,
12 Your Honor.

13 THE COURT: Sir, do you agree or disagree with the
14 facts?

15 MR. SMALLS: Yes, ma'am.

16 THE COURT: Agree or disagree?

17 MR. SMALLS: Agree.

18 THE COURT: Do you feel anything needs to be changed or
19 added to the facts?

20 MR. SMALLS: No, ma'am.

21 THE COURT: Are you pleading guilty, sir, because you're
22 guilty?

23 MR. SMALLS: (After pause) Yes -- yes, ma'am.

24 THE COURT: And if it makes you feel any better, I will
25 explain to you the elements of Possession with the Intent to

1 Distribute. The only thing that The State has to prove is
2 that you had possession of a drug. They don't have to prove
3 how much you had, even a small amount is sufficient to prove
4 it. All they have to prove is actual or constructive
5 possession, which means either that you physically had it or
6 that you had the means to control where it was or where it
7 was found.

8 Um -- of course, the mere presence is not enough to
9 prove your guilt, uh, but The State can argue, and they're
10 allowed to infer, that when a substance is found on the
11 property under your control that you had dominion and control
12 of it. And that is certainly something the Jury can
13 consider; they are not bound by it.

14 Distribute means that you had the ability to deliver
15 other than by a prescription and they can show intent by your
16 conduct and actions and they can infer it from circumstances.

17 And whether you had the intent to distribute it is a
18 factual issue for the Jury to determine, and that is
19 determined from the surrounding circumstances. The way the
20 drugs were possessed or allegedly possessed. Um -- and other
21 factors that the Jury may consider, um, appropriate.

22 What was the quantity of drugs that was found?

23 MR. VOIGT: Ultimately, Your Honor, it was approximately
24 a gram.

25 THE COURT: Okay. (After pause) And one or more grams

1 of crack cocaine is enough for the Jury to infer that you had
2 the intent to distribute it. But, that's only an inference
3 that they can consider; they don't have to -- they can give
4 it whatever weight they think is appropriate.

5 And, um, actually, what you have is Manufacturing. And
6 actually, the burden on Manufacturing is even -- actually,
7 it's a little less than what I just, um---

8 MR. VOIGT: If we had gone to trial, what we would have
9 gone to trial on---

10 THE COURT: On the P-W-I-D, yes.

11 MR. VOIGT: ---was the...

12 THE COURT: (FOLLOWING A PAUSE.) To prove Manufacturing,
13 all they have to prove is that you had the means to produce,
14 prepare, convert, process, plant, cultivate, grow, or harvest
15 a drug naturally or chemically. Manufacturing includes any
16 packaging or repackaging of the drug or labeling or
17 relabeling of the drug container. So, the pots and the whisk
18 are enough to prove Manufacturing.

19 All they have to prove is that you had the means to
20 manufacture the drugs. They don't have to prove any quantity
21 for that.

22 And the only thing they have to prove for a Proximity
23 charge is that you were within a one-half mile proximity of a
24 school, park, playground, daycare center, um, technical
25 school -- I'm -- I'm forgetting the rest of the list, but the

1 rest of the list really doesn't apply to this case.

2 Are you pleading guilty, sir, because you're guilty?

3 MR. SMALLS: Yes, ma'am.

4 THE COURT: I can't hear you.

5 MR. SMALLS: Yes, ma'am.

6 THE COURT: Sir, I want you to listen carefully. When
7 you plead guilty, you give up certain important
8 constitutional rights. Those rights include your right to a
9 jury trial. At a jury trial you're entitled to a presumption
10 that you're innocent.

11 The State has the burden of proving your guilt beyond a
12 reasonable doubt. You would have the right to confront and
13 cross-examine The State's witnesses and call witnesses in
14 your own defense.

15 You would have the right to present any defenses that
16 you may have. If you have made any confessions or other
17 incriminating statements, you/ would have the right to
18 challenge those statements.

19 You would also have the right to remain silent. And if
20 you were silent, your silence could never be used against
21 you.

22 Sir, do you understand your rights as I have just
23 explained them to you?

24 MR. SMALLS: Yes, ma'am.

25 THE COURT: I can't hear you. Do you understand your

1 rights as I've just explained them to you?

2 MR. SMALLS: Yes, ma'am.

3 THE COURT: Do you understand that you're giving up each
4 and every one of those rights?

5 MR. SMALLS: Yes, ma'am.

6 THE COURT: Do you understand, sir, that if you desired
7 a trial that I have a jury panel downstairs that is already
8 selected, ready to come upstairs, and that we could pick a
9 jury and go forward if that is what you want?

10 COURT REPORTER: I didn't hear, Your Honor.

11 THE COURT: He hasn't answered. Do you understand that?

12 MR. SMALLS: Yes, ma'am.

13 THE COURT: Knowing that, do you still wish to plead
14 guilty?

15 MR. SMALLS: (Inaudible.)

16 THE COURT: I can't hear you.

17 MR. SMALLS: Yes, ma'am.

18 THE COURT: Sir, you may have discussed parole or parole
19 eligibility with your lawyer or with others, but until you
20 are sentenced, no one can tell you when, if ever, you will be
21 eligible for parole or under what conditions. You should
22 assume that you will serve the entire time in jail that
23 you're sentenced to. Do you understand?

24 MR. SMALLS: Yes, ma'am.

25 THE COURT: Have you been satisfied with your lawyer's

1 services?

2 MR. SMALLS: No, ma'am.

3 THE COURT: Okay, why have you been dissatisfied with
4 his services?

5 MR. SMALLS: From -- from -- we -- when we had the
6 arguments, I spoke to Voigt about him.

7 THE COURT: Lawyers argue with their clients because
8 clients have -- often have a bitter truth they have to hear
9 from clients -- from lawyers. It's not a lawyer's job to
10 tell you what you want to hear; it's your lawyer's job to
11 tell you what you got to hear and that's painful sometimes.

12 So, what you're telling me is normal for the course
13 of -- being a client and a lawyer is almost like a marriage
14 in a way; you have rough spots, you have good spots.

15 You know, what I need to know, what I have to be
16 satisfied, is whether he has informed you of the charges
17 against you, whether he's prepared for trial, whether he's
18 informed you of the discovery, whether he's let you know all
19 the offers that the Solicitor has communicated to you.

20 You being dissatisfied with reality does not mean you're
21 dissatisfied with Mr. Brown. So I need you to answer,
22 'cause, you know, lawyers have a saying, we don't create the
23 facts, we just have to make the best of the facts as they're
24 brought to us.

25 So, you have a difficult situation. So the fact that he

1 can't tell you what you may want to hear does not mean he
2 has not been adequately prepared or done what he's supposed
3 to do.

4 So, with the in mind, I need to ask the question, have
5 you been satisfied with your lawyer's services?

6 MR. SMALLS: No, ma'am.

7 THE COURT: And why have you not been satisfied with his
8 services?

9 MR. SMALLS: 'Cause we -- we had -- we had problems from
10 day one. It -- it was so close that---

11 THE COURT: How have these problems affected you?

12 MR. SMALLS: Affected me 'cause I don't have no more
13 money. I had -- I had to borrow---

14 THE COURT: That still doesn't tell me how -- how has it
15 worked a detriment to you?

16 MR. SMALLS: 'Cause...

17 THE COURT: How have you been prejudiced? 'Cause I -- I
18 can't discern that from this record.

19 MR. SMALLS: I was, um, prejudiced---

20 THE COURT: How?

21 MR. SMALLS: ---because, um, I didn't get adequate -- I
22 didn't get the, uh, information at the, um -- you know, at---

23 THE COURT: What information?

24 MR. SMALLS: I ask him for, uh, what's going on with the
25 case and everything. Now I'm just getting everything right

1 today.

2 THE COURT: I don't believe that; I don't. I'm very
3 discerning; I've been doing this a long time. I may look
4 young, but I'm an old soul. I look at people's objective
5 behavior when they talk to me. Eyes tell me everything; they
6 tell me when people are not being honest, they tell me when
7 they're telling me a part of the truth, some of the truth.
8 And then when they finally come clean, body language tells me
9 a whole lot about whether somebody's telling me the truth.

10 So, we need to start over. You need to tell me --
11 Mr. Brown, you being mad with Mr. Brown, that doesn't mean he
12 wasn't adequate.

13 You being dissatisfied with him telling you certain
14 things doesn't mean he was inadequate.

15 I need to know -- when you say you are dissatisfied with
16 your lawyer, I need -- that question means how is he not
17 prepared? How is he not prepared to go forward today if you
18 wanted a trial, and how has that worked some inequity to you?

19 In other words, how have you been -- how is it -- how
20 has that hurt you in this process? Because, you got a --
21 what's been offered to you -- actually, something else was
22 offered to you that you sort of rejected.

23 MR. SMALLS: Yes, ma'am; Simple---

24 THE COURT: Um -- but you did that on your own, 'cause
25 you did that with Mr. Voigt.

1 MR. SMALLS: Yes, ma'am.

2 THE COURT: So, you can't blame Mr. Brown for that.

3 MR. SMALLS: Okay; then---

4 THE COURT: And based on what The State has disclosed to
5 me in pre-trial discussions with Mr. Brown, they offered that
6 to you many times and you threw it away every time and didn't
7 give your lawyer a chance to advise you about it.

8 MR. SMALLS: What -- what my lawyer -- me and my lawyer
9 when -- when I come to the plea court my lawyer wasn't even
10 there. He wasn't -- he didn't even come to the court.

11 THE COURT: And?

12 MR. SMALLS: And my lawyer -- and -- and I talked to
13 Mr. Voigt. Mr. Voigt said, um---

14 THE COURT: Tell me how that has affected you right now.

15 MR. SMALLS: It's affected me because I -- every time I
16 talk to him, I had to talk to Mr. Voigt because none---

17 THE COURT: So how has that affected -- how has that
18 worked some disadvantage to you?

19 MR. SMALLS: Because; I had to file the suppression
20 hearing, he didn't file the suppression hearing.

21 THE COURT: He doesn't have to file one at all. He can
22 come to Court and make a -- a -- a -- an oral motion. And
23 frankly, that's what most criminal lawyers do, 'cause they
24 don't want the other side to know what they're thinking.

25 So, when you file things in advance of time, you tip

1 your hand. That's the problem with being an armchair lawyer;
2 he knows what he's doing, you don't.

3 MR. SMALLS: Well, like I say, I just wish---

4 THE COURT: Lawyers, most times in criminal cases don't
5 file anything in advance of time; they come to Court at the
6 time of trial and say what they want to do pre-trial.
7 Because, they don't want The State to know what they're
8 thinking; they don't want The State to know what they may
9 have or not have. 'Cause then that gives them the chance to
10 get the upper hand, or so to speak to counteract what they
11 would be arguing.

12 So I need to know, as of today, what has he not done
13 that has prejudiced you somehow in the negotiation of the
14 guilty plea? How -- what -- 'cause you've got the benefit of
15 the new law which you're not entitled to but I'm gonna honor
16 it 'cause they've agreed to it. You've got the benefit of a
17 second, which you really should be charged with a third or
18 subsequent.

19 So I'm trying to -- you need to help me understand what
20 is it that he hasn't done that he should have done in terms
21 of professional norms and standards that a lawyer is supposed
22 to meet in representing a client?

23 MR. SMALLS: I didn't get the papers. I didn't -- you
24 know, I see -- I asked him about the -- the drug tests and
25 everything.

1 And everything came this morning and -- and -- at the
2 date that I have to come to trial. Everything---

3 THE COURT: You had some question that it didn't --
4 wasn't gonna test positive for cocaine or crack?

5 MR. SMALLS: I had questions 'cause I -- I -- I already
6 asked -- talked to Mr. Voigt and I'm like I didn't -- I
7 didn't do those things.

8 THE COURT: Are you saying Mr. Voigt was gonna tell you
9 the truth? They can use reasonable deception in talking to
10 you and anything you say to them can be used against you. Do
11 you think he was gonna tell you that it didn't test positive
12 for drugs?

13 MR. SMALLS: No; no, I don't -- I didn't think like
14 that. I mean, uh -- it's just -- (after pause) me -- me and
15 him had problems.

16 THE COURT: Well, I need you tell me how those problems
17 have somehow worked a detriment to you or somehow
18 disadvantaged you in this equation.

19 MR. SMALLS: Disadvantaged because it -- it enabled
20 me -- because he was gonna release hisself (sic) yest- -- I
21 mean, um, Friday 'cause we talked. Um -- and now, um, 'cause
22 I told 'em that I, um, was gonna file -- file a P-C-R. And,
23 um, he told me---

24 THE COURT: You wouldn't have a basis to file a P-C-R
25 until your case is over.

1 MR. SMALLS: Yeah, that -- that, uh---

2 THE COURT: Until you're convicted.

3 MR. SMALLS: Yes, 'cause I -- but I -- I already---

4 THE COURT: And I can tell you, having heard many
5 P-C-R's, there's no basis for one in this case.

6 MR. SMALLS: I'll just go ahead.

7 THE COURT: No, I need you to -- I need you to
8 articulate what it is you're trying to tell me, 'cause it's
9 not making sense to me and I need you to make sense.

10 MR. SMALLS: I mean, if we -- in this whole time that he
11 had came after and shared with me back at the start, he --
12 and then the other lawyer try and talk -- I mean, um,
13 Proctor, that we was in the same thing. They say it was a
14 conflict in interest.

15 THE COURT: Uh-huh?

16 MR. SMALLS: Third, then you had me with an
17 environmental lawyer that -- who -- who didn't know anything
18 about the Court system.

19 THE COURT: Uh-huh?

20 MR. SMALLS: So I -- I had to get like, um, Mr. Brown.

21 THE COURT: Uh-huh?

22 MR. SMALLS: And all this time he -- he never
23 discussed (phonetic/sic) anything about the case or
24 anything.

25 Now we come in here, I'm -- I'm -- I mean today, and --

1 and yes, I meet with him last week, I'm here.

2 THE COURT: Yes, sir?

3 MR. BROWN: Your Honor, I -- I -- I -- well, truly, I --
4 my -- my client has put me in a very awkward position, and
5 one that I foresee is going to be the, uh -- the prerequisite
6 for the significant problem -- can be significant problems
7 down the road.

8 Let me -- let me give The Court---

9 THE COURT: Well actually, he hasn't said anything that
10 amounts to you being ineffective or you having not been -- I
11 don't believe for a minute you didn't go over the discovery
12 with him.

13 MR. BROWN: Well, what happened---

14 THE COURT: Or have you not because he was being
15 difficult? Let me -- let me give a caveat to that. I
16 understand that he has been difficult to communicate with and
17 may not have cooperated during a particular period of time,
18 but that you-all have reconciled that disagreement.

19 MR. BROWN: Your Honor, I have done more in this case
20 than I do in -- in -- well, I've -- I've done as much in this
21 case as I do in any criminal case where I represent someone.

22 I've been talking to Greg Voigt for, uh -- since I
23 became the attorney of record -- the third attorney of record
24 in this matter---

25 THE COURT: Uh-huh?

1 MR. BROWN: ---which is against my principle. I
2 actually never go to other cases---

3 THE COURT: Uh-huh.

4 MR. BROWN: ---other lawyer's cases.

5 THE COURT: Uh-huh.

6 MR. BROWN: But that's what happened.

7 THE COURT: 'Cause you're going to get blamed anyway.

8 MR. BROWN: Absolutely.

9 THE COURT: Uh-huh.

10 MR. BROWN: Now, um, I don't -- Mr. -- Mr. Voigt and I
11 have talked to Mr. Smalls. Mr. Voigt, uh, indicated he
12 wanted to give him -- make an offer and Mr. Smalls said he's
13 not pleading guilty, he's going to trial.

14 THE COURT: Uh-huh?

15 MR. BROWN: And that was way back -- that -- that was
16 almost a year ago.

17 THE COURT: Uh-huh?

18 MR. BROWN: I've done everything he's asked me to do.
19 I -- I don't what else I can do. And, Your Honor, if he is
20 dissatisfied with me, then I don't think I should be
21 representing him. And I---

22 THE COURT: Uh-huh?

23 MR. BROWN: ---and I think that's the basis for a Motion
24 to be Relieved.

25 THE COURT: Well, I think he needs to articulate for me

1 what it is you haven't done that he thinks you should have
2 done.

3 MR. BROWN: Well, for instance, he claim (sic) he filed
4 a Motion to Suppress. Well, the fact is I -- I -- and I
5 agree with The Court, I don't normally file Motions
6 beforehand. But, he wanted a Motion to Suppress filed, so I
7 filed it.

8 THE COURT: But is it your job to do what you're
9 supposed to do or what he wants you to do?

10 MR. BROWN: It's my job to advise him as best I can---

11 THE COURT: Uh-huh.

12 MR. BROWN: ---knowing and having knowledge of the law.

13 THE COURT: Uh-huh.

14 MR. BROWN: But, you have clients who, in fact, um, had
15 these armchair and street corner and disbarred lawyers, and
16 they create, uh, realities that are really---

17 THE COURT: False.

18 MR. BROWN: ---fantasies.

19 THE COURT: Uh-huh.

20 MR. BROWN: And that's what I had to---

21 THE COURT: When did you file the Motion to Suppress?

22 MR. BROWN: The Motion to Suppress was filed on
23 September 29th.

24 THE COURT: Okay. And, sir, what else is there that
25 Mr. Brown should have done that he hasn't done?

1 MR. SMALLS: Talk to me frequently.

2 MR. BROWN: Your Honor---

3 THE COURT: Tell me what difference talking to you would
4 have made in the final outcome? In other words, where we are
5 right now.

6 MR. SMALLS: Exactly, I -- I mean, if it wasn't
7 before -- I mean from the beginning and everything I told him
8 like -- like last week, I asked him, I said, man, I just
9 want you to talk to me. I don't -- I -- I want you to just
10 come -- and that's then when he said come in -- come in here
11 with the money. I gave him the thousand dollars; I talked to
12 him. And---

13 THE COURT: So how would that have made a difference in
14 where we are right now?

15 MR. SMALLS: Because now it's two weeks -- two-and-a-
16 half years on this case and we could-a done -- I mean, we
17 could-a talk about doing other things like---

18 THE COURT: Like what?

19 MR. SMALLS: ---like we could-a suppressed back then --
20 we could-a.

21 THE COURT: There is no doubt -- there is no basis for a
22 suppression. There's a case on point against your position.
23 It doesn't matter if they had the wrong address in the search
24 warrant; it's not gonna make a difference. It would not have
25 amounted to a suppression.

1 The case law says that where you have a detached
2 facility and there's a mistake, as long as it is sufficiently
3 described, they can search it based on a C-I buying drugs
4 there.

5 So, tell me what difference filing the suppression would
6 have made?

7 And, I agree with Mr. Brown; I did criminal law. I
8 never would have filed a Motion in advance. I would have
9 come to Court before the Jury was sworn -- or, after the Jury
10 was sworn actually -- and made my Motion. They wouldn't have
11 never known what I was thinking; not until I got to Court.

12 MR. BROWN: Right.

13 MR. SMALLS: He -- he'd ask now?

14 THE COURT: That's -- that's appropriate strategy; that
15 protects you. So tell me -- tell me how -- I guess I'm --
16 what I'm trying to figure out, I need you -- instead of
17 just -- you can't just make sort of a blanket statement to me
18 that you're dissatisfied. I need to know what it is that he
19 should have done that he hasn't done, keeping in mind that he
20 knows the rules and you have to be very careful who you
21 listen to. Because, they really don't -- most times, don't
22 know what they're talking about. They think they do, but you
23 got to just decide who you're gonna trust, and who you're
24 gonna listen to, and who you're not gonna listen to. 'Cause
25 none of those people can come in here and represent you and

1 at the end of the day they're not gonna be affected by the
2 things they're telling you.

3 MR. SMALLS: All -- all -- all the lawyers I had, I just
4 had bad -- Sherri got disbarred. Proctor -- I mean,
5 Ms. Proctor and James, they conflict -- I mean, she say it's
6 a conflict of interest. And then the man -- with that third
7 lawyer, who was an environment. (Sic) He -- he inform (sic)
8 me that he -- he don't know anything about the case, but he
9 would like to stand and learn about the case. And, I mean, I
10 just felt like I just didn't had -- had a -- a steady or a
11 dependable lawyer or any -- anyone---

12 THE COURT: And how does that affect where we are right
13 now?

14 MR. SMALLS: 'Cause now I'm in -- I'm at like the -- the
15 peak hour and right here. And I---

16 THE COURT: How would that have changed anything?
17 Eventually it was gonna come to trial or you'd have to plead.

18 MR. SMALLS: Yes; yes, but I've -- I -- if then -- if I
19 had spoke to him---

20 THE COURT: And it really should have been done long
21 before now 'cause it's a 2009 case. And I'm Chief Judge and
22 it's one of the oldest ones on my roster, other than a 2003
23 which I'm gonna get rid of in a couple weeks.

24 MR. SMALLS: Yes, like I, uh, I would-a talked about
25 it -- if I had talked to him, I would-a probably plea to

1 the Simple Possession that they wanted to offer me.

2 THE COURT: They've never offered -- have they---

3 MR. SMALLS: Yes.

4 THE COURT: ---have you-all offered a Simple Possession?

5 MR. VOIGT: No, Your Honor; I---

6 THE COURT: Mr. Voigt says he's never offered a Simple
7 Possession.

8 MR. VOIGT: ---just my -- my -- I inherited this case
9 from Mr. Neely in our office.

10 THE COURT: Uh-huh; who has been away now what, the
11 second year at a L-L-M program?

12 MR. VOIGT: He has been away for at -- at -- at least
13 twelve months.

14 Um -- when I got the case, I -- Mr. Brown had -- had
15 come onto the case. Um -- I had a number of different
16 contact informations (sic) from previous lawyers, but
17 Mr. Brown and I had worked, uh, initially.

18 Uh -- I had extended to Mr. Brown the offer that
19 Mr. Neely had extended; I re-extended it.

20 THE COURT: Uh-huh?

21 MR. VOIGT: Uh -- and Mr. Brown and I discussed that,
22 and that would have been probably September or October of
23 last year.

24 THE COURT: Uh-huh?

25 MR. VOIGT: Um -- it was scheduled in October for a

1 plea, January for a plea, and in March for a plea.

2 Sometime between January and March is when I had a
3 conversation, uh, with Mr.---

4 THE COURT: So it's already been set three times for a
5 plea?

6 MR. VOIGT: It -- we -- I have set it for three times.
7 It had been set numerous times before that for Mr. Neely but
8 it's three times with me.

9 I've been in contact with Mr. Brown since the beginning
10 of this case. Um -- I've been in contact with Mr. Smalls as
11 well, as The Court has heard. So, uh---

12 THE COURT: And it is my understanding that you offered
13 him a polygraph or what was the other thing? I can't
14 remember from the status conference.

15 MR. VOIGT: Well, it -- it -- to be quite honest with
16 Your Honor -- Your Honor, I offered him something I knew he
17 wouldn't take. Which, uh -- so it was really nothing.

18 THE COURT: Which was?

19 MR. VOIGT: I offered him a polygraph because he -- he
20 claimed, in -- in the times that I had talked to him, that he
21 didn't do it; that he was innocent.

22 THE COURT: Uh-huh.

23 MR. VOIGT: And I said, if he's willing to take a
24 polygraph with, uh, Mr. Burnett who comes down from SLED,
25 then I would -- and if he passed the polygraph, I'd dismiss

1 the charges against him.

2 THE COURT: And he rejected that---

3 MR. VOIGT: He rejected.

4 THE COURT: ---correct, on numerous occasions?

5 MR. VOIGT: He rejected that in my office.

6 THE COURT: And how many times did he reject that,
7 Mr. Voigt?

8 MR. VOIGT: Um -- I believe I offered it to him on the
9 telephone---

10 THE COURT: Uh-huh?

11 MR. VOIGT: ---and then asked him to come. Then he
12 came and actually sat in the lobby. I don't think I ever
13 really -- and -- and then I offered it to him again. I said,
14 listen, you really want to think about this. He said, I
15 don't need to think about it, I know.

16 THE COURT: So that was rejected two times. And what
17 else did you offer him?

18 MR. VOIGT: Well, I actually gave him, uh, door 'A' and
19 door 'B'. Um -- he's chosen door 'C'. But, I gave him --
20 door 'B' was I would treat it as a first for purposes of
21 sentencing so that The Court would have no minimum mandatory.
22 I think I even told him that I would treat it as cocaine and
23 not crack, uh, so that you would have the whole discretion to
24 sentence him as you saw fit, and he rejected that as well.

25 THE COURT: And how many times did you offer that?

1 MR. VOIGT: Uh -- contemporaneously with the, uh,
2 polygraph offer; that would have been twice.

3 I think what I did was, when he rejected it the first
4 time, I said listen, think about it, talk to Mr. Brown, and
5 get back to me. Don't reject it now. And then he got back
6 to me and rejected it.

7 MR. BROWN: Your Honor---

8 MR. SMALLS: No, that -- that is not what happened.

9 MR. BROWN: ---Your Honor, if I -- if I may intrude
10 here?

11 THE COURT: Yes, sir.

12 MR. BROWN: Because, it seems like, you know, a lot --
13 Mr. Brown did a lot that he didn't know about.

14 Look, I -- I -- I don't fault any client for trying to
15 do better than they think I can do. I knew of none of this
16 contact between him -- my -- my client and Mr. Voigt---

17 THE COURT: Until later?

18 MR. BROWN: ---until -- until about a week ago.

19 THE COURT: Okay.

20 MR. BROWN: Until about a week ago. That's the first
21 time I learned about that.

22 Secondly, um, Your Honor---

23 THE COURT: So he made no effort to come to you to tell
24 you that he had talked with Mr. Voigt?

25 MR. BROWN: Not re- -- he called me last -- no, he

1 didn't; he called me on the phone saying he was mad because
2 he thought I was in cahoots with Mr. -- with Mr., uh -- with
3 Mr. Voigt and that I wasn't doing what I was supposed to do.

4 And, Your Honor, he -- you know, I understand that this
5 is very -- I mean, I don't know where we are in this
6 proceeding, but I think it's very appropriate now for me to
7 move to be relieved as counsel of record. Um---

8 THE COURT: Well, he hasn't been able to articulate to
9 me that you've been ineffective in anywhere (sic), or that
10 you've fallen below a profession norm, or that you're not
11 prepared for trial.

12 Lawyers and clients don't get along all the time, but
13 that and my barometer has to see whether you're represented
14 by anybody. 'Cause, lawyers have to tell people hard truths
15 they don't want to hear which makes them angry.

16 There is always the desire for option 'C', which in this
17 instance is not available. And, was never really available
18 other than as a first, but I -- you know, and I can't speak
19 for anyone else. I really don't know what I would have done
20 at the time, but with his record, it's unlikely that he would
21 not have still gotten some form of jail time under the
22 circumstances. It is unlikely that, with his record, it
23 would have been suspended.

24 So I don't -- I don't know -- even with The Court having
25 that latitude. So I don't know that it's really -- I need to

1 discern not -- he can't just make a blanket statement that
2 you haven't done what you were supposed to do and that he is
3 just upset with you without being able to articulate for me
4 exactly what it is you haven't done.

5 And if there is something you haven't done, I then need
6 to evaluate how did that affect where he is right now? In
7 other words, how has that been detrimental to him? Because,
8 he has a very good negotiated situation, which, if I relieved
9 you, is not gonna be extended. It's gonna be taken off the
10 table. Somebody else will have -- either have to be
11 appointed or retained and he's gonna go to trial where he's
12 gonna face the mandatory minimum on the third or subsequent
13 on all of 'em.

14 MR. BROWN: Your Honor, that -- that's a choice he has
15 to make.

16 THE COURT: Absolutely.

17 MR. BROWN: And -- and -- and I'm not -- my -- my
18 concern is simply this. If -- if this plea is withdrawn and
19 if he goes to trial now, it -- it---

20 THE COURT: Are you unprepared?

21 MR. BROWN: Oh, no, I'm prepared. But the problem is,
22 you know, zealously I am -- I'm supposed to be representing
23 my client.

24 THE COURT: Uh-huh.

25 MR. BROWN: Now allegations have been lodged against me

1 that -- pretty much that I'm incompetent. And, I don't know
2 that he's gonna get my best. Now, he'll get what I got,
3 but---

4 THE COURT: He'll get your best. You're a lawyer; we're
5 'A' personalities, we don't like to loose.

6 MR. BROWN: Well, not really.

7 THE COURT: We're able to separate; oh yeah we are.

8 MR. BROWN: It -- that---

9 THE COURT: Oh yeah we are. But, sir, back to the point
10 at hand, which is, Mr. Brown, you say you -- your client
11 never called you and told you about these deals that had been
12 offered to him by Mr. Voigt?

13 MR. BROWN: Until last week.

14 THE COURT: Okay; so those were off the table at that
15 time?

16 MR. BROWN: As far as I know, yes, ma'am.

17 THE COURT: Okay.

18 MR. BROWN: Well, it -- it -- yes, it is because I've
19 spoke with him about it.

20 THE COURT: And you've communicated to him that they
21 were off the table once rejected?

22 MR. VOIGT: Yes I did, Your Honor.

23 THE COURT: And you were face-to-face when this
24 happened?

25 MR. VOIGT: Yes, I was. As a matter of fact, I had the

1 Investigator in the room making notes just so that if it ever
2 came up somebody would be around.

3 THE COURT: Okay; yes, sir?

4 MR. SMALLS: Yeah, 'cause he -- I -- when I went to the,
5 um -- to his office, that was the first time he asked me
6 about the polygraph. Right then he -- that was the first and
7 only time that he ask me because I told -- I ask him---

8 THE COURT: And you rejected it?

9 MR. SMALLS: Yes.

10 THE COURT: So what difference does it make now?

11 MR. SMALLS: If I -- I could take---

12 THE COURT: It's not something you ever intended to do;
13 correct?

14 MR. SMALLS: Well, I ain't -- I ain't say that, but I
15 was in opposition---

16 THE COURT: I doubt very seriously you would have done
17 it---

18 MR. SMALLS: Yes, but---

19 THE COURT: ---because I think you would have come
20 across as deceptive---

21 MR. SMALLS: ---yes---

22 THE COURT: ---and you would have flunked it---

23 MR. SMALLS: ---but that---

24 THE COURT: ---and then it would have been a problem for
25 you.

1 MR. SMALLS: ---because that I -- I pass (sic) it, it
2 wouldn't be credible in Court. And then---

3 THE COURT: He said if you passed it he was gonna drop
4 the charges.

5 MR. SMALLS: Well, that---

6 THE COURT: If somebody offered me that and I thought I
7 could pass it and I wasn't gonna be deceptive, I'd have been
8 the first one sitting in the chair hooked up.

9 MR. SMALLS: Well, I just -- you know, dealing with the
10 lawyers and the things I had, I didn't -- I had -- I didn't
11 know if---

12 THE COURT: And you said you didn't do it.

13 MR. SMALLS: ---I didn't do it. I didn't, um -- I
14 didn't have no---

15 THE COURT: That was a win/win for you. The pieces
16 don't fit, you're not making sense. That's not rational or
17 logical. If somebody tells me I can take a polygraph and if
18 I pass it I'm gonna dismiss the charges, then what you're
19 telling me now doesn't make sense.

20 MR. SMALLS: No, I -- I -- I said, 'cause I know if I
21 passed it, I -- I -- well, I assume that if I had passed it,
22 it wouldn't have been hold up; he still would have gone
23 forth. But if I had flunk it---

24 THE COURT: He said---

25 MR. SMALLS: ---he would use it against me.

1 THE COURT: ---he said if you passed it he was gonna
2 dismiss the charges.

3 MR. SMALLS: Yeah, but he -- he say what he -- I -- I
4 though it would-a been used against me if I got nervous, you
5 know? And that's why -- that's why I didn't---

6 THE COURT: Nervous doesn't make you flunk a polygraph.

7 MR. SMALLS: --I didn't know; I don't know anything about
8 a polygraph. I mean, um, far as the procedure and what they
9 do. Like when they hook up things to you---

10 THE COURT: Uh-huh---

11 MR. SMALLS: ---and---

12 THE COURT: ---measures your blood pressure---

13 MR. SMALLS: ---yes.

14 THE COURT: ---your pulse, your heart rate; uh-huh.

15 MR. SMALLS: Yes, that's what I say happening. So I
16 would be nervous on the situation.

17 THE COURT: They know how to measure that. They know
18 the difference between deceptive and nervous.

19 MR. SMALLS: I didn't know that. I -- that's why I say,
20 I saw it on T-V or whatever you can call it, and -- and I---

21 THE COURT: Well, T-V is entertainment.

22 MR. SMALLS: ---and I, um, I called -- like I say, I
23 done call my, um -- and I talk to my lawyer. Sometime after
24 that I talk, 'cause sometime when I meet him we wasn't even
25 talking. And I say -- and I talk about the whole situation.

1 And he -- and he -- we never got in -- got into no
2 conversation about that, um, the day that -- I talk to Voigt
3 all the time about the, um, the deal. I was talking to the
4 Solicitor myself.

5 (After pause.) And -- and -- and I -- he -- the day of
6 the -- the day of the plea, I -- I had to talk to him 'cause
7 he didn't even show up -- he didn't even show up at the plea.

8 I mean, when I offer that---

9 THE COURT: They scheduled it many, many times. And I
10 think that the reason it didn't go forward is because you
11 said you didn't want to plead guilty. I don't think it had
12 anything to do with whether Mr. Brown was there or not.

13 Are you telling me if Mr. Brown was there you were gonna
14 plead guilty that day?

15 MR. SMALLS: I could-a talked to him about it.

16 THE COURT: That's not my question. Are telling me
17 that you were gonna plead guilty that day? Don't be evasive
18 with me.

19 MR. SMALLS: No -- no, I -- I ain't saying that, but
20 I---

21 THE COURT: You were -- you were not gonna plead guilty
22 that day.

23 MR. SMALLS: Because I didn't know anything about what
24 they -- they come now they got new things that they saying
25 different. And it just like -- like it's just getting --

1 like now they're -- they're taking a situation different.

2 'Cause they'll -- it wasn't like nothing about no, um --
3 no microwave or none of these Pyrex or none of these things.

4 THE COURT: They didn't say anything about a microwave,
5 sir. They said they found---

6 MR. SMALLS: I -- I gave 'em Pyrex.

7 THE COURT: ---pots with residue.

8 MR. SMALLS: Yes.

9 THE COURT: And a whisk with residue.

10 MR. SMALLS: And Pyrex that -- they didn't even carry
11 Pyrex.

12 THE COURT: He didn't say anything about Pyrex; he said
13 pots and a whisk with residue.

14 MR. SMALLS: Well, pots, they ain't no pots at, um --
15 the pots that had---

16 THE COURT: Yeah, but---

17 MR. SMALLS: ---those are Pyrex.

18 THE COURT: ---it doesn't matter. Does it really make a
19 difference in the grand scheme of things whether they're
20 metal pots, Pyrex pots?

21 MR. SMALLS: (Incomprehensible mumble.)

22 THE COURT: Tell me what difference it makes to your
23 case and what difference it makes to whether you plead
24 guilty.

25 MR. SMALLS: Because I didn't had -- I don't -- I didn't

1 had all the facts. I didn't -- I---

2 THE COURT: So how would that change this plea?

3 MR. SMALLS: It's like I ain't got no one -- well, I
4 never---

5 THE COURT: I can't hear you. It's like what?

6 MR. SMALLS: I say I -- I feel like I don't have no
7 other. Like I say, me and him was going at it. I understand
8 that that doesn't -- that don't stop anything, but my -- I---

9 THE COURT: I need to know how that affects the big
10 picture.

11 MR. SMALLS: Affect the big -- if he had sit down and
12 talk and con- -- we had a -- had a conversation. I say, let
13 me know on -- I said now, we've never talked. I say look, we
14 need to -- like the -- like all these last -- last week, I
15 said man, look here, if you talk to me and let me know what
16 going on, we can, um -- and then we can, um -- I can
17 understand what we -- we doing. That's when he told me to
18 come on in and do that. But we -- we indulge in -- we been
19 talking and every time---

20 THE COURT: Did he go over everything with you?

21 MR. SMALLS: When -- when?

22 THE COURT: When you went to see him; when he said come
23 on in and talk to me.

24 MR. SMALLS: He went over -- he told me that the, um --
25 Sharonda's (phonetic)---

1 THE COURT: You're not listening to my question.

2 MR. SMALLS: I don't---

3 THE COURT: You said he didn't talk to you. Then he
4 told you to come on in and sit down and talk. So, I have to
5 assume you went to his office and talked 'cause you told me
6 that earlier.

7 MR. SMALLS: Yes.

8 THE COURT: All right; and so, when you-all sat down and
9 talked, did he go everything with you?

10 MR. SMALLS: He go over with some of the things. But,
11 uh, he didn't even had the, um, the test result or none of it
12 'cause I heard from Shabrona's lawyer and she told me -- and
13 he said that---

14 THE COURT: Mr. Brown, what did you go over with him
15 when he came to your office?

16 MR. BROWN: I went over all the discovery that I had,
17 which was the police report -- and, Your Honor, just --
18 before I answer that, um, this---

19 THE COURT: I don't want to go too far in privilege
20 either.

21 MR. BROWN: ---this -- no, well that's fine.

22 THE COURT: I don't want you to give me any real
23 specifics.

24 MR. BROWN: But, I talked to him every time he called
25 me---

1 THE COURT: Uh-huh.

2 MR. BROWN: ---and every -- and we'd talk.

3 THE COURT: Uh-huh.

4 MR. BROWN: Now, I went over everything we had in the,
5 uh -- in the -- that Mr. Voigt's office gave me from
6 discovery. I went over the police reports, I went over, uh,
7 the strategy that we were going to employ. I thought we had
8 something with the, uh -- with the -- the -- the wire not
9 being presented -- us not having access to the wire.

10 I thought I would -- I filed a Motion to Suppress in
11 regards to, um, the, uh, address not being correct. I went
12 over everything with him.

13 And, not only that, we went over everything again
14 yesterday and the day before.

15 THE COURT: Uh-huh.

16 MR. BROWN: So, you know, Your Honor, it's becoming
17 extremely uncomfortable for me, 'cause I'm being accused of
18 bringing him here in the last minute---

19 THE COURT: I don't believe that.

20 MR. BROWN: ---and then forcing him.

21 THE COURT: Yeah, I don't believe that.

22 MR. BROWN: Well, yeah, thank you.

23 MR. SMALLS: That's -- that's -- we filed a Brady on
24 that -- on -- on -- on that wire and everything to ask for
25 them to give us that---

1 THE COURT: They didn't have to give it to you, I just
2 told them to give it to you. They're only required to give
3 you things that will exculpate you -- in other words, that
4 will prove -- exculpate you; in other words, that would make
5 you seem innocent.

6 So they're really not required to turn it over to you.
7 They're not gonna use it. But, I still required them to give
8 it to us.

9 MR. SMALLS: You're saying they wasn't gonna to use it?

10 THE COURT: No, they don't plan to use any of it. They
11 don't even plan to use the confidential informant.

12 The only thing they plan to produce at trial is that
13 they had a search warrant and they found this stuff at your
14 house.

15 MR. BROWN: The Brady Motion was filed back in 2010.

16 THE COURT: Uh-huh.

17 MR. BROWN: Uh -- in May of 2010.

18 MR. SMALLS: So---

19 THE COURT: But I have made them give it to him even
20 though you aren't entitled to it just out of an abundance of
21 caution. I feel like people should have everything, so I had
22 them hand it over.

23 MR. SMALLS: Right. I mean, that's what -- and -- and
24 another -- that's another reason. If I had all those things
25 then I understand proceeding---

1 THE COURT: What difference would it have made?
2 Apparently the tape shows a deal going forward, correct?

3 MR. SMALLS: Right.

4 THE COURT: So how would that help you?

5 MR. SMALLS: Because I would-a taken him -- like you
6 said, they would-a been---

7 THE COURT: How would it have helped you; how would it
8 have proved your innocence?

9 (After pause) What does the tape show?

10 MR. VOIGT: The tape, Your Honor, is a, uh, is a --
11 is a -- a---

12 MR. BROWN: It's a audio tape.

13 MR. VOIGT: ---audio transmission---

14 THE COURT: Uh-huh.

15 MR. VOIGT: ---of a, uh, a drug deal where, you know,
16 narcotic terms are used. Uh -- you know, it's -- that, uh, I
17 had Mr. Brown listen---

18 THE COURT: Does it in any way exculpate the Defendant?

19 MR. VOIGT: No, uh, not as I know, Your Honor.

20 THE COURT: Did you listen to it?

21 MR. BROWN: I listened to it when we went outside.

22 THE COURT: Are the voices identifiable?

23 MR. BROWN: It -- it -- yes, ma'am. And there's --
24 there's no exculpatory, uh, features to that tape.

25 And, as a matter of fact, I---

1 THE COURT: And I made sure it was turned over---

2 MR. BROWN: You did.

3 THE COURT: ---because I did not want you to have any
4 concern at all that somehow it would prove your innocence.

5 MR. SMALLS: Yes, ma'am.

6 THE COURT: But apparently it doesn't.

7 MR. SMALLS: But we didn't had -- we -- I saw, because a
8 professional or -- or something on it -- on that tape, I know
9 I -- I didn't have no---

10 THE COURT: To do what? To prove it wasn't you? How?
11 It probably would have hurt you 'cause they would have got a
12 voiceprint. See, when you push -- you start pushing the
13 envelope like that, then The State would have requested a
14 voiceprint and they would have matched your voice to that
15 tape.

16 (After pause) Or, what would happen if your
17 voiceprint -- you paid all that money for an expert and
18 there's a voiceprint of you on -- and how would that have --
19 if your lawyer recognized your voice on the tape---

20 MR. SMALLS: That's why I say, my lawyer, he...

21 THE COURT: He's your advocate. What do you think
22 twelve folks who don't know you would think?

23 MR. SMALLS: Like I say, he -- he didn't have no --
24 we -- we just had problems from day to day. I didn't hear
25 it, and he went and go and hear it and -- and---

1 THE COURT: Here's the bottom line. I've spent far more
2 time with you than I should have. I've had a jury downstairs
3 since nine-thirty wasting their time. Now, you need to make
4 a decision; you either want to plead guilty today or you
5 don't.

6 If you don't plead guilty today, all deals are off. You
7 go back to thirds and face all that time. You go hire a
8 lawyer or we'll appoint somebody if you can prove you're
9 indigent.

10 That's the bottom line. You need to search yourself and
11 decide what you want to do. The Court takes absolutely no
12 position about it at all. Like I said before, if you can
13 live with it, I can live with it. It's your decision. You
14 got to search your heart and decide what you want to do.

15 Make sure it is, however, what you want to do because
16 whatever the consequences are, you will have to live with
17 them. And, there will be no alterations to those
18 consequences. Which means again, that the deal Mr. Brown has
19 worked out in your behalf, which is a substantial one, will
20 no longer be available to you under any circumstances. I
21 want you to be clear about that.

22 And if you are convicted -- which I'm required to look
23 at the worse case scenario -- you then would face the
24 mandatory minimums, uh, on thirds, which are substantial and
25 I've already explained those to you.

1 So, I need you to make a decision and decide what you
2 want to do. Whatever that decision is, I will abide by it.

3 Mr. Brown has indicated that he is ready to go to trial;
4 that he is prepared. I have no reason to, uh, discharge him.

5 And then, I'm inclined to go ahead and pick a jury and
6 go forward. It's a short case, it's not gonna take that long
7 to try. I think The State only has, uh, four or five
8 witnesses, most of which are chain witnesses which will go
9 very quickly.

10 The State probably can try its case in half a day?

11 MR. VOIGT: Yes, Your Honor.

12 THE COURT: And, Mr. Brown, how many witnesses would you
13 have other than your client?

14 MR. BROWN: Uh -- probably one if I'm not relieved as
15 counsel of record.

16 THE COURT: Uh-huh. And then we would deal with the
17 search warrant, which is the, uh -- the Motion to Suppress.

18 MR. BROWN: Yes, ma'am.

19 THE COURT: And we -- the audio thing is moot -- issue
20 is moot because I've required them to turn it over and you've
21 had the ability to listen to it.

22 MR. BROWN: I have listened to it.

23 THE COURT: And I would -- and as an Officer of The
24 Court, would there really be any basis for you to need to
25 hire an expert to examine that tape?

1 MR. BROWN: I -- not -- not in my opinion, no, ma'am---

2 THE COURT: Okay.

3 MR. BROWN: ---as an Officer of The Court.

4 THE COURT: Okay; I need to know what you want to do.

5 MR. SMALLS: I'm gonna plead.

6 THE COURT: Are you certain that's what you want to do?

7 MR. SMALLS: Yes.

8 THE COURT: Are you doing that -- and I -- I need to --
9 I -- I'm trying to remember which questions -- oh, I asked
10 you, sir, did you understand that we had a jury ready and
11 available to select if it was your desire to go forward with
12 a jury trial? And you indicated to me that you wanted to go
13 forward with the guilty plea; is that correct?

14 MR. SMALLS: Yes, ma'am.

15 THE COURT: I ask the question again, and I need you to
16 be, uh, honest and forthright. Uh -- have you been satisfied
17 with your lawyer's services?

18 MR. SMALLS: No.

19 THE COURT: Okay; I'm gonna relieve Mr. Brown. You need
20 to go hire a lawyer or either go downstairs and get screened
21 at the Public Defender's Office and decide whether you meet
22 their indigency requirements.

23 I'm advising you that all offers are withdrawn from The
24 State; they will no longer be offered to you. I wish you the
25 best.

1 MR. VOIGT: I'm gonna make an oral motion to increase
2 Mr. Smalls' bond, which I will supplement on the record.

3 THE COURT: Uh -- how much do you want to increase it
4 to?

5 MR. VOIGT: I would -- let's see. Uh -- right now he is
6 on a -- it looks to be a thirty thousand dollar surety. I
7 would request that it be seventy-five thousand.

8 THE COURT: And what would be the basis of that?

9 MR. VOIGT: Your Honor, I believe that he is
10 manipulative. This is -- this is my oldest non-homicide.
11 Uh -- this case has been going on since January, uh---

12 THE COURT: Let me ask another question. Mr. Brown, do
13 you feel qualified to go forward?

14 MR. BROWN: Your Honor, I -- I -- I -- I -- I mean, I'm
15 prepared. But, you know, I -- I mean, this is awkward for
16 me; this is extremely awkward, and I know that may not be a
17 legal standard for relieving me, but---

18 THE COURT: Do you feel he could communicate with you
19 about his defense? Is there anything more that he hasn't
20 told you already that you would need to know to go forward?

21 MR. BROWN: I -- I---

22 THE COURT: Would he be assist you (sic) -- be able to
23 assist you with cross-examining witnesses? Because I think
24 this is dilatory on his part. I think he's just trying to
25 put it off and I'm not inclined to put it off anymore. And,

1 lawyers not getting along with their clients really is not a
2 basis for me to -- because half the Public Defenders' clients
3 don't like them. I mean, I -- I can't have that -- that be a
4 barometer for me relieving folk.

5 MR. SMALLS: But that -- I -- I thought that was the
6 procedure you told me when I said if I was happy with him.
7 That's why I said no, because you said that wasn't important.

8 THE COURT: You said you weren't happy with him 'cause I
9 think you're dilatory and I think you're manipulative---

10 MR. SMALLS: I didn't know---

11 THE COURT: ---and I think you want to put this off.

12 MR. SMALLS: ---no, I want it to go forward with the --
13 the plea, but you -- you said I could-a say that.

14 THE COURT: You have to tell me you're satisfied with
15 your lawyer.

16 MR. SMALLS: Okay.

17 THE COURT: I can't -- I can't qualify your plea if
18 you're dissatisfied with your lawyer.

19 And I tried to help you understand the distinction
20 between being dissatisfied and you-all having an argument.

21 I have arguments with members of my family. That don't
22 mean I'm dissatisfied with them, it just means we have a
23 difference of opinion. But, at the end of the day we're able
24 to agree that we disagree and we still move on with our
25 program.

1 I disagree with my Secretary and my Law Clerk on a daily
2 basis, but we still all in the same office within a small
3 confined place and we still go out and eat, do whatever we
4 need to do, and move on with our day. We agree to disagree;
5 that is normal.

6 Unless you are cloned or the Borg from Star Trek, not
7 everybody thinks about things the same way. You're gonna
8 have differences in opinion. And what I'm trying to help you
9 understand is to draw the distinction between you having a
10 bumpy time with Mr. Brown and being dissatisfied in some
11 particulars with him regarding communication early on versus
12 him not doing his job. There's a very big chasm in those two
13 things.

14 Just because you-all had a disagreement does not mean
15 he's ineffective. I believe Mr. Brown's ready to try this
16 case; I believe he'll do a great job.

17 So, I need you to draw that distinction. If you cannot
18 draw -- 'cause you continue to answer my question that you
19 are dissatisfied with him. As long as you are dissatisfied
20 with him, that tells me then that you have a problem with
21 understanding what you're doing, where you -- and where you
22 are right now.

23 But, he has told me that he has gone over everything
24 with you. I think the real sticking point right now is that
25 you just aren't hearing what you want to hear. And what you

1 want to hear is not available; which is, that there is some
2 viable defense that's gonna get you acquitted. Or either,
3 some viable situation that's gonna allow you to get less of
4 an offer than what The State is willing to do right now. And
5 to some extent, you are the author or the architect of your
6 own situation.

7 (After pause) So, I need to know whether, in fact --
8 'cause I believe Mr. Brown. I have -- he's an Officer of The
9 Court; I have no reason -- I -- and the difference is, I have
10 experience with him, I don't have any experience with you.
11 He's never lied to me, he's never done a bad job on a case
12 before me. So, I have no reason to believe that somehow his
13 pattern would change.

14 Now, there are some lawyers who don't do a good job and
15 I know that going into it and their pattern doesn't change.
16 That's just who they are fundamentally. But, I've never had
17 that experience with him. So until he, as we say, tears his
18 pants with me, then I don't have any reason to believe that
19 he's gonna be any different.

20 So, based on my experience with him, I know he's gone
21 over the discovery with you; I know he filed all the Motions
22 he was supposed to prior to; I know he got all the discovery
23 he was entitled to, 'cause the Solicitor has an open file
24 policy. I believe he's gone over all of it with you.

25 I just think the problem right now is he can't tell you

1 what you want to hear. And, that is the source of this
2 conflict. And part of the problem is, to some extent, you
3 think you may know more than he does about the process and
4 how it's supposed to work. It's not a lawyer's job to tell
5 you what you want to hear. It's not a lawyer's job to do
6 what you tell 'em to do. That's the problem with watching
7 television.

8 It's a lawyer's job to do what is in your best
9 interest -- period. Even if you don't agree with it. The
10 law says a lawyer can employ strategy you don't even agree
11 with as long as it's in your best interest. All he's
12 required to do is tell you this is my strategy and this is
13 what we're doing even if you disagree with him and you get in
14 a big fight about it. He doesn't have to do what you tell
15 him to do if it's contrary to your best interest.

16 So what I need to know is, truly are you dissatisfied
17 with his services or are you just upset about some things
18 that happened along the way that, in the grand scheme of
19 things, really don't amount to affecting you at this point?

20 Because, ultimately, you had a better deal but you
21 rejected it on your own. And you had -- you didn't
22 communicate it to your lawyer. You can't blame Mr. Brown for
23 that.

24 As soon as Mr. Voigt offered you a first, you should
25 have got in your car and made a beeline over to Mr. Brown's

1 office. And even if you had to sit over there all day 'til
2 he got back or left him a message with one of his
3 secretaries, you should have fully discussed that with him
4 before you rejected it. But, your posture was I'm innocent,
5 I didn't do it, I reject it. That was your choice and you
6 can't blame that on Mr. Brown.

7 So, I need to know, from a fully informed prospective,
8 one, are you satisfied with his services? Has he done
9 everything you've asked him to do in this case? Is there
10 anything more you would have him to do right now that he
11 hasn't done? And, do you have any complaints about his
12 services? And if you can't answer those questions for me,
13 then what I'm probably gonna do is just go ahead and pick a
14 jury 'cause I believe he's ready to go to trial. And, these
15 are old Indictments; they need to be disposed of.

16 MR. SMALLS: I'm happy with him.

17 THE COURT: (After pause) Have you been satisfied with
18 your lawyer's services?

19 MR. SMALLS: Yes.

20 THE COURT: Has he answered all of your questions?

21 MR. SMALLS: Yes.

22 THE COURT: Has he done everything you've asked or
23 expected in representing you?

24 MR. SMALLS: Yes.

25 THE COURT: Is there anything more you would have him do

1 that he has not already done?

2 MR. SMALLS: Yes.

3 THE COURT: I'm sorry, say that one more time?

4 MR. SMALLS: Say that one more time.

5 THE COURT: Is there anything more you would have him do
6 that he has not already done?

7 MR. SMALLS: No.

8 THE COURT: Do you have any complaints about his
9 services?

10 MR. SMALLS: No.

11 THE COURT: Has anyone promised you anything or held out
12 any hope of a reward to cause you to plead guilty?

13 MR. SMALLS: No.

14 THE COURT: Has anyone used threats, coercion, force,
15 pressure, intimidation, or duress to cause you to plead
16 guilty?

17 MR. SMALLS: No.

18 THE COURT: Are pleading guilty freely and voluntarily
19 and of your own will?

20 MR. SMALLS: Yes.

21 THE COURT: Have you had enough time to make up your
22 mind about pleading guilty?

23 MR. SMALLS: Yes.

24 THE COURT: Sir, do you understand that The Court takes
25 absolutely no position as to whether you plead guilty or do

1 not plead guilty?

2 MR. SMALLS: Yes.

3 THE COURT: Do you understand that I take no position
4 one way or the other about whether you plead guilty or don't
5 plead guilty?

6 MR. SMALLS: Yes, I understand.

7 THE COURT: Do you understand that I will honor whatever
8 decision you make?

9 MR. SMALLS: Yes.

10 THE COURT: Okay; and knowing that, do you still wish to
11 plead guilty?

12 MR. SMALLS: Yes.

13 THE COURT: Because I ask those questions because I
14 don't want my, um -- uh -- uh -- ex- -- explanations to be
15 misinterpreted. I wanted to make sure, one, that you
16 understood the elements of what you're pleading guilty to.

17 And, I wanted to make sure that you understood what a
18 lawyer's job is.

19 Um -- and so, have -- I want to make sure that you have
20 not felt pressured in anybody (sic) -- way by what The Court
21 has said. Have you felt pressured in any -- any way by what
22 The Court has explained to you?

23 MR. SMALLS: No.

24 THE COURT: Sir, have you understood my questions?

25 MR. SMALLS: Yes.

1 THE COURT: Do you need to ask me about anything that
2 we've gone over?

3 MR. SMALLS: No.

4 THE COURT: Have you been absolutely truthful in every
5 answer that you've given to The Court?

6 MR. SMALLS: Yes.

7 THE COURT: Do you understand that you have the right to
8 appeal this guilty plea and sentence of The Court but that
9 you must do so in writing within ten days of today?

10 MR. SMALLS: Yes.

11 THE COURT: Do you understand that if you cannot afford
12 an attorney for that process that one will be appointed to
13 you at no cost?

14 MR. SMALLS: Yes.

15 THE COURT: I can't hear you.

16 MR. SMALLS: Yes I said -- yes.

17 THE COURT: Okay. Um -- I find there's a substantial
18 factual basis for the plea.

19 That the Defendant has entered the plea freely,
20 voluntarily, knowingly and intelligently.

21 That he has had the advice and assistance of Counsel,
22 with whom he's indicated to The Court he's satisfied, and I
23 will accept the plea.

24 If you-all could bear with me one moment, my Secretary
25 has an administrative matter she needs my -- to ask me about

1 and then we'll deal with sentencing.

2 (WHEREUPON, COURT RECESSED.)

3 (WHEREUPON, COURT RESUMED.)

4 BAILIFF: Order in The Court; all rise.

5 THE COURT: You may be seated; I appreciate your
6 patience.

7 Um -- in addition to finding, um, that there's a
8 substantial factual basis for the plea, I also find, based on
9 my review of this record, that Mr. Brown is competent. That
10 was adequately -- more than adequately prepared for trial.

11 Um -- based on my review of the Indictments, as well as
12 The Court's file that was available -- um, as I always review
13 those files prior to trial -- um, that, um, based on what was
14 negotiated, um, that it is substantial -- it substantially
15 inures to the benefit of the Defendant.

16 And more particularly that he was given the benefit of
17 the new Omnibus Reconciliation Act on the Proximity charge,
18 uh, which would not have been available to me absent
19 Mr. Brown's ability to have negotiated that with The State,
20 um, giving him a substantial exposure of ten -- a minimum of
21 ten years and a maximum of fifteen years and a fine of ten
22 thousand dollars.

23 In addition to that, he received a substantial benefit
24 of having the P-W-I-D cocaine base, which is 09-3226, um, nol
25 prossed.

1 I also find, for the record, that while another deal may
2 have been offered to the Defendant, it is clear from the
3 record that he entertained these discussions, um, in a
4 self-represented capacity with the Solicitor. And, on at
5 lease two occasions, um, adamantly rejected those offers of
6 his own volition, having made the decision not to consult
7 with Counsel, and that that had absolutely, um -- is no
8 reflection on Mr. Brown in that he would not have had the
9 ability, one, to have known about the offers until his
10 client, um, made him aware of those. And, absent his client
11 seeking some advice, would have had no independent obligation
12 to have, uh, given him advice about something he did not know
13 about.

14 But having made all of those observations, and having,
15 um, listened intently to, uh, the Defendant in this case,
16 the -- there -- although he may have had some disagreements
17 with his lawyer, I've not heard anything up to this point
18 that would rise to the level of him being prejudiced or
19 Mr. Brown's performance falling below an objective standard
20 of reasonableness or below any professional norms for, uh,
21 the profession.

22 In fact, unfortunately -- or fortunately -- because of
23 the difficulty of most criminal cases, it is not unusual for
24 clients and, um -- and their lawyers to have disagreements.
25 To have volatile disagreement, frankly. Um -- but at some

1 point, they're usually able to resolve those and come -- and
2 are able to, um, defend a case if necessary and, um, the
3 Defendants are able to assist in their, uh, defense.

4 And there's nothing that has been indicated for this
5 record, that while Mr. Brown has indicated it might have been
6 awkward for him, but there's nothing to indicate that his
7 client would not have had the ability to communicate with him
8 or to assist in his representation.

9 Is there anything further for the record from The State?
10 The Court has accepted the negotiated plea.

11 MR. VOIGT: Nothing, Your Honor.

12 THE COURT: Anything further, Mr. Brown?

13 MR. BROWN: Your Honor, um, not -- notwithstanding all
14 that has transpired heretofore and gone---

15 THE COURT: And I took a lot of time 'cause I felt it
16 was in, um, Mr. Smalls' benefit. I felt it was in his best
17 interest. That's really why I took all the time that I did
18 with basically walking him through this guilty plea.
19 Otherwise I would have curtailed it about ten minutes---

20 MR. BROWN: Yes, ma'am.

21 THE COURT: ---into it. Yes, sir?

22 MR. BROWN: Your Honor, we would -- we would simply
23 request that The Court accept the negotiated plea. And, um,
24 that would be the crux of our position.

25 THE COURT: Sir, is there anything you would like to

1 state for the record on your own behalf?

2 MR. SMALLS: No, ma'am.

3 THE COURT: Okay; sir, I have no hesitation in saying for
4 the record that you did what is in your best interest.
5 Sometimes even what is in your best interest is still a
6 bitter pill to swallow when faced with, um, as you often hear
7 people say, being between the rock and the hard place.

8 Um -- and unfortunately, um, under these facts and
9 circumstances there really were, um, very limited options.
10 But based on what, again, my review of this file and those
11 options that were available to you, I have no hesitation in
12 telling you that I believe that what you've done is in your
13 best interest.

14 And again, as I've, uh, told your lawyer, I spent a lot
15 of time -- one, I wanted you to understand the process. I
16 wanted you to be clear that you understood the elements of
17 what you were facing and what The State had to prove.

18 And in addition to that, I really wanted you to
19 understand what a lawyer's responsibilities are to a client.

20 But I also wanted you to, um, get the benefit of what
21 was a substantial deal -- deal to you. Um -- but if you
22 rejected that, again I would have honored it.

23 So, um, I wanted, uh -- that is why I took the
24 substantial amount of time that I did with you on this plea.

25 Based on the negotiated plea, sir, you are sentenced to

1 the State Department of Corrections for a period of eight
2 years on both offenses.

3 These sentences will run concurrent with one another.

4 You will get credit for any time that you've served,
5 pursuant to 24-13-40, to be calculated and applied by the
6 Department of Corrections.

7 Um -- did he have any pre-detention time, Mr. Brown?

8 MR. BROWN: Yes, it was, uh, about sixty days, Your
9 Honor I think.

10 THE COURT: Okay; and that was before he bonded out on
11 the surety bond?

12 MR. BROWN: Yes, ma'am.

13 THE COURT: Okay. So, sir, um, any records that you had
14 at the Charleston County Detention Center, those will be sent
15 to the Department of Corrections.

16 And again, when you are -- go -- I think when you go
17 through R and E, you'll probably meet with the person who
18 evaluates your case and who will, um, then tell you what
19 max. -- what you're looking at in terms of how much you will
20 serve, how much credit you're entitled to, and what your
21 potential max. out date is.

22 Yes, sir?

23 MR. SMALLS: Is there any way I can get an option to be
24 closer to home?

25 THE COURT: You know, I don't have any control over that

1 but you certainly can request it. And I've also asked that
2 they give you the A-T-U, which is the drug treatment unit;
3 um, that they give you the services of that.

4 MR. SMALLS: Okay.

5 THE COURT: Because, I do -- again, and I don't mean
6 this in any pejorative or sense to put you down at all, but I
7 do think you may need some drug treatment. Okay?

8 MR. SMALLS: Okay.

9 THE COURT: All right; thank you very much. Ma'am,
10 thank you very much.

11 (WHEREUPON, HEARING ENDED AT 11:50 A.M.)

12 *****END OF REQUESTED TRANSCRIPT*****
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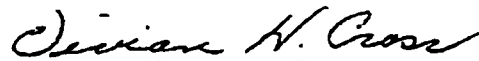
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE NINTH 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 GENERAL SESSIONS FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 5TH DAY OF OCTOBER 2011.

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

MARCH 31, 2012



VIVIAN H. CROSS
CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA

County of CharlestonAARON Smalls # 266595

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2011-CP-10-9603
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2011 DEC 29 PM 4:35
JULIE J. ARMSTRONG
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Livesay Correctional Institution, N4-18C,
P.O. Box 580, Una, South Carolina 29378
2. Name and location of Court which imposed sentence Charleston County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Shaonda Wright but
charges were dismissed against her.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Manufacturing 09-GS-10-03225
 - (b) Distribution 2ND 09-GS-10-03227

- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 5, 2011 8-years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Ineffective Assistance of Counsel claim and other
- (b) Constitutional issues ARE NOT DIRECT Appeal issues.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) (SEE ATTACHED)
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (SEE ATTACHED)
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) MUST exhaust STATE Remedies and Constitutional
 (b) Challenges must be made in a PCR not
 (c) direct Appeal

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? N/A
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Edward Brown, 146 Spring Street, Charleston, SC. 29403
(843) 577-7363
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. plea and sentencing
 ii. _____
 iii. _____

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

Vacate sentence and conviction

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

Revised 3/2003

STATE OF SOUTH CAROLINA

County of Charleston

VERIFICATION

I, Aaron Smalls #266595, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Aaron Smalls

SWORN to and subscribed before me this 8
day of December, 2011

Conni C. Martin (L.S.)
Notary Public

My Commission Expires: 8/29/15

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

I, Aaron Smalls # 246595, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Aaron Smalls
Applicant

SWORN or affirmed to and subscribed before me this
8 day of December, 2011.

Chris C. Smith
Notary Public

My Commission Expires: 8/29/15

GROUNDNS FOR RELIEF

I. APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

A defendant FACING CRIMINAL CHARGES is entitled to receive EFFECTIVE ASSISTANCE OF COUNSEL. Von Dohlen v. State, 360 S.C. 578, 602 S.E.2d 738, Reh. den., 544 U.S. 943, 125 S.Ct. 1645, 161 L.Ed.2d 511 (S.C. 2004). TO PROVE INEFFECTIVE ASSISTANCE OF COUNSEL AS A RESULT OF Counsel's bad Advice, the defendant must prove that his Attorney's conduct in advising him to plead guilty fell below objective STANDARDS OF REASONABLENESS and that but FOR the bad Advice, he would have declined to plead guilty. Moultrie v. United States, 147 F.Supp. 2d. 405 (D.S.C. 2001); Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007); Strickland v. Washington, 466 U.S. 668, 687-88 (1985). A "reasonable probability" that the outcome would have been different absent Counsel's deficient performance, is a probability that is sufficient to undermine confidence in the outcome OF the trial, Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005).

THE COURTS HAVE PREVIOUSLY HELD THAT "Failure to investigate" a case, State v. Sanders, 341 S.C. 386, 534 S.E.2d 696 (2002); Turner v. State, 335 S.C. 382, 517 S.E.2d 442 (1998); Tucker v. Ozmint, 350 F.3d

433 (4th Cir. S.C. 2003); Glover v. Miro, 262 F.3d 268 (4th Cir. S.C. 2001) (Failure to investigate was ineffective assistance of counsel), Failure to challenge the "search and seizure" or Failure to seek a "suppression hearing"; Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994) (Ineffective Assistance of Counsel for Failure to challenge Fourth Amendment violation based upon counsel's belief that officers actions were justified); Gantt v. State, 354 S.C. 183, 580 S.E.2d 133 (2003) (Failure to challenge validity of search warrant), and the Failure to recognize "possible defenses" or that "Lack of evidence" exists to convict. Tolliver v. United States, 563 F.2d 117 (4th Cir. 1977) (Mistake or neglect in Application of law); Adgett v. State, 324 S.C. 22, 484 S.E.2d 101, denial of habeas corpus vacated in part 175 F.3d 1815, Appeal from denial of habeas corpus 230 F.3d 1353 (1997) (Failure to challenge burglary indictment of BARN was ineffective assistance of counsel because BARN not a dwelling), are all considered assistance which falls below an objective standard of reasonableness.

Likewise, A defendant's undisputed testimony that he would not have plead guilty to the charges but for trial counsel's alleged misadvice is sufficient to prove that defendant would not

have plead guilty. Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006). Moreover, counsel cannot assert a trial strategy as a defense to ineffective assistance claim when the acts constitute an error of law or are inherently prejudicial. Mathews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002).

In the case sub-judice, had counsel conducted an investigation, he would have realized that the objects seized were not drugs. All the warrants suggest that the "samples" tested "presumptive" for cocaine. "Presumptive" is just another way of saying police "assumed", "suspected" or had a "suspicion" that the samples were cocaine, not that it was in fact cocaine. "Suspicion" and "speculation" does not rise to the level of "probable cause". Arizona v. Hicks, 480 U.S. 321, 326-27 (1987).

Even if they had been drugs and would support a distribution charge, there was no evidence to suggest Applicant was involved in the drugs "Manufacturing". (The manner in which drugs are packaged may suggest an inference that the possessor is involved in distribution, but the same evidence cannot support a manufacturing

Charge). The only evidence that "might" have suggested that Applicant was involved in "Manufacturing" would have been "if" the microwave had contained drug residue. However, the microwave WAS NOT SEIZED by police and was never subjected to any testing. (Police suggested that it also tested "presumptive" for drug residue but the police Report shows no test were ever conducted).

At best, it was merely a "suspicion" or an outright fabrication by police that the microwave was used in "Manufacturing" and a mere "suspicion," "speculation" or unsupported claim by police, is insufficient to submit the case to the jury. State v. Ballenger, — S.C. —, 470 S.E.2d 851, 853 (1996) (suspicion and speculation as to the guilt of the accused is insufficient to submit the case to the jury); State v. Gunn, — S.C. —, 437 S.E.2d 75, 81 (1993) (state may not prove guilt by stacking inference upon inference).

Counsel should have likewise recognized that finding "alleged" drugs on an "adjacent" property does not constitute "possession" or even "constructive possession" that would have justified submitting the case to the jury at the directed verdict stage. State v. Dennis, 321 S.C. 413, 420, 468 S.E.2d 674, 678

(1996); State v. Robinson, 306 S.C. 399, 412 S.E.2d 411 (1991) ("mere presence" near the contraband does not establish possession); State v. Kimbrell, 294 S.C. 51, 362 S.E.2d 630 (1987); State v. Maines, 273 S.E.2d 289, 294 (1981) (inference of dominion and control over objects can not arise if persons other than defendant have equal access).

Counsel should have also realized that three (3) years had passed and the state had attempted on several occasions to obtain a "true Bill" indictment and had been unable to do so due to the lack of evidence. This fact alone, should have been enough for counsel to recognize that he should not advise his client to plead guilty.

Likewise, the state attempted to suggest, and the plea judge was misled to believe, that Applicant was pleading guilty to distribution for selling drugs to an undercover informant which occurred on January 19, 2009, but Applicant was never arrested, charged nor indicted for that alleged prior bad act. The only active charges were for distribution and manufacturing that allegedly occurred on January 21, 2009 as a result of the alleged drugs that were found on an "adjacent" property, and as to these offenses, the state

had been unable to obtain a "true Bill" indictment. Counsel should have realized that his client was pleading guilty to a Factual basis in which his client had never actually been arrested or charged and should have advised Applicant not to plead guilty.

Moreover, had Counsel researched the law he would have discovered that a search warrant of the property based upon an unidentified informant's claim and untruthful allegations that evidence tested positive for cocaine when it did not, cannot be considered "probable cause" to justify the issuance of a search warrant. If the initial search warrant were invalid, then everything that occurred thereafter would be fruit of a poisonous tree, regardless of whether it were drugs or not.

Had Applicant been truthfully informed that the state had not recovered any drugs during the search, he would not have pleaded guilty. Had Applicant been informed that the state could not obtain a "true Bill" indictment, he would not have pleaded guilty to either offense. Had Applicant been informed that there was insufficient evidence to establish the "manufacturing" charge, he would

not have plead guilty to that offense and had he been correctly informed concerning his possible defenses and strength of his Fourth Amendment claim, he would not have plead guilty but instead would have went forward with a jury trial and suppression hearing.

"A DEFENDANT CLAIMING INEFFECTIVE ASSISTANCE OF COUNSEL by recommending guilty plea on the basis of inaccurate information was not required to show why further action by trial counsel would have benefited defendant or how there was a reasonable probability that the result would have been better; the focus should have concerned whether the defendant would have plead guilty had trial counsel accurately informed him of the situation."

Turner v. State, 335 S.C. 382, 517 S.E.2d 442 (S.C. 1999); Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977) (incorrect advice constitutes ineffective assistance of counsel if it induced the plea or otherwise prejudiced the defendant); Strader v. Garrison, 611 F.2d 61 (4th Cir. 1979) (conviction must be vacated when plea would never have been tendered had defendant been properly advised by attorney). For these reasons, Applicant was denied effective assistance of counsel.

STATEMENT OF FACTS

1. On or about January 19, 2009, an unidentified informant, who was facing drug charges himself, claimed the applicant had sold him cocaine. The applicant was never arrested, charged or indicted for this "alleged" illegal act because the "sample" turned out not to be cocaine.
2. Based upon that "alleged" sell however, on January 20, 2009, the North Charleston City Police "suspected" Applicant may have been involved in the drug trade and obtained a search warrant for Applicants home.
3. There was no indication that the informant was considered reliable, trustworthy, or that he had assisted police in other successful prosecutions. Moreover, police knowingly lied in the warrant affidavit and claimed that drugs had been purchased when in fact it had not tested positive for cocaine.
4. To constitute probable cause to justify the issuance of a warrant based upon information from an informant, there must be an indication of the informant's trustworthiness and truthfulness. *Illinois v. Gates*, 462 U.S. 213 (1983); *United States v. Wilhelm*, 80 F.3d 116, 119-20 (4th Cir. 1996) (no probable cause for search warrant when police relied on information from an unnamed informant, had no indication of the informant's truthfulness or reliability, and had little or no corroboration); *Franks v. Delaware*, 438 U.S. 154, 165 (1978) (Magistrate may not rely on false information to determine probable cause).
5. On January 21, 2009, Detectives with the North Charleston City Police Department, S.W.A.T. and A.T.F. came to Applicant's home and kicked in the door to search Applicant's home while he slept. Applicant was immediately placed in handcuffs and placed in the back seat of a locked patrol car. Based upon the search warrant police were authorized to "search" all "areas on the property." The Applicant demanded to know why he was in handcuffs, where the warrant was for his arrest and if they could not

produce one, to release him immediately. Officer Matthew Hughes stated, "we haven't finished searching yet. ~~We will find something to arrest you on before the day is over.~~"

6. The S.W.A.T. ^{and ATF} team searched the property for over an hour and found nothing. The ATF then searched the home for over an hour and found nothing. After two (2) hours of searching, Officer Matthew Hughes conducted another search and miraculously claimed that he had found drugs outside on an "adjacent" property and that drug residue was found inside a microwave. Based on these claims, Applicant was charged with Manufacturing (K-353411); (PWID, K-353412); and PWID within 1/2 mile proximity of a school (K-353413). Applicant never signed any waiver of rights form and never gave any statements or admissions to police.

7. Police did not seize the microwave to test to confirm their claim but the alleged drugs that police claimed to have found on an "adjacent" property were sent to SLED for testing and were not found to test positive for cocaine.

8. Applicant initially hired Attorney Sherry Crumme, who later was disbarred for an unrelated matter.

9. Applicant was appointed Lora Proctor by the indigent defense office, but she was relieved of counsel due to a conflict of interest. Applicant was then re-appointed Attorney Christopher K. DeScheres, who was an environmental lawyer, who had never handled a criminal trial and suggested that Applicant should hire a paid Attorney and allow him to act as co-counsel so he could learn how to do criminal cases. Applicant went and hired Edward M Brown and over the course of a year, Applicant paid him \$1,300.00 and owed him another \$2,200.00.

10. Prior to Plea Court, Applicant attempted to meet with Mr Brown and discuss his case, but Mr Brown refused to speak by phone, meet in person or conduct any investigation until Applicant paid the remaining \$2,200.00.

11. A few days later Applicant was required to appear in court. Mr. Brown did not show up for Plea Court and the case was postponed. Applicant spoke with the prosecutor and explained the situation. The Applicant stated that his counsel must not have shown up because he owed him \$2,200.00. The Applicant told the Solicitor that even though his counsel was not present, he wanted the Solicitor to know that he would not be pleading guilty because the search was unlawful and the alleged evidence in fact turned out not to be drugs. The Solicitor reviewed the reports and told Applicant not to worry about it because he "would dismiss the charges."

12. Applicant believes Mr. Brown sabotaged his case and asked the solicitor not to dismiss the charges because Mr. Brown had not collected the remaining \$2,200.00 and wanted the charges hanging over Applicant's head so he could guarantee the collection of the remaining money from Applicant.

13. On October 3, 2011, a few days before trial, Applicant and his employer, John Nelson, went to Mr. Brown's office. During that meeting Mr. Brown told Applicant that the reason the charges were not being dismissed is because the Solicitor claimed to have had some stuff sent off that was not tested by SLED and that the solicitor was waiting to get the results. Applicant told Mr. Brown that there were no other drugs or items taken that night that tested positive for drugs. Applicant told counsel that if he had investigated the case, he would know that. The police report does not mention any other items being taken, except those items listed on the inventory, which were not drugs according to SLED.

14. I am told that Rule 5 (a)(3) requires the state to provide discovery within (30) days and they have already provided my previous attorney with discovery and it was not mentioned anywhere.

15. Applicant said we are going to trial in two (2) days. I am not going to plead guilty. You need to investigate the case and seek a suppression hearing. Applicant paid Mr. Brown another \$1,000.00 to come to his home the following day and investigate a possible suppression hearing. At that time Applicant still owed \$1,200.00.

16. On October 4, 2011, the day before the scheduled trial date, Mr. Brown and his investigator met with Applicant and his employer at the Applicants home. Mr. Brown claimed that he needed to take pictures of the property in order to use them at trial or in a suppression hearing.

17. Mr. Brown did bring a camera, however he did not bring film. Mr. Brown asked Applicant and his employer to go buy a camera and to pay for development of that film. Applicants employer paid for the camera and development.

18. Applicants property was fenced and posted "Private Property Do Not Enter". Mr. Brown asked Applicant and his employer to take down the posted signs before he would take the photos. Applicant did not understand why at the time, but now believes counsel was trying to help the police and prosecution by showing the property was not posted and police could have entered the property, even without a valid warrant, and found the alleged drugs in plain-view. *United States v. Bellina*, 465 F.2d 1335, 1341-42 (4th Cir. 1991) (no unlawful search of evidence if it were viewable from a public vantage point); *United States v. Hersh*, 464 F.2d 228, 238 (9th Cir.), cert. den. 409 U.S. 1008 (1972); *United States v. Taylor*, 90 F.3d 903, 909 (4th Cir. 1996); *Horton v. California*, 496 U.S. 128, 136-37 (1990) (an essential predicate to the plain view doctrine is that police must be in a place with which they have a lawful right to be when they view the evidence); *Dicesore v. Stuart*, 12 F.3d 973, 978 (1993) (warrantless seizures of horses invalid because horses could not be seen until after

invalid warrantless entry onto suspects property.)

19. In fact, Mr Brown must have known that the warrant was insufficient (because the informant was unreliable and the samples were known not to be drugs) and that the drugs could not be seen from a public vantage point because police are not allowed to enter fenced and posted property without a valid warrant, *United States v. Tate*, 524 F.2d 449 (4th Cir. 2003) (Agent omitted fact that he had jumped fence and trespassed in order to obtain evidence); *Franks*, *supra*, at 165 (Magistrate may not rely on false information to determine probable cause), and was trying to help the state with its prosecution.

20. On October 5, 2011, Applicant appeared in court believing that he was going to have a trial or suppression hearing. Instead, counsel tried to get Applicant to plead guilty. Applicant asked for a suppression hearing, Judge Jefferson denied me one. She told me if I don't take this 8 years. That I would get 15 to 30 years, Then asked me how do I plea. I said "I want to go to trial. My lawyer pulled me out of the courtroom, saying that I needed to talk to my girlfriend. I went outside where we were fussing. I told him if he aint ready, we still going to trial. When we went back into the courtroom and I again told the judge that I wanted to go to trial. My lawyer again removed me from the courtroom. He called my girlfriend over to us and told her "if I didn't take the 8 years" I was going to get 15 to 30 years. He was trying to get her scared to convince me to plea. Now she said, she didn't want me to get 15 years. Now, I went to the phone to call a friend, After talking on the phone, I decided to go to trial and I told my lawyer my wishes. We again returned to the courtroom, My attorney yelled out "he is listening to a Jailhouse lawyer. The judge again^{did} asked how do I plea. The judge then told my lawyer to go listen to a audio tape recording. I asked to listen as well. The judge said no, your lawyer knows your voice. 5 minutes later my lawyer returns and yelled out "Yeah thats him". At that time I decided there was

no way I'm going to trial with this lawyer. So I proceeded to plea. Twice the judge asked me if I was happy with my lawyers representation each time I stated "no". Each time the process started over. Applicant was not happy with Counsels representation, especially considering counsel asked to be relieved. The judge denied the attorneys request and stated we are having a jury trial. Applicant took this to mean that the court was not going to continue the case. Applicant would not have time to hire another attorney - even if he could raise additional funds to hire one - and that the trial would proceed that day.

21. Applicant was under duress and did not want to go to a jury trial with his counsels representation, because Applicant suspected counsel did not know what he was doing, was not prepared, and had not adequately investigated the case, counsel had not spoken to witnesses and a trial would likely result in applicant receiving a lengthy sentence.

22. Applicant tried to get the court to conduct a suppression hearing but the judge refused. The judge said if you dont say that you are happy with counsels services and plead guilty, that I would go to trial and I would receive ¹⁵/₂₀ 30 years in prison.

23. Applicant by this time had become so frustrated and mentally brow-beaten that he could not think correctly. Applicant was not a lawyer, had never studied the law and had a detrimental reliance upon the advice of counsel that he had no defense and agreed to plead guilty and say that he was happy with counsels assistance in order to avoid a lengthy sentence. Applicant was convicted of Manufacturing (09-GS-10-03225) and Distribution 2nd (09-GS-10-03227) and sentenced to eight (8) years non-violent⁶⁵

24. Once Applicant arrived in prison and had access to law books, he began realizing that the law is very different than suggested by counsel and that the search warrant - based upon an unidentified

informant and untruthful claims that samples tested positive for Cocaine - are insufficient to constitute "Probable Cause" for issuing the warrant and that without a valid warrant, the so-called evidence could not be seen from a valid public vantage point and therefore do not fall under the plain view doctrine.

25. Applicant began to realize that the advice by Counsel was incorrect and he would not have pled guilty had he known he had this valid defense that could have resulted in the suppression of the subsequent alleged evidence regardless of whether it were claimed to be drugs or not.

12 $\frac{1}{2}$. Applicant went to the solicitor and Clerk of Court to have the Charges erase off his record, when he got there He found out that the Charges was still pending; so He called the solicitor out to talk to him; He said He was not dropping the Charges; I told him that there were no drugs at all

in my house, They said they found drugs in the microwave; but didn't take the microwave; They said they found 2 grams of cocaine in the yard, in nobody's possession. My friend (Nathaniel Carter) was talking to him about my case too; so he said, we'll see what will happen. After the first trial that was suppose to be in May, 2011, The Solicitor told the Appellate to come down to his office; when the Appellate got there the solicitor private investigator came to get me from the lobby; when I got to the office the solicitor asked the Appellate to take a lie-Detector test; the Appellate to him "NO"; Because he didn't know if he was talking about now or before, that he sold drugs so I ended the meeting.

RELIEF

These grounds FOR RELIEF PRESENT ISSUES OF FACT THAT ARE NOT CONCLUSIVELY REFUTED BY THE RECORD ALONE AND REQUIRE THIS COURT TO CONDUCT A PRELIMINARY HEARING. Chambers v. State, 262 S.C. 202, 206, 203 S.E.2d 426, 428 (1974); Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

Because a hearing will be necessary, Applicant REQUESTS THAT HE BE APPOINTED COUNSEL TO HELP HIM PREPARE FOR THE HEARING AS SOON AS PRACTICABLE. SEE: S.C.R. CIV. P. 71.1(d); and AN INTRODUCTION TO POST-CONVICTION REMEDIES; by John H. Blume, 15 SCLR 235, 252 (1994).

II. APPLICANT DID NOT KNOWINGLY,
Intelligently or voluntarily enter
A Guilty Plea because he was UNAWARE
OF THE alternative COURSES OF ACTION
Available to him.

THE entering of A Guilty plea Results in the waiver of several Constitutional Rights, therefore the DUE PROCESS Clause requires that defendants enter into the guilty plea voluntarily, knowingly and intelligently. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003). To be voluntarily, knowingly and intelligently entered, a defendant must have an understanding of the nature and consequences of the charge and plea, Joseph v. State, 351 S.C. 551, 571 S.E.2d 280 (2002); State v. Thomason, 355 S.C. 278, 584 S.E.2d 143 (2003). The defendant must understand the Constitutional Rights he is waiving by pleading guilty, Bell v. Evatt, 72 F.3d 421 (4th Cir. S.C. 2001) and he must be aware of the "alternative courses of action open to the defendant." State v. Lopez, 352 S.C. 373, 574 S.E.2d 210 (2002) (plea must be intelligent choice among alternatives available to a defendant); United

States v. EDWARDS, 8 Fed. Appx. 258, appeal from denial OF POST-CONVICTION RELIEF United States v. Hall, 71 Fed. Appx. 985, CERT. den. 125 S.Ct. 512 (SC 4th Cir. 2001). PCR Judges often focus on the defendants admissions and statements made at the guilty plea hearing and the plea Judges instructions concerning the waiver of rights and possible maximum sentences allowed and may accept the truth of these admissions. Moultrie v. United States, 147 F.Supp.2d 405 (D.S.C. 2001). However, a knowing, intelligent and voluntary plea encompasses much more than suggested by most PCR Judges. Post-conviction courts often overlook whether or not the plea was entered with a full understanding of the "possible alternative courses of action available to the defendant," Lopez, supra.

The question of whether the defendant understands that other defenses exist, other courses of action are available to the defendant OR that the defendant might have the right to have evidence suppressed, is often NOT PART OF the plea colloquy transcript.

In the case sub-judice, Applicant was NOT INFORMED by counsel that there was no evidence to support a manufacturing charge AND that if Applicant proceeded to trial, it is likely that he would be entitled to directed verdict of ACQUITTAL.

Applicant WAS NOT told that the state "did not really have" a second sample that tested positive for drugs that was allegedly found during the search of his home and that if he proceeded to trial, it too would likely be subject to directed verdict of ACQUITTAL.

Applicant WAS NOT told that over the past three (3) years the state had attempted on several occasions, to get a "true Bill" indictment but had been unable to do so.

Applicant was specifically instructed by counsel that he had NO valid Fourth Amendment claim to warrant a suppression hearing or the exclusion of the evidence. This belief was bolstered by the Judge's refusal to conduct a suppression hearing. This act by the Judge could only be taken by Applicant as further evidence that he had NO search and seizure claim that could lead to the suppression of the evidence.

The Judge also failed to realize that there was no factual basis for the plea. The Judge believed the solicitor's claim that Applicant had sold drugs to an undercover informant - who was wired - was sufficient background to justify the charge. The Court failed to realize and Applicant's counsel failed

to set the Judge straight, or otherwise inform the COURT or Applicant, that Applicant had never been arrested, charged or indicted for that alleged act, but rather the basis of the charges against Applicant was a result of the seizure of a sample from an "adjacent" property that turned out not to be drugs at all. Had the Judge understood this, there would have been no factual basis for the charge, conviction or plea. State v. Rikard, 371 S.C. 295, 638 S.E.2d 72 (2006) (There must be a factual basis for the plea).

Had Applicant been correctly informed concerning the possible alternative courses of action available to him, he would not have plead guilty but would have proceeded to trial and a suppression hearing. Any reasonably intelligent and competent ATTORNEY would never allow their client to plead guilty under the facts of this case. The misadvice concerning these alternative courses of action available to Applicant, establishes that his plea was NOT knowingly, voluntarily or intelligently made.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	C/A No. 2011-CP-10-9603
Aaron Smalls, #266595,	)	
Applicant,	)	
vs.	)	AMENDED APPLICATION FOR
State of South Carolina	)	POST-CONVICTION RELIEF
Respondent.	)	

FILED
2013 NOV 21 AM 9:18
JULIE J. ARMSTRONG
CLERK OF COURT

Under Rule 15(a), South Carolina Rules of Civil Procedure and South Carolina Code §17-27-50, the Applicant moves to amend the original pleadings filed with this court in order to more fully conform the pleadings with the evidence.

DISCUSSION

The Applicant would respectfully show this Court that Applicant's conviction, sentence, and custody are in violation of the Constitution and laws of the United States, and were obtained through violations of Applicant's Sixth and Fourteenth Amendment Rights to the effective assistance of counsel. These rights, made applicable to the states through the doctrine of incorporation, are fully outlined in Gideon v. Wainwright, 83 S.Ct. 792 (1963), and its progeny.

The Fourteenth Amendment Due Process Clause and the Sixth Amendment Right to Counsel Clause have been recognized as important elements to a criminal defendant's fundamental rights to a fair and impartial trial. See, e.g., Powell v. Alabama, 287 U.S. 45 (1932). Access to a reasonably competent attorney is

necessary in order for an accused, who has no knowledge of the law and the rules of evidence, to have "ample opportunity" to defend himself. Adams v. United States ex rel. McCann, 317 U.S. 269, 275 (1942).

In order for a defendant to obtain relief as a result of the ineffective assistance of counsel, the accused must show that his attorney did not render legal assistance within the range of competence of attorneys in criminal cases according to prevailing professional norms. Strickland v. Washington, 466 U.S. 668, 689-91 (1984). The accused must also show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., at 694.

The Applicant was denied the effective assistance of counsel, in violation of the Fourteenth Amendment Due Process Clause, and the Sixth Amendment right to Counsel Clause, as promulgated in the tenets of Strickland v. Washington, 466 U.S. 671, 104 S.Ct. 2052 (1984), and therefore Applicant's conviction and sentence should be vacated.

- I. THE APPLICANT'S CONVICTION, SENTENCE AND CUSTODY ARE IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND WERE OBTAINED IN VIOLATION OF APPLICANT'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL, IN THAT COUNSEL FAILED TO CONDUCT AN ADEQUATE INVESTIGATION OF THE RELEVANT FACTS AND LAWS GOVERNING THE APPLICANT'S DEFENSE

The Sixth and Fourteenth Amendments impose on counsel a duty to conduct a reasonable investigation into the law and facts underlying a client's charged offense, because reasonably effective assistance must be based on professional decisions, and informed legal choices can be made only after an investigation of the options. "In other words, counsel has a duty to make reasonable investigations, or make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. 671, 104 S.Ct. 2052 (1984).

Counsel's failure to conduct a reasonably adequate investigation resulted in substantial prejudice to the Applicant's defense in the following particulars:

1. Counsel rendered ineffective assistance in that he failed to investigate the facts and evidence surrounding the Applicant's charged offense, in that the State possessed no viable evidence with which to convict the Applicant. Neither the micro-waive, utensils, or pans were tested for residue deposits, and therefore were inadmissible as evidence.
2. Counsel rendered ineffective assistance in that he failed to investigate the facts, evidence, and circumstances surrounding the Magistrate's issuance of the Search Warrant. The affidavit supporting the search warrant was based upon fabricated evidence, and therefore the State lacked probable cause to request the search warrant.
3. Counsel rendered ineffective assistance in that he failed to investigate any theory of innocence, notwithstanding the

Applicant's protests that he was innocent of the charged offense of manufacturing cocaine base; such innocence having been supported by the evidence and witnesses.

II. THE APPLICANT'S CONVICTION, SENTENCE AND CUSTODY ARE IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND WERE OBTAINED IN VIOLATION OF THE APPLICANT'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL, IN THAT COUNSEL'S REPRESENTATION RENDERED THE APPLICANT'S GUILTY PLEA UNKNOWNING AND INVOLUNTARY

A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntary nature of his plea only by showing that (1) counsel was ineffective and that (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have plead guilty, but would have proceeded to trial. Counsel's representation rendered the Applicant's guilty plea unknowing and involuntary in the following particular respects:

1. Counsel rendered ineffective assistance in that he failed to seek a suppression hearing in order to challenge the evidence used by the State to support the charge of manufacturing cocaine base.
2. Counsel rendered ineffective assistance in that counsel fraudulently asserted that the State had tested additional substances seized at the Applicant's residence, and those

substances proved to be cocaine. Counsel used this false information to compel the Applicant's guilty plea.

3. Counsel rendered ineffective assistance in that he stated in open court that he, counsel, could not adequately defend the Applicant at trial, and that counsel could not adequately protect the Applicant's interests.
4. Counsel rendered ineffective assistance in that he failed to object to the trial court's repeated coercion of the Applicant to plead guilty.
5. Counsel rendered ineffective assistance in that he, counsel, failed to withdraw the Applicant's guilty plea, when the Applicant affirmatively stated in open court that he, the Applicant, wished to proceed to trial,
6. Counsel rendered ineffective assistance in that counsel failed to allow the Applicant to listen to the audio tape of an alleged undercover drug buy; such audio tape having been used to compel the Applicant to plea guilty.
7. Counsel rendered ineffective assistance in that counsel continued with the Applicant's guilty plea, after the Applicant stated repeatedly in open court that he was not satisfied with counsel's representation, and that counsel had failed to diligently act as Applicant's advocate. As the Applicant pled guilty, a motion was before the Court, made by counsel, to withdraw as the Applicant's attorney.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Aaron O. Smalls, #266595,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

C/A No. 2011-CP-10-9603

CERTIFICATE OF SERVICE

2013 NOV 27 AM 9:16
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

I hereby certify that I have this date served upon the Respondent a true copy of Petitioner's AMENDED APPLICATION FOR POST-CONVICTION RELIEF, by personal service directly to the hand of the Respondent.

Dated: 11-21-13
 Ridgeville, South Carolina

/s/ Aaron O. Smalls
 Aaron O. Smalls, #266595
 MacDougall, C.I.
 1516 Old Gilliard Road
 Ridgeville, SC 29472

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-10-9603
COUNTY OF CHARLESTON	)	
	)	
Aaron Smalls,	)	
S.C.D.C. No. 266595,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

RETURN

FILED
2012 JUN 21 PM 12:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY *[Signature]*

In response to the post-conviction relief application filed December 29, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted at the April 2009 term of the Charleston County Grand Jury for possession with intent to distribute cocaine base within proximity of a school (2009-GS-10-3227) and manufacturing cocaine base (2009-GS-10-3225). Edward M. Brown, Esquire represented the Applicant.

On October 5, 2011, the Applicant pled guilty. The Honorable Deadra L. Jefferson sentenced the Applicant to concurrent terms of eight (8) years imprisonment on each charge. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Counsel failed to properly investigate the case.
 - b. "Applicant believes Mr. Brown sabotaged his case and asked the solicitor not to dismiss the charges because Mr. Brown had not collected the remaining \$2200.00 and wanted the charges hanging over Applicant's head so he could guarantee the collection of the remaining money from Applicant."
 - c. Counsel met with Applicant the day before trial was scheduled to take pictures of Applicant's property but forgot to bring film.
 - d. "Applicants property was fenced and posted 'Private Property Do Not Enter.' Mr. Brown asked Applicant and his employer, to take down the posted signs before he would take the photos. Applicant did not understand why at the time, but now believes counsel was trying to help the police and prosecution by showing the property was not posted and police could have entered the property, even without a valid warrant, and found the alleged drugs in plain-view."
 - e. "Once Applicant arrived in prison and had access to law books, he began realizing that the law is very different than suggested by counsel and that the search warrant- based upon an unidentified informant ... is insufficient."
2. Involuntary guilty plea.
 - a. Applicant asserts that he was forced into pleading guilty based upon various circumstances surrounding his interaction with the Court and his counsel on the day of trial. These numerous grounds are outlined in great detail in Applicant's PCR application.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

~~The Respondent submits the Applicant cannot satisfy either requirement of the Strickland~~

v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at

1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

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

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

The Respondent denies each allegation not expressly admitted, qualified or explain

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

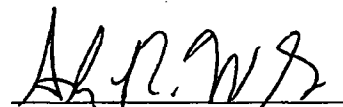
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ASHLEIGH WILSON
Assistant Attorney General

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

By:


Attorneys for Respondent

_____, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2011-CP-10-9603

AARON SMALLS, #266595)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

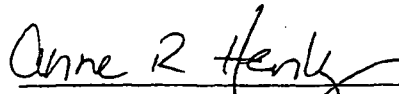
AFFIDAVIT OF SERVICE BY MAIL

2012 JUN 21 PM 12:50
 JUDGE J. ARMSTRONG
 CLERK OF COURT

FILED

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

Tommy A. Thomas, Esquire
 PO Box 88
 Irmo, SC 29063

DATED this 20th day of June, 2012


Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

AARON SMALLS,) TRANSCRIPT OF RECORD
APPLICANT,) 2011-CP-10-9603

V.)

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

NOVEMBER 21, 2013

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE STEPHANIE P. MCDONALD, JUDGE

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

TOMMY A. THOMAS, ESQUIRE
ATTORNEY FOR THE APPLICANT

ASHLEIGH R. WILSON, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE STATE

SHARON L. VIZER
CIRCUIT COURT REPORTER

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1 Thursday, November 21, 2013

2 MR. THOMAS: Good morning, Your Honor.

3 THE COURT: Good morning. Good to see you.

4 MR. THOMAS: Your Honor, I'm Tommy Thomas. I'm
5 here with Mr. Smalls --

6 THE COURT: Wait one second. Hold on. I can't
7 hear when you're talking. What is that here for?

8 THE APPLICANT: Well, I'm bringing this because I
9 want to submit an audio tape into evidence, too.

10 THE COURT: Well, I doubt that but we'll see. All
11 right. Let me hear from your lawyer.

12 This is Mr. Tommy Thomas here on plaintiff of Aaron
13 Smalls.

14 MR. THOMAS: That's correct, Your Honor.

15 THE COURT: And I've already read the transcript.
16 It was a negotiated plea. He even received the benefit
17 of the omnibus statute that did not apply at the time yet
18 he's here on a PCR. So tell me, Mr. Thomas, why that is.

19 MR. THOMAS: Your Honor, if it please the Court.
20 We're actually here on a motion hearing.

21 THE COURT: Okay.

22 MR. THOMAS: Aaron has filed a motion for me to be
23 relieved, which I have consented to.

24 THE COURT: Of course you have.

25 MR. THOMAS: Yes, ma'am. And basically, I guess

1 it's just a disagreement in regards to how to present the
2 case. He is now out. He is out on parole. He still
3 wishes for me to be relieved from the case, and he still
4 wishes to proceed at --

5 THE APPLICANT: Pro se.

6 MR. THOMAS: Pro se at a later date. I've
7 explained to him that it would have to be scheduled
8 probably for next term, and that's kind of the status,
9 Your Honor. I have -- it's been a while since I looked
10 at everything but I had it prepared at one time.

11 I'll be more than happy -- I just need to make sure
12 that everything, if the Court grants the order -- the
13 motion, I just need to make sure that everything is
14 scanned into our system so we have a copy of it. I'll be
15 more than happy to provide my trial notebook and the file
16 to him.

17 THE COURT: Oh, I'm sure you will. I know you
18 would love to be relieved. As I said, I've read the
19 transcript. I made several notes. The main one was
20 Mr. Smalls was very evasive repeatedly with Judge
21 Jefferson.

22 So if you think you're going to get away with that
23 today I have a different story for you, sir.

24 Let me hear from the attorney general about whether
25 she consents to Mr. Thomas being relieved and if she does

1 we will go through what you will need to do in order to
2 represent yourself pro se with your ineffective
3 assistance claim despite the fact that Mr. Brown did a
4 very effective and professional job for you.

5 Yes, ma'am?

6 MS. WILSON: May it please the Court, Your Honor.
7 Ashleigh Wilson for the State of South Carolina. We
8 don't take any position on whether or not Mr. Thomas
9 should or shouldn't be relieved. I understand they've
10 been trying to make that happen for a while but the State
11 is ready here to proceed so...

12 THE COURT: Has the case been continued before?

13 MS. WILSON: Your Honor, I believe it's been
14 scheduled a couple of times before and we've been trying
15 to get it on for the motion but it's been one of those
16 things where, you know, the judge who was the -- his
17 judge was the presiding judge of the term and things like
18 that, so we've been trying to get it scheduled.

19 MR. THOMAS: Your Honor, the merits has never been
20 continued, Your Honor. It's just the motion hearing has
21 been continued a couple of times, generally for conflicts
22 because of the presiding judge was also the judge who
23 heard the case.

24 THE COURT: Okay. Well, let me ask Mr. Smalls a
25 few questions about -- do you understand what it means to

1 proceed pro se, sir?

2 THE APPLICANT: Yes.

3 THE COURT: That means you'd be representing
4 yourself, right?

5 THE APPLICANT: Yes.

6 THE COURT: And you've heard that old quote about
7 the man who represents himself has a fool for a lawyer?
8 You've heard that, correct?

9 THE APPLICANT: Yeah, I heard that.

10 THE COURT: But you still think you're comfortable?

11 THE APPLICANT: Yes.

12 THE COURT: All right. Do you understand about the
13 rules of evidence and the rules of hearsay? I have a
14 little question about that since you walked in here with
15 a tape recorder type CD player that we don't really allow
16 here, so explain to me why you are competent to represent
17 yourself.

18 THE APPLICANT: I feel I'm competent because I have
19 done a lot of research. I looked over my old case and I
20 feel that I can go forward on my case.

21 THE COURT: Anything on that point, Mr. Thomas?

22 MR. THOMAS: Your Honor, the only thing and I think
23 that's probably maybe the root of this -- some
24 disagreement, is that, yes, he has. He's been very
25 active in his case. He does seem to understand the basic

1 principles of post-conviction. He and I talked about
2 that. You know, as far as competency to go forward, he
3 is probably more competent than most of the clients I've
4 represented who have, you know, no skill in the law
5 whatsoever. That would be my position, Your Honor.

6 THE COURT: Okay, sir. Mr. Smalls, have you ever
7 been treated for any kind of mental illness or disease?

8 THE APPLICANT: No.

9 THE COURT: Do you take any kind of prescription
10 medication?

11 THE APPLICANT: No.

12 THE COURT: Are you under the influence of anything
13 today that could confuse you or make it difficult for you
14 to understand what we are doing?

15 THE APPLICANT: No.

16 THE COURT: You understand that if I relieve
17 Mr. Thomas I will not appoint another lawyer for you?
18 You will be representing yourself.

19 THE APPLICANT: Okay.

20 THE COURT: I'm sorry?

21 THE APPLICANT: Yes.

22 THE COURT: You do understand that?

23 THE APPLICANT: Yes.

24 THE COURT: Okay. Explain to me why you think
25 whatever tape you brought with you this morning is

1 something that the Court would admit into evidence. What
2 is it?

3 THE APPLICANT: Okay. I have me and Mr. Brown, I
4 was in his office with Lawyer John Nelson. He made
5 fraudulent statements telling me that they had additional
6 drugs. That's the only reason that I pled to the
7 charges, and I have that on audio tape right now.

8 THE COURT: You taped Mr. Brown?

9 THE APPLICANT: Yes.

10 THE COURT: You didn't tell that to Judge Jefferson
11 at the plea hearing. I didn't see that in the record.

12 THE APPLICANT: Well, Judge Jefferson, like I
13 said -- like, what I want to say about that transcript, I
14 have problems with the transcript from the start. It is
15 not the way it was that it happened and I want the audio
16 tape of the trial -- of the plea thing. You will see
17 that it wasn't like how it is in the transcript.

18 THE COURT: What's your legal basis for contending
19 that you might be entitled to the audio tape?

20 THE APPLICANT: Because it's not -- it's not
21 truthful. It's not --

22 THE COURT: What about it isn't truthful?

23 THE APPLICANT: Like, I asked for a trial from the
24 start. I mean, as soon as we're going in there

25 Ms. Jefferson -- I mean, Jefferson asked me how I want to

1 plea. I told her I want to go the trial.

2 Numerous of times I told them that I don't trust my
3 lawyer. My lawyer tried to bail out five time in the
4 trial proceeding. He also said if I go to trial he's not
5 going to do his best.

6 THE COURT: He told you that?

7 THE APPLICANT: He told me. That's all in the
8 transcript.

9 THE COURT: Okay. I don't believe you. I've read
10 the transcript. And I do, however, believe that you are
11 competent to represent yourself and that I can tell from
12 the way that I read -- and I marked it. I have all kinds
13 of little flags and things that I found interesting in
14 the transcript of you trying to pull one over on Judge
15 Jefferson, and she was very, very patient with you.

16 But I certainly sympathize with Mr. Thomas and his
17 attempt to work with you. So I will relieve him and we
18 will continue this, but what we're going to do is set it
19 for that administrative term that I have with the other
20 case that's going to take quite a bit of time.

21 Since I've already read everything and read the
22 transcript and heard about your tape -- and if you want
23 to leave it or if you have a copy I'm happy to listen to
24 it. We'll see if it comes into evidence or not. But we
25 will set that for -- I think it's that first week in

1 January.

2 MS. WILSON: Okay.

3 THE COURT: And that way we avoid running up on
4 another term that might have the trial judge and we'll
5 quit putting this off indefinitely, and I will not
6 subject another judge to this. So I will see all of you
7 all except Mr. Thomas, who I'm happy to relieve.

8 MR. THOMAS: Thank you.

9 THE COURT: You are very welcome.

10 Ms. Wilson will send you notice. Mr. Smalls, make
11 sure that we have your proper address.

12 THE APPLICANT: Okay.

13 THE COURT: You will receive by mail notice in
14 writing of when the hearing will be.

15 What day of the week of that first week of January
16 did we pick?

17 MS. WILSON: I think it's -- we didn't pick a day
18 yet. Mr. Polzin was going to go check. I think it's the
19 week of -- Don Michel said it was the week of the sixth.

20 THE COURT: It is the week of January 6th. Let's
21 make sure that we have your address, that Ms. Wilson has
22 your address. Why don't you give it to us for the record
23 now. Your address, Mr. Small?

24 THE APPLICANT: Yes. I'm getting a PO box that I
25 have. He has it. I don't have --

1 THE COURT: You don't know what your PO box is?
2 THE APPLICANT: No.
3 THE COURT: Where are you living?
4 THE APPLICANT: I've living on Ray Street.
5 THE COURT: Who do you live with?
6 THE APPLICANT: My mother.
7 THE COURT: You would rather it go to the PO box
8 than to your address? You'd rather it go to --
9 THE APPLICANT: Yes, because it's a problem with --
10 THE COURT: Okay. Well, we want to make sure you
11 get it.
12 MR. THOMAS: Your Honor, if it please the Court.
13 THE COURT: Yes, sir.
14 MR. THOMAS: I'm sorry.
15 THE COURT: No problem.
16 MR. THOMAS: It was in the other file. The post
17 office box is 20271.
18 THE COURT: 20271.
19 MR. THOMAS: Yes, ma'am, and that's Charleston, and
20 the zip code is 29413.
21 THE COURT: 29413. So that's Mr. Aaron Smalls, at
22 Post Office Box 20271, Charleston 29413.
23 Is that right, Mr. Smalls?
24 THE APPLICANT: Yes.
25 THE COURT: All right. We will send you notice of

1 the hearing. You be here. Do you have a CD or something
2 you want to leave for me?

3 THE APPLICANT: Yes.

4 THE COURT: Okay. And is that an extra copy?

5 THE APPLICANT: Yes. I got plenty of this.

6 THE COURT: If you want to hand it on up I will
7 make it an exhibit, a court's exhibit.

8 MR. THOMAS: Thank you, Your Honor.

9 THE COURT: And we'll make sure the AG gets a copy
10 of it and Mr. Brown gets a copy of it.

11 THE APPLICANT: Okay. Thank you.

12 THE COURT: Yes, sir.

13 MR. THOMAS: Your Honor, if it please Court.

14 THE COURT: Wait one second. She's got to mark the
15 exhibit as Court's 1 then I'm happy to hear from you.

16 (WHEREUPON, Court's Exhibit Number, a CD, was
17 marked and made a part of the record.)

18 MR. THOMAS: Your Honor, if it please the Court.

19 THE COURT: Wait one second.

20 MR. THOMAS: I'm sorry. Also, I will send a copy
21 of my trial notebook and the file to the same post office
22 box.

23 THE COURT: That would be wonderful, or you can
24 give it to him and if you want to send me the order, the
25 proposed order relieving you, or I'm finding you're

1 relieved right now, whatever you need for your file.

2 MR. THOMAS: Yes, ma'am.

3 THE COURT: I know you would like to have that.

4 MR. THOMAS: Yes, ma'am. Thank you so much.

5 THE COURT: All right. Let's put one more thing on
6 the record that I just have a question about.

7 Mr. Smalls, you've already done the time on this;
8 is that correct?

9 THE APPLICANT: Yes.

10 THE COURT: I'm sorry?

11 THE APPLICANT: No, I haven't done it. I have two
12 parole up to 2019.

13 THE COURT: Okay. So you're not fished with your
14 parole yet?

15 THE APPLICANT: No.

16 THE COURT: Okay. I'm just trying to figure out
17 what you accomplish even if you do prevail.

18 THE APPLICANT: Well, basically this is a situation
19 that I feel that he shouldn't do that to no one, but what
20 he did -- I have heard of -- when I was in jail I heard
21 three other people say the same thing that he did --

22 THE COURT: Okay.

23 THE APPLICANT: -- so I'm just going for me and
24 whoever, you know, other people.

25 THE COURT: All right. Well, we'll see you the

1 first week of January.

2 THE APPLICANT: Okay. Thank you.

3 THE COURT: You're welcome.

4 MR. THOMAS: Thank you, Your Honor.

5 THE COURT: Happy Thanksgiving.

6 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

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I, Sharon L. Vizer, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 21st day of September 2013.

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

October 3, 2014

s/Sharon L. Vizer

SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)

THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

DOCKET NO. 2011-CP-10-9603

AARON SMALLS)

Plaintiff)

vs.)

STATE OF SOUTH CAROLINA)

Defendant)

TRANSCRIPT OF RECORD

January 10, 2014

Charleston, South Carolina

B E F O R E:

THE HONORABLE STEPHANIE P. MCDONALD, JUDGE

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

AARON SMALLS

Pro se Plaintiff

ASHLEY R. WILSON, ESQ.

Attorney for the State

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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1 PROCEEDINGS

2 THE COURT: Good to see everybody. All right,
3 Mr. Smalls, we are here on your PCR and it's my
4 understanding that you want to proceed as your own
5 attorney ---

6 MR. SMALLS: --- yes ---

7 THE COURT: --- correct?

8 MR. SMALLS: Yes.

9 THE COURT: And we went over your rights with you
10 about that and discussed the risks and your knowledge and
11 I found that you were fully competent to proceed as your
12 own attorney correct?

13 MR. SMALLS: Yes.

14 THE COURT: Is that still what you want to do
15 today?

16 MR. SMALLS: Yes.

17 THE COURT: All right. Then let's go ahead and get
18 started. Ms. Wilson, do you want to put anything on the
19 record before we get started?

20 MS. WILSON: Your Honor, if you wouldn't mind I'll
21 call the case and the State would also ask if you would
22 advice Mr. Smalls again on the remedy of post conviction
23 relief.

24 THE COURT: I will be happy to do that.

25 MS. WILSON: This is Aaron Smalls versus the State

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1 of South Carolina, 2011-CP-10-9603. Mr. Smalls was
2 arrested on January 20th, 2008. He was indicted by the
3 Charleston County Grand Jury on April 2009.

4 He was indicted for Possession with Intent to
5 Distribute Cocaine Base within the Proximity of a School
6 and that was indictment number 2009-GS-10-3227, third
7 offense. He was also indicted for Manufacturing Cocaine
8 Base which is indictment number 2009-GS-10-3225 and that
9 was also a third offense.

10 He was also indicted for Possession with Intent to
11 Distribute Cocaine Base indictment number 2009-10-3226
12 and that was ultimately nolle prossed. But he pled
13 guilty on October 5th, 2011 before Judge Jefferson and he
14 pled guilty to Possession with Intent to Distribute
15 Cocaine Base within the Proximity of a School.

16 I believe that was knocked down from a third offense
17 to a first offense and the Manufacturing Cocaine Base was
18 knocked down from a third offense to a second offense I
19 believe. And he was ultimately given eight years on each
20 charge concurrent.

21 THE COURT: All right. Mr. Smalls, I'm going to
22 go ahead and get you to raise your right hand for me.

23 [Whereupon, the witness is duly sworn by the court]

24 -----
25 AARON SMALLS,

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1 Having been first duly sworn,
2 Was examined and testified as follows:

3 EXAMINATION BY THE COURT

4 THE COURT: Sir, I have reviewed your transcript of
5 the guilty plea before Judge Jefferson. And as she
6 explained to you I'm going to try to explain to you.
7 Don't interrupt me. If you interrupt me I'm going to
8 hold you in contempt. If you interrupt her I'm going to
9 hold you in contempt, do you understand?

10 MR. SMALLS: Yes.

11 THE COURT: Okay. She explained to you what you
12 were facing and as I understand it there was a jury
13 impaneled qualified ready for y'all to select for your
14 particular case and to go forward with the trial.

15 She gave you multiple breaks to consult with your
16 attorney, to talk to your girlfriend and you changed your
17 mind and decided that you wanted to enter a guilty plea.
18 And what you ended up doing was accepting the State's
19 negotiated plea offer of eight years.

20 Had you gone forward to trial it's my understanding
21 that certain of your offenses were third offenses. You
22 were facing some significant mandatory minimum time and
23 Judge Jefferson went over all that on the record. She
24 was extremely patient quite frankly on the record with
25 you. Now, a lot of people I think have a

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1 misunderstanding when they come to court about what
2 happens when a PCR is granted. If you win today all that
3 means is that you get to go to trial on those charges and
4 you still face -- they can be tried as third offenses;
5 some of them. Do you want to tell him what's left to be
6 tried on Ms. Wilson? I know he have indictment 3775 and
7 I think or 3225 or 3227.

8 MS. WILSON: Also, Your Honor, I believe that would
9 be ---

10 THE COURT: --- would 3226 go forward? I think
11 that was nolle prossed ---

12 MS. WILSON: --- nolle prossed which wouldn't go
13 forward -- which couldn't go forward.

14 THE COURT: So you would be tried on the three
15 indictments as they were indicted. And only one was
16 amended to change a typographical error. But do you
17 understand the mandatory minimum sentences you will be
18 facing on those third offense indictments?

19 MR. SMALLS: Yes.

20 THE COURT: All right. For example, for third
21 offense Possession with Intent to Distribute Cocaine Base
22 if you were convicted and you'd had a jury trial you
23 would face a mandatory minimum of fifteen years and a
24 maximum of thirty and a minimum fine of 50,000 dollars.

25 Do you understand that?

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1 MR. SMALLS: Yes.

2 THE COURT: All right. And on the Possession with
3 Intent to Distribute Cocaine Base within the Proximity of
4 a School that particular charge, being a subsequent
5 offense, that mandatory minimum would be ten years, the
6 max is fifteen, and the fine would be 10,000 dollars. Do
7 you understand that?

8 MR. SMALLS: Yes.

9 THE COURT: All right. The third indictment, the
10 one that was nolle prossed you would also be facing that.
11 You got at deal that was less than any of the mandatory
12 minimum fines that you could have been facing on one
13 charge, do you understand that?

14 MR. SMALLS: Yes.

15 THE COURT: So if you win today that's what you
16 win. I don't know if that's what I would call winning or
17 not but do you understand that?

18 MR. SMALLS: Yes.

19 THE COURT: And you want to go forward.

20 MR. SMALLS: Yes.

21 THE COURT: All right. Anything else you want to
22 advise him or have me advise him of before we get
23 started?

24 MS. WILSON: Nothing, Your Honor.

25 THE COURT: All right. Sir, Mr. Smalls, it's your

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1 application. I'm happy to hear anything you want to tell
2 me but you need to call your first witness. And you need
3 to stand up when you address the court.

4 MR. SMALLS: Okay. I'd like to call myself up.

5 THE COURT: Okay.

6 MR. SMALLS: And go through some questions and when
7 I ask my question I'll just say question.

8 THE COURT: No, you're not going to do that. You
9 can tell me what you want to say. We're not going to
10 have a question and answer with yourself. You're under
11 oath; everything you say is under oath, okay.

12 MR. SMALLS: Okay.

13 THE COURT: I'm happy to read anything you want me
14 to look at. But you just need to tell me why it is you
15 think you received ineffective assistance of counsel, why
16 it is you think your guilty plea that Judge Jefferson
17 spent an amazing amount of time on was not knowing,
18 intelligent, or voluntary and why you are entitled to
19 relief, sir.

20 TESTIMONY

21 MR. SMALLS: Okay. Basically I went inside the
22 courtroom.

23 THE COURT: Okay.

24 MR. SMALLS: I informed Judge Jefferson that I
25 wanted to go to trial.

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1 THE COURT: Yes, sir.

2 MR. SMALLS: Mr. Brown told me that -- well, I need
3 to go back because -- I apologize.

4 THE COURT: That's okay.

5 MR. SMALLS: Mr. Brown told me that they had
6 additional drugs that they never tested; 37 grams that
7 was tested. And if I go to trial they would charge me
8 with trafficking. He kept on saying that so the second
9 time -- so he carried me out -- he had some issues so we
10 went outside.

11 We went again and when we came back in Judge
12 Jefferson asked me how I was going to plea. I told her I
13 wanted to go to trial. He pulled me outside again and
14 told me that that was not in my best interest to go to
15 trial.

16 I tell him you supposed to be my Judge -- I mean my
17 lawyer. You're supposed to be doing what I want to do.
18 Well, so he then got angry and told Sharonda Wright what
19 I was ---

20 THE COURT: --- now who is Sharonda Wright?

21 MR. SMALLS: Sharonda Wright is right here
22 [indicates].

23 THE COURT: That's your girlfriend?

24 MR. SMALLS: Yes.

25 THE COURT: Okay.

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1 MR. SMALLS: Told her that if I don't take this
2 plea what I you know what I was looking for. And she
3 told me she didn't want me to get that much time. So I
4 talked to someone on the phone so he changed me and
5 turned around and told her he said -- he came in out
6 there and said I was talking to jailhouse lawyers or
7 whatever the case may be inside the courtroom.

8 So he turned around and told me -- what he said --
9 he told me if I -- I told him that you know that I wanted
10 to go forward but they wouldn't allow me. What the
11 transcript was saying is not true. If you get the
12 audiotape you can hear everything. It didn't go the way
13 that they saying it went down.

14 When we got in there they -- I was ambushed. A plea
15 shouldn't take 89 pages or 80 something pages for a plea.
16 I didn't want a plea. I told them I felt I had no
17 choice. I told them when they asked me if I was happy
18 with Mr. Brown I tell them no when they had me to plea.
19 And three times I told them that.

20 I said -- I told Mr. Brown -- Mr. Brown say he
21 wanted to recuse himself three or four times. He said if
22 I go to trial he was not going to do his best. That's
23 on...

24 THE COURT: Okay. I'm happy to -- I've got the
25 transcript right here ---

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1 MR. SMALLS: --- the transcript I think it was on
2 65 or somewhere around there ---

3 THE COURT: --- all right.

4 MR. SMALLS: He told me if I go to trial he is not
5 going to do his best. So right then that was all I was
6 thinking -- I tell him I had gone another time and I said
7 I felt I had no choice because every time I come -- then
8 Judge Jefferson told me that the evidence was sent to
9 SLED and come to find out it was never sent to SLED.

10 And Mr. -- I think it's on page 30 Judge Jefferson
11 said -- I think it was Judge Jefferson on page 30 when
12 she confirmed and said that those things sent to SLED but
13 it wasn't ever backed up by facts; supported by facts.
14 The page I think before that I think Voigt ---

15 THE COURT: --- okay, let me just stop you a minute
16 because I want to make sure I understand what you're
17 telling me.

18 MR. SMALLS: Okay.

19 THE COURT: I'm looking at page 30 and you're
20 talking about not having anything in the microwave or in
21 the Pyrex dishes and the court said on page 30, that's
22 Judge Jefferson [Reading] You understand however those
23 things were found and they were tested at SLED and there
24 was residue of drugs on those items. And you said yes,
25 ma'am.

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1 MR. SMALLS: I didn't say that.

2 THE COURT: That's what the transcript says.

3 MR. SMALLS: That's what I'm saying. The
4 transcript -- the audio would explain it better than the
5 transcript. The whole transcript is switched around like
6 when she asked me about going by -- asking me how long I
7 -- when I went to school and all of that all of those
8 things was at the end. Those things was not at the
9 beginning.

10 THE COURT: What difference does that make?

11 MR. SMALLS: I mean I'm just saying how the
12 transcript manipulated; everything has been switched.
13 And then -- I'm just saying that the whole -- if you
14 listen to the audio you will see that. When I went there
15 he didn't care what I say. He just straight up just
16 ambushed me when I got into court. When we went to his
17 office I talked to him on October 3rd.

18 THE COURT: Let me just stop you for a minute
19 because I need to warn you about something. I hear you
20 saying that the tape says something different. I don't
21 know if the tape is available. I don't know that you're
22 entitled to the tape but I'm happy to listen to it. If I
23 listen to it and it doesn't back up what you say, you're
24 going to prison for perjury. Do you understand that?

25 MR. SMALLS: Perjury? That tape have to say that

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1 because that's what happened.

2 THE COURT: All right. Okay, keep going.

3 MR. SMALLS: I went in there the first time we gone
4 in there all I -- he called and brought me in there. I
5 was going -- can I demonstrate? He came through the
6 door. I thought I was going to sit down. He brought me
7 to the podium in front of Judge Jefferson. He said how
8 you plea or what do you want to do today or whatever --
9 how that was said -- how I plea. I said I want to go to
10 trial.

11 THE COURT: Yes, sir. And that's in the
12 transcript. I got that.

13 MR. SMALLS: He told me that Judge Jefferson -- I
14 can't recall exactly what she said but he said Judge
15 Jefferson -- you know can I speak to -- my lawyer wants
16 -- my client wants to go outside or something like that;
17 he needs to speak to me or whatever the case is we went
18 outside. That's how everything started but those things
19 how they -- Sharonda Wright was there too. She was --
20 she's a witness to all these same situations too.

21 THE COURT: Well, you know what? We're getting
22 ready to put her under oath too and talk to her.

23 MR. SMALLS: Okay. And I mean I wanted a
24 suppression hearing from him way before we even was going
25 to trial. I had to write one like less than a week

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1 before we went to court because he wouldn't do one right
2 then. He wanted to wait to the same day. And I mean I
3 felt we should have did this a long time ago. He
4 shouldn't wait to the last minute to put this in for me.
5 I'm trying to you know trying to go through the
6 procedures on what I have to do to get -- you know to do
7 it.

8 THE COURT: Sure.

9 MR. SMALLS: And the next thing I know I had -- I
10 guess like you said I went down to the last moment. And
11 all I was trying -- all I just wanted is a fair trial and
12 I was sure that the things that they're saying that they
13 found wasn't true. They didn't find anything in the
14 microwave and they never tested nothing because they
15 never -- I wasn't even -- they had me in the back of the
16 police car and they grabbed -- they threatened to carry
17 my child to DSS if I don't do what -- they tell that I
18 going to lock me up.

19 THE COURT: Who threatened that?

20 MR. SMALLS: The officer.

21 THE COURT: Okay. I just want to make sure the
22 record is clear. Thank you.

23 MR. SMALLS: The officer. And I was just going
24 through all -- you know everything that was going on. So
25 I was telling Mr. Brown; hey these things didn't happen

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1 like this. The alleged informant -- he didn't even try
2 to suppress to see how reliable he was. He didn't do
3 anything even though -- he didn't even went and
4 investigate anything. I asked him when he -- he came
5 outside and look around and take pictures. Well, I had
6 to buy the camera because he said he ran out of funds. I
7 went and bought a camera at the Walgreens and brought it
8 and he took the pictures.

9 I gave -- the week before that -- I mean that
10 Wednesday I was supposed to meet him in his office since
11 I didn't have the rest of his money. I gave him 1,000 --
12 I mean I told him I didn't get paid yet that I don't --
13 he told me that -- so when I went to go see him he was
14 not there.

15 So I got called home because the Tuesday before that
16 I talked to him on the phone. I sent my cousin Darren
17 Washington to get my paperwork from him because I was
18 going to try to get another lawyer because he's not -- he
19 wasn't doing anything you know. Then everything was too
20 late. I waited to the last minute.

21 I know that falls on me because I should have been
22 more knowledgeable of the law and know what paperwork to
23 write and everything, but I tried. But he basically
24 wouldn't do anything I asked him to do. We went to his
25 office -- I go with John Nelson. He was running a little

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1 late; he was at work and so...

2 THE COURT: Now who's that?

3 MR. SMALLS: John Nelson is my witness.

4 THE COURT: John Nelson.

5 MR. SMALLS: He was at the office on October 3rd and
6 October 5th.

7 THE COURT: Okay.

8 MR. SMALLS: And when he came in there he told us
9 that they tested -- that Mr. Voigt is saying that 37
10 grams of cocaine and it came and tested positive for
11 cocaine. So how they can test it now positive -- I mean
12 test that now and they didn't have it in my Rule 5. He
13 said that he sent it and it tested positive.

14 So I asked him for the thing -- I asked him I said
15 well I said where's the paperwork? He said he ain't
16 going to ask for it. Well, he is not going to ask for
17 that because if he asked for it he would be bringing that
18 into evidence, which is on an audio tape that part right
19 there that he's saying that if he brings it he would have
20 to bring it into evidence.

21 And I was like I mean well, you're not going to
22 explain what's going on. So I'm just like -- I don't
23 want to be ambushed like I told him on audio. I said I
24 don't want to be ambushed or running into any new
25 situation. When I came -- when I gone to him on the 5th

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1 he talked calmly and he talked like he was with me. Soon
2 as we got in that room he like changed to another whole
3 person. He went -- he went -- I don't even know what to
4 call it. I mean I was like I'm trying to fight for my --
5 you know fight to stay out here and you're telling me
6 that they got additional drugs now -- all confused up,
7 pressure and everything boiling up, getting nauseated and
8 everything and now I'm in here for about two hours inside
9 the courtroom; two to three hours somewhere around there.
10 And I'm standing here trying to just keep on trying to
11 play but finally after me being beat down by being in
12 here I finally break down and plea.

13 I mean I keep on trying to present but I'm by
14 myself. I ain't got my lawyer even on my side to even
15 help me. He is then telling me that he is not happy with
16 me wanting to go to trial. Then the next thing when I
17 plea he's says he's happy with it.

18 I'm trying to go to court -- I'm going to try to go
19 to trial and then I just walked -- and then he -- on one
20 occasion I said I felt I had no choice because he's not
21 helping me. He tried to bail out on me five times. He
22 said he wants to be relieved. I mean at that time I was
23 like I thought they was going to do something -- get a
24 continuance and everything but you know after that I was
25 so out of it I done blacked out. I ain't know what

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1 happened after that. I'm not even going to lie; I don't
2 know what happened. I know at the end I plea.

3 THE COURT: And so you did plead it then?

4 MR. SMALLS: Yes, I plead to that yes, ma'am.

5 THE COURT: All right. Have you already gone to
6 SCDC and done the sentence? What...

7 MR. SMALLS: I did two years of the sentence. I've
8 got a long parole time over my head.

9 THE COURT: Okay.

10 MR. SMALLS: 2019.

11 THE COURT: Got you. What else you want to tell me
12 on direct examination? You get to call your witnesses
13 still.

14 MR. SMALLS: Okay.

15 THE COURT: And the Attorney General gets to cross-
16 examine you. But what do you -- you want to look at your
17 notes to make sure you told me everything you want to
18 tell me?

19 MR. SMALLS: Could I look?

20 THE COURT: Go ahead and take a look at them.

21 [Whereupon, Mr. Smalls reviews his documents]

22 MR. SMALLS: Okay. It's kind of better now
23 because I've got the transcripts and everything.

24 THE COURT: All right.

25 MR. SMALLS: Counsel stated in court that -- on

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1 page 46 line 18 to 21 he should not be representing me.

2 On 46, 21 Brown stated motion to be relieved as counsel.

3 THE COURT: On what line?

4 MR. SMALLS: On 46.

5 THE COURT: 46?

6 MR. SMALLS: Yes. 46 and then line 18 to 21 was the
7 first one, Brown stated that he should not be
8 representing me. On 46, 21 to 24 Brown stated motion to
9 relieve counsel. 55 -- on page 55 line 4 to 7 Brown
10 moves to relieve counsel. 56 line 25 to page 57-3, Brown
11 stated that Smalls was not getting -- was not getting
12 counsel's best service -- that he would not do his best.

13 THE COURT: Which page was that?

14 MR. SMALLS: Its 56, start at 56 line 25 and 57
15 line 3 -- end on line 3. And then again on 72, 14 to 17
16 counsel wished to be relieved as counsel again. And then
17 right here on these pages I rejected the plea offer on
18 page 3 line 13, on 8 line 23 Smalls -- I rejected the
19 plea. 25, line 7, 26 to 20 Smalls does not agree with
20 the State's facts. Then I got 28 to page 29 line 15 I
21 does not agree again with the State's facts of what they
22 are saying. 31, line 5 that I said that I felt I had no
23 choice.

24 THE COURT: Okay. I read the whole transcript,
25 sir, I have. And the Appellate Court will have the whole

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1 transcript.

2 MR. SMALLS: He should have withdraw the guilty
3 plea after I kept on telling him what I wanted it and he
4 wouldn't do anything for me. He failed to investigate
5 anything, I mean the microwave, the witnesses. He didn't
6 even -- even though you won't see the reliability of the
7 witness or anything. He didn't do anything for me.

8 THE COURT: Okay. Well, he got you an amazing plea
9 offer. But you're saying he didn't do anything else for
10 you?

11 MR. SMALLS: Yes, ma'am. Well, it wasn't what I --
12 I wanted to go to trial. That's what I wanted. I mean
13 he might have did that but for two years of saying -- he
14 saw that I didn't want it but he wouldn't do what do you
15 call it -- no suppression hearing or anything.

16 I had Sherry Crummey before that, I had Lori
17 Proctor, I had -- I forgot the other man's name. Sherry
18 Crummey got disbarred and then I got Ms. Proctor. Ms.
19 Proctor felt that it was a conflict of interest because
20 Sharonda Wright was inside the courtroom so they appoint
21 me an environmental lawyer who don't know anything about
22 the court about a criminal case.

23 So I had to run out and got Edward Brown a year
24 before that because now they got me with an environmental
25 and he's telling me that he don't know anything. That he

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1 will be willing to sit second chair. And I'm like I
2 don't need nobody to sit second chair who don't know. I
3 need somebody who can help me. So I couldn't bring this
4 and plead my case to the court and get them to get
5 another attorney for me but like I said I have no
6 knowledge of the law until a little right now. I don't
7 have too much of it right now but I'm trying to do as
8 good as I can.

9 THE COURT: Okay. What else?

10 MR. SMALLS: Just that -- and the evidence that
11 they said at the beginning they said that they came in
12 for an alleged sale but they never tested -- they never
13 tested the drugs that they said that was -- this
14 happened, the drug sale allegedly supposed to happen on
15 the 17th of '09.

16 This charge happened in '09 not '08. The paperwork
17 is saying '08 on there but this charge happened in '09.
18 It happened in '09. They said that the informant came
19 and made a purchase but they never submitted no drugs or
20 anything to confirm these things here. None of those
21 things were supported. It wasn't never tested by SLED or
22 anything.

23 And so that's been a fruit from a poison tree
24 because that was the real reason that they came to the
25 house, I mean came there for that. None of those things

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1 was never -- I was trying to tell him we needed
2 suppression and we needed to get these -- but he never --
3 he just told me no news is good news. Every time I talked
4 no news is good news. So I waited patiently thinking
5 this is the right thing to do and the next thing I know
6 I'm in trial.

7 I talked to Mr. Voigt you know because he called me.
8 It was a -- Mr. Brown failed to come to one of the plea
9 times so I talked to Mr. Voigt. And he told me -- I'm
10 going to let it because we've already been through that
11 and he is saying he didn't say it so I'm not even going
12 to go into that again.

13 It's just like I talk to him, he says something and
14 then the next thing he reneged and saying he didn't say
15 it so. But I mean I'm just -- I was just going through
16 all these things and then these policemen saying that --
17 they said that I told them that they had -- that I put
18 drugs there. I never told them that I put drugs right
19 there or anything.

20 THE COURT: Okay. Stop for a minute. Sir, what
21 we are here to talk about today is whether the guilty
22 plea you entered was knowing, intelligent, and voluntary.
23 We're not here to try your case, okay. So what else do
24 you want to tell me about that? And you need to
25 understand that I've reviewed the transcript; I've

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1 actually reviewed it more than once. What else do you
2 want to tell me about that day and what made that plea in
3 your mind not knowing, intelligent, and voluntary? I
4 think you've told me everything but I want to make sure
5 you cover everything you need to cover.

6 MR. SMALLS: I was just trying to go to trial and
7 all the things that was going on and him trying to bail
8 out on me, I mean get off the case, and me wanting to go
9 to trial and everything. And then after I found out that
10 things wasn't the way it was once I get to prison then I
11 -- you know now I know and it wasn't knowingly,
12 intelligent because I ---

13 THE COURT: --- because the jailhouse lawyers told
14 you that?

15 MR. SMALLS: No, because I went to the court -- I
16 mean the law books and I see some of the things that he
17 was saying wasn't true. That's all I can say.

18 THE COURT: Okay, thank you.

19 MR. SMALLS: Thank you.

20 THE COURT: Any cross-examination?

21 MS. WILSON: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. WILSON:

24 Q. Mr. Smalls, do you recall how many times you met
25 with Mr. Brown before you pled guilty?

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1 A. That week or?

2 Q. The whole time he represented you?

3 A. I think about five times. I came and made some
4 payments on sometimes but I'm not sure...

5 Q. Did you talk to him on the phone about your case?

6 A. Yes, I talked -- well I talked and when I asked him
7 about it he would tell me no news is good news. But he
8 ain't really -- he ain't talk about no -- what is going
9 on.

10 Q. Okay. Did he talk to you about the discovery he
11 received from the State and the evidence that the State
12 had against you?

13 A. He talked about it. He never told me anything about
14 it. He told me he had it but he never told me ---

15 Q. --- okay, I'm sorry to interrupt you but it's just a
16 yes or no. Did he review the discovery? I mean like did
17 he go over the police reports with you? Did he show you
18 all the evidence the State had? Did he go over the
19 statement that the police said you made and that type of
20 stuff?

21 A. No. When we went there he just did look at the
22 papers. We had John Nelson there; that was on October
23 3rd and 5th.

24 Q. So did you look at the papers or no?

25 A. He gave me the paper because I sent my cousin Darren

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1 Washington in. But like I say I didn't -- I don't know
2 what I'm looking at.

3 Q. So he gave you a copy of the discovery?

4 A. Yes, he gave me it, yes.

5 Q. And did you discuss with him possible defenses and
6 what kind of strategy y'all could present at trial?

7 A. Well, yes we talked about that on October 5th.

8 Q. Did you give him any witnesses or people to
9 investigate?

10 A. No.

11 Q. And when it came shortly before it was time to plead
12 guilty did y'all talk about a plea offer from the State?

13 A. He waited -- he told me the -- the plea deal was on
14 the table. I don't want to say the wrong thing. Mr.
15 Brown came to me when we was talking about I wanted to go
16 to trial he went on Monday while we was talking -- the
17 Monday before October 3rd.

18 I didn't even ask him about no plea. He told me --
19 he called Mr. Voigt and the plea was off the table. And
20 I told him I don't know -- I didn't know why you even
21 called Mr. Voigt about the plea because I told you I
22 wanted to go to trial.

23 He said well anyway it doesn't matter -- no matter
24 because it's off the table. On October 5th I mean he
25 waited until that morning to tell me I have to take the

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1 eight years or I'm going to jail for a long time. He
2 just -- like I said he just turned into another person.

3 Q. Okay. Do you recall telling Judge Jefferson who
4 you pled guilty in front of that you wished to plead
5 guilty?

6 A. Yes.

7 Q. Do you recall agreeing with the facts that the State
8 presented?

9 A. Later I denied it.

10 Q. But ultimately at some point you told the court that
11 you agree?

12 A. Yes.

13 Q. Do you recall waiving your constitutional rights to
14 -- do you recall waiving your constitutional rights --
15 that you were pleading guilty?

16 A. Yes.

17 Q. In those constitutional rights do you recall your
18 right to a jury trial?

19 A. Yes.

20 Q. And your right to remain silent?

21 A. Yes.

22 Q. And your right to confront witnesses?

23 A. Yes.

24 Q. Do you recall ultimately at the end of your guilty
25 plea telling the court that you were satisfied with Mr.

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1 Brown's representation?

2 A. After a while I did -- I told them I wasn't happy
3 with him about three or four times.

4 Q. Okay. But before the conclusion of your guilty
5 plea you told the court you were satisfied?

6 A. Yes.

7 Q. Do you recall being advised by Judge Jefferson about
8 the penalty for the charges you were facing?

9 A. Yes.

10 Q. You advised her -- do you recall her telling you
11 about the elements of all the charges and what the State
12 had to prove?

13 A. Yes.

14 Q. Do you recall telling the court that nobody had
15 promised you anything to plead guilty?

16 A. Yes.

17 Q. Do you also recall the court -- telling the court
18 that you weren't threatened or coerced by anyone to plead
19 guilty?

20 A. Yes.

21 Q. Do you also recall telling the court that your plea
22 was free and voluntary and that you entered it on your
23 own free will?

24 A. Yes.

25 Q. Okay. Did you also tell the court that -- state to

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1 the court that you didn't feel pressured by the court to
2 plead guilty?

3 A. Yes.

4 Q. Did you also tell the court that the statement you
5 gave during your guilty plea proceeding was truthful?

6 A. Yes.

7 Q. And you are telling the truth today -- the guilty
8 plea?

9 A. Yes.

10 Q. Okay. Your testimony today is that you rejected
11 the guilty plea several times and that you wanted to go
12 to trial is that correct?

13 A. Yes.

14 Q. Okay. But do you recall during your guilty plea
15 proceeding toward the end, and I can point to the page in
16 the transcript if you have a copy, on page 71 on line 16
17 where Judge Jefferson says -- I'll let you turn to it;
18 I'm sorry.

19 [Whereupon, the witness reviews documents]

20 Q. And I'm on page 71 and I'm starting on line 16.

21 A. Okay.

22 Q. And it starts with the court saying [Reading] I ask
23 you the question again and I need you to be honest and
24 forthright have you been satisfied with your lawyer's

25 services. And you say no. And it starts on line 19 the

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1 court says [Reading] Okay I'm going to relieve Mr. Brown.
2 You need to go hire a lawyer or you can do downstairs and
3 get screened at the Public Defender's office and decide
4 whether you meet their indigence requirements.

5 And it says -- the court says [Reading] I'm advising
6 you that all offers are withdrawn from the State and they
7 will no longer be offered to you and I wish you the best.

8 So there the court was giving you the opportunity to
9 go to trial. You recall that?

10 A. That's -- like I said I blacked out. I don't
11 remember that. But, like I said I pled; that's all I can
12 say I remember. I pled to the charges so I can say
13 that's what happened. I blacked out. I was tired.

14 I tried to get -- I tried -- Mr. Brown had to ask
15 them to let me sit down two or three times because I was
16 catching panic attacks. Right then I was just
17 discombobulated. I couldn't even think right then. I
18 couldn't even stand on my foot.

19 Q. Okay, thank you. Mr. Smalls, do you also recall
20 telling the court that you didn't have any physical or
21 emotional ailments preventing you from understanding what
22 is going on at the guilty plea?

23 A. I don't -- I mean I...

24 Q. You want me to point it to you in the transcript or
25 you just don't remember that?

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1 A. I don't recall.

2 Q. Okay. Do you also recall after the court saying I
3 -- you know we're going to just go forward with the trial
4 and go hire another lawyer. Do you recall telling the
5 court that you wanted to go forward?

6 A. I don't recall.

7 Q. Okay. Do you recall telling -- beg the Court's
8 indulgence -- okay, you said on page 73 of the transcript
9 at line 5 you tell the court that I thought that was the
10 procedure you telling me that if I said I was happy with
11 and I ---

12 THE COURT: --- how about slow down just a little
13 bit.

14 MS. WILSON: I'm sorry. Yes ma'am. I'm sorry.

15 Q. [Ms. Wilson] On page 73 of the record at line 5
16 this is Mr. Smalls speaking and he says [Reading] I
17 thought that was the procedure you told me when I said if
18 I was happy with him. That's why I said no because you
19 said that wasn't important.

20 And then the court says [Reading] You said you
21 weren't happy with him because I think you're dilatory
22 and I think you're manipulative. And Mr. Smalls said I
23 didn't know. And the court says [Reading] And I think
24 you want to put this off. And Mr. Smalls says [Reading]
25 No; I wanted to go forward with the plea.

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1 I said -- well, basically there you told the court
2 you wanted to plead guilty when she was giving you the
3 opportunity to go to trial. Is that -- do you recall --
4 is that your recollection?

5 A. Well, that's what is on there, yes...

6 Q. Thank you.

7 THE COURT: Okay. You may respond briefly, sir.
8 Stand up so we can hear you. Anything you want to
9 respond in reply to the cross-examination?

10 RESPONSE TO CROSS-EXAMINATION

11 MR. SMALLS: Okay. Basically, you know like I say
12 I don't remember those things that -- did not happen like
13 I said. Like I say -- all I'm just saying is the main
14 thing that happened all that some of those things didn't
15 happen like how -- it did happen.

16 But yes, I ultimately I pled to these charges. I
17 admit that I pled to these charges. But like I said I
18 blacked out and I don't recall half of it. But I have
19 Sharonda Wright and she can just say a little what she
20 can remember.

21 THE COURT: All right. Don't tell me what she's
22 going to say ---

23 MR. SMALLS: --- no, no ---

24 THE COURT: --- but if you want to call her as a
25 witness you can.

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1 MR. SMALLS: I want to call her as a witness.

2 THE COURT: All right. Anything further before he
3 calls Ms. Wright?

4 MS. WILSON: Nothing further from the State.

5 THE COURT: All right, Ms. Wright come on up to the
6 witness stand and we will swear you in.

7 [Whereupon, Ms. Wright comes forward]

8 THE COURT: And sir, you can just stand up and
9 question her from right there after we swear her in.

10 [Whereupon, the witness is duly sworn by the Clerk
11 of Court]

12 CLERK OF COURT: What we need you to do is give us
13 your full name and spell your last name please.

14 THE WITNESS: My name is Sharonda Wright, Sharonda
15 Renee Wright, W-R-I-G-H-T.

16 THE COURT: Okay. Spell your first name too.

17 THE WITNESS: Sharonda, S-H-A-R-O-N-D-A.

18 THE COURT: R-O-N-D-A?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Okay. Thank you. All right sir, you
21 may ask her a question.

22

23

SHARONDA WRIGHT,

24

Having been first duly sworn,

25

Was examined and testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. SMALLS:

3 Q. Sharonda Wright, all I want -- do you recall what
4 happened at the trial?

5 THE COURT: No, sir. You need to ask her some
6 questions that she can answer, not that are going to tell
7 a whole long story, okay.

8 MR. SMALLS: Okay.

9 Q. [Mr. Smalls] When we -- when I went on October 5th,
10 2011 was -- when I first got in the courtroom what
11 happened?

12 A. [No response]

13 THE COURT: If you know.

14 A. Are you referring to your talk with Judge Jefferson
15 or...

16 Q. [Mr. Smalls] Yes, when I went up to the podium with
17 Mr. Brown, yes.

18 A. I know -- I might not remember everything but I know
19 you did want to go to trial on numerous occasions. And
20 Mr. Brown keep taking you out trying to talk you out of
21 it.

22 They also got me to try to talk him out of going to
23 trial. And I remember at the end Judge Jefferson said
24 she wasn't going to even send you to trial. She just
25 wanted to just take the plea.

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1 THE COURT: Just stop for one minute. I know that
2 you were sworn in but I want to make sure you understand
3 that under our Code 16-9-10 is the provision of our Code
4 that applies to perjury.

5 THE WITNESS: Uh huh.

6 THE COURT: And if I find evidence when I listen to
7 this tape, if the tape is available, that indicates that
8 either one of y'all isn't telling me the truth the next
9 thing that is going to happen is you're each going to be
10 facing a perjury charge. Do you understand that?

11 THE WITNESS: I understand, yes ma'am.

12 THE COURT: Okay. So ask your next question.

13 Q. [Mr. Smalls] When Mr. Brown -- when I was on the
14 phone and we came back in the courtroom what did Mr.
15 Brown told the court?

16 A. I don't remember -- one thing I remember is he
17 saying that you were on the phone out there talking to a
18 jailhouse snitches and things like that.

19 And he also told him that he didn't want to proceed
20 that he wouldn't do his best if he did so he was trying
21 to get off of it but she didn't take him off at the time.
22 She told him that he had to represent Mr. Smalls.

23 Q. That's all I wanted.

24 THE COURT: Okay. All right. Cross-examination.

25 MS. WILSON: Thank you, Your Honor. Briefly.

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1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Good morning Ms. Wright.

4 A. Good morning.

5 Q. What is your relationship to Mr. Smalls?

6 A. I'm his girlfriend. I have three kids with him.

7 Q. And were y'all co-defendants on this charge?

8 A. I was.

9 Q. And what were you charged with?

10 A. If I remember because I don't know too much about
11 that drug thing I think it was Possession of Cocaine Base
12 and also in the proximity of a school; if I recall.

13 Q. And what was the outcome of those charges that you
14 were facing?

15 A. For me?

16 Q. Uh huh.

17 A. It was dismissed.

18 Q. And were you at every meeting between Mr. Brown and
19 Mr. Smalls?

20 A. No.

21 Q. Thank you.

22 THE COURT: Okay. Anything further? You don't
23 have to. Do you have any follow-up on her cross-
24 examination?

25 MR. SMALLS: No, that's all.

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1 THE COURT: All right. Ma'am, you may step down.

2 THE WITNESS: Thank you.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: Okay. Call your next witness please,
6 Mr. Smalls.

7 MR. SMALLS: I can call Mr. Brown?

8 THE COURT: Yes. You can call Mr. Brown or you can
9 let Ms. Wilson call Mr. Brown. However -- do you want to
10 call Mr. Brown?

11 MR. SMALLS: I call Mr. Brown.

12 THE COURT: All right. Come on up Mr. Brown and
13 we will swear you in.

14 [Whereupon, Mr. Brown comes forward]

15 [Whereupon, the witness is duly sworn by the Clerk
16 of Court]

17 CLERK OF COURT: Please state your full name and
18 spell your last name please.

19 THE WITNESS: Edward M. Brown, B-R-O-W-N.

20 - - - - -

21 EDWARD BROWN,

22 Having been first duly sworn,

23 Was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SMALLS:

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1 Q. Hello Mr. Brown.

2 A. Good morning, Mr. Smalls.

3 Q. Do you recall when you were beginning to work on my
4 case?

5 A. I recall signing a retainer contract with you and I
6 do recall your retaining me to represent you in the
7 matter of the State versus Aaron Smalls.

8 Q. Would you agree that the way I portrayed you of the
9 attorney client privilege -- the relationship that we had
10 or somewhat?

11 A. I don't understand your question.

12 Q. That we had a good relationship as attorney client?

13 A. During what time period?

14 Q. I mean the whole thing.

15 A. The time that I represented you prior to coming to
16 court it was -- there was nothing extraordinary about our
17 attorney client relationship. It was a regular attorney
18 client relationship.

19 Q. Have you had a chance to look at the transcript?

20 A. I've reviewed the transcript.

21 MR. SMALLS: Can I give him a copy of the
22 transcript because I'm going to go to some pages?

23 THE COURT: You can but I'm not sure how much I'm
24 going to let you go into that. You can ask him questions
25 sure. If you want him to have the transcript in front of

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1 him you can. If you'll hand that to our deputy he'll
2 take it up to him.

3 MR. SMALLS: Okay.

4 [Whereupon, documents are provided to the witness]

5 Q. [Mr. Smalls] On page 3 of the -- could you read line
6 3 through 16?

7 A. I'm sorry, page what?

8 Q. Page 3.

9 A. Okay. You mean read it ---

10 THE COURT: --- why do you need him to read that?
11 I have the transcript ---

12 MR. SMALLS: --- because I -- I wanted him ---

13 THE COURT: --- the transcript is in the record.
14 You need to ask him a question about what's in the
15 transcript.

16 Q. [Mr. Smalls] That I rejected -- at that time did I
17 reject the State's plea offer and wanted to go to trial?

18 A. Let me read the transcript.

19 [Whereupon, the witness views document]

20 THE COURT: Line 6 through 7 states [Reading] My
21 client has decided that he wants to proceed forth with
22 the trial.

23 Is that what you want to show, sir?

24 MR. SMALLS: Yes.

25 THE COURT: Okay. We don't need to read lines 3

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1 through 16. Ask him a question.

2 A. That is what is reflected in the transcript. That
3 is the representation I made to the court in regards to
4 your matter.

5 Q. [Mr. Smalls] Okay. On page -- transcript 26 line 3
6 to 16.

7 A. Page what?

8 Q. 26 line 3 to 16. I'm just going to state it and see
9 what it is. I told you -- I told the court twice that he
10 did not -- that I did not agree with the facts.

11 On 28 -- page 28 line 20 through 29 -- line 15.

12 Those were the two times that I did not agree with the
13 facts that the court was -- what they were saying -- when
14 they was making statements?

15 MS. WILSON: Objection, Your Honor, it's not a
16 question.

17 THE COURT: Sustained.

18 Q. [Mr. Smalls] Mr. Brown, did I inform you -- the
19 trial court on several occasions that he was unsatisfied
20 with your services -- that I was unsatisfied with your
21 service?

22 A. Whatever you said to the court in regards to my
23 service would be reflected in the transcript. I don't
24 recall the several occasions.

25 Q. Line -- on page 37, 25 through 38, page 39 line 4 to

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1 6?

2 A. Wait a minute, you're going too fast.

3 THE COURT: Sir, the transcript is in the record.

4 MR. SMALLS: Okay, so ---

5 THE COURT: --- it reflects what it says. You
6 don't have to have a witness put that in. Do you
7 understand that?

8 MR. SMALLS: Okay.

9 THE COURT: But you agree that the transcript is
10 correct as to those parts that you are pointing out?

11 MR. SMALLS: Yes.

12 THE COURT: Okay, next question. Move on.

13 Q. [Mr. Smalls] Would you say in fact that the trial
14 court used the same information to encourage me to plead
15 guilty? That the utensils -- the alleged utensils and
16 cocaine residue was tested positive?

17 A. Mr. Smalls, again the transcript says what it says.
18 The bottom line is after much debate you decided that a
19 guilty plea was the best thing for you.

20 And I think the record clearly reflects that you
21 were under no duress. No one twisted your arms or
22 promised you anything.

23 Q. Well ---

24 THE COURT: --- don't interrupt him. Let him
25 finish his response.

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1 A. So whatever you -- whatever is in the transcript is
2 there and that's what happened in the proceeding.

3 Q. [Mr. Smalls] Okay. Well could I -- inside the
4 transcript it says that he asked if I could sit down and
5 on two or three other occasions.

6 THE COURT: And I'll take notice of that. I read
7 that. In fact, the court was so observant and paying
8 such attention in your guilty plea she noticed that you
9 might be having an anxiety issue and was abundantly
10 patient with you letting you sit down, letting you have
11 numerous conferences with your attorney, leaving the
12 courtroom to talk with your attorney, able to meet with
13 your girlfriend; I've seen all of that in the transcript.

14 MR. SMALLS: Well, basically the transcript is all
15 I'm going to base it on right now.

16 Q. [Mr. Smalls] Okay, the lab reports. Did the Rule 5
17 material include a lab report verifying the existence and
18 confirmation of the additional drugs?

19 A. I don't recall what the lab report says Mr. Smalls.
20 I don't have it in front of me.

21 [Whereupon, Mr. Smalls reviews documents]

22 MS. WILSON: Your Honor, can I see what he's
23 submitting, please?

24 THE COURT: Yes. Do you have copies for the
25 Attorney General?

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1 MR. SMALLS: Of the SLED report?

2 THE COURT: Or she can look at these copies.

3 [Whereupon, Ms. Wilson reviews documents]

4 MS. WILSON: Thank you.

5 THE COURT: Thank you. All right. Yes, sir?

6 [Whereupon, the witness is shown documents]

7 Q. [Mr. Smalls] On the 17th they alleged that they have
8 -- let me go back.

9 MR. SMALLS: You said that I can't talk about
10 anything...

11 THE COURT: Ask him what you need to ask him and if
12 you get too far afield I'm sure she will object, okay.

13 MR. SMALLS: Okay.

14 Q. [Mr. Smalls] On January 17th they said -- they sent
15 an alleged informant to the house. Were any drugs tested
16 positive inside the -- on the drugs that they said that I
17 allegedly sold?

18 A. Mr. Smalls, what I have in front of me was what was
19 submitted on January 23rd and the results. And it says
20 rock substance results cocaine found 1.1 gram, 16.97
21 grains. Is that what you're talking about?

22 Q. No, that's on the 21st. I have no SLED results so
23 I'm trying to find out what happened to the alleged drugs
24 on the 21st. If you had investigated you would have
25 found that there was no SLED result on the 17th to

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1 confirm that a drug even exists on that date.

2 A. All I have here is what the SLED report says. This
3 is what I got -- and I think you got these from me did
4 you not? I'm sorry; these are what I gave to you.

5 Q. I think you gave it to Mr. Thomas, yes.

6 A. Yes.

7 Q. I had only saying that -- the statement on this
8 paper they said that the defendant -- they didn't say
9 nothing about the distribution -- they didn't say
10 anything about the distribution at all.

11 THE COURT: Ask him a question, okay.

12 Q. [Mr. Smalls] So after you found out that there
13 wasn't nothing being said about the distribution why
14 didn't go to suppress the evidence because there was
15 nothing saying that a drug deal ever existed?

16 A. Mr. Smalls, the court record would reflect that on
17 September 29th or thereabouts a motion to suppress was
18 filed with the Clerk's Office in regards to all the
19 evidence.

20 Q. What date?

21 A. If I recall correctly it was September 29th.

22 Q. September 29? I'm talking about before that when
23 you first got the case. I'm not talking about the end.
24 The wee hours of less than a week before I'm going to
25 trial.

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1 THE COURT: Ask him a question.

2 Q. [Mr. Smalls] I'm talking about did you do it at the
3 beginning when you first got the case?

4 A. Mr. Smalls, the motion was clocked in with the
5 Clerk's office on September 29th. That's what it
6 reflects.

7 Q. Yes. What I'm asking why should it have waited
8 almost over a year? I think I retained you a year before
9 that. We waited till the last moment. Why wasn't these
10 things -- I asked you when I first hired you to ask to
11 get a suppression hearing.

12 A. No, you did not.

13 THE COURT: Ask you a question. He answered your
14 question. Ask him another question.

15 Q. [Mr. Smalls] Okay. Did you agree -- did you agree
16 on the manner in which the plea hearing was carried?

17 A. Absolutely.

18 Q. Is that why Judge Jefferson -- that you felt awkward
19 and were not comfortable with the proceeding on 65 --
20 page 65 line 16 to 18?

21 MS. WILSON: Objection, Your Honor, it's not a
22 question.

23 THE COURT: Well I believe -- I'm going to overrule
24 the objection. He asked him is that why you felt
25 uncomfortable so he can answer that question.

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1 A. The reason I felt awkward -- I think the word was
2 awkward is because you indicated to the Judge that you
3 were no longer pleased with the services that I was
4 rendering to you.

5 Q. [Mr. Smalls] Okay. And you also said it on page
6 72, 14 to 17 also.

7 A. If that's what the record reflects then that's what
8 it reflects, yes.

9 Q. Mr. Brown, did you state on page 56 that if I go to
10 trial you are not going to do your best?

11 A. No, sir.

12 Q. Huh?

13 A. Let me look at the page. What page is it?

14 Q. Page 56, line 25 to page 57, line 3.

15 [Whereupon, the witness reviews document]

16 A. In the context of this proceeding there is something
17 -- there is a phrase in there -- a sentence that says
18 [Reading] And he's not going to get my best.

19 But in the context -- the context of that was that I
20 was prepared and nothing you thought that I was going to
21 do that day was going to be able to satisfy you because
22 you didn't -- if I remember correctly you wanted me, and
23 I was the third lawyer, you wanted to fire me and get
24 somebody else.

25 Q. So you're saying the transcript is right or is it

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1 wrong or is that...

2 A. The transcript says what it says.

3 Q. Okay. So I felt that if I went to trial you was
4 not going to do your best since you already stated that
5 you ---

6 THE COURT: --- sir, don't argue with the witness.
7 Ask him a question.

8 Q. [Mr. Smalls] Okay. No more -- no further
9 questions.

10 THE COURT: Okay. Thank you, sir. Cross-
11 examination.

12 MS. WILSON: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. WILSON:

15 Q. Mr. Brown, how long have you been practicing law?

16 A. This is the beginning of my 39th year.

17 Q. How much of that has been in criminal law?

18 A. The whole 39 years.

19 Q. And do you recall how many months or years before he
20 pled guilty that you were retained to represent him?

21 A. I think it was about two years. One or two years;
22 I'm not sure.

23 Q. Can you recall how many times you met with him or
24 spoke to him on the phone, was it frequently?

25 A. I spoke with him quite frequently. I met with him a

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1 number of times. He used to go across the street to the
2 barber shop from where my office was and some of those
3 times he would just stop in and we'd chat about the case.

4 Q. And did you file Brady or Rule 5 motions on his
5 behalf?

6 A. I filed everything; yes ma'am Rule 5 and Brady.

7 Q. And did you review the materials that you received
8 from Mr. Smalls?

9 A. I did.

10 Q. Prior to Mr. Smalls pleading guilty did you talk
11 with him about the elements or the charges that he was
12 facing and what the State had to prove to convict him?

13 A. I did.

14 Q. Did he tell you his version of the facts?

15 A. He did. And in fact in terms of investigation I
16 went out there to look at the physical location and
17 that's where he bought the camera. But yes, I did all
18 the investigation that I could have done or should have
19 done.

20 Q. Did you talk to him about possible defenses or any
21 trial strategies y'all could present at the trial?

22 A. Yes, ma'am.

23 Q. And did you think he had any viable defenses?

24 A. No, ma'am.

25 Q. Could you briefly characterize the State's evidence

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1 against Mr. Smalls?

2 A. It was compelling. Mr. Smalls was hung up on a
3 minuscule issue in my opinion that had no bearing on this
4 case and that is that the drugs that were found -- where
5 he lived was not where the drugs were found.

6 As I recall the scene, that is where the drugs were
7 ultimately found, it was a house and then it was like a
8 garage that was detached from the house that had been
9 converted into a living quarters. And he claimed that he
10 lived there and Ms. Wright and his children lived in the
11 house.

12 His problem with that was that he didn't live there.
13 But the search warrant and the case law clearly gave the
14 right to search the house and the garage. And I think
15 drugs were found in both places so. That was the main
16 thrust.

17 He also indicated that he didn't have -- that they
18 never recorded him. Well, they did. They have audio. I
19 heard the audio and it was clearly his voice on the
20 audio. That's when the uncover cop -- the undercover
21 officer came and bought the drugs.

22 So when they catch you red handed like that I mean
23 you can certainly go to trial and that's his
24 constitutional right. But I didn't think he had a viable
25 defense. In addition to that he had previous criminal

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1 history that would create a problem -- previous criminal
2 history in drugs that would create a problem in terms of
3 him taking the stand.

4 Q. Did Mr. Smalls give you any potential witnesses or
5 people to investigate?

6 A. No. The only person -- no, he didn't give me --
7 there was no one that he told me about, no.

8 Q. Did you receive a copy of the search warrant that
9 was executed at his home in your discovery?

10 A. I did.

11 Q. And did you review it with him?

12 A. I reviewed it thoroughly with him.

13 Q. And other than the basis that you just described
14 previously and that you thought didn't have any merit did
15 you see any viable basis to have the search warrant
16 suppressed?

17 A. Well, Ms. Wilson you always file a motion to
18 suppress the search. But you know those things are very
19 tenuous. In this instance that wasn't going to happen at
20 least not in my opinion.

21 Q. And did you discuss this with Mr. Smalls?

22 A. I did. I think that's when he came in and taped me
23 if I recall correctly. I think that's what we talked
24 about when he taped the conversation.

25 Q. Prior to Mr. Smalls guilty plea is that -- prior to

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1 that had you fully investigated his case?

2 A. Yes, ma'am.

3 Q. Were you ready to go to trial?

4 A. I was. Ms. Wilson, I need to also add I don't very
5 often go to where the search or where the drugs occurred.
6 But he was -- you know I did that in this case because I
7 wanted to make sure that I had understood where the house
8 and the detached structure was located.

9 Q. And based off your investigation you felt
10 comfortable advising Mr. Smalls about whether it was in
11 his best interest to plead guilty?

12 A. I did.

13 Q. And did you receive -- you said you did receive the
14 audio tape of the drug buy between the defendant and the
15 informant. Was it an officer or an informant that he was
16 reported selling drugs to?

17 A. It was an informant.

18 Q. And you received that audio tape and listened to it
19 and reviewed it?

20 A. I listened to the tape and I listed -- I listened to
21 the tape twice before the trial.

22 Q. And was anything on that tape exculpatory?

23 A. No, ma'am.

24 Q. Were you aware of whether or not the drugs found at
25 Mr. Smalls home -- were you aware of whether or not it

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1 was tested by SLED?

2 A. As far as I know they were, yes.

3 Q. And today it seems like Mr. Smalls is talking about
4 the -- the submission of these drugs that were allegedly
5 sold and is controlled by SLED.

6 But isn't it true that Mr. Smalls wasn't charged
7 with the selling of drugs during the buy, he was charged
8 with ultimately what was found at the house, is that
9 correct?

10 A. I think that's correct, yes ma'am.

11 Q. And prior to coming here today did you have a copy
12 of the transcript and review it?

13 A. I did.

14 Q. And in your opinion does it accurately reflect the
15 plea proceeding?

16 A. It did. I don't know what he's talking about about
17 the transcript being -- something being out of place.
18 What's reflected in the transcript is exactly what
19 happened in the courtroom.

20 Q. And do you recall the time when Mr. Smalls blacked
21 out during the guilty plea proceeding?

22 A. No, ma'am.

23 Q. And did you feel like he understood the proceeding
24 and what was going on that day during the plea?

25 A. That was a very long plea. He was asked that on a

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1 number of occasions. He did understand what was going
2 on.

3 Q. Do you recall when you started entering plea
4 negotiations with the State for Mr. Smalls?

5 A. It was probably about a year before or maybe six
6 months before, a year to six months because I remember
7 talking to Mr. Voigt on more than one occasion about it.

8 Q. And ultimately what did the State offer Mr. Smalls
9 to plead guilty do you recall?

10 A. Eight years, concurrent on all the charges.

11 Q. And did you communicate the offer to Ms. Smalls?

12 A. Yes, ma'am.

13 Q. And did you inform him of the consequences of
14 pleading guilty?

15 A. Yes, ma'am.

16 Q. Did you talk to him about his constitutional rights
17 and what he would be giving up?

18 A. Yes ma'am, I did.

19 Q. Did he ever indicate he misunderstood something?

20 A. No ma'am, he did not.

21 Q. Did you coerce or threaten Mr. Smalls to plead
22 guilty?

23 A. No, ma'am.

24 Q. And ultimately did you feel like it was his decision
25 to plead guilty?

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1 A. It was his decision.

2 Q. Thank you, Mr. Brown.

3 A. You're welcome.

4 THE COURT: Any redirect?

5 MR. SMALLS: Yes.

6 REDIRECT EXAMINATION

7 BY MR. SMALLS:

8 Q. Mr. Brown, on -- I was speaking when I asked if the
9 things were tested on -- inside the house the spindle --
10 the Pyrex and spindle that they say tested positive for
11 were those sent to SLED?

12 A. I have the report that you gave me Mr. Smalls.

13 MR. SMALLS: Well I'm just -- is there any way I --
14 would the Supreme Court have a copy of these information
15 here of everything going inside my file because this
16 right here says the Pyrex and the spindle was tested
17 positive and sent to SLED. But I never got a report on
18 that right there at all.

19 THE COURT: Sir, I can't give you legal advice.

20 MR. SMALLS: Okay.

21 THE COURT: You can ask him a question and he can
22 answer it but I haven't heard an objection yet you can
23 only ask him questions on redirect to cover something
24 that was covered in the cross-examination. You can't go
25 back over what wasn't covered in the cross-examination or

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1 bring up something new that didn't get led to in the
2 cross-examination, okay.

3 MR. SMALLS: Okay.

4 Q. [Mr. Smalls] So you're saying that the transcript is
5 in fact correct?

6 A. Absolutely.

7 Q. Okay. So the part that you said that you said you
8 were not going to give me your best so you're saying that
9 is accurate?

10 A. What's in the transcript is accurate. What you were
11 asking me is not correct.

12 Q. That you was not going to do your best?

13 A. What's in the transcript is accurate. That's what I
14 said.

15 Q. On 56 -- I mean page 56, 25 -- line 25 to 57 read.
16 You stated that I will not get -- you know I will not get
17 counsel's best service. I'm just asking you if that's
18 true or is it not?

19 A. Mr. Smalls, the transcript says [Reading] Now the
20 allegations he's lodged against me that pretty much --
21 that I'm incompetent and I don't know that he's going to
22 get my best. Now he will get what I've got but -- and
23 then I'm cut off.

24 Q. Okay.

25 A. That's what the transcript says.

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1 Q. Okay. Thank you.

2 A. Yes, sir.

3 THE COURT: Okay. Thank you. Mr. Brown, you may
4 step down.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

7 THE COURT: Mr. Smalls, any further witnesses?

8 MR. SMALLS: That's all.

9 THE COURT: So you're resting your part of the
10 case?

11 MR. SMALLS: Yes, ma'am.

12 THE COURT: Okay. Would you like to go ahead?

13 MS. WILSON: Yes, ma'am.

14 THE COURT: Call your next witness.

15 MS. WILSON: The State would call Mr. Greg Voigt
16 briefly, Your Honor.

17 THE COURT: All right. Mr. Voigt, come on up and
18 we will swear you in.

19 [Whereupon, Mr. Voigt comes forward]

20 [Whereupon, the witness is duly sworn by the Clerk
21 of Court]

22 CLERK OF COURT: State your full name and spell
23 your last please.

24 THE WITNESS: My name is Gregory Voigt, V-O-I-G-T.

25 - - -

1 GREGORY VOIGT,
2 Having been first duly sworn,
3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. WILSON:

6 Q. I think it's still morning -- good morning Mr.
7 Voigt.

8 A. Good morning.

9 Q. And were you the Solicitor assigned to Mr. Smalls'
10 case?

11 A. Not originally but it was reassigned to me when
12 another Solicitor left our office so I've had the file
13 for about ten or eleven months.

14 Q. And could you briefly describe the State's evidence
15 against Mr. Smalls.

16 A. This was a search warrant case. The search warrant
17 was obtained by a confidential informant under controlled
18 circumstances wearing a wire had purchased cocaine, a
19 small quantity of cocaine from that residence.

20 The North Charleston Narcotics unit then had a
21 search warrant drawn up. A search warrant was issued for
22 the residence. They found a small quantity of cocaine
23 buried under some mulch; essentially the curtilages of
24 the house. In the rear area there was a small detached
25 garage which had been converted to an apartment. There

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1 was a metal pan and a wire whisk that were seized.
2 Numerous firearms were also seized and ammunition and
3 other things like that; some fairly large weapon like a
4 Bushmaster or something like that.

5 Q. Now did you feel like you gave everything to --
6 every discovery document to Mr. Smalls that was
7 exculpatory?

8 A. I did. As a matter of fact I probably wound up
9 during the course of this case giving him more than I
10 thought that he was entitled to and that was primarily at
11 the direction of Judge Jefferson.

12 When I first got the case the case had been
13 previously scheduled for a plea maybe three or four
14 times. There had been some inconsistency in his
15 representation due to Ms. Crummey's situation so I put
16 the case on a plea docket I think three times.

17 And I think I held open -- Chris Neely was the
18 original prosecutor in this case and I think he tendered
19 -- my notes indicate he tendered some sort of offer to at
20 least one of the previous attorneys and I wasn't quite
21 sure who.

22 When I have a situation like that I will tend to
23 leave that offer open just because there was no -- so
24 there wouldn't be any ambiguity just because I come in
25 that there wouldn't be an offer. And I know that through

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1 Mr. Brown that offer had -- the original offer had been
2 rejected and I know that I spoke to Mr. Smalls in person
3 at some point and he rejected that offer.

4 So going into the trial there was no offer. But in
5 preparation for the trial -- and that's kind of a long
6 detour to actually answering your question -- but in
7 preparation for the trial we realized there were certain
8 things that had not been tested, some very obvious things
9 that had not been tested by SLED.

10 So there are actually two sets of SLED reports,
11 which was going to make the trial slightly just longer
12 because they were a different chain of evidence and
13 different analysts. But the initial cocaine seized at
14 the house in the curtilage under the mulch had been
15 tested. But the metal pan and the wire whisk had not.

16 And I went to North Charleston and reviewed the
17 evidence in anticipation of trial and caught the strong
18 whiff of cocaine coming off the metal pan and had that
19 sent to sometime in the summer had that sent to SLED for
20 testing and the results of that came back.

21 I relayed that information to Mr. Brown as well and
22 said look, now I've fixed this particular problem because
23 if I had stumbled into trial prior to that Mr. Brown
24 would have been able to correctly say that there was --
25 despite what looks like very clear evidence of cocaine

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1 residue on those items they hadn't been tested and they
2 hadn't scientifically proven it cocaine. So I solved
3 that problem.

4 I know that prior to the -- so when we walked in for
5 the trial that day it was my intention to try to use the
6 guns under the theory that with the distribution and with
7 possession of the intent to distribute being there was a
8 nexus, a long standing nexus between guns and drugs Judge
9 Jefferson at Mr. Brown's request excluded all evidence of
10 the guns in this case. And then I knew we were probably
11 going to have to have a short suppression hearing prior
12 to the trial.

13 Q. Is your testimony today that you later discovered
14 that the pan and whisk weren't tested and that you had it
15 sent to SLED and you relayed the results of that testing
16 to Mr. Brown is that correct?

17 A. Yes, I did. It was probably sometime in September
18 or maybe August because I got the results back I think in
19 August.

20 Q. And that was directly prior to the plea?

21 A. Right. Again directly -- because what had happened
22 is there had been numerous plea settings and this was
23 going to be a plea I wasn't going to trouble SLED and I
24 wasn't going to trouble any of us. We already had
25 cocaine. We already had enough to make a prima facie

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1 case. But if I really wanted to try the case I wasn't
2 going to leave evidence back on the table.

3 So at that point I think I'd had conversations with
4 both Mr. Brown and Mr. Smalls if there was not going to
5 be a plea I wasn't going to take -- so I then had those
6 items tested in preparation for trial and got those
7 results back, gave them to Mr. Brown and then scheduled
8 the trial accordingly.

9 Q. Do you have a copy of the guilty plea transcript?

10 A. I don't have a copy of the guilty plea transcript.
11 I have a fairly good memory of it but it was one of the
12 -- you know every year each one of us has a plea like
13 this it was -- we only have a couple of those thankfully.

14 Q. Thank you.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. SMALLS:

18 Q. Okay. Mr. Voigt you stated that you -- you sent
19 off to test the Pyrex and the spindle?

20 A. What it was was a fairly large, and frankly for
21 cooking cocaine, a fairly large thing. It was a metal
22 pan and a wire whisk. That's what was found in the back
23 bedroom apartment -- the detached apartment. That was
24 ultimately sent out -- it wasn't Pyrex; it wasn't a glass
25 container.

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1 Q. And -- so you got the lab -- you got the results and
2 gave it to Mr. Brown?

3 A. Yes, I did.

4 Q. I have never received one of those...

5 THE COURT: Ask him a question. I'm sorry; wait, I
6 have a question. The results of the whisk and the pan?

7 THE WITNESS: That came back for a small quantity
8 of cocaine as well.

9 THE COURT: Okay, thanks.

10 Q. [Mr. Smalls] Okay. I mean ---

11 A. --- I made sure Mr. Brown was aware of that because
12 that was something he had raised to me because I think
13 you had raised it to him and you raised it to me directly
14 yourself as well.

15 Q. Yes, but I haven't gotten it when I asked for
16 everything when I got it. So after that when you got it
17 tested -- well, it's too late to ask Mr. Brown because
18 Mr. Brown is off the stand ---

19 THE COURT: --- sir, it came back positive. Ask a
20 relevant question.

21 Q. No further questions.

22 THE COURT: Okay. Any redirect?

23 MS. WILSON: No redirect, Your Honor.

24 THE COURT: All right sir, you may step down.

25 [Whereupon, the witness is excused and exits the

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1 witness stand]

2 MS. WILSON: Your Honor, can I just have one second
3 to ask Mr. Brown something to determine if I want to
4 recall him?

5 THE COURT: Sure, sure.

6 [Whereupon, Ms. Wilson confers with Mr. Brown]

7 MS. WILSON: Your Honor, I'd like to recall Mr.
8 Brown.

9 THE COURT: Okay.

10 [Whereupon, Mr. Brown retakes the witness stand]

11 THE COURT: Mr. Brown, you are still under oath.
12 Thank you.

13 THE WITNESS: Yes, ma'am.

14 - - - - -

15 EDWARD BROWN,

16 Having been previously sworn,

17 testified as follows:

18 DIRECT EXAMINATION

19 BY MS. WILSON:

20 Q. Mr. Brown, you heard Mr. Voigt's testimony about the
21 retesting -- or the testing of the second set of evidence
22 that hadn't been tested. Were you aware of that?

23 A. I was aware that I raised -- that Mr. Smalls had
24 brought that to my attention and that it was -- what we
25 initially got didn't include all the tests. And I did

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1 receive a second set of results from Mr. Voigt pursuant
2 to the Brady Motion and Rule 5.

3 Q. And did you review that with Mr. Smalls?

4 A. I gave Mr. Smalls everything that I had in terms of
5 what Mr. Voigt sent me because he requested it.

6 Q. Thank you ---

7 A. --- now I don't know if he picked it up personally
8 but I do remember someone coming by and picking up some
9 stuff for him.

10 Q. Thank you.

11 A. Yes, ma'am.

12 THE COURT: Okay. Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. SMALLS:

15 Q. Mr. Brown, the second -- the parts in the spindle --
16 so you're saying now that you gave me a copy of that?

17 A. I'm not saying I gave you directly. You sent
18 someone by to pick up some material one day and I gave
19 that person -- I gave you some stuff too.

20 I gave you some discovery but I gave that person
21 discovery also. The bottom line is what I got from Mr.
22 Voigt I gave to you.

23 Q. Well Mr. Brown, I have never received that copy of
24 that report. I've never saw this thing. And you had
25 never sent it to me or I requested.

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1 THE COURT: Again, do not argue with the witness.

2 Ask him a question.

3 Q. [Mr. Smalls] Okay. So Mr. Brown, it's just straight
4 I mean -- anybody else ever take it -- because me or
5 Darren Washington had never received the thing. So
6 you're sure that you gave us that part because I never --
7 I never got it.

8 A. Yes, I am absolutely sure.

9 Q. Well, I --

10 THE COURT: -- do you have a copy -- does anybody
11 have a copy of that? I just want to look at it. Let's
12 make it a court's exhibit.

13 [Whereupon, documents are provided to the court]

14 THE COURT: Y'all give me one minute okay.

15 [Whereupon, the court reviews documents]

16 THE COURT: Okay. Next question.

17 MR. SMALLS: Okay. Could I see it?

18 THE COURT: Sure. We'll bring it to you.

19 [Whereupon, Mr. Smalls is provided document for
20 review]

21 THE COURT: While he looks at that Mr. Voigt is
22 that a copy that we can mark or do you want us to run and
23 make a copy to put in?

24 MR. VOIGT: If we could make a copy. It looks like
25 that's a fax.

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1 THE COURT: Let's do that when Mr. Smalls finishes
2 with it.

3 [Whereupon, the court confers with the clerk]

4 THE COURT: We're going to make copies so everybody
5 has a copy.

6 [Off the record momentarily]

7 THE COURT: Any further questions?

8 MR. SMALLS: No, ma'am.

9 THE COURT: I'm sorry?

10 MR. SMALLS: No, ma'am.

11 THE COURT: No? Okay. Any further witnesses?

12 MS. WILSON: Nothing from the State. The State
13 rests.

14 THE COURT: All right. Mr. Michel is going to
15 bring us those copies. Sir, you may step down.

16 [Whereupon, the witness is excused and exits the
17 witness stand]

18 THE COURT: All right. I think we've pretty well
19 covered everything but I'm happy to hear any final
20 argument that either Mr. Smalls or Ms. Wilson wants to
21 put on the record.

22 MR. SMALLS: No, ma'am.

23 THE COURT: I'm sorry?

24 MR. SMALLS: No, ma'am.

25 THE COURT: Okay. Thank you. Yes, ma'am?

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1 MS. WILSON: Nothing from the State.

2 RULING BY THE COURT

3 THE COURT: Okay. All right, Mr. Smalls, your
4 application for post conviction relief is denied. I'm
5 taking a look again at the transcript and I think pretty
6 telling is what Judge Jefferson says on page 38.

7 She makes a comment to you that your being
8 dissatisfied with the reality does not mean that you are
9 necessarily dissatisfied with Mr. Brown. She asks: I
10 need you to answer because you know lawyers have a
11 saying. We don't create the facts; we just have to make
12 the best of the facts as they are brought to us.

13 And I'm seeing that common theme here today. You're
14 dissatisfied with parts of the transcript that say what
15 you don't want it to say. That doesn't mean it doesn't
16 say that. You just don't want it to say that.

17 I find it very telling that you allege to this court
18 during your first part of the presentation that you think
19 this transcript is inaccurate and yet you've gone through
20 and outlined it painstakingly so that the parts of it
21 that you agree with you could attempt to question Mr.
22 Brown about. To say that that reflects on your
23 creditability would be an understatement.

24 Judge Jefferson took an extreme amount of time to
25 make sure that your plea was knowing, intelligent, and

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1 voluntary. And twice broke to say let's go ahead and
2 pick the jury. 'We've got the panel sitting back --
3 they've been sitting there since 9:30. She worked with
4 you until I think 11:50 to give you a chance to decide
5 whether you wanted to plea or not.

6 You were -- she covered your physical and mental
7 condition repeatedly even noting that here's the bottom
8 line I've spent far more time with you than I should
9 have. I've had this jury downstairs waiting and you need
10 to make your decision. She repeatedly advised you of
11 your constitutional rights, of what you might be facing,
12 that you could have a jury trial, and even that you could
13 get another lawyer if you wanted to.

14 But she was also very careful to note that the deal
15 was then off the table. And sir, I can tell you're a
16 pretty smart fellow and you've decided that was not going
17 to be a smart thing for you to do. I don't understand
18 why you're in here today trying to get these charges back
19 in place in light of the testimony here, what I've read
20 in the file, and what I've read in the transcript.

21 And I understand that you feel that you didn't
22 receive the second set of SLED reports but that doesn't
23 make your plea unknowing or involuntary, or
24 unintelligent. And that second set of SLED reports,
25 whether you had it or not, doesn't help you any; cocaine

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1 residue was found there as well. You were very fortunate
2 to have an excellent attorney who got an excellent deal
3 for you. Now, Rule 607 subsection (I) of the South
4 Carolina Appellate Court Rules addresses your transcript
5 issue. Again, I find that not credible; a non credible
6 argument on your part.

7 But when folks receive a transcript and they believe
8 that it is not accurate they have a remedy and that
9 remedy is within 30 days to get a copy of the backup tape
10 or the original tape from the court reporter. You've had
11 this transcript for longer than 30 days and that right
12 has been waived under our Rule.

13 But I'm curious now and so I'm going to listen to
14 it. If I find something interesting we can move to
15 reconsider but that's not why I'm listening to it because
16 I'm confident the transcript reflects what happened that
17 day particularly based on the testimony of Mr. Voigt and
18 Mr. Brown. And the fact that you rely on the transcript
19 as part of your case; you don't get to pick and choose
20 the parts that you think are inaccurate.

21 So, the application is denied. I am going to listen
22 to the tape for purposes of perjury and then I'll just
23 decide where we're going to go from there. Anything else
24 anybody needs to put on the record?

25 MS. WILSON: Nothing from the State, Your Honor.

Aaron Smalls v State of South Carolina
(2011-CP-10-9603)
January 10, 2014

1 THE COURT: All right. If you would send me a
2 proposed order I'd appreciate it.

3 MS. WILSON: Thank you.

4 THE COURT: Okay, thank you. We're adjourned.

5 [Whereupon, court's exhibit number 1 is marked by
6 the court reporter]

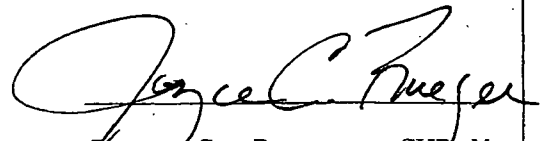
7 *****END OF TRANSCRIPT OF RECORD*****
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 10th day of January, 2014..

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

March 14, 2014


Joyce C. Rueger, CVR-M
Court Reporter

 **COPY**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



REGINALD I. LLOYD
Director

Det. Matt Hughes
North Charleston Police Department
PO Box 62558
North Charleston, SC 29419

DRUG ANALYSIS

June 24, 2011
SLED LAB: L11-06932
Your Case No: 2009002440
Incident Date: 1/21/2009
[S] Aaron Smalls
[S] Sharonda Wright

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Sub # 1 On June 16, 2011, items were received from Laura Reynolds of the North Charleston Police Department.

Item: 1 Cardboard box containing paper bag containing piece of metal wire and metal pot, both with rock substance.

RESULTS:

Cocaine Base (Crack) (C-II) found, 0.1 grams (1.5 grains).

Chemical Analyst

Douglas Robinson

cc: Charleston County Solicitor's Office



FORM A
REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)

I, Douglas R. Robinson, am a Chemical Analyst employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 3 years and 3 months experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than 7 times. I have received the following training as a chemical analyst.

B.S. Chemistry, University of South Carolina, Columbia, SC 2003
Environmental Chemical Analyst, GEL Laboratories, Charleston, SC 2005-2008
South Carolina Law and Legal Training, South Carolina Criminal Justice Academy, 2008
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2008
Drug Enforcement Administration, Forensic Chemist Seminar, 2009

Sub # 1 On June 16, 2011, items were received from Laura Reynolds of the North Charleston Police Department.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test	☒ Gas Chromatography
☐ Microscopic Exam	☒ Mass Spectroscopy
☐ Infrared Spectroscopy	☐ Liquid Chromatography
☐ Ultraviolet Spectroscopy	☒ Physical Test
☐ Visual Examination	☐ Published Literature

See Drug Analysis Report L11-06932 for Results.

Chemical Analyst



Douglas Robinson

Date: June 24, 2011



KDN

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Matt Hughes
North Charleston Police Department
4900 Lacross Road
North Charleston, SC 29406

DRUG ANALYSIS
January 30, 2009
SLED LAB: L09-00942
Your Case No: 2009002440
Incident Date: 01/21/2009
[S] Aaron Smalls
[S] Sharonda Wright

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Sub # 1 On January 23, 2009, items were received in B203832 from Paula Davis of the North Charleston Police Department.

Item: 1.1 Rock substance
RESULTS:
Cocaine found, 1.10 grams (16.97 grains), C-II.

Chemical Analyst

Jill L. Clark

Jill L. Clark

cc: Charleston County Solicitor's Office



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RULE 5 KDN: 00055

FORM A

REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)

I, Jill L. Clark, am a Chemical Analyst employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 9 years and 1 months experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than 34 times. I have received the following training as a chemical analyst.

B.A. Chemistry, Huntingdon College, Montgomery, AL, 1988
Drug Enforcement Administration, Forensic Chemist Seminar, 2000
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2000
Graduate Studies, Univ. South Carolina Dept. of Chemistry, Columbia, 1988-1989
Medical Technologist, ASCP, Baptist Medical Center Laboratory, 1992-1999
Basic Law Enforcement Training, South Carolina Criminal Justice Academy, 2000

Sub # 1 On January 23, 2009, items were received in B203832 from Paula Davis of the North Charleston Police Department.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test

☐ Microscopic Exam

☐ Infrared Spectroscopy

☐ Ultraviolet Spectroscopy

☐ Visual Examination

☒ Gas Chromatography

☒ Mass Spectroscopy

☐ Liquid Chromatography

☐ Physical Test

☐ Published Literature

See Drug Analysis Report L09-00942 for Results.

Chemical Analyst

Jill L. Clark

Jill L. Clark

Date: January 30, 2009



CONTROL NO B203832

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM B (RULE 6)
CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL
 (Initial Custody)

This is to certify that I A. HANSON am employed by

(Name)

NORTH CHARLESTON POLICE DEPARTMENT and that on

(Name of Agency or Department)

JAN. 21, 2009 I seized from ARON A. SMALLS

(Date)

(Name)

pursuant to SEARCH WARRANT

(State Whether Subject to a Warrant, Lawful Arrest or Otherwise)

at or near 1640 MARIETTA ST. N. CHRS. SC 29405

(Place Where Seized)

the following substance(s) or container(s):
 (Describe substance or container with sufficient particularity to distinguish it.)- OFF WHITE ROCK LIKE SUBSTANCEOn JAN. 21, 2009, I made delivery of the above described

(Date)

substance(s) or container(s) to EVIDENCE of

(Name)

NCPD in substantially the same condition

(Law Enforcement Agency)

as when I received it.

Place: _____
 Date: _____A. Hanson
 (Signature)

Sworn before me on this _____ day of _____, _____

Notary Public for South Carolina
 My Commission expires: _____

EVBLED: FMB.1 3/99

CONTROL NO.

B203832

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)**CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL**

(Subsequent Change of Custody)

This is to certify that I Paula Davis am employed by

(Name)

NCPD

(Name of Agency or Department)

as

Evidence Tech

(Capacity of Employment)

and that on

1/23

(Date)

, 09, I receivedDrop Box

(Specify whether by Mail or in Person)

from

A. Hudson

(Name of Person)

of

NCPD

(Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

A. Hudson

(Name of Person Making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

B203832On 1/23, 09, I made delivery of the above described

(Date)

substance(s) or container(s) to SLED of

(Name)

SLED

(Law Enforcement Agency)

in substantially the same condition

as when I received it.

Paula Davis

(Signature)

Place: _____

Date: _____

Sworn before me on this _____ day of _____.

Notary Public for South Carolina

My Commission expires: _____

EV95LED: FRMC.1 309

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Aaron Orlando Smalls,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-10-9603

ORDER OF DISMISSAL

FILED
2014 MAR -5 PM 12:12
JULIE J. ADKINS
CLERK OF COURT

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Trial Counsel:

Date of Hearing:

Court Reporter:

The Honorable Stephanie P. McDonald

Aaron Smalls- *Pro Se*

Ashleigh R. Wilson, Esquire

Edward Brown, Esquire

January 10, 2014

Joy C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 29, 2011, and amended November 21, 2013. The Respondent made its Return on June 20, 2012. An evidentiary hearing into the matter was convened on January 10, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented himself. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant also called to testify his co-defendant Sharonda Wright. The Applicant's plea counsel, Edward Brown, Esquire, and Gregory Voight, Assistant Solicitor, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and the Respondent's Return thereto.

ARM

PROCEDURAL HISTORY

The Applicant was indicted at the April 2009 term of the Charleston County Grand Jury for possession with intent to distribute (PWID) cocaine base- third offense (2009-GS-10-3226), possession with intent to distribute (PWID) within ½ mile of a school (2009-GS-10-3227), and manufacturing cocaine base- third offense (2009-GS-10-3225). Edward Brown, Esquire, represented the Applicant. The Applicant pled guilty to PWID cocaine base within ½ mile of a school- first offense and manufacturing cocaine base- second offense. The remaining PWID cocaine base charge was *nolle prossed*. Pursuant to a negotiated plea agreement, the Honorable Deadra L. Jefferson sentenced the Applicant to confinement for eight years. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.

In his application amended November 21, 2013, the Applicant alleges:

1. Ineffective assistance of counsel.
 - a. Counsel failed to conduct an adequate investigation of the relevant facts and laws governing the Applicant's defense.
 - b. Counsel failed to seek a suppression hearing in order to challenge the evidence used by the State to support the charge of manufacturing cocaine base.
 - c. Counsel stated in open court that he could not adequately defend the Applicant at trial.
 - d. Counsel failed to object to the trial court's repeated coercion of the Applicant to plead guilty.
 - e. Counsel failed to withdraw the Applicant's guilty plea.
 - f. Counsel failed to allow the Applicant to listen to the audio tape of an alleged undercover drug buy.
 - g. Counsel continued with the Applicant's guilty plea after Applicant stated he was not satisfied with counsel's representation.

2. Involuntary guilty plea.

- a. Counsel fraudulently asserted that the State had tested additional substances seized at the Applicant's residence, and those substances proved to be cocaine. Counsel used this false information to compel the Applicant's guilty plea.

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 his or her 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).

Summary of the Testimony

At the start of the Applicant's evidentiary hearing, the Court confirmed that the Applicant was previously advised of his right to counsel.¹ The Court advised the Applicant of the risks associated with pursuing post-conviction relief along with the minimum mandatory sentences he would be facing if he were granted a new trial. The Applicant stated he was aware of his right to counsel and wanted to proceed with his post-conviction relief application *pro se*.

The Applicant took the stand and testified he spoke with counsel five (5) times before pleading guilty. He also testified he did not review discovery with his attorney. He testified he discussed possible defenses with his attorney and did not give his attorney any leads or witnesses to investigate. The Applicant testified counsel did not investigate any of his witnesses or look

¹ The Applicant's evidentiary hearing was originally scheduled for November 21, 2013. At the November 2013 hearing, the Applicant moved to relieve his counsel- Tommy Thomas, Esquire. Thomas consented to being relieved and the Applicant expressed to the Court his desire to represent himself at the PCR hearing. The Applicant was advised by the Court of the risks and pitfalls of proceeding without counsel and the hearing was continued until the next term of court. The Honorable Stephanie P. McDonald relieved Thomas from representation of the Applicant in this matter by Order filed December 2, 2013.

into drugs found in the microwave. He testified counsel came to his home and took photos of the scene, but otherwise would not do anything that he asked. The Applicant testified he wanted a suppression hearing prior to trial and trial counsel wanted to wait until the day of trial to present the motion to the Court.

The Applicant also testified trial counsel told him that the State had additional drugs that had not been tested. He testified the drugs purchased by the confidential informant were never submitted for testing at SLED. He testified further counsel told him that if he proceeded to trial the State would bring additional charges against him. The Applicant testified counsel told him it was not in his best interest to proceed to trial.

The Applicant testified he told Judge Jefferson during his guilty plea that he wanted to proceed to trial. He testified he did not want to plead guilty, but felt he had no choice because counsel tried to bail on him. The Applicant testified that during his guilty plea he was advised by the Court of the penalty for the charges he was facing and the elements of the charges he was facing. He testified he told the Court he was not promised, threatened, or coerced anything to plead guilty. He testified he told the Court his plea was freely and voluntarily entered and that no one pressured him to plead guilty. The Applicant testified he recalled telling the Court that his answers were truthful during his guilty plea and that he was being truthful during his guilty plea.

Lastly, the Applicant testified that his guilty plea transcript was inaccurate. He testified his guilty plea did not take 80 pages and that an audio recording of the guilty plea would reflect a different proceeding. The Applicant testified further that during his guilty plea he blacked out and does not recall what happened.

The Applicant called to testify his co-defendant Sharonda R. Wright. Wright testified that she is the Applicant's girlfriend and has three (3) children with the Applicant. Wright testified

she was charged with possession of cocaine base within the proximity of a school and her charge was dismissed. Wright testified that at the plea proceeding the Applicant wanted to go to trial. She testified counsel kept trying to talk the Applicant out of going to trial and tried to get her to talk him out of going to trial. Wright testified that counsel said he would not do his best if the Applicant went to trial. Lastly, Wright testified she was not at every meeting between the Applicant and his attorney.

Also present to testify was Edward Brown, Esquire. Brown testified he has been practicing criminal law for the last thirty-nine (39) years. He testified he was retained to represent the Applicant at least a year prior to the Applicant's guilty plea. He testified he met with the Applicant frequently to discuss his case. Brown testified he filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the received discovery materials with the Applicant. Counsel testified he also reviewed with the Applicant the audio of the controlled buy between the confidential informant and the Applicant. He testified further that nothing exculpatory was on the tape.

Counsel testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove, the Applicant's version of the facts, and possible defenses. Counsel testified the Applicant did not have any viable defenses to present at trial. He testified further the Applicant's criminal background would hurt the Applicant if he chose to take the stand to testify at trial.

Counsel testified that during their talks the Applicant was caught up on drugs found in a place where the Applicant claimed he did not live. Counsel testified the Applicant claimed he lived in a detached garage and his co-defendant lived in the home where the drugs were found. He testified he received a copy of the search warrant executed in the case and reviewed it

that he
thoroughly with the Applicant. He testified *that he* filed a motion to suppress all evidence in the Applicant's case and thought it was unlikely that the evidence was going to be suppressed. He testified he discussed the likelihood of the motion's success with the Applicant. Counsel testified he explained to the Applicant that police could search both the home and garage and that drugs were found in both the home and garage.

Counsel testified the Applicant did not give him any witnesses or leads to investigate. Counsel testified his investigation of the case included visiting the home where the drugs were found. He testified the Applicant brought it to his attention that all the evidence had not been sent to SLED for testing. He testified he ultimately received a second testing report from the State. Counsel testified he gave the Applicant a copy of the report. He testified he was prepared for trial and based on his investigation felt comfortable advising the Applicant on whether it was in his best interest to plead guilty.

Counsel testified he spoke with the solicitor several times about a plea offer. He testified that ultimately the State offered a negotiated sentence of eight (8) years, concurrent. Counsel testified he communicated the offer to the Applicant, informed the Applicant of the consequences of his plea, and informed the Applicant of his constitutional rights.

Counsel testified he felt awkward during the Applicant's guilty plea when the Applicant indicated he was not pleased with his services. He testified that his statements to the Court during the Applicant's guilty plea were made in the context of him being prepared for trial, but thinking that nothing he could do would satisfy the Applicant. He testified the Applicant wanted to fire him and get someone else.

Counsel testified the Applicant did not black out during his guilty plea proceeding. He testified the Applicant understood what was happening. He testified ultimately it was the

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Applicant's decision to accept the plea offer and he did not coerce, threaten, or pressure the Applicant to get him to plead guilty. Counsel testified further he reviewed the transcript of the Applicant's guilty plea and it accurately reflects the plea proceeding.

The State called to testify Gregory Voight, Assistant Solicitor. Voight testified the Applicant's case was reassigned to him several months prior to the Applicant's guilty plea. Voight testified a search warrant was obtained for the Applicant's residence after a controlled buy at the Applicant's home. He testified police searched the Applicant's residence and found a small quantity of cocaine and firearms.

Voight testified the Applicant was scheduled to plead guilty three or four times. He testified when he took over the Applicant's case he left open a plea offer from the prior solicitor and the offer was rejected by the Applicant. He testified there was no offer going into the Applicant's trial.

Voight testified further ^{that} while preparing for the Applicant's trial he realized that some of the evidence had not been sent to SLED for testing. Voight testified the issue was initially brought to his attention by Brown because the Applicant had brought the issue to his attention. Voight testified he spoke with counsel about the evidence that was not sent for testing and then sent a pan and whisk found in the detached garage to SLED for testing. He testified he received a SLED report from the second set of tests and forwarded the report to counsel for the Applicant. He testified the pan and whisk seized both tested positive for a small amount of cocaine. Voight testified there were all together two SLED reports from the testing of evidence found in the Applicant's home.

At the conclusion of the Applicant's evidentiary hearing, the Court advised the Applicant of his right to appeal the Court's denial and dismissal of his application for post-conviction

relief.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness

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and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

As an initial matter, this Court finds the testimony of the Edward Brown, Esquire, and Gregory Voight, Esquire, to be credible. This Court finds further ^{that} the testimony of the Applicant was not credible. The Applicant's lack of credibility was evidenced by his claim that the transcript of his guilty plea did not accurately reflect his guilty plea proceeding. At the evidentiary hearing, the Applicant relied upon and highlighted for the Court several statements in the guilty plea transcript made by plea counsel. The Applicant also claimed that he "blacked out" during his guilty plea and did not recall what happened. In light of the conflicting testimony presented by the Applicant, this Court finds the Applicant's claim that the transcript of his guilty plea was inaccurate is wholly without merit and a direct reflection of the Applicant's poor credibility.

This Court finds counsel is a trial practitioner who has extensive experience in the trial of

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serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that trial counsel was not ineffective for failing to investigate the Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

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This Court finds counsel adequately investigated the Applicant's case prior to the Applicant's guilty plea. Counsel reviewed all materials received in discovery and visited the Applicant's residence where drugs were found. This Court also finds the Applicant has failed to show what would have been discovered had counsel investigated the Applicant's case further. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was deficient and that prejudice resulted from counsel's performance.

This Court finds that counsel was not ineffective for failing to seek a suppression hearing. This Court finds counsel provided credible testimony that he filed a motion to suppress all evidence in the Applicant case. This Court also finds credible counsel's testimony that he discussed the motion to suppress and the likelihood of the motion's success with the Applicant prior to the Applicant pleading guilty. This Court finds it is not unreasonable for criminal defendants to seek resolution of motions to suppress shortly prior to trial. This Court also finds it is not unreasonable for counsel to abandon pursuing a motion to suppress evidence once a defendant expresses interest in pleading guilty. This Court finds the Applicant has also failed to provide any basis for the suppression of the drugs found by police in his residence. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel's performance was deficient and resulted in prejudice.

This Court finds further ^{that} counsel was not ineffective for failing to allow the Applicant to listen to the audio of the controlled buy made by police prior to the execution of the search warrant for the Applicant's home. This Court finds credible counsel's testimony that he listened to the audio tape with the Applicant. Counsel testified further that the contents of the tape were not exculpatory. This Court finds the Applicant has failed to show how his review of the audio tape of the controlled buy in any way affected his decision to plead guilty or the outcome of his

Dem

proceeding. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel's performance was deficient and resulted in prejudice.

Involuntary Guilty Plea

The Applicant alleges that his guilty plea was entered involuntarily. This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds the Applicant was fully advised of the consequences of pleading guilty and made aware of all the constitutional rights he was waiving as a result of pleading guilty. The record reflects the Applicant initially

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12

wanted to reject the State's plea offer and proceed to trial, but had a change of heart. (Tr. 3:6-8, 13:2-9). The record reflects the Applicant was advised by the Court of the substance of the negotiated plea offer he was accepting. (Tr. 17:12-23). The Applicant told the Court he was not under the influence and did not suffer from any physical or emotional problems that would keep him from understanding the plea proceeding. (Tr. 19:18-20:2, 22:13-16). The Court advised the Applicant of the potential penalties for the charges he was facing. (Tr. 21:4-22:12).

The Applicant was also advised of his constitutional rights including his right to a jury trial, his right to remain silent, his right to confront his accusers, and his right to appeal. (Tr. 36:6-24, 80:7-10). The Applicant agreed with the facts presented by the State and told the Court he was certain he wanted to plead guilty. (Tr. 28:20-29:3, 33:13-23, 71:4-7). The Applicant told the Court he was not promised anything, threatened, coerced, forced, or pressured to plead guilty. (Tr. 78:11-23, 79:19-23). The record also reflects the Applicant told the Court he was indeed guilty of the charges he was pleading to. (Tr. 33:21-23, 36:2-5). This Court finds the Applicant was fully aware that he could proceed to trial instead of pleading guilty if he chose to. This Court also finds the Applicant was not pressured to plead guilty. This Court finds the Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered.

Accordingly, this Court finds^{that} the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. The Applicant's complaints concerning counsel's performance are without

2PM

merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the original or amended application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes ^{that} the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of March, 2014.


The Honorable Stephanie P. McDonald
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
Aaron Orlando Smalls

INDICTMENT/CASE#: 2009GS1003227A/W#: K353413Date of Offense: 1/21/2008S.C. Code §: 44-53-0445(B)(2)CDR Code #: 0108

AKA:

Race: BLACK Sex: M Age: 41DOB: SS#:

Address:

City, State, Zip: NORTH CHARLES, SC 294060000DL#: SID#: SC00914229*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: PWID COCAINE BASE 1/2 MILE PROX

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 44-53-0445(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0107

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

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

ATTEST:

Voigt, Gregory

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 8 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: 2009-GS-10-3225
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>4.40</u>
TOTAL	\$	\$ <u>289.40</u>

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender Fund

Other:

Attu if available

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128Sentence Date: 10/5/11

KDN20090100533

WITNESSES

MATTHEW HUGHES

North Charleston Police Department

AGENCY CASE NUMBER
2009002440

ARREST WARRANT NUMBER

K353413

DATE OF ARREST

January 21, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 07 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GSI003227

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2009

09-0391(03)
THE STATE

vs.

AARON ORLANDO SMALLS

DOB:

B/M

Indictment for

Possession With Intent To Distribute
Cocaine Base Within Proximity Of A School

FILED

2009 APR -8 AM 9: 55

JULIE J. ARMSTRONG
CLERK OF COURT

BY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

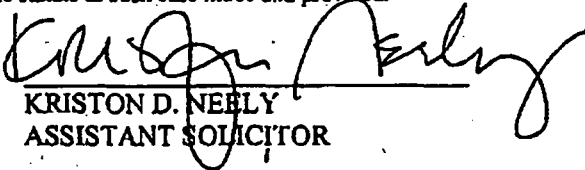
INDICTMENT

At a Court of General Sessions, convened on April 6, 2009 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent To Distribute Cocaine Base Within Proximity Of A School

That in Charleston County, South Carolina, on or about January 21, 2009, the Defendant, AARON ORLANDO SMALLS, unlawfully did possess with intent to distribute, distribute, dispense, sell, purchase, or manufacture, a quantity of Cocaine Base within a one-half mile radius of the grounds of Matilda Dunston School located at Remount Road, North Charleston, South Carolina all in violation of Section 44-53-445 of the South Carolina Code of Laws (1976) as amended.

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


KRISTON D. NEELY
ASSISTANT SOLICITOR

ARREST WARRANT

K- 353413

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

CHARLESTON

THE STATE

against

1640-B

ARON ORLANDO SMALLS

Address

NORTH CHARLESTON, SC 29406

Phone

SSN

Race

Height 5'10 Weight 210

DL State

DL #

DOB

Agency ORLA

Prosecuting Agency

NCPD

Prosecuting Officer

HUGHES

Offense

PWID COCAINE BASE

1/2 MILE PROX SCHOOL

Code

Code/Ordinance Sec: 44-53-445

This Warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

CHARLESTON

AFFIDAVIT

R. STONE

who

Personally appeared before me the affiant ARON ORLANDO SMALLSbeing duly sworn deposes and says that defendant ARON ORLANDO SMALLS violate the criminal laws of theState of South Carolina (or ordinance of CHARLESTON)

PWID COCAINE BASE 1/2 MILE PROX SCHOOL

44-53-445

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

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofAffiant's Address 4901 LACROSS RD
NORTH CHARLESTON, SC 29405Affiant's Telephone 843-554-5700

CHARLESTON

ARREST WARRANT

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

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

on 01-21-2009defendant ARON ORLANDO SMALLSdid violate the criminal laws of the State of South Carolina (or ordinance of CHARLESTON)☒ County/ ☐ Municipality of

as set forth below:

DESCRIPTION OF OFFENSE:

CHARLESTON

PWID COCAINE BASE 1/2 MILE PROX SCHOOL

Having found probable cause and ARON ORLANDO SMALLS affiant having sworn before me, you are empowered and directed to arrest the said

defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to

the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on January 22, 2009Signature of Issuing Judge (L.S.)Judge's Address 3670 LEROY'S AVENUE, SUITE 106

N. CHARLESTON, SC 29405

Judge Code: 7004/SL/ABCIssuing Court: 843-746-9872Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

Ball set by
Linda Lombard

JAN 22 2009

Judge _____

on _____

Type and Amount: \$5,000

Name of Surety: _____

PRELIMINARY HEARING held by _____

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

RECORDED

FILE CASE # 1605

IN CASE # 397

REPORT GROUP CLISX

ISS. CODE _____

WITNESSES

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

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Name: _____
Address: _____

Telephone: _____

CODEFENDANT'S AV 32 NAT 6002

FILED

STATE OF SOUTH CAROLINA

Inv. Officer Hughes

COUNTY OF CHARLESTON

AFFIDAVIT

OCA# 2009002440

Personally appeared before me, a magistrate of this County, one RESTON
 who, first being duly sworn, deposes and says that

AARON ORLANDO SMALLS

did within this County and State on the 21st day of January, 2009, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

**POSSESSION WITH THE INTENT TO DISTRIBUTE COCAINE BASE WITHIN A ½
 MILE PROXIMITY OF A SCHOOL
 VIOLATION OF SECTION 44-53-445**

The affiant states there is probable cause to believe that the defendant named above did commit the crime set forth, and that such probable cause is based on the following facts:

That on January 21st, 2009 at approximately 9:15 am, while at Marietta Street, located in the City of North Charleston, County Charleston, South Carolina, the defendant, Aaron Orlando Smalls, did commit the offense of Possession With the Intent to Distribute Cocaine Base Within a ½ Mile Proximity of a School, in violation of section 44-53-445 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully have in his possession approximately 2 grams of an off rock like substance, which tested presumptive for cocaine.

Facts to establish the aforesaid are that the North Charleston Police Narcotics Unit executed a search warrant at the defendants residence. During the execution of this warrant Detectives located the aforementioned substance in a clear plastic bag under landscaping mulch adjacent to his residence. The defendant advised Detectives that there might be illicit drugs buried in the yard. This incident occurred within a ½ mile proximity of Matilda Dunston School located at 1825 Remount Road. Detectives Hughes, Roy and Bailey of the North Charleston Police Department are witnesses to prove the same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
 this _____ day of JAN 22 2009
 2009.

RESTON
 (AFFIANT)

[Signature]
 Signature of Judge

Address: 4900 Lacross Rd.
 N. Charleston S.C.
 Phone: 843-554-5700

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Aaron Orlando Smalls

AKA:

Race: BLACK Sex: M Age: 41DOB: SS#:Address: ASTCity, State, Zip: NORTH CHARLES, SC 294060000DL#: 01 SID#: SC00914229*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: PWID/Dist Crack/Moth 3rd Off (old law) manufacturing Cocaine Base 2nd Off.in violation of § 44-53-0375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0114 3015
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation ☒ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Voigt Gregory

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 8 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: 2009-GS-10-3227
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>4.40</u>
TOTAL	\$	\$ <u>289.40</u>

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: Attu if available.

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2128

10/5/11

KDN20090100533

WITNESSES

MATTHEW HUGHES

North Charleston Police Department

AGENCY CASE NUMBER

2009002440

ARREST WARRANT NUMBER

K353411

DATE OF ARREST

January 21, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 07 2009

VERDICT

Foreperson of Petit Jury

INDICT

DOCKET NO. 2009GSI003225

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2009

09 0391(01)
THE STATE

VS.

AARON ORLANDO SMALLS

DOB:

B/M

Indictment for

Manufacturing Cocaine Base

FILED

2009 APR -8 AM 9:55

JULIE J. ARMS, CLERK OF COURT

BY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

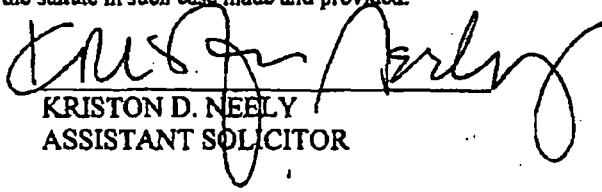
INDICTMENT

At a Court of General Sessions, convened on April 6, 2009 the Grand Jurors of Charleston County present upon their oath:

Manufacturing Cocaine Base

That in Charleston County, South Carolina, on or about January 21, 2009, the Defendant, AARON ORLANDO SMALLS, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to distribute, dispense, or deliver Cocaine Base, all in violation of Section 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


KRISTON D. NEELY
ASSISTANT SOLICITOR

ARREST WARRANT

K-353411

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

THE STATE
against

AARON ORLANDO SMALLS

Address: 7151

NORTH CHARLESTON, SC 29406

Phone: SSN: 200

DOB: Race: Height: 5'10 Weight: 200

DL State: SC Agency ORIF: NCPD

Prosecuting Agency: NCPD

Prosecuting Officer: HUGHES

Offense: MANUFACTURING COCAINE BASE

Offense Code: 44-53-375

Code/Ordinance Sec: 44-53-375

This Warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of The accused

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

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHARLESTON

AFFIDAVIT

Personally appeared before me the affiant R. R. STONE

who

being duly sworn deposes and says that defendant AARON ORLANDO SMALLS
did within this county and state on 01-21-2009 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON)
in the following particulars:

DESCRIPTION OF OFFENSE:

MANUFACTURING COCAINE BASE
44-53-375

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

SEE ATTACHED AFFIDAVIT

Signature of Affiant

R. R. Stone

Affiant's Address 4900 LACROSS RD

NORTH CHARLESTON, SC 29405

Affiant's Telephone 843-554-5700

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHARLESTON

ARREST WARRANT

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

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

on 01-21-2009 defendant AARON ORLANDO SMALLS

did violate the criminal laws of the State of South Carolina (or ordinance of CHARLESTON) as set forth below:

☒ County/ ☐ Municipality of
DESCRIPTION OF OFFENSE:

CHARLESTON) as set forth below:

MANUFACTURING COCAINE BASE

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

Sworn to and subscribed before me on

January 22, 2009

Signature of Issuing Judge (L.S.)

Judge's Address 3670 LEBBES AVENUE, SUITE 106

Judge's Telephone N. CHARLESTON, SC 29405

Judge Code: 7004/LSI/AEC

ORIGINAL

Linda Lombard

Judge _____

on **JAN 22 2009**

Type and Amount: _____

Name of Surety: 12,000

PRELIMINARY HEARING held by _____

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before _____

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition: _____

Sentence: _____

WITNESSES

Name: _____
Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

JAN 23 AM 11:33

RECORDS GROUP

CODEPENDANTS

JAN 23

6002

1000 30

RECORDS

GROUP

CODEPENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Inv. Officer Hughes

AFFIDAVIT

OCA# 2009002440

Personally appeared before me, a magistrate of this County, one RESTON
 who, first being duly sworn, deposes and says that

AARON ORLANDO SMALLS

did within this County and State on the 21st day of January 2009, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
MANUFACTURING COCAINE BASE
VIOLATION OF SECTION 44-53-375

The affiant states there is probable cause to believe that the defendant named above did commit the crime set forth, and that such probable cause is based on the following facts:

That on January 21st, 2009 at approximately 9:15 am, while at _____ Street, located in the City of North Charleston, County Charleston, South Carolina, the defendant, Aaron Orlando Smalls, did commit the offense of Manufacturing Cocaine Base, in violation of section 44-53-375 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully have in his possession and under his control a microwave along with a container and mixer which contained a substance that field tested presumptive for cocaine.

Facts to establish the aforesaid are that the N.C.P.D. Narcotics unit executed a search warrant at Marietta Street after a controlled purchase of illicit drugs was conducted. During the execution of this warrant detectives located the aforementioned items in the kitchen of the garage apartment. After being advised of his rights the defendant stated that the microwave was in fact used for manufacturing cocaine base but declined to say who was responsible. Detectives Hughes, Bailey and Hudson of the North Charleston Police Department are witnesses to prove the same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
 this _____ day of JAN 22 2009
 2009.

J
 Signature of Judge

RESTON
 (AFFIANT)

Address: 4900 Lacross Rd.
 N. Charleston S.C.
 Phone: 843-554-5700